

# CHAPTER 5

## INDIGENOUS LEGAL SERVICES

5.1 This chapter discusses the following issues that were raised by submissions and during public hearings:

- funding for Aboriginal and Torres Strait Islander legal services (ATSILS);
- the need for separate legal aid services for Indigenous people;
- the Commonwealth Government's proposed introduction of tendering for Indigenous legal services;
- issues relating to Indigenous women, including conflict of interest issues;
- alternative dispute resolution; and
- broader access to justice issues.

### **Funding for Indigenous legal services**

5.2 Prior to the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1989, ATSILS were funded by the Commonwealth Government through grants-in-aid administered by the then Department of Aboriginal Affairs.<sup>1</sup>

5.3 ATSILS are now funded by the ATSIC Legal and Preventative Services Program,<sup>2</sup> administered by ATSIS.<sup>3</sup> The principal funding recipients are a network of 25 ATSILS, located at 96 service sites nationally. These are Indigenous owned and controlled organisations that provide legal aid in a culturally appropriate way.<sup>4</sup> ATSIS also provides funding for a network of Family Violence Prevention Legal Services.

5.4 The total amount of legal funding administered by ATSIS in its Law and Justice Program for the 2002-03 financial year was \$57.093 million.<sup>5</sup> In the same financial year, ATSILS received a total of \$43.053 million for legal representation to 69,292

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1 *Aboriginal Legal Aid*, House of Representatives Report, July 1980, p. 163.

2 See ATSIC website: [http://www.atsic.gov.au/programs/Social\\_and\\_Cultural/Default.asp](http://www.atsic.gov.au/programs/Social_and_Cultural/Default.asp).

3 ATSIC, *Submission 98*, p. 6; *ATSIC Annual Report 2002-2003*, p. 183.

4 ATSIC, *Annual Report 2002-2003*, p. 183.

5 ANAO *ATSIS Law and Justice Program*, Performance Audit Report No. 13 2003-2004, p. 25.

Indigenous clients in 113,698 duty matters.<sup>6</sup> State and territory governments also provide funding for ATSILS.<sup>7</sup>

5.5 In its submission, ATSIC stated:

ATSILS are required to prioritise provision of services in accordance with ATSI's National Program Policy Framework for ATSILS ... Accordingly, in face of sheer demand for assistance, ATSILS predominantly provide legal aid services for criminal matters (89% of case and duty matters in 2001-02; compared with only 2% family matters and 2% violence protection matters).<sup>8</sup>

5.6 ATSIC also submitted that current challenges for its legal aid program are:

- the rapid growth in the number of young Indigenous people, with over 40 per cent of Indigenous people being under 15 years of age;
- growing demand for ATSILS to provide services relating to child protection, civil and family matters; and
- funding shortfalls.<sup>9</sup>

### ***Funding shortfalls***

5.7 Several Indigenous legal service providers expressed concern that they are unable to meet increasing demands because of inadequate funding.<sup>10</sup>

5.8 ATSIC noted that financial constraints prevent genuine access to justice for Indigenous people on a wide range of matters and contribute to high incarceration rates and recidivism amongst Indigenous Australians:

It should be emphasised that there is a very real disadvantage experienced, now, by Indigenous people due to the constrained resources provided to

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6 ATSIC, *Submission 98*, p. 6.

7 Commonwealth Government's Response to recommendations made by the House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, November 1995, p. 27.

8 *Submission 98*, p. 7.

9 *ibid*, p. 10.

10 For example, see Katherine Aboriginal Regional Legal Aid Service, *Submission 2*, p. 2; Coalition of Aboriginal Legal Service, *Submission 5*, p. 39; North Australian Aboriginal Legal Aid, *Submission 7*, p. 7; Aboriginal Legal Rights Movement, *Submission 16*, p. 24; Miwatj Aboriginal Legal Service, *Submission 35*, p. 1; Redfern Legal Centre, *Submission 61*, p. 1; Victorian Aboriginal Legal Service, *Submission 67*, p. 2; Top End Women's Legal Service, *Submission 74*, p. 3.

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Indigenous legal aid services which simply do not match the number of people and matters requiring assistance.<sup>11</sup>

#### 5.9 ATSIK's submission referred to an overall funding shortfall for Indigenous legal aid services when compared with LACs:

ATSIK's submission to the Department of Finance and Administration Pricing Review in 2001 found a \$12 million annual funding shortfall of ATSIK compared to Legal Aid Commission benchmarks. ATSIK commissioned the Australian Institute of Criminology to develop a funding allocation method (FAM) to advise proportionate need for legal service funds between the ATSIK Regions. While the formal report is not yet available, initial studies point to a severe shortfall in funding against current indicators of need.<sup>12</sup>

#### 5.10 ATSIK argued that, while there are serious resource strains across the whole legal aid system which need urgent supplementation, within this general constraint:

... the resources currently available to LACs and ATSIK are not equivalent. At the very least the ATSIK indigenous legal aid program needs to be funded at similar levels to LACs in order to recruit effectively and provide much needed services.<sup>13</sup>

#### 5.11 A 2003 Australian National Audit Office (ANAO) report also referred to the shortfall in funding for Indigenous legal aid services:

Other reports on the provision of legal services by ATSIK have referred to 'shortfalls in ATSIK funding' for legal aid of either \$12.4 million or \$25.6 million. Grantee organisations advised the ANAO that in the current environment service delivery is suffering. ATSIK are slowly becoming less effective as they are forced to reduce the number of lawyers they employ, or reduce the range of services delivered, while the demand for assistance is increasing. This reflects increasing demand for ATSIK's services, increasing costs and relatively flat funding levels.<sup>14</sup>

#### 5.12 The ANAO stated that the development of a whole-of-government approach (by Commonwealth, state and territory governments) to address the legal aid needs of Indigenous Australians would provide:

... the best opportunity for all providers to achieve a standard of service delivery that is consistent and appropriate. Achieving this will require ATSIK to work with funding agencies to provide governments with a comprehensive picture of the issues involved in providing legal aid to Indigenous Australians. In addition, unless ATSIK acts to provide realistic specifications for the services ATSIK are to provide, there are clear risks

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11 *Submission 98*, p. 5.

12 *ibid*, p. 10.

13 *ibid*, p. 5.

14 ANAO *ATSIK Law and Justice Program*, Performance Audit Report No 13 2003-2004, p. 42.

that there will be continued reductions in the ability of ATSILS to deliver quality services.<sup>15</sup>

5.13 ATSIC's submission referred to the report of an audit in 2003 by the Office of Evaluation and Audit in ATSIC, which found that:

- ATSILS are providing legal services at a cost that is significantly lower than that paid by mainstream LACs for legal work undertaken on a referral basis by private practitioners, and that it is achieved at a level of client satisfaction no different from that reported by LAC clients.
- The national shortfall in ATSIC funding to ATSILS, if their outputs are costed at the same level as LAC-paid legal work, is \$25,605,598.
- There is low morale and high staff turnover among ATSILS practitioners.<sup>16</sup>

5.14 The Katherine Regional Aboriginal Legal Aid Service submitted that it is severely underfunded:

While our workload has experienced generally a steady but at times explosive incline, our funding has steadily decreased in both real and nominal terms. This has [led] to a series of very significant problems for our clients.

First, areas of law where services need to be provided and where proactive solutions may be made ... are constantly being sidelined in favour of the non-stop rigo[u]rs of providing assistance in crime ...

Second, there is a shortage of money to pay lawyers appropriately. This has led in turn to 2 problems: (a) a complete inability to attract experienced practi[t]ioners (especially in areas outside of crime); and, (b) very high attrition rates for lawyers within the service. Our regional location compounds that secondary problem.<sup>17</sup>

5.15 Mr Neil Gillespie of the Aboriginal Legal Rights Movement (ALRM) also advised that reductions in legal aid funding has resulted in its lawyers being paid lower salaries than their LAC counterparts:

In real terms we have had a substantial reduction rather than just a loss of \$50,000. Once you take into consideration the loss of purchasing power of our dollars you will understand why we exhibit frustration in the total funding of ALRM. We have staff, for argument's sake, who are on 30 per cent less than their counterparts in the Legal Services Commission. I was at a function the other day and I found out that I am on far less than my counterparts—CEOs in native title representative bodies. The average salary there is in the vicinity of \$140,000. My salary is 50 per cent of that.

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15 *ibid.*

16 *Submission 98*, citing ATSIC, Office of Evaluation and Audit *Evaluation of the legal and preventive services program*, 2003, pp. 1 & 2.

17 *Submission 2*, p. 2.

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That is indicative of the plight in our funding. We cannot afford to pay our people the dollars they command.<sup>18</sup>

5.16 The North Aboriginal Legal Aid Service submitted that ATSIC should lobby both the Commonwealth Government and the Northern Territory government to provide the same level of service to the remote communities as in Darwin.<sup>19</sup>

5.17 The Victorian Aboriginal Legal Service stated:

Given the myriad studies and research that undeniably demonstrate the abysmal levels of disadvantage suffered by Indigenous people in Australia, it is incredible that an Indigenous organisation continue to be funded well below the levels of mainstream services.<sup>20</sup>

### **The need for separate legal services**

5.18 In 1980, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs strongly supported the existence of specialist Aboriginal legal services.<sup>21</sup> The Royal Commission into Aboriginal Deaths in Custody in 1991 also supported the continued existence of such services, while making various recommendations on their operations.<sup>22</sup>

5.19 Submissions to this inquiry also expressed strong support for specialist Indigenous legal services that provide culturally sensitive services to Indigenous people.

5.20 Many remote Aboriginal communities endure chronic lack of health and educational services, overcrowded housing, substance abuse including severe alcoholism and petrol sniffing, and very high levels of violence.<sup>23</sup> Aboriginal and Torres Strait Islander people are widely regarded as the most disadvantaged group in the Australian justice system.

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18 *Committee Hansard*, 11 November 2003, p. 23.

19 North Australian Aboriginal Legal Aid Service, *Submission 7*, p. 6.

20 Victorian Aboriginal Legal Aid Service, *Submission 67*, p. 10. Also see Top End Women's Legal Service, *Submission 74*, p. 2.

21 *Report*, p. 30.

22 Recommendations 105-108 quoted in Coalition of Aboriginal Legal Services NSW, *Submission 5*, pp. 11-12.

23 Katherine Regional Aboriginal Legal Aid Service, *Submission 2*, p. 2. See also ATSIC, *Submission 98*, pp. 5 & 6.

5.21 The high incarceration rate of Aboriginal and Torres Strait Islander people is one indication of that disadvantage.<sup>24</sup> The Victorian Aboriginal Legal Service (VALS) submitted that:

The legal situation of Indigenous people in Victoria, as in the rest of Australia, is appalling. At the end of June 2002, Indigenous people in Victoria were 13 times more likely to be imprisoned than non-Indigenous people, which was an 8% increase since June 2001.<sup>25</sup>

5.22 The Coalition of Aboriginal Legal Services NSW (COALS) noted that:

In August 1995, nearly a third (31%) of all people held in police custody were Aboriginal ... Indigenous people also appear in court at a rate five times higher than that which would be expected given their population size, and their rate of incarceration is twelve times higher than that of non-Indigenous Australians. ... almost one in five prisoners currently incarcerated in Australian correctional facilities is an Aborigine or Torres Strait Islander.<sup>26</sup>

5.23 COALS stated that the incarceration rates for young people were even more disturbing: as at 31 December 2000, 41 per cent of detainees in juvenile corrective institutions were Indigenous. This rate is almost 16 times higher than the rate for non-Indigenous juveniles.<sup>27</sup> As Mr John Boersig from COALS explained to the Committee, most of those incarcerated are boys. However:

... the recidivism of Indigenous women and girls is increasing at dramatic rates. This is a very big issue. Aboriginal youth comprise 42 per cent of inmates around Australia. What that means is in New South Wales, for example, of 350 kids in custody 123 are going to be Indigenous. That is incredible. You walk into the shelter at Dubbo or the shelter at Grafton and you find that all the kids there are Indigenous.<sup>28</sup>

5.24 Mr Boersig told the Committee that, due to the fact that the Indigenous prison population is increasing by about 8 per cent per year:

... there is a great need to maintain representation in criminal matters. That of course is broader than simple representation in court, although that is important. It is not just about being there when someone is sentenced; it is

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24 Coalition of Aboriginal Legal Services, *Submission 5*, p. 6; Aboriginal Legal Rights Movement, *Submission 16*, p. 4; Victorian Aboriginal Legal Services, *Submission 67*, p. 2; Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 89*, p. 5; Yilli Rreung Regional Council, *Submission 95*, p. 1; ATSIC, *Submission 98*, p. 5; ABS Year Book 2003, ABS Catalogue No. 1310.0, p. 360; ABS Corrective Services, Catalogue No. 4512.0, June 2003, pp. 20-24.

25 *Submission 67*, p. 5.

26 *Submission 5*, pp. 5-6.

27 *Submission 5*, p. 6, citing Australian Institute of Criminology *Persons in Juvenile Corrective Institutions 1981 – 2000: With a Statistical Review of the Year 2000*, unpublished, AIC, Canberra.

28 *Committee Hansard*, 13 November 2003, p. 47.

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about the way the matter is conducted, it is about being out there in the field when people are arrested and it is about prevention. It is getting out there and educating people about their rights and responsibilities. Ultimately the point I am making is that in relation to the landscape we also need to find creative ways to address these issues, apart from money and apart from recognising this issue of core business.<sup>29</sup>

#### 5.25 VALS stated:

Lack of appropriate levels of funding to Indigenous organisations that deal with allied problems such as alcohol and substance abuse, family violence, lack of employment opportunities, education and health are also contributing factors to the continued over-representation of Indigenous people in the justice system.<sup>30</sup>

5.26 COALS submitted that it is because of these social problems and the unique relationship ATSILS have with the Indigenous community that such services are better placed to prepare and provide all relevant facts for the sentencing of Aboriginal offenders.<sup>31</sup> COALS also argued that legal representation of Indigenous people is best carried out by Indigenous legal organisations and their peak representative bodies, and submitted:

... that any attempt to mainstream Indigenous legal services would only serve to exacerbate the already serious problem of the vast over-representation of Aborigines and Torres Strait Islanders within police and prison populations.<sup>32</sup>

#### 5.27 Mr Frank Guivarra from VALS argued:

VALS provides around 85 per cent of the criminal law services and over 65 per cent of the family law and civil law services required by Indigenous people in Victoria. These figures show that even though there are other services available, such as legal aid and community legal centres, Indigenous people still prefer to use VALS. Why is that? A 1980 House of Representatives inquiry found that Aboriginal and Torres Strait Islander legal services create a unique relationship of trust and cultural understanding with their clients that simply could not be emulated by a large, mainstream legal aid service. This relationship means that Indigenous people feel more confident with the legal system and are therefore more likely to access legal representation when they need it.<sup>33</sup>

5.28 COALS submitted that Commonwealth and state governments have made commitments to the recommendations of the Royal Commission into Aboriginal

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29 *ibid*, p. 44.

30 Victorian Aboriginal Legal Aid Service *Submission 67*, p. 10.

31 *Submission 5*, p. 45.

32 *ibid*, p. 41.

33 *Committee Hansard*, 12 November 2003, p. 71.

Deaths in Custody.<sup>34</sup> These commitments include funding legal aid services for Aboriginal and Torres Strait Islander people.<sup>35</sup>

### **Tendering for Indigenous legal services**

5.29 A concern expressed repeatedly by Indigenous legal service providers during the Committee's inquiry is the proposed introduction of competitive tendering for Indigenous legal services. Early in the inquiry the Committee was told that ATSIC/ATSIIS was intending to implement a "contestability" policy or competitive tendering, in accordance with Commonwealth Government policy.<sup>36</sup>

5.30 The Commonwealth Government's policy on competitive tendering is contained in Commonwealth Procurement Guidelines issued by the Minister for Finance and Administration:<sup>37</sup>

The Government is committed to ensuring an efficient and effective public sector through the discipline of contestability. Recent regulatory and legislative changes ensure that Government business activities do not have net competitive advantages over their private sector competitors simply as a result of their public ownership. In a contestable environment, agencies must meet Competitive Neutrality requirements.

Competitive Neutrality policy promotes efficient competition between public and private business operating in the same market.<sup>38</sup>

5.31 ATSIC advised that its move to competitive tendering 'will ensure that service providers are sympathetic to Indigenous people's circumstances, needs and culture'.<sup>39</sup> However, ATSIC warned:

The successful tenderers alone will not be able to provide all Indigenous peoples' need for legal aid and justice, leaving significant gaps in service

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34 *Submission 5*, p. 4. See also House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, November 1994, pp. 2-4.

35 Commonwealth Government's Response to recommendations made by the House of Representative Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Justice Under Scrutiny: Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, November 1995, p. 27.

36 ATSIC, *Submission 98*, p. 3.

37 Commonwealth Procurement Guidelines, p. 5, issued under Regulation 7(1) of the Financial Management and Accountability Regulations. The Guidelines are available at <http://www.finance.gov.au>.

38 *ibid*, p. 7. The Commonwealth Government's Competitive Neutrality policy can be found at [http://www.ccnco.gov.au/cn\\_display.html](http://www.ccnco.gov.au/cn_display.html).

39 *Submission 98*, p. 9.



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which will require co-operation with other providers and additional resources.<sup>40</sup>

5.32 In March 2004 the Minister for Immigration and Multicultural and Indigenous Affairs released the 'Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians'. In a media release, the Minister stated that the aim of the reforms is to:

... ensure that legal services are tendered in a competitive environment thereby ensuring that Indigenous people get value for money. A larger emphasis will also be put on allocating the services to those most in need.

As we prepare to commit more than \$120 million to the purchase of Indigenous legal aid services from January 2005 to December 2007, there is no better time for reform.<sup>41</sup>

5.33 The media release also stated that it was expected that a final draft of the Request for Tender guidelines would be finalised by August 2004, so that the first funds could be released under new contractual arrangements from 1 January 2005.<sup>42</sup>

5.34 When questioned about concerns raised during the inquiry about the tendering issue, a representative from ATSIC told the Committee that:

The way the system is now has failed Indigenous people regarding justice. The services provided for Indigenous people just were not sufficient. We had to take into consideration that the best way to deliver a service was to actually go to tender, with real outcomes.<sup>43</sup>

5.35 Although it was somewhat unclear from ATSIC's submission and from questioning in a public hearing, it appears that it was the ATSIC board that made the decision to tender:

The processes for arranging service delivery reflect the history of the board's support for greater contestability in the arrangements for service delivery of legal services, but since the changes that were introduced from July last year ATSI, as the funding agency, is responsible for arranging the service delivery. The minister's direction to ATSI makes it very clear that it wants us to move towards outcomes based approaches to the arrangement of services. In this area, in light of the strong support that the ATSIC board has given historically to using tendering as a way of securing better and more effective outcomes from the resources that we have available, we are moving down that path.

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40 *ibid*, pp. 4-5.

41 Minister for Immigration and Multicultural and Indigenous Affairs, 'Legal aid reforms to benefit Indigenous Australians', *Media release*, 4 March 2004, at [www.atsia.gov.au](http://www.atsia.gov.au) (accessed 13 April 2004).

42 *ibid*.

43 Mr Lionel Quartermaine, Aboriginal and Torres Strait Islander Commission, *Committee Hansard*, 9 February 2004, p. 35.

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Ministerial direction encourages us to use modern approaches to arranging service delivery. It is not mandating us to use tendering in the arrangement of services that we purchase, but in the area of legal services we believe that it is the most appropriate way to go to secure the best outcomes.<sup>44</sup>

5.36 The Committee also heard ATSIC's view that going out to tender would assist it to save money. However, no study was conducted to indicate that this would be the case.<sup>45</sup>

### ***Criticism of the decision to tender***

5.37 The Committee received evidence indicating serious concern within ATSILS that competitive tendering would mainstream the provision of legal aid services, resulting in the disempowerment of Aboriginal communities.<sup>46</sup> Some ATSILS were also concerned that mainstream legal services are not approached by Indigenous clients because of language and cultural barriers.<sup>47</sup>

5.38 ATSIC itself stressed the importance of ATSILS as preferred legal service providers compared with LACs, CLCs and private legal services:

The reasons for Indigenous peoples' preference for approaching Indigenous-specific organisations rather than mainstream service providers are multi-faceted. However, it is essentially the ATSILS' ability to cater for the cultural needs of Indigenous clients that render them the most suitable avenue for Indigenous people in need of legal aid, particularly in the areas of:

- Dealing with language difficulties;
- Representation and explanation of the law in the face of what is often limited understanding of the justice system by Indigenous people; and
- Advocating and negotiating with relevant government authorities for services to Indigenous people.<sup>48</sup>

5.39 COALS argued that the effectiveness of ATSILS in meeting Indigenous legal needs:

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44 Mr Bernie Yates, ATSIS, *Committee Hansard*, 9 February 2004, p. 39.

45 Mr Rodney Dillon, ATSIC, *Committee Hansard*, 9 February 2004, p. 43.

46 Coalition of Aboriginal Legal Services, *Submission 5*, p. 76; Australian Legal Assistance Forum *Submission 113*; Western Suburbs Legal Service Inc *Submission 114*.

47 Wurringa Baiya Aboriginal Women's Legal Centre, *Submission 89*, p. 7. Also see *Committee Hansard*, 13 November 2003, p. 57.

48 ATSIC, *Submission 98*, p. 9.

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... is primarily attributable to their accessibility and acceptability to the Indigenous population, their community-based structure, and the specialised nature of the legal service they provide ... These organizations have earned their place as an essential part of the legal system of this country, and they should continue to be supported in their endeavours.<sup>49</sup>

5.40 Further, COALS expressed its strong objection to any suggestion to merge ATSILS with other legal service providers. Instead, it urged that:

... consideration be given to expanding these organizations and their representative bodies such that Indigenous participation within the justice proves be granted. It is submitted that any attempt to mainstream services to Aborigines and Torres Strait Islanders will inevitably lead to disempowerment of Aboriginal communities.<sup>50</sup>

5.41 COALS emphasised that Indigenous participation and self-determination in the provision of legal services are vital, since this:

... facilitates the building of trust between organizations and Indigenous communities. This, in turn, increases the level of service acceptance by those communities and contributes to their long-term sustainability. This focus on long-term sustainability of Indigenous programmes is the most effective way in which the negative effects of dispossession and colonization, including high rates of Indigenous incarceration and high levels of Indigenous deaths in custody, can be addressed.<sup>51</sup>

5.42 COALS also argued that ATSILS' approach to assessing legal aid was more appropriate than that of the LACs:

In line with the object of maximising the access of *all* Indigenous Australians to appropriate legal representations, ATSILS guidelines are relatively flexible and discretionary. To a large extent, they avoid the formal and administratively intensive assessment procedures outlined in the Legal Aid Commission's guidelines in favour of more personal and culturally appropriate consultation between staff and clients ... In accordance with its objective of maximising the participation of Indigenous people in legal processes, the approach adopted by ATSILS more effectively promotes the rights of Indigenous people to empowerment, identity and culture, and in doing so, reduces the disproportionate number of the Indigenous population involved in the criminal justice system.<sup>52</sup>

5.43 Mr Neil Gillespie from ALRM told the Committee that the basis on which any output-based service delivery of legal aid services is to be applied is unclear:

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49 Coalition of Aboriginal Legal Services, *Submission 5*, p. 43.

50 *ibid*, pp. 43-44.

51 *ibid*, p. 44.

52 *ibid*, p. 46.

We have no problem with tendering. We have no problem with output based service delivery. However, we would like to understand the basis on which we are expected to provide the services. We have, for a long time, been seeking a revision and a realistic approach to performance and also to service delivery. The systems that we operate at the moment do not help us in providing a better service to our clients. This is highlighted, again, in both ATSIC's own internal document and the National Audit Office report.<sup>53</sup>

5.44 VALS also questioned the appropriateness of the decision to tender:

The Senate Inquiry into competition policy raised questions about the appropriateness of extending competition policy to areas of social welfare provision. The public interest test should be applied when considering whether to tender ATSILS. There is ample evidence that the services are poorly funded and working with disadvantaged communities.<sup>54</sup>

5.45 VALS described the Exposure Draft as 'a formula designed to have ASTILS squeezed out of existence'.<sup>55</sup> The National Association of Community Legal Centres (NACLC) was even more critical:

The present arrangements with ATSILS have been developed around concepts of empowerment, community-based services, flexibility in service delivery, the preventative strategies of running test cases and law reform activities, and the need for broad based assistance such as information, education and research. All these are absent in the Exposure Draft.

The Exposure Draft in its present form will make it difficult for ATSILS to win tenders and appears to have been designed to maximise the opportunities for private law firms to do so. As such, the continued existence of ATSILS as specialist community based Indigenous organizations seems unlikely. Consequently, it appears to undermine the right of Indigenous Australians to self-determination.<sup>56</sup>

5.46 In response, a representative from ATSIC told the Committee:

This is not necessarily going to go to private services. We would like to think that Aboriginal services will quote for these and get these services—not private services. We are thinking along the lines of rules that they will have to understand Indigenous communities, and the majority of the people that understand communities will be the Aboriginals services now.<sup>57</sup>

5.47 The NACLC argued that arrangements for providing services to Indigenous clients were contrary to recommendations of the Royal Commission into Aboriginal

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53 *Committee Hansard*, 11 November 2003, p. 31.

54 VALS, *Submission 67*, pp. 7-8.

55 VALS, *Submission 67B*, p. 1.

56 NACLC *Submission 84B*, p. 3.

57 Mr Rodney Dillon, ATSIC, *Committee Hansard*, 9 February 2004, p. 35

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Deaths in Custody.<sup>58</sup> Further, the Exposure Draft was 'not a commercially realistic document'<sup>59</sup> and its proposals 'are designed to implement the agenda to mainstream aboriginal services'<sup>60</sup> and shift costs from the Commonwealth to the states, with the following results predicted:

The Exposure Draft will not result in the delivery of quality legal services to Indigenous people nor will it improve access to justice for these the most disadvantaged people in our community. The ideological agenda driving this proposal is likely to have a number of expensive and damaging consequences.<sup>61</sup>

5.48 The NACLC also claimed that:

The need for targeted legal services for Indigenous people and the effectiveness of the service delivered have rarely been questioned, even though, at times, there have been concerns about the governance of ATSILS. All the reviews of ATSILS have concluded among other conclusions, that the fundamental issue affecting ATSILS has been the lack of funds. The level of service delivery, given this under-resourcing, the climate of instability created by the many reviews of ATSILs and the overwhelming need, is outstanding.<sup>62</sup>

5.49 Of particular concern to the NACLC was that there is no requirement in the Exposure Draft that organisations be Indigenous or employ Indigenous staff. In fact, the NACLC argued that, in its current form, the Exposure Draft would make it difficult for ATSILS to win tenders as it appears to maximise the opportunities for private law firms. This means that the continued existence of ATSILS as specialist organisations is unlikely and will result in an undermining of the right of Indigenous people to self-determination.<sup>63</sup> Further, the NACLC claimed that:

Replacing Aboriginal legal services with white organizations, possibly private practices of lawyers, make it less likely that Aboriginal people will seek assistance. It is widely known and recognised that in the vast majority of cases Aboriginal people prefer to use Aboriginal managed legal services. Access to justice will thus be further restricted for Aboriginal people.<sup>64</sup>

5.50 The NACLC also argued:

The benefits of tendering are often exaggerated and the costs and other unintended consequences are often underestimated ... Studies such as the

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58 NACLC *Submission 84B*, citing Recommendations 84, 105, 106 and 107.

59 *ibid*, p. 2.

60 *ibid*.

61 *ibid*, p. 3.

62 *ibid*, p. 2.

63 *ibid*, p. 3.

64 *ibid*, p. 4.

Office of Evaluation and Audit (ATSIC 2003) indicated that ATSILS are already under funded and cheaper than Legal Aid ... Loss of supplementary funding, pro bono support and in kind assistance associated with moving services to private practitioners would be likely to cancel any supposed cost savings.

The tender as proposed does not offer any transparent value-free method of comparing the quality of the service being offered. Often the end result of a tender process for human services is poor quality, less appropriate services.<sup>65</sup>

5.51 Strong criticisms were also voiced by the Australian Legal Assistance Forum (comprising the Law Council of Australia, the Community Legal Centres, National Legal Aid and ATSILS)<sup>66</sup> and Western Suburbs Legal Service Inc.<sup>67</sup>

5.52 Another aspect of the Minister's recent announcement was that a means test would be introduced for anyone with an income over \$40,000. CDEP (Community Development Employment Projects) participants and those receiving Centrelink benefits would be exempt.<sup>68</sup> The NACLCL argued that this would increase costs for legal services:

The eligibility requirements appear to enable the vast majority of Indigenous clients to receive a service. However the means test outlined is broader than that used by legal aid commissions and ATSILS will be required to administer it before advice or duty lawyer services are provided. The administration of the means test will add new costs to ATSILS. It appears that for the very few who will not qualify, the introduction of this requirement is an unnecessary expense. There has been no provision made for the additional resources required to manage these requirements.<sup>69</sup>

### **Indigenous women's issues**

5.53 The special needs of Indigenous women have been increasingly recognised in recent years, particularly since the ALRC's 1994 report, *Equality Before the Law: Justice for Women*, recommended the establishment of specialist legal services to meet their needs. The report identified the lack of access to culturally accessible legal

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65 *ibid*, p. 5.

66 *Submission 113*.

67 *Submission 114*.

68 Minister for Immigration and Multicultural and Indigenous Affairs 'Legal aid reforms to benefit Indigenous Australians' *Media release*, 4 March 2004, at [www.atsia.gov.au](http://www.atsia.gov.au) (accessed 13 April 2004).

69 *Submission 84B*, p. 6.

aid for Indigenous women and determined that Indigenous women are the most legally disadvantaged group in Australia.<sup>70</sup>

5.54 The Committee received evidence that, almost ten years after the ALRC report, Indigenous women remain chronically disadvantaged in terms of their access to legal services, awareness and exercise of their legal rights, and domestic violence support.<sup>71</sup>

5.55 VALS advised that the imprisonment of Indigenous women has increased 250 per cent over the past ten years, making them the most imprisoned group in Australia.<sup>72</sup> In Victoria, 80 per cent of women who are imprisoned are mothers, mostly with young children. Such high rates of incarceration mean that:

... the imprisonment of Indigenous women not only impacts on offenders, but also their children and their communities.<sup>73</sup>

5.56 Mr Frank Guivarra referred to some of the systemic reasons behind the high rate of incarceration of Indigenous women:

A lot of it revolves around the poverty trap: shoplifting, social security fraud and stuff like that. Drugs have also been a factor for a high percentage of the people incarcerated.

...

Centrelink overpayments and people not notifying. They are saying, 'There's the money; it's great,' and then, all of a sudden, they are caught and they cannot pay. It is the nonpayment of fines and stuff like that; they cannot make restitution, so the person has got to be locked up.<sup>74</sup>

5.57 The Wirringa Baiya Aboriginal Women's Legal Centre argued that many Indigenous women are imprisoned because they have fought back against abuse.<sup>75</sup> The Top End Women's Legal Service referred to the high levels of violence against many Indigenous women, including aggravated and sexual assault in circumstances where weapons are used. Meanwhile support and assistance, including legal assistance to remote indigenous women in relation to violence, is seriously inadequate.<sup>76</sup>

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70 Report No 69, 1994, especially chapter 5 and recommendation 5.2 concerning the establishment of specialist legal services for Aboriginal and Torres Strait Islander women. See also Criminal Justice Commission, *Aboriginal witnesses in Queensland's criminal courts*, 1996, chapter 7.

71 For example, Women's Legal Service SA Inc, *Submission 72*, p. 2; Northern Territory Legal Aid Commission, *Submission 82*, p. 9; National Network of Women's Legal Services, *Submission 86*, p. 3.

72 Victorian Aboriginal Legal Service, *Submission 67*, p. 5.

73 *ibid.*

74 *Committee Hansard*, 12 November 2003, p. 77.

75 *Submission 89*, p. 5.

76 *Submission 74*, p. 3.

5.58 Several submissions and witnesses raised particular concern about the level of violence within Indigenous communities. Ms Marilyn Wright of the Women's Legal Service SA expressed the view that domestic violence is about power imbalance:

Domestic violence is about power and it is about an abuse of that power. It is about lack of equal relationships. I guess that is why women, particularly Aboriginal women and women whose second language is English, are at a disadvantage because those power relationships may be accentuated. It is about the society we live in.<sup>77</sup>

5.59 However, Ms Winsome Matthews from the National Network of Indigenous Women's Legal Services (NNIWLS) expressed the view that violence in Indigenous communities encompasses more than domestic violence within families and power imbalances:

... we are dealing with family and community violence. That refers to a broad spectrum of events that all people now need to get their heads wrapped around, because domestic violence is not something that occurs in our communities; it is family and community violence. It is intergenerational, it is same gender, it encapsulates suicide and homicide and it also encapsulates the vast spectrum of dysfunctional community syndrome—which is about the rape and killing of elders and children. This is how bad family violence is. It is not about the power imbalance between a man and woman.<sup>78</sup>

### ***The extent of funding***

5.60 Ms Leanne Matthews from NNIWLS argued that more funding must be allocated to the needs of Indigenous women:

One of the things we have been told consistently is that there is just not enough money in the Attorney-General's Department to enhance current activity or to introduce a new scheme. So it comes back to the Commonwealth government's budget priorities: how much of a priority are the needs of black women in this country, especially when we are dying at the hands of our own community through violence? In New South Wales alone, 52 per cent of murders are those of Aboriginal women who have been beaten to death.<sup>79</sup>

5.61 Ms Matthews explained how the NNIWLS is funded:

We came about through the 1996 last-minute funding allocation of the Labor government, which placed a whole heap of money into the National Network of Women's Legal Services, which are predominantly mainstream and non-Aboriginal. They were given that money to strike an Indigenous women program because of the evidence and findings of the Equality

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77 *Committee Hansard*, 11 November 2003, p. 59.

78 *Committee Hansard*, 12 November 2003, p. 69.

79 *ibid*, p. 65.



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before the law report, which showed the vast disadvantage that Indigenous women were suffering.<sup>80</sup>

5.62 Ms Mathews explained that the funding is provided through the Attorney-General's Department, and noted:

We have attained other money to enhance our position and to expand our network through philanthropic grants. The Myer Foundation and the Reichstein Foundation are two organisations that have supported us quite well. We were able to develop the network to a position where it could become incorporated so that we could get real change happening, as there was a lack of infrastructure for Indigenous women and for their policy and political lobbying avenues.<sup>81</sup>

5.63 There are currently eight federally funded Indigenous women's legal service projects which are sponsored by generalist women's legal services and community legal services. The NNIWLS told the Committee that Wirringa Baiya Aboriginal Women's Legal Service (funded by the NSW Attorney-General's Department) is the only independent Indigenous legal service in Australia.<sup>82</sup>

5.64 The following table shows the extent and distribution of Commonwealth funding for Indigenous women's legal services in 2002/03.

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80 *ibid.*

81 *ibid.*

82 *Submission 90*, p. 3.

**Table 5.1 Commonwealth community legal services allocation for Indigenous women's legal services 2002-03**

<b>Jurisdiction</b>		<b>\$ Amount</b>
<b>NSW</b> Women's Legal Resource Centre		244,166
<b>QLD</b> Women's Legal Service		137,317
North Queensland Women's Legal Service		158,443
	<b>Qld total</b>	295,760
<b>SA</b> Women's Legal Service		95,065
<b>WA</b> Geraldton Resource Centre		58,096
Kimberley Community Legal Service		58,096
Pilbara Legal Service		58,096
	<b>WA total</b>	174,228
<b>TAS</b> Women's Legal Service		42,252
<b>TOTAL FUNDING</b>		<b>851,531</b>

Source: NNIWLS, document tabled on 12 November 2003.

5.65 The Committee notes that the total amount of funding is less than a million dollars (the Attorney-General's Department advising that the total in 2003/04 had increased to \$0.9 million),<sup>83</sup> and that there is no Commonwealth funding for projects in Victoria, the NT or the ACT.

### *The need for a review*

5.66 The NNIWLS recommended that funding be allocated for a major national solution-focused review of Indigenous women's legal needs, available legal services and any gaps. Such a review would assist with future policy formulation, service targeting and quality improvement and should be undertaken in partnership by an office such as the Human Rights and Equal Opportunity Commission's Indigenous Social Justice Commissioner, with the NNIWLS.<sup>84</sup> At the Melbourne hearing, Ms

83 Correspondence from Ms Sue Pidgeon, Attorney-General's Department, 3 May 2004, which stated that the Commonwealth allocated \$4.4 million in 2003/04 for specialist legal services solely for women. Of this, \$2.9 million was allocated to provide generalist women's legal assistance and referral services; \$0.6 million for women in rural and remote areas; and \$0.9 million for projects to assist the particular needs of Indigenous women.

84 *Submission 90*, p. 6.

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Winsome Matthews of the NNIWLS added that AT SIS should be included as a necessary component of the review.<sup>85</sup>

5.67 AT SIC also recommended that a comprehensive national study be undertaken to accurately determine Indigenous women's needs for legal aid and access to justice:

It is clear that Indigenous women are not being appropriately served by existing legal aid services but the extent and nature of their need for services has not been adequately identified or analysed. Therefore, an analysis of Indigenous women's legal needs is required and a strategy developed to address them.<sup>86</sup>

5.68 When questioned as to whether AT SIC or AT SIS itself might be best placed to conduct such a study, a representative from AT SIS stated:

... we do not have a comprehensive national database of unmet need, particularly as it relates to female Indigenous people. It is an important gap. We are between a rock and a hard place with our legal services. As you pointed out, almost 90 per cent of its business is focusing on criminal matters.<sup>87</sup>

5.69 The Committee notes that some AT SILS have implemented forums to help Indigenous women gain access to adequate legal representation:

In order to make its service more accessible to women, in 2002 VALS made a successful application to the Department of Justice for an Indigenous Women's Justice Forum Coordinator. The forums provide a space for Indigenous women to explore justice issues affecting them such as family violence and access to adequate legal representation. The aim of the forums is to link information about programs and services across communities and organisations. They also provide the opportunity to develop Indigenous community-controlled strategies to help resolve issues affecting women and their families.<sup>88</sup>

5.70 At the Port Augusta hearing, Ms Marilyn Wright of the Women's Legal Service SA told the Committee that change should come from Indigenous women themselves:

We have seen how strong the elders in Coober Pedy have been recently regarding the mining issues, the dumping of uranium. They are an incredibly strong group of women. So the potential is there within the communities to solve the problem, but it is a matter of having the support, the resources and access to services.

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85 *Committee Hansard*, 13 November 2003, p. 62.

86 *Submission 98*, p. 15.

87 Mr Bernie Yates, AT SIS, *Committee Hansard*, 9 February 2004, p. 34.

88 Victorian Aboriginal Legal Aid Service, *Submission 67*, p. 4.

... If we are talking about change in Aboriginal communities, it has to come from the actual communities themselves on the basis of self-determination, and most of the communities have incredibly strong groups of women.<sup>89</sup>

5.71 Ms Winsome Matthews from the NNIWLS agreed:

... it is about the localisation of authority and the power being given back to the people. There are a few principles by which Aboriginal people are now well placed to identify what their problems are but also the solutions to those problems and how government should be facilitating the resourcing of such. This is a view we take in New South Wales. We are looking at community justice groups being established across the state to become the point of reference for the community and also policing and criminal justice authorities about legal issues and conditions in those communities.<sup>90</sup>

***Family violence prevention services***

5.72 At the Port Augusta hearing, Mr Mark Forth from the Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service noted that Indigenous communities have their own particular complexities when it comes to family violence and that community involvement is essential in addressing family violence issues:

Family violence does have its own particular issues and there are certain ways of dealing with aspects of it ... Particularly in Indigenous communities, it requires the involvement of the people in the community itself, because they want to get involved in order to rid themselves of this curse, so to speak. Although as a practitioner I have a lot of confidentiality issues, we certainly call upon many people—staff members and people outside the office—for help in dealing with the issue. So, while it is certainly a difficult legal problem, it is also a community problem; and it is something the community wants to address. My submission to the committee, from my experience and contacts I have with people in remote and rural communities, is that there is a very big unmet need for help in this area which we have limited resources or ability to deal with.<sup>91</sup>

5.73 The Committee heard that ATISIS has funded 13 Family Violence Prevention Services in remote, rural and regional areas, with funding in 2003/04 of \$4.8 million. As Mr Bernie Yates of ATISIS told the Committee:

We have been progressively trying to address the situation of women in the system with the establishment of family violence prevention legal services ... It is a separate program but it is an integral part of the total picture of how you try to meet some of the needs in this area.<sup>92</sup>

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89 *Committee Hansard*, 11 November 2003, p. 60.

90 *Committee Hansard*, 12 November 2003, p. 64.

91 *Committee Hansard*, 11 November 2003, p. 47.

92 *Committee Hansard*, 9 February 2004, p. 34.

5.74 The following table shows the funding for each service, broken down by base funding and funding for a sexual assault worker. Two services have not yet received funding for such workers because their project proposals are still to be finalised. There are services in each state and territory, except Tasmania and the ACT.

**Table 5.2 Family Violence Prevention Services**

<b>FVPS Provider</b>	<b>Location</b>	<b>Base Funding</b>	<b>Sexual Assault Worker Funding</b>
Central Australian Aboriginal Family Legal Unit	Alice Springs	\$313 770	\$48 115
Walanbaa Yinnar Wahroo – Walgett Family Violence Prevention Unit	Walgett	\$324 002	\$34 334
Tharpuntoo Family Violence Unit	Cairns	\$294 002	\$46 884
Many Rivers Violence Prevention Unit	Kempsey	\$323 969	\$57 952
Darwin Family Violence Prevention Unit	Darwin	\$320 980	
Fitzroy Crossing Family Violence Prevention Unit	Fitzroy Crossing	\$294 002	\$33 652
Yamatji Family Violence Prevention Unit	Geraldton	\$294 002	\$27 622
Thungula Goothada – Family Support Legal Centre	Kalgoorlie	\$305 502	\$31 500
Katherine Aboriginal Families' Support Unit	Katherine	\$305 502	\$62 646
ATSIC Family Violence Prevention and Legal Service	Melbourne	\$300 000	
Mt Isa Indigenous Families Support Unit	Mt Isa	\$314 002	\$37 129
Warndu Wathilli – Carri Ngura Aboriginal Family Violence Legal Service	Port Augusta	\$306 126	\$50 000
Kamilaroi Family Violence Legal Support Centre	Moree	\$336 857	\$36 458

Source: ATSIIS, *Submission 111*, pp. 2-3.

5.75 The NNIWLS spoke highly of the services:

Services are reporting a high level of community acceptance and many ATSIC regions are pressing for the establishment of [Family Violence Prevention Units] in their area. The Network considers that this is a dramatic breakthrough and it is critical that there is a strong and supportive response ... While there will probably never be enough [Units] there is the strongest possible case for more of these services to be established.<sup>93</sup>

5.76 This view was supported by other witnesses. Ms June Lennon of the Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service told the Committee that the service was well-known within the Port Augusta Indigenous community:

If one of our family, if you like, is experiencing family violence or doing it, we try and refer them to this place because we think that—particularly as we focus on the victims of family violence and their children—they are more likely to go there if they know about what the service offers. Sometimes when you have the word ‘legal’ in the description of your service, they are not really sure of what type of legal service is provided.<sup>94</sup>

5.77 Ms Lennon continued:

Once people started learning about the service, and I think a lot of it happened through word of mouth—people were able to say that they had used our service and they were helped in whatever way—that promoted our service even more. Also, our staff network with most members of the Aboriginal community, basically on a daily basis. They only have to walk down the street and people access them. We have been receiving through the community more inquiries about what we actually provide. I think that is because we have been there, we have been operating, and people have come in for a number of matters and we have been able to explain to them why we are actually there. I feel that they are accessing our service more comfortably now than when they first started to.<sup>95</sup>

***Conflict of interest***

5.78 One issue which was brought to the Committee’s attention numerous times was the conflict of interest in legal aid matters involving Indigenous people where more than one party applies for legal assistance. This is particularly relevant for women who are denied access to assistance because their partner has received assistance first.

5.79 ATSIC submitted that:

ATSILS provide approximately 89% of the advice and representation for criminal matters. This trend has discouraged Indigenous women from approaching ATSILS for assistance initially, particularly given the

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93 NNIWLS 'Policy and Budget Submission - January 2003', *Submission 90*, Attachment 2.

94 *Committee Hansard*, 11 November 2003, p. 50.

95 *ibid.*

likelihood of ATSILS defending the perpetrator. The problem has often been attributed to the "first-in, first-serve" nature of ATSILS work. The lack of alternative service providers in many of the jurisdictions in which ATSILS operate means that even if the victim sought ATSILS assistance first, if refused, they at least have the option of seeking police assistance. However were the ATSILS to turn away the perpetrator, he would have nowhere else to seek representation. ATSI acknowledges that wherever possible LACs have attempted to represent indigenous women in cases of conflict where the partner is represented by the ATSILS. However it remains that in many instances the victim lacks any legal advice beyond that provided by the police.<sup>96</sup>

5.80 The Top End Women's Legal Service submitted that while steps had been taken in recent years, Indigenous women were still disadvantaged by the focus by LACs and ATSILS on representing offenders:

They are generally unable to assist victims of crime. Steps have been taken in the last few years to address the problem. ATSI now funds Aboriginal Family Violence Prevention Units in Alice Springs, Katherine and Darwin. The Northern Territory government funds domestic violence legal units in Alice Springs and Darwin. These are commendable efforts. However, there remain enormous gaps in service provision. To give just a few examples, where is the assistance for indigenous women living in violent towns such as Tennant Creek or Borroloola or communities with high rates of violence such as Maningrida or the Tiwi Islands?<sup>97</sup>

5.81 At the Melbourne hearing, Ms Winsome Matthews of the NNIWLS went further, informing the Committee that legal services may not be provided to a woman if there is the *potential* for a conflict of interest:

Traditionally [Aboriginal legal services] have been [gender] exclusive to the point where service will not be provided to a woman if there is a potential that her husband may be a client in the future.

...

There have been a number of examples of that in rural New South Wales, especially in relation to the Walgett violence prevention unit and the difficulty they had in provision of service prior to the establishment of that unit.<sup>98</sup>

5.82 An ATSI representative also recognised the problem during the first Canberra hearing:

In the past we have addressed the perpetrator and not the innocent person. The innocent person has usually been covered by the prosecutor, but we

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96 *Submission 98*, p. 15.

97 *Submission 74*, p. 3.

98 *Committee Hansard*, 12 November 2003, pp. 63 & 64.

know that this system is not good for us and we are trying to address it—it is going to take us time—with the little money we have got.<sup>99</sup>

5.83 Ms Katharine Hairsine from VALS told the Committee that Indigenous women often feel they cannot get legal assistance or representation even when this is not the case:

A lot of women feel that if there is a conflict of interest we will not represent them. Anecdotally, a lot of women within the community do not think that they can get representation from the Aboriginal Legal Services.

...

Anyone who came to us would not be unrepresented. In the past we also made funding applications to set up a separate women's annexe. That would have got rid of that conflict of interest but we were unsuccessful in that application. There definitely are women who would not apply to VALS because they assume that they would not get representation, even though they would.<sup>100</sup>

5.84 Ms Hairsine stated that VALS took measures to address such situations:

For instance, if you have a family law case where the husband has already had representation by VALS it means the woman cannot be represented by VALS. But VALS will ensure that representation for that woman is provided by another legal service provider, and VALS will fund that. It means that the woman does not go without representation—but it will not be by VALS, and that means people like client service officers. Also, having Indigenous staff in the organisation can make it easier for people to use the service.<sup>101</sup>

5.85 Mr Chris Charles explained that the ALRM had a slightly different approach:

The ALRM policy has always been that if there are parties in dispute, as in one family feuding against another—we have literally had cases like that, with multiple assault charges laid between family members; I had quite a lot of it in Ceduna some years ago—ALRM will not act at all. We will brief out both sides or ask both sides to get independent representation. Our view is that if we are seen to take sides by representing one side at the expense of another we are picking sides within the community and we do not want to do that. That will decrease access to our services by both families later and we do not want that to happen because we would like both sides to be able to come to us later. We do not want to pick sides.

On the other hand, there has been a change in our policy recently whereby we have given priority to assistance being given to victims of domestic violence and women. Now if we have a domestic violence situation and the

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99 Mr Rodney Dillon, ATSIC, *Committee Hansard*, 9 February 2004, p. 43.

100 *Committee Hansard*, 12 November 2003, p. 76.

101 *Committee Hansard*, 12 November 2003, p. 73.



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woman comes to us first we will act for the woman first and the male perpetrator will have to go elsewhere. That is a recent change in our policy which was consistent with our recognition of the need to look after the interests of women and domestic violence victims.<sup>102</sup>

5.86 Mr Charles added, however:

We have a briefing out budget of about \$100,000 to \$150,000 a year, which is, frankly, ludicrous. We do not have the resources to pay for the separate representation of the many people who we think under our properly formulated policies ought to be separately represented. We do not ever get a budget sufficient to enable us to provide for their representation and that gives rise to the Legal Services Commission picking them up.<sup>103</sup>

5.87 Mr John Boersig from COALS told the Committee that:

In New South Wales [the issue of conflict of interest] is addressed by saying in the policy framework that the first person in is the person who gets the advice and assistance. That is a very difficult policy to implement at times, particularly when the core business for many organisations is criminal law.<sup>104</sup>

5.88 The Committee received evidence that Indigenous women experience significant obstacles within their own communities that seriously affect their rights and their ability to access justice. ATSIC recognised these difficulties:

The effect of delayed access to justice for Indigenous women is even more severe given the cultural inhibitions in their own communities such as beliefs in the sanctity of kinship and fear of community retribution. If they overcome this threat and seek representation, only to be met with refusal by the under-resourced ATSILS the lesson can be devastating. These considerations have often led to reluctance in seeking legal advice by many women.<sup>105</sup>

5.89 This means that:

... reference to the statistics of clients accepted or refused by the ATSILS does not present the real picture of the legal needs of indigenous women, particularly in relation to family violence.<sup>106</sup>

5.90 At the Melbourne hearing, Ms Winsome Matthews of the NNIWLS expressed a similar view:

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102 *Committee Hansard*, 11 November 2003, pp. 31-32.

103 *ibid*, p. 32.

104 *Committee Hansard*, 13 November 2003, p. 43.

105 *Submission 98*, p. 16.

106 *ibid*.

Our remote and rural people—the women who work in those locations—have the added tension of dealing with law men and their right under customary law.

...

We are pretty much talking about those locations where traditional law is still strong—and I am talking more about where the patriarchal systems of law of custom is active—and the struggle that our own women have in addressing those issues.

...

It is not just about legal disadvantage of women; it is about the overall role of Aboriginal women in society and about how disregarded, underestimated and simply not considered we are.<sup>107</sup>

5.91 Ms Matthews told the Committee that Indigenous women's groups are attempting to make positive changes to ensure that the rights of Indigenous women are upheld and actively promoted:

We are also looking at embedding an Indigenous perspective into current areas of investigation and review, because of how absent it has been. Often you get an Aboriginal perspective that is predominantly represented by the Aboriginal Legal Service which never upholds the perspective or legal needs or concerns of Indigenous women.<sup>108</sup>

5.92 ATSIC argued further that:

These observations indicate that current arrangements for Indigenous women's access to justice are poor, especially in remote areas. However while ATSIC/ATSIS and its ATSILS committed to stamping out family violence, the prioritising of scarce resources to criminal matters means that, in practice, victims are not assisted while those responsible, are. Within existing resources ATSIS is limited in its capacity to give its own policies concrete substance. This contradiction will be overcome only through additional resourcing of ATSILS and Indigenous women specific legal service providers.<sup>109</sup>

### **Alternative dispute resolution**

5.93 In 1980 the House of Representatives Committee encouraged ATSILS to make more effective use of alternative legal aid services, particularly in metropolitan areas where such services may be available. It also recommended that ATSILS should

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107 *Committee Hansard*, 12 November 2003, pp. 65 & 69.

108 *ibid*, p. 66.

109 *Submission 98*, p. 16.

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direct more resources towards rural areas where such services were unavailable.<sup>110</sup> The Committee was interested in the extent to which such services were needed.

5.94 ALRM supported the use of alternate dispute mechanisms as they are similar to how disputes are dealt with in traditional Indigenous society:

ALRM believes that alternate dispute resolution mechanisms such as mediation and conciliation could prove useful within Indigenous communities because they are more similar to how disputes would be traditionally resolved.<sup>111</sup>

5.95 At the Sydney hearing, Mr John Boersig from COALS noted the success of family conferencing and the importance of "local solutions" in Indigenous communities:

Family conferencing has a fascinating history. It started in New Zealand to address the issues of Maori people. It developed in New Zealand and has been imported into New South Wales under the Young Offenders Act. Its value is that it keeps children out of court and tries to find solutions between victims and offenders, in the context of minimising harm to the community.

...

In New South Wales they are trying to bring Indigenous people in to be involved as conference convenors. There are wider issues about elder involvement that are addressed in both circle sentencing and youth conferencing. There will always be a struggle with a one-size-fits-all system in addressing particular local needs. As you have no doubt heard from Indigenous people, they are very much interested in local solutions and local needs. The development of youth conferencing needs to take that into account and provide local solutions.<sup>112</sup>

5.96 Ms Matthews from the NNIWLS noted the success of community justice groups in the NT and far north Queensland:

... they have been extremely successful with their community justice groups. The community of Yuendumu in the Northern Territory have extended their community justice groups to also have a traditional high court and a senate to deal with local issues, particularly the legal matters of the people. They have expanded to also look at the legal context of other social issues that they are confronted with ... It is a move that is rising amongst Aboriginal communities, and community justice groups in New

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110 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs *Aboriginal Legal Aid*, July 1980, p. 130.

111 *Submission 16*, p. 17.

112 *Committee Hansard*, 13 November 2003, p. 47.

South Wales have a legislative base under the alternative justice process, which is complementary to the circle-sentencing initiative.<sup>113</sup>

5.97 However, some notes of caution were sounded. Mr Mark Forth from the Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service informed the Committee that:

We do try to use mediation quite a bit. Very rarely is it successful, I should add. Usually those people who get into these intractable situations are not the same sorts of people who are able to find solutions at mediation. That is not say it never happens; it does happen occasionally. Usually you get a fairly good inclination of that right at the beginning and you try to find some solution without heading off to court. Most of the time, regrettably, you really have to at least commence some sort of legal action and get something under way before one of the parties realises you are serious. That, regrettably, is usually the state of play in these matters.<sup>114</sup>

5.98 However, Mr Forth added:

Regarding the success rate for mediation—and this is just off the top of my head—less than a handful have succeeded at mediation to resolve some sort of issue. I find that that is not dissimilar to the sort of rate you get in the non-Indigenous community.<sup>115</sup>

5.99 The Redfern Legal Centre also cautioned against the use of mediation in family law matters where violence is involved:

Legal Aid eligibility requirements and the procedures of the Family Court are heavily focussed on counselling and mediation. Unrepresented women in fear of violence are at risk of agreeing to unsuitable arrangements especially with regard to contact with children, because of fear of the perpetrator. Those who are too scared to participate are at risk of becoming ineligible for assistance. While mediation and counselling are often appropriate and constructive ways of resolving family problems, proper representation of the parties is essential for proper protection of the safety of women and children.<sup>116</sup>

## **Other access to justice issues**

5.100 As well as the lack of available legal services, various barriers have prevented Aboriginal and Torres Strait Islander people from accessing legal aid. The most common barriers include language issues, lack of cultural awareness amongst service providers, telecommunications issues, and transport to and from remote areas.

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113 *Committee Hansard*, 12 November 2003, p. 64.

114 *Committee Hansard*, 11 November 2003, p. 49.

115 *ibid*, p. 51.

116 *Submission 61*, p. 6.

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## *Language*

5.101 The Top End Women's Legal Service advised that a common barrier to accessing legal aid representation is language as most of their clients have English as either a second, third, or fourth language.<sup>117</sup> Literacy rates are also low amongst clients who are socially and economically marginalised.<sup>118</sup>

5.102 Language barriers are not peculiar to remote Aboriginal communities. There are also misunderstandings about Aboriginal English which is spoken quite widely in metropolitan Aboriginal communities:

Aboriginal English is a language in Australia that must be recognised as equal to English, and non-Aboriginal workers need training in this language and its nuances to better engage with Aboriginal women and children escaping domestic violence and all forms of sexual assault.<sup>119</sup>

5.103 The Yilli Rreung Regional Council referred to the large number of clients of the North Australian Aboriginal Legal Aid Service who speak an Indigenous language at home:

The Australian Bureau of Statistics, 2001 Census data reports that 11.8% of Indigenous people residing in the Darwin region and 84.5% of Indigenous people residing in the Jabiru region speak an Indigenous language at home. In some communities serviced by NAALAS, English is reserved for speaking with non-Indigenous people. Indigenous individuals residing in remote areas may use English as a second, third or fourth language. A large number of NAALAS clients speak an Indigenous language at home.<sup>120</sup>

5.104 The Yilli Rreung Regional Council also noted that:

The use of an interpreter, where required, is vital to effective provision of legal services. However, it can be time consuming to organise for an interpreter to be present when providing a service to clients and where an interpreter is used, more time is needed. This impacts on the resources which the service provider uses and needs.<sup>121</sup>

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117 *Submission 74*, p. 2. See also Miwatj Aboriginal Legal Service, *Submission 35*, p. 3; Yilli Rreung Regional Council, *Submission 95*, p. 8; ATSIIC, *Submission 98*, p. 20.

118 Top End Women's Legal Service, *Submission 74*, p. 2.

119 Wirringa Baiya Aboriginal Women's Legal Service, *Submission 89*, p. 7.

120 *Submission 95*, pp. 6-7.

121 *ibid.*

5.105 The Committee notes that in the recent Budget the Government announced that the Aboriginal Interpreter Service would be extended in the Northern Territory.<sup>122</sup> While this is a welcome initiative, more remains to be done.

### ***Cultural awareness training***

5.106 ALRM submitted that understanding Aboriginal society is an integral part of delivering affective legal aid services, particularly in communities where the society is organised in a fundamentally different way to western mainstream society.<sup>123</sup> ALRM argued that funds were needed to educate the community about Indigenous culture, in order to help dissolve misconceptions of Indigenous people in the justice system.<sup>124</sup> There was also a need for culturally appropriate legal practitioners and organisations that understand the Indigenous community.<sup>125</sup>

5.107 This view was also expressed by ATSIC which recommended that:

... cultural awareness training is made available for non-Indigenous lawyers, particularly those working in LACs.<sup>126</sup>

5.108 The Yilli Rreung Regional Council emphasised the importance of understanding cultural differences:

The society of the client group is often organised according to traditional custom and social structures. Many clients in the region practice customary law and recognise customary law authority structures. The provision of legal education, advice and representation to this group is a complex and time consuming exercise which requires the legal service to recognise and work within the existing social structures.<sup>127</sup>

5.109 However, it is not just a question of ensuring that lawyers are appropriately trained. Culturally appropriate services must be provided in other parts of the justice system. Ms Naomi Brown representing the Community Legal Centres Association (Western Australia) Inc referred to the case of an Indigenous woman from a rural area who had to travel to Perth for a welfare report:

... there were no Indigenous court counsellors. There is not necessarily a process to decide whether, if the counsellor is male, it is appropriate for the woman and/or her children to talk with that person about, for example,

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122 Minister for Immigration and Multicultural and Indigenous Affairs 'Australian Government announces new initiatives in Indigenous affairs', *Media release*, 11 May 2004, where it was stated that the Aboriginal Interpreter Service was part of a \$3.9 million package which funds a pre-court juvenile diversion scheme.

123 *Submission 16*, p. 7.

124 *ibid*, p. 24.

125 Wurringa Baiya Aboriginal Women's Legal Centre, *Submission 89*, p. 4 & 7.

126 *Submission 98*, p. 9.

127 *ibid*.

issues of sexual abuse. If you are looking at the systems, there is discrimination against not only Indigenous people but also people of culturally and linguistically diverse backgrounds. These sorts of questions are not even looked at: how are we going to get this story; is there an appropriate way of actually getting the story about the issues in the family; do we have an understanding of how this family works? ... The women I spoke with in Western Australia in relation to that were very strong about saying, 'There need to be services that are culturally appropriate,' and that includes access to legal aid services as well. There are no Indigenous liaison officers attached to Legal Aid, not even in remote areas where there [is] a wealth of Indigenous cultures—there are for Aboriginal legal services; but there are not for legal aid services.<sup>128</sup>

### ***Telephone advice and videoconferencing for remote communities***

5.110 The Top End Women's Legal Service submitted that in many remote communities Aboriginal people cannot access the most basic services, as very few Aboriginal people own a phone or can access a public phone to ring the '1800' numbers for government funded legal advice and services.<sup>129</sup> Moreover, in some places, as the Alpururulam Community Government Council noted:

[Residents'] only access is through the use of Council telephones. Privacy cannot always be guaranteed and waiting for return phone calls involves lengthy waiting periods.<sup>130</sup>

5.111 Many people in remote communities do not know about the various civil authorities and therefore are less likely to contact them.<sup>131</sup> Some Aboriginal communities when asked about use of telephone advice services in their communities noted other problems:

If general legal advice is available by telephone the Council has not been given this information ... Country-men do not know what questions to ask, and therefore assistance is required for office staff and Managers and more visits from legal representatives.<sup>132</sup>

5.112 Some Indigenous legal providers also saw access to telephones or computers with Internet access as ineffective.<sup>133</sup> Further, videoconferencing facilities may not be always be appropriate:

ATSIC representatives of Indigenous clients living in remote communities have expressed concerns that the use of videoconferencing facilities is not a

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128 Ms Brown, *Committee Hansard*, 12 November 2003, p. 53.

129 *Submission 74*, p. 2.

130 *Submission 109*, p. 1.

131 *Submission 74*, p. 2.

132 Nyirranggulung Mardruk Ngadberre Regional Authority *Submission 100*, p. 1.

133 See, for example, Miwatj Aboriginal Legal Service, *Submission 35*, p. 6.

substitute for face to face contact and does not necessarily translate to an increase in access to justice. For example, the video conferencing facility in the community may still be hundreds of kilometres from clients living in outstations. Those clients may have difficulty in travelling to the community for a videoconference on a designated time and date.<sup>134</sup>

5.113 More general concerns about reliance on such technology in rural and remote areas are discussed in more detail in Chapter 6.

### ***Transport to and from remote areas***

5.114 In 1980 the House of Representatives Committee found:

Geographical isolation is a major factor affecting the access of Aboriginals to legal aid. In remote areas, Aboriginals' lack of access to legal assistance can be attributed partly to the absence or limited number of legal practitioners in these areas.<sup>135</sup>

5.115 Legal aid lawyers and staff are still prevented in many cases from meeting face-to-face with their clients in regional and remote areas. Travelling to client locations can be costly. For example, North Australian Aboriginal Legal Aid advised the Committee that over \$86,000 is required each year to cover lawyers' travel and accommodation to provide services to clients in remote communities.<sup>136</sup>

5.116 Ms Leanne Matthews from NNIWLS explained the practical effect of living in a remote community:

To give a quick scenario, in some remote towns there is no legal service. Legal providers, such as legal aid and the Aboriginal Legal Service, fly in half an hour prior to court commencing. They barely have enough time to speak with their clients and obtain a brief about the charges and to explain what options are available to them. Often they are advised to plead guilty.<sup>137</sup>

5.117 The lack of any contact with their legal advisors until just before court commenced was confirmed by a number of remote Aboriginal communities that responded to Committee correspondence about their circumstances.<sup>138</sup>

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134 Yilli Rreung Regional Council, *Submission 95*, p. 4. The use of videoconferencing facilities is discussed in more detail in Chapters 6 and 10.

135 *Aboriginal Legal Aid*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Report, July 1980, p. 11.

136 *ibid*, p. 6.

137 *Committee Hansard*, 12 November 2003, p. 61.

138 Amoonguna Community Incorporated *Submission 104*; Yuelamu Community Council Inc *Submission 105*; Gurungu Council Aboriginal Corporation *Submission 106*.



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### *Civil legal aid assistance*

5.118 The Katherine Regional Aboriginal Legal Aid Service advised that civil matters such as family law work, debt recovery, credit, consumer, and tort related law matters are sidelined by criminal law matters.<sup>139</sup> Other Indigenous legal service providers made similar comments.<sup>140</sup>

5.119 The North Australian Aboriginal Legal Aid Service argued that a particular need is consumer legal assistance in remote communities in relation to such matters as being forced to pay high prices for basic food items, unfair dismissals, 'used car rip offs' and discrimination.<sup>141</sup>

5.120 The Top End Women's Legal Service argued that:

The access to justice in remote areas is so inadequate that remote indigenous people cannot be said to have full civil rights. Their civil rights are severely reduced because they do not get adequate information let alone advice or representation about a range of civil law matters, for example welfare rights, housing, discrimination law, consumer rights, credit and debt, employment law, motor accidents compensation, crimes compensation, negligence, family law and so on.

Furthermore remote indigenous people have no effective access to a range of civil authorities that could assist them to assert their civil rights ...<sup>142</sup>

5.121 Mr John Boersig from COALS stressed the importance of developing and promoting a range of services that can be cross-referred to assist Indigenous people with their legal needs:

There are civil and family law services—no doubt you have heard about that at length—in which domestic violence issues are crucial, as well as all the issues associated with that, such as victim's compensation, mediation, child care and protection.<sup>143</sup>

5.122 As an example Mr Boersig referred to the office where he works in Newcastle:

There are three different service providers operating out of the same premises. The key service provider is the University of Newcastle Legal Centre. Attached to that are the civil lawyers with the Legal Aid Commission, and also attached is one of the officers of the Many Rivers Aboriginal Legal Service. Each of those services has a particular specialty. The Many Rivers Aboriginal Legal Service focuses on criminal law, the

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139 *Submission 2*, p. 2.

140 Victorian Aboriginal Legal Aid Service, *Submission 67*, p. 10; Top End Women's Legal Service, *Submission 74*, p. 1.

141 *Submission 7*, p. 7.

142 *Submission 74*, p. 1.

143 *ibid.*

university provides family law and other related civil services, and the Legal Aid Commission provides civil services.

...

Both in Newcastle and, indeed, in other areas, including Lismore and Redfern, officers of Aboriginal legal services also involve students. That has been very effective in adding value to the kinds of services that can be provided.<sup>144</sup>

### **Committee view**

5.123 The Committee is gravely concerned by the evidence it received about the overwhelming deficiencies in the legal aid system as it relates to Indigenous people in Australia, particularly those living in remote areas. The Committee is particularly concerned about the critical lack of access to justice for Indigenous women, especially in relation to domestic violence matters. While the Committee recognises that there are serious problems in the provision of legal aid and access to justice for many Australians, it is apparent that Indigenous people are disproportionately disadvantaged in seeking legal assistance and related services.

5.124 The Committee considers that the Commonwealth Government's decision to introduce competitive tendering in relation to the provision of Indigenous legal services is ill-considered and inappropriate. The decision is particularly difficult to comprehend given the recognition by ATSILS and, indeed, the Commonwealth Government that ATSILS are the preferred service providers of Indigenous people due to their ability to cater to specific cultural needs. The Committee agrees with the submission by the NALC and its claim that '(u)nder the cloak of contestability policy dramatic new policies are being proposed that will reduce the effectiveness of Legal Aid provision to one of the most disadvantaged groups in Australia'.<sup>145</sup>

5.125 The Committee urges the Commonwealth Government to recognise the importance of ATSILS and acknowledge that there is a clear need for targeted, culturally sensitive and specialised Indigenous legal aid services in order to enable Indigenous people to achieve access to justice. Further, evidence suggests that the approaches taken by ATSILS in providing services most effectively promote the rights of Indigenous people to empowerment, identity and culture. The Committee considers that the 'Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians' should be immediately withdrawn and the Commonwealth Government's policy in this area reconsidered as a matter of priority.

5.126 The Committee is particularly concerned by the Government's decision announced during the last stages of this inquiry that it will abolish ATSIC and

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144 *ibid*, pp. 43 & 44.

145 *Submission 84*, p. 6.

"mainstream" funding for Indigenous services.<sup>146</sup> The Committee notes that the Government intends to transfer the responsibility for funding Aboriginal legal services and Family Violence Prevention Services to the Attorney-General's Department.<sup>147</sup>

5.127 The Committee urges the Government to ensure that Departmental officers administering these programs recognise that ATSILS are usually the most appropriate providers of legal services to Indigenous people, and acknowledge that there is a clear continuing need for self-determination and for targeted, culturally sensitive and specialised Indigenous legal aid services. Moreover, the Government must ensure that ATSILS are recognised for their role as the main provider of legal services to Indigenous people and that the integrity, capacity, strength, effectiveness and value of ATSILS are maintained.

### **Recommendation 27**

**5.128 The Committee recommends that the Commonwealth Government should urgently increase the level of funding to Indigenous legal services in order to promote access to justice for Indigenous people. In doing so, the Government must factor issues of language, culture, literacy, remoteness and incarceration rates into the cost of service delivery.**

### **Recommendation 28**

**5.129 The Committee recommends that the Commonwealth Government's 'Exposure Draft of a Request for Tender for the Purchase of Legal Services for Indigenous Australians' should be withdrawn and its underlying policy reconsidered.**

5.130 Evidence presented to the Committee about the circumstances and needs of Indigenous women is particularly troubling. Chronic disadvantage in relation to access to legal services, awareness and legal rights, and a severe shortage of culturally appropriate domestic violence support services are some of the problems Indigenous women face. The Committee is also deeply concerned by the extremely high levels of violence within Indigenous communities which impact largely on women, and by evidence indicating that Indigenous women face significant impediments from within their own communities in attempting to exercise their rights and seek access to justice.

5.131 The Committee supports the calls by ATSIC and the NNIWLS for a comprehensive analysis of the needs of Indigenous women in the legal system. Pending the outcome of that review, however, it is clear that urgent steps must be taken to increase the assistance available to them. Appropriate measures include the

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146 Senator Amanda Vanstone, Minister for Immigration and Multicultural and Indigenous Affairs 'New service delivery arrangements for Indigenous affairs' *Media Release*, 15 April 2004.

147 The Hon Gary Hardgrave MP, Acting Minister for Immigration and Multicultural and Indigenous Affairs 'Improving services for Indigenous Australians' *Media Release*, 30 April 2004.

expansion of Family Violence Prevention Services which appear to be gaining increased acceptance in Indigenous communities; and funding for specialist Indigenous women's legal services and for ATSILS generally.

5.132 The Committee notes that in the recent Budget, the Government announced that it would be 'expanding' the Family Violence Prevention Legal Services by providing \$22.7 million over four years.<sup>148</sup> The Committee notes that this represents a small expansion only taken on an annual basis, given the current \$4.8 million provided in 2003/04, but welcomes the decision to continue funding of this important program. The Committee notes also that the Government has announced that it will support state/territory and local projects that address Indigenous family violence by providing a further \$37.3 million over four years,<sup>149</sup> and welcomes that decision. However, more needs to be done.

### **Recommendation 29**

**5.133 The Committee recommends that the Commonwealth Government commission a comprehensive national study to determine accurately the legal needs of Indigenous women.**

### **Recommendation 30**

**5.134 The Committee recommends that the Commonwealth Government and state/territory governments address the needs of Indigenous women as a matter of urgency by improving, developing and promoting appropriate legal and community services, community education programs, domestic violence support networks and funding models to ensure that the experience of Indigenous women within the justice system is fair and equitable. In implementing this recommendation, the Commonwealth Government, state/territory governments, legal aid commissions and other key stakeholders should consult widely with Indigenous women, so that the impetus for change comes from Indigenous women themselves.**

### **Recommendation 31**

**5.135 The Committee recommends that the Government allocate sufficient funding to Indigenous legal services and Indigenous Family Violence Prevention Legal Services to enable adequate provision of effective legal services for Indigenous women in family law and family violence matters, including funding for additional culturally sensitive services in areas of highest need.**

5.136 The Committee is also concerned about the problems faced by Indigenous people in remote communities. The problems arising from circuit courts in remote

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148 Minister for Immigration and Multicultural and Indigenous Affairs 'Australian Government announces new initiatives in Indigenous affairs', *Media release*, 11 May 2004.

149 *ibid.*

communities, particularly the frequently reported lack of access to legal advice until the day of the person's hearing, have been well documented elsewhere. The Committee has also heard evidence of the problems of reliance on telephone services, particularly given the lack of privacy in community facilities where calls must often be taken, and the desirability of having face-to-face interviews with legal advisors and support workers.

### **Recommendation 32**

**5.137 The Committee recommends that the Commonwealth Government and state/territory governments address the serious problem of lack of access to justice for Indigenous people in remote areas by providing resources to support the expansion and development of available services.**

5.138 Finally, the Committee considers, as it has concluded elsewhere in this report, that the provision of adequate legal services to Indigenous people can only be achieved if proper funding is provided on the basis of assessed need. Consequently, an analysis of the needs of Indigenous people should be undertaken on a national basis.

### **Recommendation 33**

**5.139 The Committee recommends that the Commonwealth Government conduct a legal needs analysis for Indigenous people throughout Australia through a national strategy involving all Aboriginal and Torres Strait Islander legal services, legal aid commissions, community legal centres and other key stakeholders.**

