13. Alternative Legal Services

Description of alternative legal services

385 Legal aid schemes can be divided into two broad categories: (i) schemes which are operated by professional legal bodies and in which legal assistance is provided by private legal practitioners, that is, Law Society schemes; and (ii) legal aid services which employ salaried lawyers. Legal aid is also available from voluntary community-based legal aid agencies including those sponsored by law students at university law schools, duty solicitor schemes operated by private practitioners, and specialised services which provide assistance to a particular clientele or for particular legal problems such as trade unions, councils for civil liberties, road motorists' associations, religious organisations and Aboriginal legal services.

386 Before the establishment of the State legal aid commissions the only salaried legal services which provided legal aid in matters arising under State laws were Public Defenders in New South Wales, Queensland and Victoria which generally only provided legal assistance in criminal matters, and the New South Wales Public Solicitor's Office which provided aid in both criminal and civil matters. The Australian Legal Aid Office was established by the Commonwealth Government in 1973 to provide legal advice and assistance on matters of both Federal and State law to persons for whom the Australian Government has a special responsibility, for example, pensioners, Aboriginals, ex-servicemen and newcomers to Australia.

Establishment of legal aid commissions

387 Since 1975 the Government has moved towards the establishment of a comprehensive legal aid scheme in Australia based on co-operative arrangements between the Commonwealth Government and the States. It was envisaged that legal aid would be provided through independent legal aid commissions in each State or Territory and that a Commonwealth legal aid commission would assume an advisory, co-ordinating and monitoring role. It was also intended that each State or Territory legal aid commission would take over the existing Australian Legal Aid Office and any State or Law Society schemes. In accordance with the Government's policy of self-management by Aboriginals, the scheme provided for the Aboriginal legal services to continue to operate separately.

388 The Legal Aid Commission of Western Australia commenced operation in April 1978; the Australian Capital Territory Legal Aid Commission in July 1978; the Legal Services Commission of South Australia in January 1979; the Legal Services Commission of New South Wales in August 1979; and the Legal Aid Commission of Queensland in December 1979. The Legal Aid Commission established in Victoria is expected to commence operation this year. All these legal aid commissions have absorbed the functions of the Australian Legal Aid Office except the Legal Services Commission of New South Wales. The New South Wales Legal Services Commission Act, 1979 does not make provision for the absorption of the functions of the Australian Legal Aid Office. In July 1977 the Tasmanian Government set up a committee of inquiry to consider the future of legal aid services in that State. The committee has reported but legislation has not yet been enacted to establish a legal aid commission. A draft Bill to establish

a legal aid commission in the Northern Territory has been submitted to the Northern Territory authorities by the Attorney-General's Department. The *Commonwealth Legal Aid Commission Act* 1977 which established the Commonwealth Legal Aid Commission came into operation in July 1977. Appointments of Chairman, Deputy Chairman and other Commissioners were made in March 1978.

Factors inhibiting Aboriginals' use of alternative legal aid services

389 Few Aboriginals avail themselves of alternative legal services which provide legal assistance for those who do not have the means to meet private solicitors' fees. Alternative legal aid agencies have generally been unacceptable and inaccessible to Aboriginals. As the majority of Aboriginals live in non-metropolitan areas and many of these in remote areas, their geographical isolation has denied them access to community services generally and to legal aid in particular. These are the same areas where the Aboriginal legal services have had the greatest difficulties in providing their service.

390 Aboriginals have also been reluctant to approach agencies which they perceive as an integral part of the dominant non-Aboriginal community with which they are often in conflict and which in the past has shown little concern for or interest in protecting their rights and interests. The legal profession itself (with notable exceptions) has had little inclination to assist Aboriginals. Legal aid agencies have failed to recognise the special problems and needs of Aboriginals and particularly the disadvantages and injustices they have suffered in their contact with the law and the legal process. Where legal aid has been provided, it has only been available on a piecemeal basis with no preliminary or follow-up service. The absence of Aboriginal staff within conventional legal agencies has further inhibited Aboriginals' access to and utilisation of such organisations.

391 With the establishment of the Aboriginal legal services, Aboriginals have had improved access to a comprehensive legal assistance scheme designed to meet their special legal needs and demands and to take account of their social and cultural background and of their unique position in Australian society. The legal services have adopted a broad approach to the provision of legal aid for Aboriginals: they attempt to provide representation for Aboriginal defendants in court proceedings, but also attempt to provide advice and assistance to clients before and after court appearances. Recognising that many Aboriginals are unaware of their legal rights and responsibilities and are particularly vulnerable in the criminal investigation process, they endeavour to ensure that as far as possible legal assistance is available to Aboriginal offenders in the crucial period immediately following their arrest. To this end, unlike many other legal agencies, Aboriginal legal services provide a 24-hour service, including weekends.

392 The Aboriginal legal services provide for community participation in the operation and management of the services; they represent Aboriginal community interests where appropriate; and play a significant role in community education in legal and associated non-legal matters. The Aboriginal legal services generally believe that other legal aid agencies are unable to provide Aboriginals with a legal service as sympathetic and effective as they are able to provide, despite financial constraints on their activities. Other legal aid agencies tend to agree.

Alternative legal assistance available to Aboriginals

393 The Attorney-General's Department was unable to provide any information on the number of Aboriginals who approach the Australian Legal Aid Office for assistance. However, representatives of other alternative agencies said that they are seldom consulted by Aboriginals. The Committee was also informed that Aboriginals rarely approach private solicitors for assistance.

Private legal practitioners

394 The Committee received little detailed evidence indicating the extent to which assistance is provided to Aboriginals by private practitioners on a voluntary basis other than through Law Society duty solicitor rostering schemes. The Law Institute of Victoria stated in its submission that very few of Victoria's 4,000 practising solicitors have ever acted for or advised an Aboriginal except at the request of the Victorian Aboriginal Legal Service or some other Aboriginal agency. It is the overwhelming experience of Victoria's legal profession that until the establishment of the Victorian Aboriginal Legal Service in 1973, Victoria's Aboriginals just did not seek to use the law to protect themselves or their interests.

395 When Aboriginal legal services refer matters to private practitioners, they favour practitioners known to be sympathetic to Aboriginals and who often charge reduced fees. There is an increasing pool of such practitioners available with many former Aboriginal legal service solicitors returning to private practice. In general, the legal services prefer to handle matters internally except where counsel is required. The Aborigines and Torres Strait Islanders Legal Service stated that while the Service makes some use of private practitioners, experience has shown that most Aboriginals prefer to be represented by a solicitor retained by the Legal Service or at least a solicitor who has been involved with the Service on a district committee or has acted for the Service's clients on previous occasions.

396 The Redfern Aboriginal Legal Service stated that in many country areas the arrangement whereby legal aid is provided to the community as a whole by private practitioners appearing for defendants through a duty solicitor roster system is unsatisfactory for Aboriginal people. Aboriginals are reluctant to approach a solicitor who is often seen as a representative of the white establishment community with which the Aboriginal population is often in conflict and certainly has little in common, and not as someone who is concerned to understand and represent the views of Aboriginals. Aboriginals tend not to view professional relationships in the same way as non-Aboriginals and, in common with many other legal clients, Aboriginals have little confidence that their case will not be jeopardised by imparting information to a solicitor who is seen to socialise with the police prosecutor and the magistrate. They may therefore not give proper instructions to the solicitor.

397 Because there is little financial reward in appearing as a duty solicitor, especially in the sphere of criminal law, the solicitor's livelihood depends primarily on the amount of private work he is able to undertake in the profitable areas of legal work such as conveyancing, probate and commercial matters. It was suggested that the solicitor may therefore not devote as much time to the preparation of Aboriginal clients' cases as would be desirable. It was also suggested that while such solicitors may be experienced in the lucrative areas of legal work, they may have little expertise in the area of criminal law and in children's court matters. The Redfern Legal Service added that any other form of legal assistance provided by private members of the legal profession on a

referral basis meets the same objections. In the Sydney metropolitan area problems have arisen when legal practitioners with little or no experience in appearances in children's courts have put their names on rosters of the Law Society's Legal Aid Office duty solicitor scheme in order to gain experience in this area of the law. The Law Society has recently curtailed this practice.

Alternative legal aid agencies

NORTHERN TERRITORY

398 Although the Australian Legal Aid Office has offices in Darwin and Alice Springs, most Aboriginals prefer to seek assistance from the Aboriginal legal services. The Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Legal Aid Service provide representation for Aboriginals by their own salaried solicitors or by referring clients to private practitioners known to be experienced in casework involving Aboriginal people. The Committee was informed that while the Australian Legal Aid Office solicitors assist Aboriginal legal services on occasions by undertaking a court list or even attending a circuit court when Aboriginal legal service solicitors cannot attend, the Australian Legal Aid Office is unable to provide an adequate legal aid facility for Aboriginal people except in a stop-gap role.

SOUTH AUSTRALIA

399 Because of budgetary difficulties in which the Aboriginal Legal Rights Movement of South Australia found itself towards the end of the 1978–79 financial year, a number of matters were referred to the Legal Services Commission of South Australia. The Director of the Legal Services Commission said that despite financial constraints the Commission will continue to assist Aboriginals on the same basis as non-Aboriginals although it will limit the number of referrals to private practitioners. The Commission does not seek reimbursement from the Aboriginal Legal Rights Movement for Aboriginal cases briefed out to private practitioners.

VICTORIA AND TASMANIA

400 In Victoria and Tasmania the Aboriginal legal services make minimal use of alternative agencies through referrals. The Tasmanian Government also advised that to its knowledge few, if any, Aboriginals request legal aid from the Australian Legal Aid Office or the Tasmanian Law Society scheme, preferring to use the Tasmanian Aboriginal Legal Service. The Victorian Aboriginal Legal Service stated that, with one exception, it has not referred any Aboriginal clients to the Australian Legal Aid Office, Legal Aid Committee or Public Solicitor's Office since 1973 and is continuing to reduce the number of referrals to outside practitioners.

NEW SOUTH WALES

401 The extent to which Aboriginal legal services in New South Wales make use of other legal aid agencies varies from service to service. The Redfern Aboriginal Legal Service makes minimal use of the facilities of the Public Defender's Office or of rostered duty solicitors, arguing that it is able to provide a more effective service itself. It prefers to maintain quality control by handling as much work 'in-house' as possible. Matters requiring referral to outside practitioners are referred to counsel known to understand and sympathise with the aims of the Service and the special legal needs of its clients.

402 The Director of the New South Wales Legal Services Commission indicated that if the Aboriginal legal services wished to utilise the facilities and resources of the Public Defender's Office, no particular limitation would be placed on assistance available to Aboriginals. The Commission stated that while there would obviously be additional costs and resources would have to be increased, additional work of the type in which aid is granted would certainly be accepted.

403 The Western Aboriginal Legal Service makes no use of other legal assistance agencies on the reasonable grounds that such agencies do not operate in the region covered by the Service. The South Coast Aboriginal Legal Service refers some serious cases requiring briefing of counsel to the New South Wales Public Defender's Office. When the Committee took evidence from representatives of the Service in September 1979, the Service had no salaried solicitor and all cases were being handled by a local private firm, costs being paid by the Service. At this time the South Coast Service did not refer clients to the Wollongong offices of the Australian Legal Aid Office or the Public Defender.

404 The St Mary's and Districts Aboriginal Legal Assistance relies heavily on the Australian Legal Aid Office, the Law Society of New South Wales legal aid scheme and the Public Defender's Office in various matters requiring briefing. Most criminal cases in the District or Supreme Court are processed through the Public Defender's Office, while the Law Society's legal aid scheme provides assistance in appeals to the District Court arising from the Children's Court. Most civil work is processed through the Law Society scheme or the Australian Legal Aid Office. These referrals are dictated by funding limitations and the legal service would prefer to handle criminal and civil matters through its own resources and under its own control.

QUEENSLAND

405 The Aborigines and Torres Strait Islanders Legal Service attempts to utilise the facilities and financial resources offered by other legal aid schemes. It makes extensive use of the Public Defender's Office in criminal matters and some use of the Australian Legal Aid Office. The Public Defender provides aid in criminal matters through salaried counsel. Outside practitioners, including solicitors retained by the Aborigines and Torres Strait Islanders Legal Service, may be briefed and instructed to assist. The Aborigines and Torres Strait Islanders Legal Service requires its retained solicitors to claim costs on the Public Defender and, if payment is forthcoming, the amount received is deducted from the retainer paid to the solicitor by the Legal Service. The Legal Service itself is not entitled to claim costs from the Public Defender. The Service stated that while cases are generally left to the solicitor chosen by the accused in country areas, in Brisbane clients' cases are taken over by officers of the Public Defender. Clients have complained of communication problems with the officers and do not understand why their cases are being handled by Public Defender staff when they have specifically asked to be represented by a Legal Service solicitor. The Service stated that while it continues to require its solicitors to claim costs, it reserves the right to withdraw an application for Public Defence if it feels it would not be in a client's best interest to be represented by officers of the Public Defender.

406 The Aborigines and Torres Strait Islanders Legal Service has attempted to utilise the Australian Legal Aid Office as it does the Public Defender and thought that considerable financial assistance might be obtained with respect to magistrates' court criminal matters. Persons seeking assistance from the Australian Legal

Aid Office are referred to private practitioners on a roster system. There is also provision for a successful applicant to use his own solicitor who may claim on the Australian Legal Aid Office for his fee. However, because the regulations of the Australian Legal Aid Office state that assistance is only available for adjourned matters, matters completed on first appearance do not attract financial benefit. The Service also stated that the Australian Legal Aid Office's means test is strict and is calculated in a way which tends to operate to the advantage of persons with large, regular financial commitments and therefore to the disadvantage of Aboriginals who have few if any such commitments.

407 The Queensland Government, however, stated that many Aboriginals seek assistance from the Australian Legal Aid Office because assistance is often not available from the Aborigines and Torres Strait Islanders Legal Service for a variety of reasons. The Government suggested that Aboriginal clients with a limited knowledge of legal procedures become confused by the way in which the Aborigines and Torres Strait Islanders Legal Service accords priority to some types of cases over others and by the Service's policy of not providing representation in cases where both parties are Aboriginals or Islanders. It was also alleged that some branches of the Service are more concerned with political activity than client need.

WESTERN AUSTRALIA

408 The Legal Aid Commission of Western Australia initially determined that priority should generally be given to those applicants who were not *prima facie* entitled to assistance from the Aboriginal Legal Service of Western Australia or some other legal aid body. Aboriginal applicants were usually first referred to the Aboriginal Legal Service and advised to apply to the Commission only if aid was not granted by the Service. Agreement on an alternative approach was later reached between the Aboriginal Legal Service and the Commission whereby the same criteria for aid would be applied to Aboriginals as to any other applicants. Where aid is provided and costs paid by the Commission, the Aboriginal Legal Service subsequently reimburses the Commission 90% of costs. These arrangements are not proving entirely satisfactory: the Aboriginal Legal Service expressed concern about a case in which it refused aid to an Aboriginal who subsequently applied for and was granted aid by the Commission which in turn sought reimbursement of costs from the Aboriginal Legal Service.

Aboriginals' eligibility for assistance under State-funded schemes

409 Alternative legal aid agencies will assist Aboriginals providing they meet the eligibility criteria applicable to all persons seeking legal assistance. In some cases priority may be given to applicants who are not entitled to assistance from another legal aid service. The Law Society legal aid committees and Public Defenders are willing to provide legal assistance for Aboriginals; however, these agencies considered that the Aboriginal legal services are able to provide a more effective service because of their better understanding of the special legal needs of Aboriginals. In regard to Commonwealth-funded legal aid schemes, Aboriginals may elect to approach either a State legal aid commission or an Aboriginal legal service, irrespective of whether the need for legal aid arises under Commonwealth or State law. Where the functions of the Australian Legal Aid Office have not been absorbed by a legal aid commission and where an Aboriginal legal

service is not readily accessible, Aboriginals may approach an office of the Australian Legal Aid Office, their eligibility for assistance being subject to a means and needs test.

410 All the Aboriginal legal services asserted that in many instances clients were referred to them by alternative legal aid agencies. It was suggested by some Aboriginal legal services that the referral of Aboriginals to their offices resulted more from an unwillingness on the part of those agencies to take on cases of applicants who had access to a separate legal service than from any concern to ensure that Aboriginals' legal needs are effectively met.

411 The Committee detected in the comments of some State Governments and in the policy of the Legal Aid Commission of Western Australia a belief that because Aboriginals are Commonwealth persons, funding of their legal assistance should be fully accepted by the Commonwealth. Such an attitude fails to recognise that agencies such as the legal aid commissions and the schemes whose functions they are absorbing are funded to provide assistance to all Australian citizens, including Aboriginals. The agreements between the Commonwealth and the States signed in 1974 and 1975 give the Commonwealth responsibility for planning, co-ordinating and financing activities to promote the economic, social and cultural advancement of Aboriginals. Some of the agreements specify the Commonwealth's responsibility for Aboriginal legal aid but all agreements specifically maintain each State's responsibility to implement measures to meet the special needs of the Aboriginal people in the ordinary course of the provision of services by the State functional agencies. Accordingly, the Committee does not consider that the existence of Aboriginal legal services absolves other legal aid agencies from responsibility for providing assistance to Aboriginal people. Any Aboriginal who elects to approach an alternative legal aid agency should be assisted, subject to meeting standard criteria of eligibility for assistance, and the cost of providing assistance should be borne by that agency and not passed on to an Aboriginal legal service.

Need for co-operative arrangements between Aboriginal legal services and other legal aid agencies

412 While the new arrangements for the provision of legal aid through State and Territory legal aid commissions provide for the continued separate operation of the Aboriginal legal services, there is still scope for co-operative arrangements to be developed between the Aboriginal legal services and other legal aid agencies. The Interim Charter for the operation of the Aboriginal legal services directs the Aboriginal legal services to establish and maintain co-operative arrangements with general community legal aid services, particularly in regard to the servicing of rural and remote areas. It suggests that such arrangements may include providing legal assistance for non-Aboriginals as part of complementary arrangements whereby other legal aid agencies provide assistance for Aboriginals.

413 In remote areas of Western Australia and particularly in the Kimberleys and the Pilbara, there was a certain degree of co-operation between the Aboriginal Legal Service of Western Australia and the Law Society's 'flying solicitor' scheme. The Aboriginal Legal Service's officers in the far north-west often provided advice and assistance to non-Aboriginals providing that an Aboriginal was not prejudiced by such action. On occasions where non-Aboriginal offenders were before the courts on serious charges, Aboriginal legal service solicitors appeared on behalf of the accused to arrange adjournments or submit pleas in mitigation. The Law

Society's 'flying solicitor' service did not distinguish between Aboriginal and non-Aboriginal clients and in places such as Kununurra and Wyndham it was by no means uncommon for most persons advised to be Aboriginal. The 'flying solicitor' service was suspended in mid-1978 shortly after the Legal Aid Commission of Western Australia took over the legal aid role of the Law Society. The scheme has been re-established with costs being met largely by the Commonwealth Government.

414 Several witnesses pointed to the need for co-operative arrangements between different agencies in the legal aid system whereby any solicitor appearing in any court in a State or Territory could represent clients of any legal aid agency and later submit a report and note of his fees to the agency concerned. The Committee was informed that on many occasions when an Aboriginal legal service solicitor is appearing in court, there may be one or two other solicitors providing assistance for clients under other legal aid schemes or representing private clients. Although in some situations this may be unavoidable, duplication of legal representation is both time-consuming for the solicitors and wasteful of their agencies' resources and should be minimised where possible. As far as the Aboriginal legal services are concerned, the establishment of co-operative arrangements should not only avoid unnecessary duplication in court attendances but should also allow the legal services to identify courts which are not being covered adequately and assign solicitors to these courts. This type of co-operative arrangement would also allow the Aboriginal legal services to extend their coverage in rural areas where the legal needs of Aboriginals are least adequately catered for. As part of the arrangements Aboriginal legal services could provide legal assistance to non-Aboriginal defendants as well as Aboriginals where appropriate and where the defence of a non-Aboriginal will not adversely affect an Aboriginal client.

Proposals for the establishment of a joint legal aid office at Ceduna

415 In 1979 discussions were held between the Director of the South Australian Legal Services Commission and representatives of the Aboriginal Legal Rights Movement on the desirability of establishing a joint legal aid office at Ceduna, a small town on the west coast of South Australia. There is a substantial Aboriginal population in the town and surrounding areas and racial tension and conflict between the Aboriginal and non-Aboriginal communities are considerable. The proposal to establish a joint office came about after a submission by the South Australian Aboriginal Legal Rights Movement to establish a branch office staffed by a solicitor at Ceduna was rejected by the Department of Aboriginal Affairs. The Aboriginal Legal Rights Movement argued before the Department that the large number of Aboriginal offenders appearing in court charged with criminal offences and the high proportion of serious criminal charges in Ceduna and the surrounding areas were cause for considerable concern and pointed to the urgent need for Aboriginals to have ready access to legal advice and representation.

416 As a result of its discussions with the Aboriginal Legal Rights Movement, the Legal Services Commission sought funds from the State and Commonwealth Governments to establish a joint office at Ceduna. It was proposed that such an office would be administered jointly and would serve the needs of both Aboriginal and non-Aboriginal clients. It was suggested that the office would have one solicitor and two field officers, one of whom would be Aboriginal. The Director of the Legal Services Commission strongly favoured the proposal and considered there was a lot to be gained in the cause of race relations by establishing a

joint office at Ceduna. To date, funds for the establishment of a joint office at Ceduna have not been forthcoming. The Committee sees merit in this proposal and believes it warrants further consideration by the Commonwealth Government and South Australian Government. However, it would be essential in such a joint office that consistent practices be adopted in respect to Aboriginals and non-Aboriginals and this would be a matter for negotiation between the Aboriginal Legal Rights Movement and the Legal Services Commission.

417 While the establishment of a joint office at Ceduna can be supported on the grounds that the town is not large enough to justify separate offices operated either by the Aboriginal Legal Rights Movement or the South Australian Legal Services Commission, it is desirable to maintain the independence and separateness of the legal services in places which are large enough to support two separate services, although this need not preclude close co-operation between the services.

Conclusion

418 Both Aboriginal and non-Aboriginal legal agencies are subject to funding restraints which inhibit their capacity to meet demands for legal aid. The legal aid commissions are structured and staffed to provide legal aid in areas where the Australian population is concentrated. They are based in the capital cities and their activities are predominantly directed towards meeting the legal needs and demands of the urban population. The accessibility of alternative legal aid services to the Australian population (both Aboriginal and non-Aboriginal) in non-urban areas is therefore severely limited and the presence of the Aboriginal legal services in these areas is of paramount importance. Because the Aboriginal legal services' client population is predominantly located in non-metropolitan areas, it is reasonable to suggest that their operations should be directed primarily towards meeting the legal needs of Aboriginal people in rural areas. While the Aboriginal legal services' activities have significantly increased Aboriginals' access to legal aid in all areas including rural areas, evidence presented to the Committee during the course of the inquiry has clearly revealed that the legal needs and demands of Aboriginal people in rural areas are still not being adequately met in either the criminal or civil jurisdictions and that there is a need for the Aboriginal legal services to further decentralise their operations.

419 The Committee recognises the very real benefits of an identifiably Aboriginal organisation providing legal assistance to all Aboriginals and appreciates the Aboriginal legal services' concern and reservations about the ability of alternative legal aid agencies to meet the special needs and demands of Aboriginals for legal aid. However, it considers that the Aboriginal legal services' limited resources can be better employed by making more effective use of alternative legal aid agencies where these are available. The savings thus gained would allow the services to extend their coverage of rural areas where the needs of Aboriginals are being less adequately met and where Aboriginals have the least access to any form of legal assistance. The accessibility and acceptability of alternative services to Aboriginal people could be significantly improved by increasing co-ordination and co-operation between different agencies and within the whole legal aid structure. In this respect the Aboriginal legal services have an important role to foster awareness among alternative legal services of the special legal needs of Aboriginals with a view to making these agencies more accessible and responsive to Aboriginal people. They also have an important role to play through the provision of community legal education to their Aboriginal clients to ensure that

Aboriginals understand the full range of legal services available from alternative legal agencies.

420 The Committee suggests that initial steps to utilise alternative legal agencies should entail the establishment of co-operative arrangements between the respective Aboriginal legal services and those agencies which are responsible for the delivery of legal aid services within their own State or Territory. Such co-operative arrangements should seek to eliminate duplication of services wherever possible, particularly in respect of solicitors' court appearances in routine casework. There may also be some merit in reaching a co-operative arrangement for the temporary transfer of staff between the organisations. This would enable staff from alternative legal agencies to familiarise themselves with the particular legal needs and demands of Aboriginals and the scope of the Aboriginal legal services' operations. Aboriginal legal service staff temporarily transferred to another legal agency could familiarise themselves with the service's range of activities, assess the extent to which the programs and resources of the organisations can be rationalised, and establish effective liaison between the organisations.

421 The Committee recommends that:

- *the Aboriginal legal services enter into special co-operative arrangements with State and Territory legal aid commissions and other legal aid agencies so that legal aid resources can be rationalised, particularly in rural areas and, if necessary, seek the assistance of the Minister for Aboriginal Affairs and the Attorney-General in attaining these objectives;*
- *when assistance is sought by the Aboriginal legal services, the Minister for Aboriginal Affairs and the Attorney-General intervene on behalf of the Aboriginal legal services and provide such assistance as is necessary to ensure that co-operative arrangements between the Aboriginal legal services and legal aid commissions and others are established and maintained; and*
- *the Aboriginal legal services make more effective use of alternative legal aid services by encouraging Aboriginal people to use such services, particularly in metropolitan areas where alternative services are most readily available, and that the Aboriginal legal services direct resources towards meeting currently unmet legal needs of Aboriginal people in rural areas where alternative sources of legal aid are not available.*

14. Community Participation in the Delivery of Aboriginal Legal Aid

Community participation and control

422 The extent to which the Aboriginal legal services provide for community representation in the management of the services varies considerably both in theory and in practice. All Aboriginal legal services are incorporated associations pursuant to the respective State and Territory association incorporation Acts and Ordinances. Their objectives and rules and regulations of management and operation including conditions relating to community representation are set out in constitutions and/or memoranda and articles of association.

Membership of Aboriginal legal services

423 Membership of Aboriginal legal services is open to all Aboriginals but is not a requirement for obtaining assistance from the services. Only a limited number of Aboriginal people formally join the legal services or attend their meetings. Most legal services provide for the collection of a nominal membership fee although this is rarely enforced. While members have the right to speak and vote at meetings, in most cases lack of membership status does not preclude participation in meetings. Membership of most Aboriginal legal services is also open to non-Aboriginals who are honorary members. They are not normally allowed to vote although they may speak at meetings. Honorary members are usually persons who have rendered or agreed to render legal or other services or who have shown an interest in the Aboriginal legal service. Some legal services provide for a third category of membership described as associate membership which is open to any organisation, association or person that supports the aims of the legal service. Delegates from such organisations are usually restricted to two.

Aboriginal legal service councils

424 The internal management of Aboriginal legal services is the responsibility of the Aboriginal people. The governing body of the Aboriginal legal service is the council which consists of a president and/or chairman, secretary, treasurer and other councillors. Council membership is usually restricted to Aboriginals although the Aboriginal Legal Service of Western Australia, the Aborigines and Torres Strait Islanders Legal Service and the Aboriginal Legal Rights Movement have provision for non-Aboriginal councillors. In Queensland at least half the councillors must be Aboriginal and in South Australia at least two-thirds must be Aboriginal. Some councils invite honorary members and advisers to attend council meetings or the annual general meetings of the legal service and speak on any matters which the council thinks fit. Advisers and honorary members are not entitled to vote or move or second any motion at council or service meetings. The size of legal service councils varies but provision is made for minimum and maximum numbers of members. Rules relating to quorums for meetings, termination of membership, filling vacancies, special meetings, management of funds, appointment of auditors, and so on are prescribed in the legal services' constitutions and memoranda and articles of association.

425 Council members of most Aboriginal legal services are elected at annual general meetings and hold office until their successors are elected. However,

councillors of the Aborigines and Torres Strait Islanders Legal Service are elected by members of the Service's seven district committees. Employees of the legal services are excluded from legal service councils. This is a recent condition introduced by the legal services to avoid problems arising from members' conflict of interests. Councillors are normally paid nominal sitting fees and/or are assisted to attend meetings. They may also be compensated for loss of wages where appropriate.

426 The councils are responsible for both management and policy of the legal services. The memoranda and articles of association of the legal services empower them to carry out the services' objectives, determine policy matters, and supervise the operation of the service and any person acting on its behalf. Councils are responsible for the appointment and dismissal of staff and for determining terms of employment and rates of remuneration. In some cases individual council executive members (president, secretary or treasurer) may suspend an appointed member of staff; this is subject to the decision of the council. Councils may also pass resolutions and make such by-laws as they deem expedient for carrying out the objectives of the services. These are subject to confirmation at the service's next annual general meeting.

Executive committees

427 Most Aboriginal legal services leave the routine management functions to a smaller elected committee of the council. The executive committee usually comprises the president and/or chairman, secretary and treasurer of the council. For many services this is the most practical and economical way of organising the administration of the service, particularly when members of the council are dispersed throughout the State or region and can therefore meet less frequently than the smaller executive committee.

Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd

428 The most administratively decentralised and representative Aboriginal legal service is in Queensland. Next to the Aboriginal Legal Service of Western Australia, the Aborigines and Torres Strait Islanders Legal Service is the largest legal service in terms of client population and geographical coverage. The Aborigines and Torres Strait Islanders Legal Service has divided the State into seven areas to facilitate the delivery of legal aid. Each area has a regional office and district management committee which is responsible for the operation of the Service within its specific area. The district committees are elected by registered members of the Legal Service who reside in the respective areas. The committees consist of not less than 11 and not more than 17 members, a majority of whom are Aboriginals and Islanders. The district committees elect from amongst their members an executive of four (chairman, vice-chairman, secretary and treasurer), three of whom are also elected State councillors.

429 The State council is the governing body of the Aborigines and Torres Strait Islanders Legal Service and meets twice yearly. Only members of district committees are eligible for election as State councillors. The council elects a four member State executive annually which acts on the council's behalf between council meetings. Executive members of the State council are ex officio members of each district committee. The executive meets six to eight times a year. The Service's central office is located in Townsville and not in the State's capital as is the case with the other State-wide services.

430 The operation of the district committees is governed by terms of reference issued by the State council. The State council may establish district committees within any region of the State to fulfil the objectives of the Legal Service. Membership, powers, duties and terms of reference are laid down in the resolution of executive council establishing such committees and may be varied from time to time as the executive council thinks necessary. District committees are autonomous in most respects but are bound by policy guidelines issued by the State council in relation to such matters as client contributions, use of private solicitors and other legal aid schemes, and transport policy. No member of a district committee, the State council or the executive is permitted to be a permanent employee of the Legal Service or receive any remuneration for carrying out duties as a State councillor or district committee member. Members are, however, reimbursed such expenses as travel and loss of wages which might be incurred in their capacity as committee or council members.

South Coast Aboriginal Legal Service Ltd

431 The memorandum and articles of association of the South Coast Aboriginal Legal Service provide for the next highest degree of community representation in the management and operation of an Aboriginal legal service. The region covered by the South Coast Legal Service is also divided into areas each of which has a management committee consisting of representatives of all Aboriginal communities in the area. Management committees hold regular meetings which are open to all members. However, only members of the management committee may speak and vote at such meetings. The Service's memorandum and articles of association require that meetings of the management committee be publicised by the secretary of the management committee and held in centres accessible to all communities within the area.

432 Each management committee is entitled to appoint four of its members to act as directors of the Service for the ensuing year and to represent it at directors' meetings. Three members of the Board of directors comprise an executive which is responsible for the administration of the Service. A small amount of financial assistance is provided from time to time to assist members of the board of directors to attend board meetings, which are normally held on a quarterly basis. It is interesting that while the memorandum and articles of association of the South Coast Aboriginal Legal Service provide for the Service to be one of the most representative organisations, an Aboriginal community within its jurisdiction has made a request to establish a separate legal service.

Other Aboriginal legal services

433 The administration of the other legal services including the smaller organisations in the Northern Territory and New South Wales is highly centralised. The management tends to be dominated by urban Aboriginals who invariably comprise a minority of the services' actual and potential client population. For example, the majority of the managerial staff of the North Australian Aboriginal Legal Aid Service are residents of the Darwin area where the Service is located but which contains only 15% of the client population. It is significant, however, that the Central Australian Aboriginal Legal Aid Service which has recently attempted to facilitate the attendance of traditionally-oriented Aboriginals at annual general meetings now has greater representation of traditionally-oriented Aboriginals on its council.

434 The Aboriginal Legal Service of Western Australia is one of the most administratively centralised organisations. Although it has established ten regional branch offices in addition to its central office in Perth, it has only established two nominal management committees outside Perth. Both are located in the Kimberleys and are consultative committees only, consisting of three Aboriginals who are honorary field officers. The committees only meet three to four times a year to advise the local Service solicitor about the operation of the Service and problems encountered in their respective areas. Most members of the Aboriginal Legal Service of Western Australia reside in the Perth metropolitan area, most of the Service's meetings (including the annual general meeting) are held in Perth, and members of the executive committee who are elected at the annual general meeting are normally all residents of the Perth area. The Service does not see the provision for community representation in the management of the Service as a matter of high priority and has not been prepared to allocate resources to facilitate representation from areas outside Perth. It stated in evidence that with additional funds it would establish sub-committees in various regions such as the Kimberleys and the Pilbara.

435 Similar features are apparent in other Aboriginal legal services. Executive councils are generally dominated by urban Aboriginals. Meetings are mainly held in the cities and attended predominantly by urban Aboriginals. Few services provide for community participation through regional management committees as in Queensland. Consequently, representation of areas outside the metropolitan area is left to chance and the ability of Aboriginals in outlying areas to attend important meetings to vote for their representatives. There are exceptions. For example, the South Australian Legal Rights Movement's constitution provides for the Movement to co-opt people from Aboriginal reserves to attend its meetings. According to the constitution, an Aboriginal community is entitled to appoint two persons to represent it on the council for a term the community thinks fit with the same voting rights as ordinary members of the council. In practice this does not happen as few have the means to attend such meetings and the Movement does not assist them to attend. The council has only three members who are not residents of the Adelaide area and these three members are from Port Augusta.

Attendance at meetings

436 Some services advised the Committee that they go out of their way to advise communities of annual general meetings and other meetings but that few send representatives. This is again largely because their members are widely dispersed throughout the State or region and do not have the means to attend. The legal services are unwilling to provide transport or financial assistance and most meetings are held in places far removed from the communities. It was suggested that although most organisations make provision within their budgets to meet travel and accommodation expenses of committee or council members and this is an expected and accepted part of an organisation's expenditure, there is a tendency for Aboriginal legal services to feel obliged to run their organisations 'on the cheap'. For example, the North Australian Aboriginal Legal Aid Service stated that often isolated communities are not advised of meetings because financial constraints prevent it from complying with communities' requests for transport to bring their representatives to meetings. Many isolated communities within the jurisdiction of the North Australian Aboriginal Legal Aid Service are inaccessible except by aircraft. Where they are serviced by roads, the roads are

generally impassable during the wet season. It is therefore not possible for the Service to make transport arrangements to bring isolated community representatives to annual general meetings similar to those made by the Central Australian Aboriginal Legal Aid Service whereby Aboriginals are transported to Alice Springs in buses and community trucks. These differences are reflected in the North Australian Aboriginal Legal Aid Service's urban dominated council and in the greater representation of traditionally-oriented Aboriginals from isolated communities on the Central Australian Aboriginal Legal Aid Service's council.

437 There is a need for Aboriginal legal services to consider setting aside funds to meet the travel expenses of representatives of the non-urban client population who are entitled to attend council meetings and the annual general meeting. It was suggested by one legal service representative that consideration should be given to holding council meetings less frequently to minimise costs. There also seems to have been a tendency for legal services to assume that because Aboriginal people in isolated areas have not attended annual general meetings in the past, they have no interest in doing so. The greater attendance by non-urban Aboriginals at annual general meetings held in locations outside the metropolitan areas shows that this is not the case.

438 Some of the Aboriginal legal services have held annual general meetings outside their central office areas. The Aboriginal Legal Rights Movement has held one meeting at Port Augusta and the Redfern Legal Service held its last annual general meeting at Walgett. Last year the Central Australian Aboriginal Legal Aid Service held a special annual general meeting at Ti Tree. The meeting was attended by over 450 members in contrast with previous attendances of approximately 150 at annual general meetings in Alice Springs. A new executive was elected and the previous executive was criticised for not taking into account the views of more remote communities. On this occasion the Aboriginal people from outlying areas demonstrated that while they are not immediately able to exercise control over the Legal Service, they are capable of making their opinions known at the appropriate time. While the Committee acknowledges that travel costs to and from country areas are high regardless of where meetings are held, it considers that equitable representation of Aboriginal communities within a legal service's jurisdiction is essential if the services are to meet their goals.

Need for greater community representation

439 It was suggested that differences of opinion about priorities and methods of operation will manifest themselves regardless of the size of legal services. It is therefore essential that Aboriginal legal services be structured so that they can properly take into account the varying legal needs and demands of Aboriginal people in urban areas, country towns and isolated Aboriginal communities. This can best be achieved by providing for greater representation at the community level in the management of the legal services. Effective representation is necessary if legal services are to meet their objectives regardless of whether the organisation is small or large and is in many respects a more important issue than the issue concerning the merits and demerits of smaller regional services and large State-wide services.

440 Aboriginal legal services also need to ensure that the services are not dominated by one group. Problems arise when particular groups or families feel they are being excluded, intentionally or unintentionally, from the legal service and that other groups are receiving preferential treatment. It was suggested that

internal dissension and internal factions will always be a problem in such services. Different groups compete for the allegiance of the Aboriginal community, particularly in urban locations, with the legal service providing a base for their operations and there have been occasions when competing interest groups have attempted to take control of legal services. The Committee considers that administration by a united and representative executive should minimise the occurrence of faction fighting within legal service organisations.

441 The Committee believes it is important to ensure that Aboriginal people are aware of their capacity to influence the management and operation of Aboriginal legal services by exercising their right to elect community representatives to legal service councils. Prisoners at the Goulburn Training Centre who gave evidence to the Committee were generally uninformed or misinformed about the management and operation of the Aboriginal legal services. They appeared to be under the impression that Aboriginal legal aid is provided through a single national organisation appointed and run by government rather than through separate legal services in each State and, in the case of New South Wales, through four separate organisations servicing defined areas. They were unaware that legal service staff are appointed by Aboriginal people and that Aboriginals are entitled to vote at annual general meetings to elect council members of the Aboriginal legal service which is responsible for the delivery of legal aid in the area in which they normally reside. There are other advantages in promoting the attendance of more Aboriginal people at legal service meetings, particularly annual general meetings. Criticisms of the management or operation of the services can be brought to the attention of council members. Legal staff also have the opportunity of making known to their clients the constraints within which they are compelled to operate and problems they encounter in the delivery of legal aid.

442 The Committee strongly believes the successful operation of Aboriginal legal services depends largely on the extent to which Aboriginal groups and individuals within each service's jurisdiction are represented in the management of the service. This principle is fundamental to the successful delivery of any service to Aboriginals and the premise upon which the Government's policy of self-determination is based. The Committee sees considerable merit in the type of organisation developed by the Aborigines and Torres Strait Islanders Legal Service in Queensland and provided for in the constitution of the South Coast Aboriginal Legal Service where legal services are responsible for the delivery of legal aid over a large geographical area, particularly in respect of the provisions for small local representative committees to control the activities of the legal services in each committee's area. The establishment and organisation of local committees requires considerable diplomacy and skill and their autonomy and relationship with the central office are difficult issues. Ideally, such committees should be given maximum autonomy to select and dismiss staff and make decisions affecting the delivery of legal aid in their respective areas. They should also be entitled to fair representation on the State or regional body of control and be assisted to participate in such meetings. While in theory the organisational structure developed by these two services appears to provide for effective community participation in the legal services' activities, evidence indicates that these services have not been without administrative problems and have, on occasions, been subject to criticism by Aboriginal groups for concentrating their activities in certain areas at the expense of other areas within their jurisdictions.

State or regional organisations?

443 In most of the States—Queensland, Western Australia, South Australia, Victoria and Tasmania—legal aid is delivered through a single legal service. These legal services are large centrally organised bodies which attempt to provide legal aid to all Aboriginals within the respective States, usually through a network of smaller branch offices. In New South Wales and the Northern Territory legal aid is delivered through multiple services: New South Wales has four separate Aboriginal legal services and the Northern Territory has two. These services are regionally based organisations which provide a service to a smaller number of people in a defined area within the State or Territory. The Pitjantjatjara Legal Service provides a limited service to the Pitjantjatjara people in the Northern Territory, South Australia and Western Australia and differs in its role from the other legal services.

444 Ideally, the jurisdiction of Aboriginal legal services should be based on clearly defined criteria such as the size, composition and distribution of the Aboriginal population; the geographical accessibility of different areas; the availability of alternative services; the frequency of court sittings; the legal service's proximity to Aboriginal communities; and the demonstrated needs and demands of the client population for legal aid. The areas of responsibility of the Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Legal Aid Service in the Northern Territory have been determined by a practical geographical division of the Territory into two separate jurisdictions for the delivery of legal aid. The Pitjantjatjara Legal Service covers the Pitjantjatjara homeland communities and was established to meet the needs and demands of a particular homogeneous tribal group. The jurisdiction of the Pitjantjatjara Legal Service has therefore been determined by the area occupied by the Pitjantjatjara people. The establishment of four autonomous regional legal services in New South Wales has resulted primarily from specific requests from communities within the respective regions for separate funding. In some respects, the establishment of separate services in New South Wales can be attributed to history, accident, politics and the attitudes of government rather than to geographical or demographic factors.

445 The New South Wales Regional Office of the Department of Aboriginal Affairs stated that it supported the establishment of the four autonomous legal services because of the following administrative and policy considerations: the continuing failure of the Redfern Aboriginal Legal Service to acknowledge the conditions under which Commonwealth financial assistance was provided; representations from Aboriginals concerning the administration of the Redfern Legal Service and the quality of legal aid; and the establishment of meaningful community control that would place the responsibility for the sound management of legal services with the people who benefit directly from their services. Officers of the Department's central office stated that there is no firm view on the establishment of separate services and that, as funds allow, the Department responds to Aboriginal initiatives in the forms of requests by local communities for separate funding, for example, because of dissatisfaction with their relations with the central organisation.

Establishment of separate regional legal services in New South Wales

446 Between 1976 and 1978 Aboriginal groups in the south coast and western regions of New South Wales and the western suburbs of Sydney made representations to the Department of Aboriginal Affairs for separate funding. These

groups claimed that they were not able to participate meaningfully in the affairs of the Redfern Aboriginal Legal Service and that the quality of legal aid available to Aboriginals in their areas was suffering as a result. There were claims that the resources available to the Redfern Legal Service were not being equitably distributed throughout the State region and that some areas were being given preferential treatment.

447 The Redfern Service admitted that there were many problems in delivering a satisfactory service in rural areas at the time but argued that this was mainly because its funds were limited and not because of other reasons. Solicitors who had been employed by the Service at the time suggested that the conflict between Sydney and the country areas was possibly a natural consequence of difficulties associated with the sudden expansion of the Legal Service from a small branch office in Sydney to a State-wide organisation run by people with little administrative experience. They suggested that the sort of problems that arose then might not arise now because of greater management experience and expertise and increased provision for community representation in the Service's management structure.

448 There was some argument concerning the question of funding the three additional legal services in New South Wales. It was suggested that the services received funds over and above those which were subtracted from the Redfern Aboriginal Legal Service's budget. The Redfern Service claimed that had it received additional funds it would have been able to provide a better service to the communities which subsequently established separate legal services. However, as the level of funding for the delivery of legal aid in New South Wales did not increase significantly with the establishment of separate services, the Redfern Legal Service's claim cannot be substantiated. In fact, the amount of funds available to meet demands for legal aid may have decreased in real terms as the establishment of the three autonomous services necessarily resulted in the commitment of additional funds to meet the administrative overheads of these organisations. The Regional Office of the Department of Aboriginal Affairs stated that while the establishment of separate legal services with members and directors drawn from the service area has ensured that local communities are aware of the organisations' management policies and have a direct role in framing them, the implementation of the policy of self-management in the delivery of legal aid does have a financial cost as a higher proportion of funds must necessarily be expended on administrative costs. The Regional Office has not been able to assess whether the benefits of local community control offset the higher administrative costs of a system of autonomous legal services.

449 Certain problems have arisen as a result of the establishment of separate legal services in New South Wales. These problems are mainly administrative and relate to definitions of boundaries and responsibility for cases proceeding to superior courts. The areas of responsibility of the respective legal services were negotiated at a conference of Aboriginal legal services convened by the Department of Aboriginal Affairs Regional Office in March 1978. The boundaries were based on petty sessions districts and attempted to provide for Aboriginal communities within these areas.

450 In addition to defining the boundaries, operational guidelines were established providing that responsibility for an Aboriginal client charged with an offence falls to the legal service responsible for that particular petty sessions district regardless of the client's normal place of residence; and if a case is taken to a higher

court, the legal service which initially handles the matter should undertake the full conduct of the case. It was agreed at the conference that co-operation and liaison between each service and with other legal aid agencies shoud be promoted to ensure that all clients receive assistance from one service or another. The Department of Aboriginal Affairs concluded that to date the operational guidelines appear to have been implemented satisfactorily.

451 The Committee received evidence to the contrary. At least five requests have been made for the establishment of additional separate legal services in New South Wales since 1978. Four of these requests have come from areas within the jurisdiction of the Redfern Legal Service and one from within the jurisdiction of the South Coast Aboriginal Legal Service. They are Kempsey, Inverell, Lismore, Newcastle and Bega. Agitation for the establishment of further regional services reflects dissatisfaction with the operation and management of the existing services and indicates that some communities consider their legal needs are not being adequately met under existing arrangements.

452 The New South Wales Regional Office stated that although the establishment of regional legal services has ensured local community participation in management policies and direct accountability to local communities, it has not prevented the services from encountering financial and management difficulties. Nevertheless, it has assisted to a certain extent in resolving these problems because service directors have become aware that if local problems are not resolved, membership will hold them directly responsible for any effects such problems may have on the availability and quality of legal aid provided by the service.

453 Most of the complaints regarding the implementation of the operational guidelines relating to the boundaries of responsibility for each service were received from the Redfern Aboriginal Legal Service. The Service claimed there is unnecessary duplication in court work in the Sydney metropolitan area. For example, it asserted that there is generally little co-ordination between it and the St Mary's and Districts Legal Assistance in relation to attendance at the Minda Children's Court at Lidcombe. Files opened for the various clients are situated in two separate offices and are not easily passed backwards and forwards. Solicitors representing clients of each of the two separate organisations have on occasions appeared on the same day at the same court when in fact both defendants could have been represented by one solicitor. The Committee believes that co-ordination problems of this type can be just as evident within a large legal office as between different offices and that possibly the unsatisfactory relations between the Redfern Service and other legal services have exacerbated these difficulties.

454 The Redfern Aboriginal Legal Service also considered uncertainty exists regarding the Aboriginal legal services' responsibilities to inmates of various gaols; for example, whether the various Aboriginal legal services should be available to act for Aboriginals held in the gaols within their own defined areas of operation or whether the legal service which represented the client before his imprisonment has a continuing right and responsibility to protect his interests. Other criticisms by the Redfern Service related to claims that practical difficulties arise in respect of clients who live in one area but are charged with an offence and appear in court in another area. The Service also maintained that because the Aboriginal legal services are fragmented within the State a situation has arisen where one legal service can be played off against another and alleged that police have taken advantage of this situation.

455 The complaints relating to the organisation of the legal services in New South Wales received from the Redfern Service were not convincing to the Committee and instead reflected the Service's discontent, its resistance to the establishment of the three additional services, and a degree of antagonism and lack of co-operation that was not evident elsewhere in Australia. For example, the Central Australian Aboriginal Legal Aid Service and the North Australian Aboriginal Legal Aid Service do not appear to experience similar problems in the delivery of legal aid to Aboriginals in the Northern Territory. Similarly, the Central Australian Aboriginal Legal Aid Service, the South Australian Aboriginal Legal Rights Movement and the Aboriginal Legal Service of Western Australia co-operate effectively to provide a limited legal service to the Pitjantjatjara people. The Committee believes that as long as the Redfern Service's antagonistic attitude prevails, the lack of co-operation between it and the other legal services in New South Wales will continue to affect the quality of legal aid provided to Aboriginal people in that State.

456 Whether the establishment of separate regional legal services in New South Wales has improved the level of legal representation available or has instead caused duplication of effort and inefficient use of time and resources is questionable. As already reported, complaints from Aboriginal prisoners at the Goulburn Training Centre reflected dissatisfaction with the type of legal service being provided for Aboriginals in New South Wales and indicated that the establishment of separate services has not necessarily improved or hampered the delivery of Aboriginal legal aid in New South Wales. The Aboriginal prisoners were in fact unaware of the existence of the different legal services and were concerned only to receive a satisfactory service. The New South Wales Bureau of Crime Statistics and Research suggested that in 1978, 39 per cent of Aboriginals were unrepresented in court in final appearances. The Committee considers there is a need for further statistical information relating to levels of representation provided before and after the establishment of the three additional services before it is possible to assess the effect of regionalisation on the delivery of legal aid in New South Wales.

Advantages and disadvantages of different structures

457 It is debatable whether one structural model is preferable to and more cost effective than another as an organisation responsible for the delivery of legal services to Aboriginals. There are advantages and disadvantages to both approaches.

458 The scale of operation of a large centrally organised service with a network of branch offices throughout the State allows greater economies in administrative procedures and business practices. The larger services tend to be based in the capital cities and therefore have access to other legal agencies and legal facilities located in metropolitan areas. They are also able to co-ordinate and organise appeal cases from country branch offices. The client population is large enough to justify retaining senior solicitors and solicitors with expertise in the civil jurisdiction so that the service does not have to confine legal assistance to the criminal area. The service may also be able to employ additional back-up and support staff such as social workers or community workers, promote internal training programs, and undertake research and policy development. State-wide organisations can exercise a greater degree of flexibility by appointing staff where they are most needed, on a permanent or temporary basis, and relocating them when and where necessary. Because a single organisation is responsible for

developing policies and determining priorities which are adhered to throughout the State, the legal service can adopt a unified approach in its negotiations and consultations with governments and other legal aid agencies. There is minimal duplication of central office facilities when legal services seek to increase their coverage and accessibility through the establishment of branch offices. Co-ordination of activities, particularly court appearances, is easier and the organisation provides a wider base on which branch staff may call for advice and assistance.

459 These advantages have to be weighed against certain disadvantages. The larger State-wide Aboriginal services are normally urban based and urban dominated. There is often little opportunity for non-metropolitan Aboriginal communities to participate in management and policy matters. The services are therefore less aware of and less responsive to the diverse views, interests and needs of Aboriginal individuals and groups within the State. As discussed previously, this has, intentionally or unintentionally, resulted in greater emphasis being placed on the delivery of legal aid to Aboriginals in metropolitan areas. Urban Aboriginals are not only articulate and able to make their needs known but are also more familiar with the range of services provided by the legal services and more inclined to approach them for assistance. It is also easier for the legal services to attract and retain staff (particularly solicitors) in metropolitan areas. It is also significant that the legal services least able to meet the needs of Aboriginals in outlying areas, particularly for legal assistance in criminal matters, are the State-wide organisations which have a heavy concentration of staff and resources in the capital cities such as the Aboriginal Legal Service of Western Australia, the Aborigines and Torres Strait Islanders Legal Service and the Aboriginal Legal Rights Movement. Further disadvantages of State-wide organisations relate to travel by both staff and council members to and from country areas which is costly and time-consuming. The cost of providing a telephone service to branch offices and clients throughout the State is also high for such organisations.

460 Smaller regional Aboriginal legal services have limited potential for economies of scale and variations in approaches to the delivery of legal aid may may create difficulties in co-ordinating activities with other services. The smaller the legal service the less scope there is for employing staff with expertise in areas other than criminal law. The services do not have ready access to legal facilities available in major city centres such as court registries, high courts, children's courts and small claims courts.

461 The main advantage of establishing smaller, separate Aboriginal legal services is that they are closer to the client population and therefore more able to facilitate the access of Aboriginals to legal aid and their participation in the organisation and management of the legal service. The smaller legal services therefore tend to be more responsive to the legal needs and demands of Aboriginals within their jurisdiction. Large areas such as those covered by the State-wide legal services often comprise disparate groups of Aboriginals who may not closely identify with each other and feel little sense of communal purpose. In this respect the establishment of local community-based services would be more effective. This is particularly so where traditionally-oriented Aboriginal communities form homogeneous tribal groups. It is significant that initiatives have already been taken in the Northern Territory to establish separate land councils representing the interests of different 'nations' in the area. Smaller legal services expend

considerably less in travel and telephone costs as they operate within more limited geographical areas.

462 There have been a number of requests for the establishment of separate legal services. Requests made known to the Committee have come from those areas in New South Wales previously referred to in this chapter, from Tennant Creek in the Northern Territory, and from the Kimberleys and the Pilbara in Western Australia. Existing legal services have also sought funds to increase their accessibility and effectiveness through the establishment of branch offices.

463 In the Northern Territory the establishment of two separate legal services has been successful primarily because there is willing co-operation between the services and agreement that the division of areas of jurisdiction between the services is the most reasonable and appropriate way to organise the delivery of legal aid in the Northern Territory. While the creation of four separate services in New South Wales appears to have been less successful, the Committee believes that some of the problems brought to its attention could be avoided through greater co-operation and co-ordination between the legal services. It considers if this approach is accepted and funds are made available to other Aboriginal community groups in New South Wales to establish local legal services, it may be necessary to review the boundaries of all the legal services in New South Wales in order to rationalise the delivery of legal aid throughout the State.

Other proposals

464 Alternative structural approaches to the delivery of legal aid to Aboriginals were presented to the Committee. The National Aboriginal Conference proposed three levels of control and direction, namely area committees, State executive councils and a national co-ordinating council. It was envisaged that the area committee would comprise Aboriginals from all areas within its region elected for a finite period. It would meet regularly to determine local Aboriginal legal service policy and strategy and would elect a certain number of members to serve on the State executive council. The Conference's proposal to establish area committees is similar to the structure in Queensland. Members from each State executive council would be elected to a national co-ordinating council. The Conference considered this structure would provide appropriate checks and balances and ensure that legal services were not fragmented.

465 The Department of Aboriginal Affairs New South Wales Regional Office expressed support for the establishment of numerous independent legal services to provide Aboriginal communities with the opportunity for direct participation in their management. It considers the most desirable organisation of the Aboriginal legal services would be a series of services responsible for managing their own affairs at a local level but which would operate as part of a confederation at the regional level. The confederation of services would conduct negotiations concerning policy on behalf of all of its branches and retain senior counsel for cases proceeding to superior courts. The services could reduce their operational overheads by purchasing goods and services as a unit, but still retain their right to allocate financial resources at the local level.

Delivery of legal aid through separate regional services

466 The Committee believes there is a need for a network of legal aid offices throughout the country, even at the expense of metropolitan services, supplemented where necessary by the appointment of honorary field officers in small,

isolated communities and that this approach is necessary and appropriate for the delivery of legal aid to the widely dispersed Aboriginal population. The main objective must be to ensure that legal services are provided where the need exists and in a way which conforms to the wishes of the local community. This objective can be met by the establishment of separate regional legal services or by the extension of existing legal services through branch offices responsible to local management committees.

467 It is the Committee's view that the development of separate regional legal services is the most effective way to improve the access of Aboriginals to legal aid because they provide for greater community participation and control and because each legal service is directly accountable to the local community it serves. While the initial cost of establishing separate legal services may exceed the cost of expanding the coverage of established Aboriginal legal services by setting up branch offices, the Committee believes that in the long term smaller regional services will provide the more effective legal service, particularly to those Aboriginal people in rural areas whose access to legal aid is presently most limited and whose need for a specialised legal service is greatest. It is possible that in some circumstances the establishment of separate services may not be viable and alternative facilities such as branch offices should be provided in such a way as to ensure that the service is directly accountable to the local community it serves.

Pitjantjatjara Legal Service

468 Prior to 1973 little if any legal advice was available to the Pitjantjatjara communities. Indeed few communities existed as such as most Aboriginals in the Pitjantjatjara homelands area lived in larger settlements and missions. There was some improvement in the access of the Pitjantjatjara people to legal representation following the establishment of the South Australian Aboriginal Legal Rights Movement, the Central Australian Aboriginal Legal Aid Service, and the Aboriginal Legal Service of Western Australia. Today, Aboriginal legal service representatives from Adelaide, Alice Springs and Kalgoorlie make infrequent visits to these areas. The South Australian Aboriginal Legal Rights Movement provides representation for Aboriginals appearing before a South Australian magistrate who visits the Pitjantjatjara area three times a year. All other magistrates' court matters and all superior court matters are dealt with in regional centres distant from the Pitjantjatjara country. The legal assistance provided by the Aboriginal Legal Rights Movement is fragmented and inadequate. No satisfactory relationship has developed between the solicitors and the client Pitjantjatjara communities because of language and cultural barriers and the infrequency of visits to the area. The same problems arise in respect of visiting legal service solicitors from Alice Springs and Kalgoorlie.

469 Problems in meeting the legal needs of the Pitjantjatjara people arise not only from their remoteness from the centres of the various State legal systems but also from the fact that the State boundaries trisect the region. Because the area covers three legal jurisdictions, it is subject to different policies, laws and practical application of the law. Some difficulties are experienced by solicitors in being admitted to practice in the three jurisdictions. In spite of these problems, a measure of success has, however, been achieved in explaining to the Pitjantjatjara people the roles of the police and the courts and in ensuring that criminal charges are dealt with locally where possible.

470 Pitjantjatjara delegates to the 1976 annual general meeting of the Central Australian Aboriginal Legal Aid Service expressed dissatisfaction with the

frequency and quality of service provided to them. The Service had previously been reluctant to provide legal assistance in areas beyond the State borders partly because of difficulties arising when Northern Territory solicitors appeared in South Australian courts and partly because their staff numbers were insufficient to meet the needs of Aboriginals within their own area of responsibility. Alice Springs is, however, the main regional centre for most Pitjantjatjara communities and the Central Australian Aboriginal Legal Aid Service continues to undertake a considerable amount of court representation work on behalf of Pitjantjatjara people who have committed offences while in the Northern Territory.

471 By 1976 it became apparent that the South Australian, Western Australian and Northern Territory legal services could not provide satisfactory legal assistance for the Pitjantjatjara people. The Pitjantjatjara communities formed a council of representatives which held its first meeting at Amata (South Australia) in July 1976. The council was incorporated in February 1977 and assumed responsibility for community development and administration. The council repeatedly requested funds from the Commonwealth Government to employ a solicitor to cater for their legal needs, especially in relation to their pursuit of land rights in South Australia and Western Australia (land rights had earlier been granted in the Northern Territory).

472 Late in 1978 the Commonwealth Government made these funds available. The Pitjantjatjara Legal Service is not funded with the expectation that it will fulfil the functions of Aboriginal legal services operating elsewhere. It is a condition of its grant that the Service be responsible for advising the communities and negotiating with governments in land rights matters, and assisting the Pitjantjatjara Council in the administration of lands granted to the communities. The Council has asked the Legal Service to undertake other matters but limited resources have prevented it from expanding its operations. The Central Australian Aboriginal Legal Aid Service, the Aboriginal Legal Rights Movement and the Aboriginal Legal Service of Western Australia attempt to meet the other legal needs of Pitjantjatjara communities, particularly the needs of individual Aboriginals.

473 The Committee believes that the South Australian, Western Australian and Northern Territory Aboriginal legal services are unable to meet the legal needs of the Pitjantjatjara people. It is important that the Pitjantjatjara people have access to a single legal service which is attuned to their special needs and with which they can develop a relationship based on familiarity and trust. Evidence points to the need for such a service to provide a wider range of legal aid than is currently available from the Pitjantjatjara Council's legal office. It is also important that legal advice and assistance be more readily accessible to the Pitjantjatjara people than is presently the case. This could be achieved by appointing field officers selected from communities within the region.

474 The Committee is concerned that if an expanded legal service is directly controlled by the Pitjantjatjara Council rather than a separate legal service council elected by member of the communities, problems could be encountered insofar as the Pitjantjatjara Council's interests may be given priority over the interests of individual community members. The Pitjantjatjara Council has its proper role; however, the Committee believes the risk of undue influence or pressure from the Council on legal service staff would be minimised if the proposed legal service for the Pitjantjatjara people operated independently of the Pitjantjatjara Council. The legal service's constitution could, however, provide for the Council to

exercise control over the service in matters affecting land rights issues and the management of their land. The Committee considers this is an area which warrants further careful consideration and planning by the Pitjantjatjara Council and governments to ensure that the Pitjantjatjara people have access to legal advice and assistance in all areas of the law.

475 The Committee recommends that *the Department of Aboriginal Affairs consult the Pitjantjatjara Council and Pitjantjatjara people to determine the most appropriate way of organising the separate delivery of legal aid to Aboriginal people in the Pitjantjatjara traditional homeland communities and that it provide necessary assistance to the Pitjantjatjara people for the establishment of a legal service which will provide a full range of legal services to them.*

Management of Aboriginal legal services

476 The day-to-day management of Aboriginal legal services is conducted by an employed office manager, director or executive officer who acts as the service's company secretary. He co-ordinates and administers the activities of the service and implements decisions made by the council and its executive committee. The office manager normally works closely with the senior solicitor, senior field officer and members of the executive committee. In many respects the position of office manager is the key position in a service and the competence of its incumbent is often reflected in the effectiveness of the service's operation. The executive officer has wide discretionary powers and is directly responsible to the executive committee of the governing council.

Administrative problems affecting efficiency of operation

477 The efficiency of operation of all the Aboriginal legal services has at some time suffered from unsatisfactory administration. The Committee's attention was drawn to wastage and abuse of service facilities such as vehicles, telephones, travel provisions and mail services by both Aboriginal and non-Aboriginal staff, and to problems relating to the conduct and supervision of staff members. Poor administration has also been reflected in inconsistency in attitudes towards staff and their functions; failure to provide adequate direction and guidance to staff in the performance of their duties; disorganisation of offices and ill-defined lines of control resulting in ineffective communication between staff, especially between solicitors and executive officers; and inability of executive officers to delegate responsibility. The legal services are conscious of criticisms which have been levelled against them concerning the misuse of facilities and the inadequacy of management controls and state they have implemented, or are in the process of implementing, proper checks and controls. Generally, there appears to have been a steady improvement in management and budgeting procedures as Aboriginal people have gained management experience and expertise.

478 Criticisms have also been levelled at the services concerning mismanagement of resources and the effect this has had on the conduct of legal cases and the quality of legal representation provided. Judges and stipendiary magistrates stated that on occasions the attitude and conduct of certain solicitors did not greatly assist the court or, more importantly, the clients they were representing. For example, Aboriginal clients were sometimes prejudiced by philosophies adopted by the Aboriginal legal services, particularly when offenders were advised to plead not guilty in cases where evidence was weighted against them

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and their interests might have been better served by entering a plea of guilty. Most criticism, however, related to the early years of the Aboriginal legal services' operation. It was suggested that during this formative period Aboriginal legal service staff tended (intentionally or unintentionally) to be dominating and paternalistic towards their clients; that they used the Aboriginal legal services as a vehicle of protest against the subjection of Aboriginals to the authority of law enforcement agencies; and that the operation of the legal services was adversely affected through the employment of staff with extreme political views and aspirations.

479 The Department of Aboriginal Affairs Regional Office in South Australia alleged that mismanagement of resources is reflected in poor preparation of cases and quality of representation provided by the Aboriginal Legal Rights Movement. The Regional Office also stated that it had received complaints concerning misrepresentation in the securing of bail for apprehended persons; preferential treatment of clients and some staff members; methods of briefing cases out; choice of firms briefed; failure of solicitors to appear; excessive remand periods of some offenders; protracted execution of certain matters relating to property and loans transactions; and incompetency and misconduct of staff. It was also alleged that the Aboriginal Legal Rights Movement was fostering recidivism not only amongst habitual offenders who committed serious crimes but also amongst juveniles, particularly in remote communities. This allegation was in fact confirmed by other evidence offered to the Committee.

480 Many of these complaints were made verbally and informally to the Regional Office and were not always investigated or substantiated. The Regional Office acknowledged that complaints regarding some of the matters mentioned above were in fact rare and referred to particular cases or incidents. Also, many of the complaints were made by the Aboriginal Legal Rights Movement staff. While it is understandable that they should wish to express their concern about shortcomings in the administration and operation of their organisation, it perhaps would have been preferable if the matters could have been resolved internally or if the Movement had obtained assistance and advice from an independent body. The Movement had in fact recognised the need for an evaluation of its administration and efficiency and had earlier approached a member of the judiciary for assistance in this area. He was unfortunately unavailable and the Movement failed to follow up the matter by seeking assistance from some other suitably qualified individual or organisation.

481 There now appears to be a growing realisation by the Aboriginal legal services that their objectives are better achieved by providing a high standard of representation for clients, considering each case on its merits and, when appropriate, advising clients to plead guilty. Several solicitors stated that they have had to impose stricter controls on some clients who wish to plead not guilty when evidence is so strongly weighted against them that their cases cannot possibly succeed, when clients have refused to provide adequate instructions, or when legal advice is ignored or contradicted. Some solicitors have become unpopular for taking this stand. The view shared by most members of the Bench who contributed to the inquiry is that Aboriginal legal service solicitors are competent and that their presence during proceedings ensures Aboriginals are on an equal footing with the rest of the community. Judges and stipendiary magistrates have come to appreciate the special role played by Aboriginal legal services in the judicial process.

Role of legal service councils

482 Administrative problems experienced by Aboriginal legal services result not only from the incompetence of individual administrators in the organisation but also from weak and divided councils which are unable to give their executive officers adequate direction or support when required. In this situation the potential for inefficiency increases as does the potential for control to pass from Aboriginals to non-Aboriginals. In some instances non-Aboriginal solicitors have exercised undue influence and control over the services. It is therefore important that council members be fully aware of their powers and responsibilities and of the role they are expected to play in the administration of the organisation. A majority of the services have clearly defined the duties and responsibilities of legal service councillors in their constitutions and/or memoranda and articles of association. Where such matters have not been included in legal services' constitutions, it is important that the constitutions be amended to clarify councillors' duties and responsibilities.

Interference with the solicitor-client relationship

483 The Committee received isolated reports concerning instances in which Aboriginal legal service management staff have attempted to direct or influence solicitors as to how specific cases should be handled. The Committee considers that Professor Sackville's comments concerning the functions of proposed local legal services committees apply equally to the functions of Aboriginal legal service councils and executive staff. He recommended that:

> The policies determined by the committee should be followed by employed solicitors, but the decision in a given case should be made by the solicitor to whom the matter is referred, rather than by the committee . . . Under no circumstances should the local legal services committee have power to direct professional staff as to how a case accepted by the office should be handled: it is vital that there should be no interference with the normal solicitor-client relationship.[1]

Allegations of political activity

484 Other criticism of the Aboriginal legal services' management related to the involvement of staff in matters outside the operation of the organisations, namely political activities. The Committee believes legal service councils have a responsibility in the management of public funds to provide an unbiased service without personal, political or sectional interference and to ensure against the use of resources and facilities for purposes other than for which they are primarily provided; namely, to assist Aboriginals in need of legal advice, representation or other legal services. The Department of Aboriginal Affairs reported that it had no record of a legal service being involved in a concerted way in party politics. It stated: 'Naturally they are very politically aware and they lobby us sometimes in a political context, and we feel that is appropriate. Sometimes the lobbying becomes rather intense but that is part of the process.'

Special management reviews

485 The Victorian Aboriginal Legal Service recently requested the Victorian Law Society to arrange a management review of the Service. The review found that the responsibilities of various employees in the office needed to be more clearly defined and that greater communication and interaction was necessary

[1] Commission of Inquiry into Poverty, *Legal Aid in Australia*, Research Report, Law and Poverty Series, Professor R. Sackville, Commissioner, AGPS, Canberra, 1975, p. 180.

between staff and members of the executive. Duty statements were required so that everybody understood their duties and responsibilities within the organisation, to whom they were answerable, and precisely what was expected of them.

486 In 1979 the South Australian Regional Office of the Department of Aboriginal Affairs undertook a special investigation into the administration of the Aboriginal Legal Rights Movement. The review team reported that interpersonal and interfactional antipathies had overshadowed the objectives of the Movement. It found that administrative failings and staff inadequacies could be largely attributed to the absence of competent leadership and standing procedures through the executive down to the administrative level. The review claimed the Movement's council was inclined to adopt a passive role, was reluctant to take initiatives or make decisions and tended to confine itself to responding to staff grievances and requests from nepotists and other lobbyists seeking special favours or priority treatment. The review team also found that office records were of poor quality, administrative functions disorganised, and that the attitudes and competence of some staff were unsatisfactory. It reported that the quality of service provided in criminal cases was affected by: (i) the abuse of the service by recidivists and poor co-operation by clients; (ii) the inexperience on the part of legal staff; (iii) the ineptitude of field officers; (iv) the inadequacy of the legal staff establishment and excessive workload demands; and (v) poor internal policy on priorities relating to clients.

487 It is the Department of Aboriginal Affairs' responsibility to maintain a monitoring role over the Aboriginal legal services and to ensure their accountability for public funds. It is also important that the Department develop a comprehensive evaluation framework which will enable it to assess the effectiveness of the legal services for programming purposes. However, the Committee believes that the Department is not the most appropriate body to undertake special investigations of the type conducted by the South Australian Regional Office.

488 The Committee accepts that the need for special reviews of the management and administration of particular legal services may arise from time to time but considers that such special investigations are better undertaken by persons or organisations independent of government who have considerable expertise in the administration of a legal aid organisation, for example, the Commonwealth Legal Aid Commission, law societies, members of the judiciary, or members of university law faculties. In fact, the South Australian Regional Office itself stated in evidence to the Committee that departmental officers were not qualified to make judgments on the professional competence of legal staff or the quality of legal service provided. In this respect, it is significant that the proposed investigation into the operation of the Aboriginal legal services in New South Wales was to have been undertaken by Mr Justice Wootten.

489 The Committee recommends that *if and when the need arises for the management and efficiency of an Aboriginal legal service to be reviewed other than as part of regular monitoring procedures, the review be conducted by an independent appointee acceptable to both the Aboriginal legal service and the Minister for Aboriginal Affairs or, in the event of there being a failure to agree, by a person chosen conjointly by the Minister for Aboriginal Affairs or his nominee, the Aboriginal legal service concerned and the President of the relevant Law Society or Law Institute in the State or Territory of the Aboriginal legal service to be investigated (in the case of the Pitjantjatjara Legal Service, the third party be the President of the South Australian Law Society).*

Employment of non-Aboriginal administrators

490 It was suggested that administrative problems experienced by the Aboriginal legal services could be alleviated by the employment of professionally qualified administrators at least until Aboriginal people have acquired the necessary management skills. The majority of the services resist this approach. Understandably there is a desire on the part of the Aboriginal community to exercise control in administrative matters unimpeded by the influence of non-Aboriginals. Nevertheless, some services have relied on the assistance and advice of non-Aboriginal employees in the management of the service and with a considerable degree of success. The constitution of the Aboriginal Legal Service of Western Australia specifically provides for the inclusion of at least two non-Aboriginal solicitors in the executive committee membership of the council: the principal legal officer in an ex-officio capacity and two non-Aboriginal honorary members, one of whom is a solicitor not employed by the Legal Service. The supervision of the day-to-day work of the Service is conducted by the office manager, together with the executive field officer and principal legal officer, all of whom are ex-officio members of the council. This provision was made in the constitution because the Service recognised the need for legal representation as well as Aboriginal representation on the council. The Committee suggested to the Service that the inclusion of non-Aboriginal employees on the executive impedes genuine Aboriginal control and decision-making. The Service agreed that it would be preferable to have Aboriginal professional support but, in the absence of such support, some non-Aboriginal involvement was necessary and beneficial because it provided other executive members with a better understanding of the operation of the Service.

491 The Committee acknowledges that non-Aboriginal representation on Aboriginal legal service councils and the appointment of non-Aboriginals to executive positions are matters which must be decided at the discretion of each legal service. However, it considers that if Aboriginal people are to develop the necessary expertise to manage their own affairs, it is essential that wherever possible the administrative functions of Aboriginal organisations be carried out by Aboriginals and the executive decisions be made by them. This not only guards against undue direction (however well-intentioned) by non-Aboriginals and continuing reliance on non-Aboriginal expertise but also enables Aboriginal people to assume responsibility for their actions and decisions. It need not (and should not) preclude a legal service's governing body from seeking the advice of non-Aboriginal professional staff, particularly in matters where the advice of professionally qualified people may clarify a particular issue or place before the council additional relevant factors for its consideration.

Need for management training

492 One of the major problems facing the Aboriginal legal services is the scarcity of Aboriginals with formal management training or administrative expertise. In the past, the burden of running the organisations was usually borne by one or two people. This was an unsatisfactory arrangement and often resulted in hostility towards these members. Aboriginals have therefore had to acquire the necessary skills to manage organisations as large and complex as the Aboriginal legal services through experience gained on-the-job and at times through trial and error. It has taken time to acquire an understanding of the mechanisms for administering such organisations. In this period mistakes and inefficiency of operation have been inevitable.

493 Immeasurable benefits are being derived from the experience in administration and management which Aboriginals are gaining through their participation in the control and operation of Aboriginal legal services. However, without proper training to equip them to meet the demands and responsibilities of executive positions in Aboriginal organisations, Aboriginal people will never be able to exercise the same degree of control over their own lives as is exercised by others in society and will have a continuing need for non-Aboriginal professional support. The problem can be attributed in part to the fact that the unrelenting demands of everyday criminal work on the services' time and resources have prevented them from assessing their needs and planning for the future. Participation by Aboriginal management staff in management training programs such as those offered by the Aboriginal Training and Cultural Foundation in Sydney, by the Institute of Aboriginal Development in Alice Springs, and other tertiary institutions is essential to the efficient operation of Aboriginal legal services and to Aboriginal development in general. The Committee believes it would also be beneficial for Aboriginal legal service councillors to participate in management training programs wherever possible.

494 The Committee considers the Department of Aboriginal Affairs should assume greater responsibility for promoting and facilitating Aboriginals' participation in management training schemes and recommends that *in consultation with the National Aboriginal Employment Development Committee, the Minister for Aboriginal Affairs:*

- *assess the present and future needs of Aboriginal community controlled organisations including the Aboriginal legal services for management training for Aboriginal staff;* and
- *review available management and administration training programs offered by tertiary institutions and other organisations to assess their suitability for Aboriginal people and, where appropriate, investigate the need to negotiate with institutions concerning the introduction of special entrance conditions for Aboriginals and the provision of appropriate support for Aboriginal participants in such programs.*

495 The Committee further recommends that *the Minister for Aboriginal Affairs consult the Aboriginal Training and Cultural Foundation and the Institute of Aboriginal Development on the development and promotion of special programs to provide suitable management training for Aboriginal legal service management staff and other Aboriginal people.*

15. Aboriginal Legal Service Staff and Training

496 It is the policy of all Aboriginal legal services to employ Aboriginals wherever possible. As only two Aboriginals have graduated in law, the services are compelled to employ non-Aboriginal solicitors. All field officers and most management and administrative support staff are Aboriginal. Most Aboriginal employees have no formal qualifications or training and receive very little formal training within the legal services. Some of the services are subsidised to employ staff undertaking training through the National Employment and Training Scheme or other schemes promoted by the National Employment Strategy for Aboriginals. Larger services employ an accountant and/or bookkeeper on a full-time basis. Two legal services employ social workers. All the legal services except the Central Australian Aboriginal Legal Aid Service and the St Mary's and Districts Aboriginal Legal Assistance have branch offices. These are generally staffed by at least one field officer and secretary and, in some cases, also by a solicitor. Some services employ part-time and honorary field officers. A detailed breakdown of staff employed by the legal services as at May 1980 is provided in Appendix 7.

Aboriginal legal service solicitors

497 The majority of solicitors are salaried employees of the Aboriginal legal services although some services such as the Aborigines and Torres Strait Islanders Legal Service, the South Australian Aboriginal Legal Rights Movement and the Tasmanian Aboriginal Legal Service employ solicitors on a retainer basis. These solicitors are retained at a fixed annual salary; they give priority to Aboriginal legal service matters and seldom exercise their right of private practice. Private solicitors provide assistance to legal services on request as needs arise, particularly in higher court cases and civil work. As already discussed some services also refer clients to alternative legal aid agencies.

498 Generally, Aboriginal legal services experience little difficulty in recruiting solicitors. The majority of their solicitors are young and relatively inexperienced. They are, nevertheless, hard working and keenly committed to the work they are doing and to the Aboriginal community in general. The duties of legal service solicitors are demanding, physically and emotionally. Solicitors are on call at all times, seven days a week. The workload is invariably heavy as are the community's expectations of the solicitor's ability and capacity to undertake such work. At times legal service solicitors face a lack of support, if not open hostility, from individual Aboriginals and groups within the community. Solicitors are generally appointed with an open-ended commitment, but two years is the average length of employment. A reasonably high turn-over of staff in any poverty law practice is common,[1] nevertheless it is not desirable.[2] Expertise in poverty law work and a hard won understanding and knowledge of the Aboriginal community are lost when an experienced lawyer leaves. There are many reasons why solicitors leave; 'burn-out' is the term that best describes the combination of exhaustion

[1] A Legal Services Corporation Memorandum (Washington, D.C., 2 March 1977) indicates that the annual turn-over among legal service lawyers in federally funded (U.S.) programs is in the order of 33 per cent.

[2] The Legal Services Corporation Memorandum *supra* suggests that 'a duration of service of less than four years is in itself detrimental to and inefficient for legal services programs'.

and frustration that most commonly prompts resignations. While the work is rewarding, it is constantly demanding. There is a need to investigate and develop strategies to reduce staff turn-over and promote continuity in the employment of professional staff within the legal services.

499 The Department's policy on salary rates for Government-funded Aboriginal organisations is based on the principle of nominating a yardstick such as the Australian Public Service, State Public Service Boards or other equivalent organisations such as the Australian Legal Aid Office to keep salaries and wages within acceptable limits. Most of the legal services base their salary structures on Commonwealth or State Public Service rates and awards and rates paid by the Australian Legal Aid Office or State legal aid commissions. The Aboriginal Legal Service of Western Australia is currently preparing a submission to have salaries tied to the Australian Legal Aid Office. Salaries offered by a number of other Aboriginal organisations, such as the Aboriginal medical services, are tied to State Public Service Board rates. The legal services pointed out, however, that because of funding limitations they attempt to restrict remuneration and other benefits offered to employees. They maintained that salaries for professional staff tend to be lower than those provided by government public services, legal aid commissions and other legal agencies for staff with equivalent qualifications and experience. The legal services generally do not provide ancillary benefits such as security of tenure, overtime payments and superannuation. They have been prepared to forego these conditions to ensure that maximum funds are available to provide Aboriginal clients with assistance. Because of this policy Aboriginal legal services are unable to offer the same inducements to prospective employees as, for example, private practitioners, other legal aid agencies or the public services.

500 Solicitors who work for Aboriginal legal services do so in the knowledge that they will be providing a service to a clearly defined sector within the Australian community. Since the services are controlled by Aboriginals the selection of solicitors is based as much on their personal qualities and attitudes towards Aboriginal people as on their professional qualifications and expertise in the legal field. Special skills are required from those working for and representing Aboriginals. It was put by those involved that demands made on the Aboriginal legal service solicitor exceed those placed on the ordinary solicitor. By and large, Aboriginals do not accept the professional relationship which is generally maintained between solicitors and clients in the wider community. To gain Aboriginal clients' confidence, the solicitor must be able to appreciate their problems, identify closely with the community and become an integral part of it. He must be sensitive to and aware of the people within the community, their social organisation, their way of life, their authority structures, and the relationship of particular people to the rest of the community. The Aboriginal legal service solicitor must have an ability to communicate effectively with Aboriginals so that he can understand their problems, promote awareness of their legal rights and obligations and of the Australian law and its administration, and increase their confidence and competence to exercise control over their own lives.

501 To date, only two Aboriginals have graduated in law. One is employed by the Victorian Aboriginal Legal Service; the other who was formerly employed by the Central Australian Aboriginal Legal Aid Service, is now attached to the New South Wales Legislative Assembly's Select Committee on Aborigines. The Department of Aboriginal Affairs informed the Committee that at the beginning of 1980 seven Aboriginals enrolled in the Law Faculty of the University

of New South Wales and one at the Queensland Institute of Technology were being supported by the Aboriginal Secondary Grants Scheme.

502 In comparison with other countries, particularly the United States of America and Papua New Guinea, Australia's record in providing educational assistance to its indigenous population has not been good. While there has been an encouraging increase in the number of Aboriginal children undertaking secondary education in the past decade, Aboriginals remain significantly underrepresented at higher levels of education. Universities and some other institutions offer places to certain categories of students including Aboriginals who have not matriculated or obtained higher school certificates. In addition to this, a limited number of tertiary education institutions, for example, the University of New South Wales, now provide special entrance conditions for Aboriginal people. However, as most Aboriginals have not completed secondary education, they experience difficulties at university. Many Aboriginals attending tertiary institutions therefore require special assistance and extra tuition in course work and English language. Aboriginals who withdraw from university courses attribute their failure to the unavailability of extra tuition and other assistance with course work; in the case of Aboriginals from remote country areas, to loneliness resulting from isolation from their families; and to other problems of adjustment to the intellectual demands of the courses and the social and cultural demands of a new environment.

503 The role and influence of the Aboriginal legal services in this area could be considerable by encouraging Aboriginals to undertake law degrees. Many Aboriginals develop an interest in the law and legal process through their employment in the legal services. Legal service solicitors could provide practical experience and extra tuition to law students. The legal services themselves could provide support in other areas, for example, by helping students from remote areas to adjust to a new environment. The legal services are also in a position to seek support from other organisations. Several law societies indicated that, if approached by the legal services, they would be interested in providing extra tuition to Aboriginal law students through some of their members. The South Australian Aboriginal Legal Rights Movement has sought assistance from practising solicitors within the State to provide personal tutoring and other assistance required by Aboriginal law students. The Committee urges Aboriginal legal services to take initiatives and recognise their responsibility and the influence they can exert in this area.

504 The Committee considers the need to train Aboriginals in the law is long overdue. While it welcomes the provision by some university law faculties of special places for Aboriginal students, it believes that if maximum use is to be made of such opportunities, further assistance, particularly in the form of extra tuition, is required to ensure Aboriginal law students are able to complete their courses and attain the normal standards required at graduation and for admission to practice.

505 The Committee recommends that:

- *the Government adopt a firm policy of promoting the provision of special educational assistance for Aboriginal people to enable them to undertake university law courses and of promoting the provision of special entrance conditions for Aboriginal students by university law faculties;*
- *the Government direct the Tertiary Education Commission to implement this policy and make known to university law faculties the special needs of*

Aboriginal students, including their need for extra tuition and support for the duration of their courses; and

- *the Minister for Aboriginal Affairs, as a matter of priority, develop an appropriate strategy for ensuring that Aboriginals receive maximum assistance and support to qualify as legal practitioners so that Aboriginal legal services can, as soon as possible, operate independently of non-Aboriginal professional legal staff and Aboriginals can assume full responsibility for the delivery of legal aid to their people.*

Aboriginal legal service field officers

506 The Aboriginal field officer acts as an intermediary between clients of the legal service and its professional non-Aboriginal legal staff. Because the field officer facilitates communication between clients and solicitors, his role is essential to the effective operation of the legal services. All Aboriginal legal services employ field officers. The extent to which they meet the demands of their role varies between the legal services and depends largely on the personal qualities and competence of individual officers. While the primary function of the Aboriginal legal services is to provide legal representation in court proceedings, the services have found it necessary to adopt a much broader advisory and educative approach to the provision of legal aid in order to meet the special needs of their clients. This additional function is largely performed by field officers who have the closest social and cultural links with the Aboriginal client population.

507 The duties of field officers are wide-ranging. They are generally responsible for the initial contact with clients, whether it be in the legal service office, courthouse or police station. Their duties include obtaining instructions and information from clients, preparing statements, advising defendants of options available to them, making arrangements for defendants and their witnesses to see solicitors, notifying relatives and obtaining interpreters if necessary. Evidence from the Aboriginal legal services suggests field officers have less difficulty obtaining information from clients than solicitors or other non-Aboriginals, particularly in country areas, because they understand Aboriginal people, appreciate how to approach them and know how to obtain relevant information from them. Clients generally respond readily to field officers and disclose information to them that they may not ordinarily disclose to a non-Aboriginal whom they may not know or trust. In this respect solicitors are very dependent on field officers for advice and guidance about clients whom they are representing in court.

508 Field officers also have the role of establishing and maintaining a good working relationship and reliable communication channel with police, magistrates and welfare services. Their liaison and communication function is particularly important in country areas. A considerable amount of their time is spent indirectly educating community members by advising them of their legal rights and obligations, helping them identify the nature of their problems, and providing them with information relevant to their needs. Because they are closely associated with the Aboriginal communities and well acquainted with their needs, they are able to bring to the attention of the legal service or other organisations matters which might not otherwise be raised.

509 Field officers are often required to act on behalf of clients by applying for bail, adjourning cases, seeking remands, setting dates for hearings and generally assisting clients to understand court procedures. In some States, field officers also play an important role in court proceedings. While legal practitioners by virtue of the professional status accorded to them have a right of appearance in court on behalf of their clients, as a general rule the appearance of non-qualified persons in court on behalf of an individual is subject to the discretion of the judge or magistrate presiding at the time. Western Australia is the only State which provides by law for field officers and others to appear in court on behalf of persons of Aboriginal descent. Section 48 of the *Aboriginal Affairs Planning Authority Act* 1972–1973 provides that:

> Any officer of the Department of Community Welfare, or any person generally or specifically authorised in writing by the Minister for that purpose may in any legal proceedings in any court to which a person of Aboriginal descent is a party, or in which a person of Aboriginal descent is indicted for or charged with any crime, misdemeanour or offence, address the court or the jury on behalf of that person and examine and cross-examine witnesses.

Field officers are nominated by the Aboriginal Legal Service of Western Australia for ministerial approval to appear in court and, if accepted, are issued with special certificates. In remote areas of Queensland field officers appear on behalf of clients who plead guilty to minor offences in courts exercising summary jurisdiction. This practice is not used extensively elsewhere. Magistrates in the Northern Territory expressed reluctance to rely on field officers acting in this capacity unless they had received appropriate training.

Aboriginal honorary field officers

510 Several legal services have appointed honorary or part-time field officers in remote areas. The Aboriginal Legal Service of Western Australia has appointed honorary field officers in Meekatharra, Pinjarra, Onslow, Roebourne, Medina and Mount Barker. These officers provide liaison between Aboriginal offenders and the Aboriginal Legal Service through the nearest branch office. Honorary field officers are able to alert Aboriginal offenders to the availability of legal assistance through the Aboriginal Legal Service of Western Australia, ensure that the Service is informed whenever an Aboriginal offender requires the assistance of a solicitor in court, obtain instructions from clients and their witnesses before the solicitor arrives, and provide general advice to the client about his case. They also provide a communication link between Aboriginal communities and local authorities such as police and clerks of courts. In Western Australia honorary field officers receive an honorarium to cover expenses and remuneration of approximately $500 per annum.

511 The appointment of honorary field officers is an innovative approach to the delivery of legal services to Aboriginals in isolated areas. However, the effectiveness of these field officers is also limited by lack of training. With appropriate training honorary field officers, like full-time field officers, could assume a greater role in the delivery of legal aid to Aboriginals, particulaly in remote areas. The Committee considers that the appointment of honorary field officers in remote areas in other States and the Northern Territory would significantly increase the Aboriginal legal services' coverage of isolated Aboriginal communities.

Recruitment of Aboriginal staff

512 Concern was expressed at the methods adopted by some legal services in the recruitment of field officers and other Aboriginal staff members. Vacant positions within the legal services are normally advertised in the local press and, in remote areas, by word of mouth. Aboriginal legal service councils are responsible for the selection, appointment and retention of staff. It was alleged that factiousness and nepotism within some legal services have led to the appointment of Aboriginal staff on the basis of family relationships or allegiance to a particular group rather than on the basis that applicants possessed the requisite qualifications to perform the duties and responsibilities of the positions. While it is difficult to substantiate such allegations as few complaints about staff are made in writing or taken beyond the complainant's immediate community, the allegations reflect concern and dissatisfaction by both Aboriginals and non-Aboriginals about methods of management and operation in some legal services. In the Committee's view such allegations are serious and should require constant examination and review by executive members of the service.

513 The Committee believes, however, that most legal services exercise care in the selection of staff and that it is proper that responsibility for the selection of legal service personnel should reside with legal service councils. The South Australian Regional Office of the Department of Aboriginal Affairs submitted that it would be desirable for the Regional Office to have some discretionary powers in relation to ratification of appointments of staff and executive members of the Aboriginal Legal Rights Movement. The Committee considers this proposal is unacceptable and reflects an approach which is contrary to the Government's policy of self-management.

Field officer training

514 A major problem facing the legal services and, in fact, all Aboriginal organisations, is the shortage of Aboriginal people who are suitably qualified to fill positions within such organisations. In the Committee's view the shortcomings of selection procedures present fewer problems than the absence of training for Aboriginal field officers and other legal service staff. There is consensus on the importance of the role of the field officer within Aboriginal legal services. However, the level of competence of field officers, the quality of their work, the range of duties they are able to perform and their effectiveness within the organisation vary considerably. Some field officers play a complex role providing support and assistance to solicitors in legal matters, while others are engaged in little more than driving clients to and from court, locating witnesses, acting as unofficial interpreters, filling in forms and running errands. The lack of training for field officers has particularly reduced the effectiveness of the legal services in country areas where field officers are often the first and only point of contact for Aboriginals faced with a legal problem.

515 While many field officers are dedicated and hard working, lack of training has also contributed to poor perception of job role or lack of job satisfaction and work interest. For the same reason, Aboriginal legal services are unable to increase the level of field officers' responsibility within their organisations. There are obvious advantages to be gained through the employment of Aboriginal field officers who are more attuned to the problems and needs of the Aboriginal community than non-Aboriginal professionals. It is therefore unfortunate that

the legal services are unable to use this resource to the fullest extent. While Aboriginal field officers have the greatest potential contribution to make in improving the position of Aboriginals within the legal system, they currently represent the weakest point within the Aboriginal legal aid organisations.

516 Aboriginal prisoners at the Goulburn Training Centre who gave evidence to the Committee expressed their dissatisfaction with the operation of the Aboriginal legal services in New South Wales and were particularly critical of the performance of field officers. They considered that field officers' lack of education and training does not equip them to fulfil their role and that their inadequate knowledge of the law and its administration severely limits their capacity to be of much assistance to Aboriginal clients. It was alleged that some field officers are neither willing nor competent to perform the duties required of them; that they misuse legal service facilities which are available to them, particularly motor vehicles; and that field officers are selected without regard to their education and their suitability for or experience in the type of work the position entails.

517 Lack of training and, more particularly, lack of appropriate qualifications and status have made it difficult for field officers to gain access to police stations, cells, prisons and other correctional institutions to interview clients or ascertain whether Aboriginals are being held when they are not accompanied by a solicitor. In some areas special arrangements are made between the police authorities and Aboriginal legal services allowing field officers access to Aboriginal prisoners. One legal service advised the Committee that a reason for police authorities' reluctance to admit Aborginal field officers to correctional institutions is that some field officers have criminal records. The Committee suggests that where Aboriginal legal services have sought official approval from prison authorities for field officers to visit Aboriginal prisoners and a permit has not been issued to a field officer with a criminal record, a formal request for review or special consideration of the officer's application for approval be lodged with the appropriate authority.

518 It is important that field officers be able to identify the relative legality of individual cases and offer proper advice and that the privilege of confidentiality between the lawyer and client be extended to them. With appropriate training, field officers could be accorded recognition by relevant authorities and accredited the right of access to corrective institutions and the right to speak on behalf of clients to opposing parties, law enforcement officers, and government and court officials. Unless field officers and other Aboriginals employed by the legal services are offered adequate training to fulfil the requirements of their positions within Aboriginal legal services, the policies of giving preference to the employment of Aboriginals and of self-management in Aboriginal affairs are of little value to the Aboriginal people.

Training provided by Aboriginal legal services

519 Aboriginal field officers receive little if any formal training to enable them to carry out their duties with the Aboriginal legal services. At various times the legal services have arranged for members of the judiciary, court officials, officers of the police force and representatives of community agencies such as social welfare departments, housing departments and consumer affairs bureaux to deliver lectures to service staff. In 1976 and 1977 the Aboriginal Legal Service

of Western Australia, in conjunction with the extension school of the Law Faculty of the University of Western Australia, organised three training seminars for field officers (two of one week's duration and one of two weeks' duration). In 1974 and 1977 the Aborigines and Torres Strait Islanders Legal Service arranged training workshops of a week's duration for its field officers. While these programs were doubtless of considerable assistance to those who participated in them, the value of one-off programs is limited, particularly in view of the legal services' relatively high rate of staff turn-over.

520 Some legal services have prepared their own legal handbook for field officers and other staff members or have obtained other manuals. This reference material tends to be technical and detailed and the manuals are therefore not used extensively. Most of the skills acquired by field officers are therefore gained through on-the-job experience. Where possible, solicitors assist and advise field officers and in some cases field officers may acquire a considerable amount of legal knowledge and skill by developing a close working relationship with a solicitor within a legal service.

Proposals for on-the-job training

521 Basic field officer training should be provided in the first instance through the legal services themselves utilising the employed solicitors. The solicitors already have a good relationship with the field officers and are especially suited by reason of their employment to provide instruction and guidance in the areas in which field officers need training. The legal services are also in the best position to ascertain the needs of the communities and therefore design the most suitable training programs. Because of the geographical distribution of the Aboriginal legal services' client population, field officers are necessarily dispersed over a wide area within the services' jurisdictions. It is therefore desirable that on-the-job training be supplemented by regular seminars and intensive short training courses. Problems have arisen within the legal services when they have attempted to conduct on-the-job training. All the legal services reported that limited resources, heavy workloads, time constraints and lack of training skills prevent them from providing training for field officers.

522 The Aboriginal Legal Service of Western Australia has a training officer position which until recently was filled by an employee who was a professionally qualified social worker. The employee performed the functions of both a social worker and a field officer training consultant. Unfortunately, the training function suffered as a result of heavy demands by clients for welfare advice and assistance. The position was subsequently filled by a full-time training officer. The Service has been supported by the Aboriginal Legal Education Committee of the University of Western Australia's Law Faculty and continues to rely on that Committee for back-up material and advice on training.

Diploma courses in legal studies

523 The Government recognises that many Aboriginal adults have been educationally disadvantaged in the past and finance is provided to State education departments and institutions for special pre-employment and vocational training courses. In South Australia, for example, there are two special programs for mature age Aboriginal students. The South Australian Aboriginal Community College caters for Aboriginal students who have had limited schooling; the Aboriginal Task Force program offered by the South Australian Institute of

Technology caters for students with a higher level of education. Aboriginal students are admitted to the courses on the basis of special entrance qualifications. They undertake a two-year diploma course over a period of three years and, at the end of the course, receive a certificate of community development which is accorded status equivalent to matriculation. The Committee sees merit in the development of a diploma course in legal studies at this level with special emphasis on areas which are equivalent to Aboriginal legal service field officers' work. This type of course could also be a preliminary requisite for Aboriginal students who have not completed secondary education and who have the interest and ability to undertake further studies towards professional legal qualifications at university level.

524 While the Committee did not seek specific information on the structure, content or type of course that would be most suitable for the Aboriginal field officer, such courses should be closely related to the field officer's work and correspond to the practical nature of many of his duties. Training should cover courtroom procedures, legal rules and practices and the hierarchy of the courts; basic instruction in those areas of the law in which Aboriginal clients are most likely to be involved including the law relating to petty criminal offences, procedures in landlord and tenant cases, consumer affairs matters, and personal injury and workers' compensation rights and remedies; interviewing techniques and methods of taking formal statements; social welfare matters including social security entitlements and the role and responsibility of welfare agencies; the law and practice of bail; police interrogation procedures; and rules and regulations relating to imprisonment, parole and probation.

525 Ideally, training in these areas will equip field officers to undertake a greater proportion of minor court work within the summary jurisdiction, particularly where only a plea may be necessary. The completion of a formal diploma course will also accord field officers higher status and recognition amongst that section of the non-Aboriginal community with which they have most frequent contact during the performance of their duties. Hopefully, it will facilitate Aboriginal field officers' access to the courts, prisons and other government institutions and agencies and thus enable them to work more effectively within the legal system. Successful completion of diploma courses should be acknowledged in field officers' wage structures, and incentives should be offered to field officers who undertake training. However, until there are sufficient numbers of trained Aboriginal field officers, the attainment of diplomas in law should not be a pre-requisite for Aboriginals seeking employment in this area.

526 Some objections were raised concerning the concept of allowing people without full professional legal qualifications to operate within the legal system. The main concern of the legal profession is to ensure that if field officers are to be accorded certain status and privileges within the legal system, they receive proper training to prepare them for the type of work they will be required to undertake. It is also necessary to ensure that their role and responsibilities are carefully defined and are in accordance with the various statutory provisions governing the legal profession within each State and Territory. This latter point is especially relevant if problems of professional negligence arise as a result of the advice of field officers. It is particularly important to be aware of the needs of Aboriginal clients whose liberty should not be placed in jeopardy through incompetent or inadequate advice. This would defeat the whole purpose and intent of the Aboriginal legal services.

527 A course for field officers has been devised by the Aboriginal Legal Service of Western Australia. The course is modelled on training programs operating in the United States for American Indian para-legals and particularly on the Tribal Court Advocate Training Scheme. The Legal Service has lodged a submission with the Department of Aboriginal Affairs seeking funds to support the course. It has also sought assistance from the Commonwealth Department of Education, State tertiary institutions and Aboriginal organisations. The Legal Service envisages that Aboriginals employed by other Aboriginal organisations and unemployed Aboriginals should also participate in the program.

Role of the Department of Aboriginal Affairs

528 In the past a number of legal services (in particular the Aborigines and Torres Strait Islanders Legal Service, the Aboriginal Legal Service of Western Australia and the North Australian Aboriginal Legal Aid Service) have attempted to persuade university or college extension schools to introduce permanent training courses as part of their programs. All the attempts have failed despite their approaches to the Department of Aboriginal Affairs for assistance and support in this field. The Department's role in this area leaves a lot to be desired from an organisation professing to be sympathetic and supportive of Aboriginal organisations and initiatives, particularly when needs are obvious and articulated. Since 1974 the Department has referred in its Annual Reports to special training schemes being prepared for Aboriginal field officers. In 1976 Sir David Hay recommended:

> That the Department and the Legal Services in consultation (where appropriate) with the Attorney-General's Department and Australian Legal Aid Office examine the feasibility of formal training schemes for field officers employed by Aboriginal Legal Services.[3]

The Attorney-General's Department stated in evidence to the Committee that no approaches have been made to it by the Department or by Aboriginal legal services regarding the training of Aboriginal field officers.

529 In its report of the review of the Aboriginal Legal Rights Movement the Department of Aboriginal Affairs South Australian Regional Office dealt with the training of Aboriginal field officers in a section entitled 'Ineptitude of Field Officers'. It found that little background information and training is provided for field officers. It doubted whether in-service training was sufficient and suggested it would be more appropriate for training to be provided by an educational extension program or, alternatively, to recruit individuals who have completed secondary education. The report stated:

> . . . there has been little agreement on how this problem of educational and work skill handicap can be eliminated. The Movement itself seems to have done very little thinking on the problem. . . . There has been no attempt to teach law in a structured and systematic way to field officers.

The review team did not question why this was the case, nor did it consider whether the Movement had the capacity, either in terms of educational skills, time or resources, to devise and implement a systematic and structured training scheme for field officers. In fact, the Aboriginal Legal Rights Movement had approached the South Australian Department of Further Education for assistance

[3] D. O. Hay, *Review of Delivery of Services Financed by Department of Aboriginal Affairs*, Report to the Government, June 1976, p. 166.

in the training of Aboriginal field officers and a suitable program had been designed by the end of last year. Several field officers have already completed the first stage of the program which is being conducted at the South Australian College of Advanced Education.

530 The review team explored the possibility of the South Australian Legal Services Commission providing training for field officers. In the team's opinion, the capacity of field officers in terms of educational background to cope with the intellectual level of material offered by the Commission emerged as a major problem. Nevertheless, the team saw fit to criticise the field officers for their lack of verbal and literacy skill and for the fact that they were not conversant with legal techniques, statutes and jurisprudential law. On this aspect of its investigation, the review team considered that effective training must involve a period of scholastic training but stated 'the inclination of current field officers to apply themselves accordingly would be unlikely'.

531 The central office of the Department of Aboriginal Affairs acknowledged that the provision of training has been an area of neglect by itself and the legal services. In other areas the Department has committed itself to training as a matter of priority and attaches importance to training as a necessary support for programs. Senior officers of the Department stated: 'Aboriginal legal services are not putting a high priority on training as far as we (the Department) are aware.' The Department said that before it can contribute in this area, 'The services need to be interested in training and prepared to give some priority to it.' Elsewhere, the Department referred to the training of Aboriginal field officers as a 'luxury' and suggested that only some legal services had indicated an interest in it. Contrary to the experience of the Department, it became apparent to the Committee that all the Aboriginal legal services recognise the urgent need for training and regard it as an extremely important means of increasing their effectiveness. The legal services claimed, however, that in real terms they are unable to give precedence to training as any diversion of their limited staff and resources will necessarily reduce their capacity to meet the needs and demands of their clients for legal advice and representation which is their primary objective.

532 The Department stated in its submission that it will be canvassing options which might be available for formalised training at educational institutions and for structured on-the-job training. In evidence to the Committee, departmental officers were unable to provide details of their intentions in this area and stated that '. . . it is more a question of the Department responding to initiatives taken by the services, the Department providing some encouragement to the services to look at this field, and to devote some resources to it'. In almost 10 years the Department has shown little capacity for progressive innovation in the promotion of training programs for Aboriginal field officers despite the fact that the Department stated in evidence that it sees its role as one of providing stimulation and suggestions. While the Committee acknowledges that the Department of Aboriginal Affairs is subject to funding restraints the Department's inaction and lack of initiative in this important area are matters of concern. This approach has possibly arisen as a result of the development of the policy of Aboriginal self-determination. The Committee believes Aboriginals must play an active role in the design and implementation of programs affecting their advancement and should be encouraged to take initiatives in all areas of Aboriginal affairs. However, this does not mean the Department should merely be a passive recipient of ideas and initiatives from Aboriginal people.

Conclusion

533 The Committee considers it is important and essential to the realisation of the concept of self-management that Aboriginal legal services look beyond their immediate needs to their future role and requirements. In the particular matter of field officer training it urges the Aboriginal legal services to examine their present and future training requirements, to give consideration to the type of formal or informal courses which will best equip their field officers to make a greater contribution to the delivery of legal aid, and ensure that their needs and demands for assistance, advice and support are made well known to the Department of Aboriginal Affairs.

534 The practical difficulties of providing staff with intensive training for relatively long periods are considerable. Aboriginal legal services are unable to meet the needs and demands of clients within their existing staff establishments and presumably their effectiveness would be reduced if the number of field officers on the job were reduced as a result of their participation in training courses. Nevertheless, if field officers are to make a greater contribution to the delivery of legal aid, it is vital that they be encouraged to expand their knowledge of the law and its administration. This can best be achieved by their participation in formal vocational courses. The Committee considers that the importance of providing comprehensive training which has long-term benefits for Aboriginal people and which will allow them to assume greater responsibility for their affairs should be recognised in increased levels of funding. It therefore recommends that:

- *additional funds be made available to the Aboriginal legal services to enable Aboriginal field officers to participate in training programs and courses and to provide for the employment of relief staff to carry out their duties when necessary so that the delivery of legal services is not disrupted; and*
- *the Minister for Aboriginal Affairs ascertain the present and future requirements of the Aboriginal legal services for field officer training and promote the design and implementation by appropriate legal and educational institutions of suitable formal diploma or certificate courses and training programs for Aboriginal field officers.*

16. Funding

Commonwealth funding of the Aboriginal legal aid program

535 The Aboriginal legal services are funded by the Commonwealth Government through grants-in-aid administered by the Department of Aboriginal Affairs. Allocations to the legal aid program since 1970–71 are given below:

Year	*Amount* ($)
1970–71	24 250
1971–72	28 000
1972–73	715 000
1773–74	1 190 000
1974–75	2 582 000
1975–76	3 746 000
1976–77	3 711 000
1977–78	3 890 000
1978–79	4 208 000
1979–80*	4 781 000

*Estimated expenditure

536 While the figures might suggest a steady increase in legal aid funds, in fact funding has not kept pace with inflation since 1975–76 so that in real terms the legal services' allocation of funds from the Commonwealth has decreased. The shortfall of expenditure is calculated in Appendix 19. The South Australian Aboriginal Legal Rights Movement stated in its submission that the Government's approach to funding makes no allowance for inflation which in real terms has meant a reduction in budget allocations of between 8% and 10% in 1980, nor for rising maintenance costs, travel and accommodation expenses, telephone, stationery, vehicle maintenance and other daily expenses. The Movement pointed out that no allowance is made for other factors affecting funding such as national wage increases which the services are required as a matter of law to pass on to staff; increases in solicitors' costs, particularly outside solicitors and barristers (the Aboriginal Legal Rights Movement stated that solicitors' scale of costs has increased by 29.5% since July 1977); anticipated increase in workload; and increases in solicitors' retainers.

537 The Commonwealth Legal Aid Commission has expressed concern at the inadequate Commonwealth funding of legal aid. It has drawn attention to serious backlogs of applications and embarrassment caused to State legal aid commissions by inadequate commitment levels for referrals to private practitioners. Further, the Australian Legal Aid Office's disposable income test for the provision of legal aid has not been indexed to take account of inflation and therefore operates to deny aid to a great many pensioners or other needy people. The Commission has also commented on its own inability to perform its statutory monitoring and co-ordinating functions given its present inadequate funding and staff levels.[1]

[1] Commonwealth Legal Aid Commission Annual Reports 1977 to 1979.

Criteria for the allocation of funds within different functional areas

538 Although it supplied detailed information on the budgetary process, the Department of Aboriginal Affairs did not specify its budgetary criteria. It was unable to provide a convincing explanation of the processes whereby priorities between programs—health, housing, education, and so on—are established and evaluated and whereby the funds for Aboriginal legal aid, once determined, are allocated between the Aboriginal legal services. The Department stated that because total funds provided by the Government for Aboriginal advancement programs are insufficient, the Minister for Aboriginal Affairs, in consultation with the Minister for Finance, ultimately determines the amount of funds to be allocated for the various programs. These decisions are made in the context of available funds and the relative priority of competing demands for funds from Aboriginal communities and organisations throughout Australia. The Department states in its Ministerial Directive and Guidelines that communities where the need is greatest are to receive the highest priority in the allocation of funds.[2] Relative need within each region is determined by the Department of Aboriginal Affairs' Regional Director and his officers in consultation with local Aboriginal communities and relevant Aboriginal advisory bodies. The Department nominated the following criteria used for allocating funds to the Aboriginal legal aid program: the expressed need for the provision of legal aid services, competing inter-regional/community needs and priorities, the need for fiscal restraint, and the need for balance between legal aid and other functional programs.

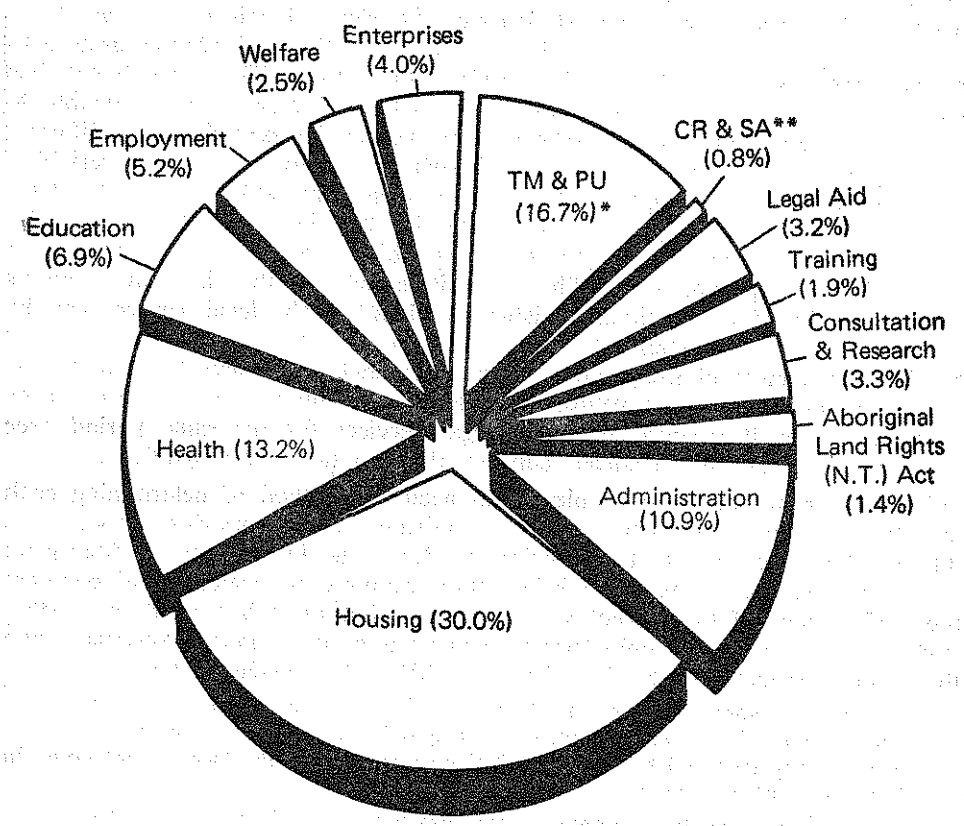
539 The Department provides financial assistance in 10 functional areas. It stated that while Government policy may lend weight to particular functions, the total of grants in functions generally reflects Aboriginal priorities of need. The percentage of direct annual Commonwealth Government expenditure on Aboriginal assistance programs which has been devoted to Aboriginal legal aid since 1970–71 is set out below:

Year	%
1970–71	0.1
1971–72	0.1
1972–73	1.3
1973–74	1.2
1974–75	1.6
1975–76	2.0
1976–77	2.3
1977–78	3.1
1978–79	3.2
1979–80*	3.8

**Estimated expenditure*

[2] *Ministerial Directive and Programming Guidelines, Government Financial Assistance to Aboriginals* 1980–81, Department of Aboriginal Affairs, p. 3.

The diagram below illustrates the breakup of Commonwealth funds allocated to Aboriginal assistance programs for 1978–79.[3]



*Town Management and Public Utilities
** Culture, Recreation and Sporting Activities

Criteria for the allocation of funds between Aboriginal legal services

540 The Department stated that the level of funding of each Aboriginal legal service is largely historical and that funding is primarily based on maintaining programs at the same level of activity as in the previous financial year. Where additional funds become available for legal aid, the determination of priorities and the selection of projects for funding are based mainly on budget figures provided by the legal services themselves and on advice from the Department's area staff. The Department stated that it also takes account of the geography and population of areas covered by the legal services and of the views expressed by other persons who are familiar with the legal services' activities such as magistrates and police. Commonwealth grants received by each Aboriginal legal service for the financial years 1972–73 to 1979–80 are shown in Appendix 8. This table also shows funds sought by each legal service from the Department over the same period.

[3] Department of Aboriginal Affairs, *Annual Report* 1978–79, AGPS, Canberra, 1979.

541 The Department stated that it has no reliable information in statistical form whereby it can determine funding priorities between different legal services. Statistical information provided by the legal services is neither uniform nor adequate. The scarcity of official statistics on Aboriginal involvement at all stages of the legal process also makes it difficult to evaluate the legal services using data derived from sources outside the services themselves. The Department has calculated cost per capita expenditure for each legal service but is unable to explain the significant disparity between cost per capita expenditure of different legal services nor indicate whether this disparity is a reflection of other variables. An analysis of the per capita distribution of Commonwealth funds to the legal services in 1978–79 is provided in Appendix 20. The Department has also calculated the estimated cost per case expenditure of each legal service for 1978–79 (see Appendix 21). The Committee believes that in many respects calculations based on caseload statistics provided by the legal services can be misleading as the statistics are neither uniform nor comparable. To illustrate the inherent danger of using these figures as indicators or bases for determining funding requirements or priorities, the Committee compiled a similar table using caseload figures it received from the legal services for the same period (see Appendix 21). The discrepancies between the two tables are significant.

542 As a result of these problems, no accurate method of determining each legal service's cost effectiveness and of establishing funding priorities between the different legal services has been devised to date. The Department of Aboriginal Affairs agreed that it lacks the information required to evaluate and compare the performance of the respective services and that there is a need for further in-depth evaluation. The only formal evaluation of departmental programs was the review conducted by Sir David Hay in 1976 who concluded that:

> In spite of administrative and financial difficulties experienced by the Legal Services and by the Department, the Aboriginal Legal Services have been effective in delivering legal aid to the Aboriginal community. As the Department noted in its response to the Administrative Review Committee Questionnaire:
>
> > As a result of these programs there has been a considerable expansion of the availability of qualified legal officers to Aboriginals appearing before the courts or in contact with the police, and a dramatic decrease in the rate of convictions recorded and the severity of sentences against Aboriginals in areas where Aboriginal Legal Aid Services representation has been established.[4]

The Committee notes, however, that Sir David Hay also found that the operational procedures of the Department did not provide sufficient data to enable it to assess progress and to establish a performance basis for bids for funds from the Commonwealth and that there was insufficient emphasis on program evaluation as a basis for recommending changes in priority for the purposes of financial assistance.[5] These comments still apply. The review also recommended that the Department develop a conceptual framework which allows evaluation of the need for and effectiveness of legal services.[6]

Formulation of aid programs

543 The methodology for the development of all Aboriginal assistance programs is laid down in the Ministerial Directive and Programming Guidelines. Preparation

[4] Hay, *Review of Delivery of Services Financed by Department of Aboriginal Affairs, op. cit.*, p. 163.
[5] *ibid.*, pp. 5–6.
[6] *ibid.*, p. 166.

of the Department's aid programs commences several months in advance of their implementation so that its bid for funds for the next financial year may be based on appropriate consultation with Aboriginal groups and advisory bodies as well as with State and other Commonwealth authorities. The Department recently revised its programming cycle by clearly identifying the forward estimates and draft estimates stages within the budgetary process. Aboriginal legal services were previously required to provide detailed documentation of individual projects at the forward estimates stage. The emphasis on consultation/co-ordination and on detailed documentation is now during the draft estimates stage when the Department has a better idea of the funds it may expect. The task then is to match identified community and State proposals for projects with the resources that are expected to be available.

Forward estimates stage

544 The Department of Aboriginal Affairs provides a planning figure to each Regional Director after the budget is brought down in Parliament in August. The planning figure covers the cost of maintaining essential on-going programs at the same level of activity as in the preceding year and an additional amount to accommodate expansions or additions to programs against the possibility of extra funds becoming available. Regional estimates for grants-in-aid and State grants programs are limited to this planning figure, but reserve lists may be provided for high priority projects which cannot be accommodated within this limit. On the basis of consultation with Aboriginal groups and advisory bodies and with State and Commonwealth authorities, area and regional staff identify on-going projects which are to be supported in the next year, and essential expansions and new projects to be included in the program. Since the forward estimates are concerned more with levels of funds to be sought than with details of projects to be supported, no elaborate documentation of projects or of project budgets is required at this stage. Programs are considered at regional co-ordinating conferences and Regional Directors then forward agreed programs to the Department of Aboriginal Affairs' Central Office. The Department's Central Office arranges appropriate consultation with the Commonwealth departments and assembles the departmental program and forward estimates for the Minister's approval prior to submission to the Department of Finance in January.

Draft estimates stage

545 Regional Directors are provided with tentative cash allocations for each functional program under grants-in-aid and State grants based on preliminary discussions with the Department of Finance. They arrange discussions with Aboriginal groups and advisory bodies and with State and Commonwealth authorities to review the progress of on-going programs; confirm priorities and select projects for inclusion in the program; and prepare detailed documentation and budgets for all such projects, including on-going and essential expansions and new projects which are to be proposed. Programs are considered at regional co-ordinating conferences and Regional Directors forward agreed programs with prescribed supporting documentation to the Department of Aboriginal Affairs' Central Office. At this stage detailed project appraisals and project budgets are required for all budgets. The Department of Aboriginal Affairs' Central Office assembles the departmental program and draft estimates for the Minister's approval prior to submission to the Department of Finance. Under the Department's revised programming cycle, the legal services have until April to finalise their

proposed budgets for the forthcoming year. Services are advised of their budget allocations when the Government's budget is brought down. Supply funding is available for allocation to each service on July 1 each year to fund on-going operations up to the passing of the Appropriation Bills.

Flexibility within agreed budgets

546 An important aspect of the services' budgeting arrangements is the question of flexibility in the use of budgeted funds. In his review of the Department of Aboriginal Affairs, Sir David Hay recommended that:

> The Aboriginal legal services be given greater management freedom, appropriately monitored, to re-allocate funds within the various heads of expenditure in the approved budget.[7]

The Department of Aboriginal Affairs is required by Government financial regulations to account for the proper use of public moneys. To comply with these requirements the Department, in consultation with an Aboriginal organisation, prepares an 'agreed budget' listing the items of expenditure considered necessary to achieve the organisation's stated objectives over a full year. The organisation may transfer funds between the main heads of expenditure of the 'agreed budget' with the prior approval of the Department's Regional Director. In certain circumstances and provided there is no change to the nature of the project an organisation may be authorised by the Regional Director to transfer funds between budget items within specified limits without seeking prior approval.

547 The Committee questioned whether it was necessary or desirable for Aboriginal legal services to seek approval before transferring expenditure from one item to another. The Department stated that it is concerned to ensure that savings within original allowances are not transferred to an activity which carries with it an on-going commitment at a full year's cost which must be sought in a legal service's next budget and which may not be forthcoming. The main areas of concern are capital items of expenditure and the use of funds to expand staffing. The Committee considers that this approach is not consistent with the Government's policy of self-management.

548 The Victorian Aboriginal Legal Service stated in evidence that it is given sufficient flexibility to transfer expenditure from item to item and that the process of obtaining permission from the Department of Aboriginal Affairs is not excessively complex or time-consuming. On the other hand a senior officer of the Queensland Regional Office of the Department of Aboriginal Affairs stated that there is now less rather than more flexibility to transfer items. The Queensland Department of Aboriginal Affairs' Regional Office made the following comments on the present budgeting process in its submission:

> The Service has had difficulty in coming to grips with governmental budgeting requirements. D.A.A. funding of the Service requires a detailed budget to be submitted some nine months prior to the commencement of the financial year, although revision of sub-items within the total sought is permitted as late as one month prior to the financial year. Pending the passing of the Budget by Parliament, the Service is required to operate for the first five months of the year at a level fixed on the basis of the previous year's funding for recurrent expenditure. Any expansion of the level of service provided may then be implemented during the balance of the year. It seems unlikely that any private enterprise of such a size would opt for such an arrangement.

[7] D. O. Hay, *ibid.*, p. 166.

549 The Aboriginal Legal Service of Western Australia submitted that the Department had demonstrated inflexibility in its approach to annual budgeting arrangements in 1978 when it informed the Legal Service without warning that a $30 000 carryover from the 1977–78 financial year would be deducted from the allocation for the 1978–79 financial year. Given that the $30 000 was made available to the Service four days prior to the expiration of the 1977–78 financial year as a special grant on short notice, the Service considered that to spend it in a four day period would have been an irresponsible use of funds but by not doing so it jeopardised considerations in relation to its 1978–79 budget. The Department of Aboriginal Affairs' Regional Director for Western Australia stated that representations were made on behalf of the Legal Service to reinstate the amount and that the Department had corrected the matter. He commented that with a little more forethought on both sides the matter probably could have been avoided.

550 Several legal services expressed the view that the process of consultation and negotiation between representatives of the legal services and Department of Aboriginal Affairs' staff that precedes the formulation of annual budget requirements is of little value when budgets based on realistic needs are subject to arbitrary modification by the Department to fit in with fixed departmental financial allocations. They alleged that the Department does not inform them who decides on modifications to their estimates or the reasons behind such modifications, nor are they informed of the areas of the itemised estimate which they are expected to reduce.

551 In the case of Western Australia, the Department of Aboriginal Affairs' Regional Office stated that it examines the Legal Service's estimates and determines what it will and will not support. The estimates are then forwarded to the Central Office. If its projection of funds is greater than the actual amount of funds allocated for Aboriginal legal aid, the Regional Office must re-examine the budget which was originally put forward by the Legal Service. While departmental officers normally reconsult the Legal Service at this stage concerning items which may or may not be included, the Department does not attempt to re-order the Service's priorities; it is the Service's decision where estimated expenditure should be cut back.

Triennial funding

552 Several Aboriginal legal services claimed that annual budgetary arrangements and the quarterly allocation of funds prevent them from engaging in any long-term programs or planning. They therefore favour the establishment of triennial funding programs. This approach was also supported by the Law Institute of Victoria. Triennial funding would facilitate longer-term planning by the services; encourage a rationalisation of resources away from 'band-aid' activities towards preventive activities; relieve the legal services' perennial fear of abolition; and assist Aboriginal self-determination by placing greater planning control in the hands of the Aboriginal legal services.

553 There are several arguments against triennial funding: it would not have any significant effect on the services' financial difficulties which result from limited levels of funding rather than annual budgeting controls; other functional areas manage to operate satisfactorily with annual funding arrangements; it would involve a major change in departmental and government policy; and, should financial mismanagement occur, the scope for damage would be far greater than

under annual funding arrangements. The Commonwealth's view, as expressed by the Department of Finance, is that 'the "locking-in" effect of multi-year expenditure commitments should be avoided wherever possible', and that exceptions to the general rule of not entering into such commitments would only be considered for the most compelling reasons. Further, 'given the importance the Government, over recent years, has attached to restraining public sector spending, it necessarily follows that multi-year expenditure commitments are to be avoided as much as possible'. The Department of Finance informed the Department of Aboriginal Affairs that while the Government has approved some special funding arrangements for specified authorities, these have generally been designed to meet particular problems. While the Government may be prepared to make exceptions, it is unlikely that grant allocations to Aboriginal organisations would meet Cabinet's requirements for exemption from the normal budgetary and forward commitment procedures and from the general prescription against multi-year expenditure commitments.

Extra-budgetary funding of major cases

554 Aboriginal legal services may request special funding for extraordinary civil and criminal cases which are likely to be both expensive and long-running. While legal services may manage to conduct cases without extra-budgetary funds, they are required to seek the Minister's approval in major civil cases, for example, land rights cases which will involve extraordinary expense and the diversion of resources from the priorities set out in the guidelines. In some land rights cases, Aboriginal communities may retain private practitioners on their own account or, alternatively, legal practitioners may volunteer their services. In these instances, there is no call on public funds. However, where Aboriginal communities seek funds for a major civil case and wish to retain private practitioners for this purpose, the Department of Aboriginal Affairs seeks the advice of the Deputy Crown Solicitors to ascertain the appropriateness of the fees being charged by the practitioners. The Department's policy concerning major civil cases is based on an assessment of whether the cost of funding a major case will be offset by some long-term benefits in the Aboriginal people's interest.

555 No guidelines or advice are given to the Aboriginal legal services in respect of extraordinary and unpredictable major criminal cases (e.g. the *Huckitta* cases) concerning the circumstances in which they may apply for additional funds. Departmental officers stated to the Committee that when such requests are lodged, the Department generally seeks advice from the Commonwealth Crown Solicitors to ensure that an Aboriginal legal service is conducting the case in the most efficient and economical way. This was not to imply the legal service might be guilty of some error of judgment, of over-extending resources or of not providing adequate defence, and it has never been suggested to the Department that a proposal for extra funding for a major case was inappropriate. Departmental officers have also approached the Commonwealth Legal Aid Commission on an informal basis concerning the cost and conduct of certain difficult and expensive cases which some Aboriginal legal services have undertaken. The Committee considers that the Commonwealth Legal Aid Commission is the appropriate body for providing such advice: it not only has the necessary expertise to judge such matters but, as a statutory authority, is also independent of government.

556 The Department stated the funding of test cases presents no real problems from a programming point of view provided funds are available, but each case

must be specifically approved by the Minister for Aboriginal Affairs under paragraph 31(a) of the Ministerial Directive. These cases generally arise during the course of the financial year and it is then necessary to find savings from existing approved projects to fund test cases. If sufficient advance warning is available funds can be programmed as part of the normal programming cycle via forward and draft estimates. If a need arises during the course of the year and offsetting savings are available, funds are appropriated as additional estimates through *Appropriation Bill No. 3*.

Department of Aboriginal Affairs' control of funding

557 The National Aboriginal Conference suggested that the Aboriginal legal services should be funded through the Attorney-General's Department rather than through the Department of Aboriginal Affairs. It considered that because of its specialised legal role the Attorney-General's Department would be in a better position than the Department of Aboriginal Affairs to assess the merits of proposals emanating from the Aboriginal legal services. The Attorney-General's Department itself supports the continued separate development and self-management of the Aboriginal legal services.

558 Other witnesses, including Aboriginal legal services, argued that the Department of Aboriginal Affairs, as a department committed to the welfare of Aboriginals, is more sympathetic to Aboriginal problems and would not be as hampered by traditional legal attitudes. The Tasmanian Aboriginal Legal Service stated that, for all its problems, it is still the department most responsive to the Aboriginal community, with the highest Aboriginal staff ratio and the greatest experience in this area. The Aboriginal movement is able to deal with a single agency and the Department, in theory and partly in practice, represents at attempt to deal with the problem as a whole. The legal aid program can also be co-ordinated with other programs within the same structure. The Department itself has expressed no desire to relinquish its funding responsibility for the Aboriginal legal services.

Fiscal accountability

559 The Committee considers the operation and effectiveness of Aboriginal legal services are not being adequately evaluated either by the Department of Aboriginal Affairs or the Aboriginal legal services themselves. Efforts on the part of the Department have been largely directed towards the legal services' fiscal accountability for public funds. Aboriginal legal services are subject to strict departmental rules and regulations in expenditure. They must account to the Department yearly in an audit report to show that funds received are spent in accordance with directives laid down by the Minister and in accordance with the rules of the Department of Aboriginal Affairs. Conditions for grants relate to general accounting procedures such as the provision of quarterly certified financial returns and audited annual accounts, limitations to the use of grants, banking arrangements, purchase and disposal of assets, insurance, and use of surplus moneys. As incorporated organisations the legal services must also account to the various corporate affairs commissions or similar organisations to show that they are functioning properly and operating in accordance with State and Territory laws.

560 All the legal services accepted there was a need for them to be accountable and all recognised this as an important function of their responsibility to the

funding agency, the Department of Aboriginal Affairs, and the Government. Auditors checking legal services' accounts and financial statements are obliged to ensure that the legal services are operating in accordance with the Department's financial rules and that funds are being properly appropriated. It was suggested that it may be appropriate for auditors to ensure that moneys are also spent in accordance with the terms of the respective legal services' constitutions, memoranda and articles of association. The Department stated that the situation has never arisen where an auditor has found that an Aboriginal legal service's activities are not in accordance with the Department's financial rules or the objectives of the Aboriginal legal service. However, it doubted whether auditors would in fact relate the activities of the organisations to the objectives set out in their constitutions, memoranda and articles of association in their annual audits. The Department stated that if it wanted legal service auditors to assess the degree to which the services comply with conditions laid down in the Interim Charter, for example, it would probably need to specify this as a condition within the existing financial rules and as a requirement of the annual audit.

561 Requirements of auditors including their necessary qualifications (for example, that they be registered company auditors) are set out in company legislation of the respective States and Territories. Auditors are required to state whether a company's accounts have been drawn up so as to give a true and fair view of the affairs of the company and are in accordance with the provisions of the Companies Acts (including the disclosure requirements of the Ninth Schedule of the Act). Financial statements of companies including the balance sheet, profit and loss statement, and auditor's report are filed with the Registrar of Companies after presentation at the company's annual general meeting. In conducting an audit the auditor will verify the receipt of income, for example, receipt of a grant from the Commonwealth Government. In the course of performing a transaction test he may verify that the moneys received under a grant are applied in accordance with the requirements/conditions of the grant. It is doubtful whether auditors automatically verify all such grants: in carrying out such checks they would rely heavily on information supplied to them by officers of the association.

562 It is suggested that the Minister for Aboriginal Affairs require that, as a matter of practice, auditors examining the accounts of an Aboriginal organisation, including the Aboriginal legal services, ensure that moneys are spent in accordance with the organisation's objectives set out in their constitutions and/or memoranda and articles of association, and that the auditor provide the organisation and the Minister with an audit certificate both with respect to the financial statements of the association and the application of the grant income (including the requirement that the financial statements comply with the disclosure requirements of the Companies Acts). This provision would then provide for the auditor to qualify his audit report if and when an organisation is found to be acting outside its objectives or terms of reference. The provision would further guarantee the accountability of the Aboriginal legal services both to the funding body and to the Aboriginal people. These requirements could be included in the Department's 'Conditions of Grants'.

Evaluation of program effectiveness

563 Assessment of program effectiveness by the Department is based primarily on statistics provided by the legal services themselves and on the subjective views

of departmental area staff. Requests for program expansion are considered on similar grounds. While the Department acknowledged that statistics provided by the Aboriginal legal services are unreliable as a basis for evaluation, little attempt has been made to ensure that accurate statistics are available.

Distortion of statistics

564 The Department's primary interest in statistics is in terms of workload requirements for programming purposes. The Committee received evidence that statistics which the Aboriginal legal services provide for the Department of Aboriginal Affairs may be inflated or deflated to fit in with departmental requirements and implied or stated priorities. For example, because the legal services have been required to give low priority to civil matters, a requirement now spelt out in the Interim Charter, Aboriginal legal services which have undertaken what they fear the Department may consider to be an unacceptable proportion of civil cases may transfer caseload or workload estimates from this area to areas which are accorded priority by the Department. In some cases there was considerable discrepancy between figures provided to the Committee during the inquiry and figures provided for departmental purposes. It became apparent to the Committee that most legal services believed that by providing statistical information which might reflect their failure to conform with departmental priorities in the provision of legal aid, their funds might be cut back. This is unfortunate because distorted statistical information provides neither a reliable basis for assessing the services' expenditure and ensuring their accountability for public funds nor does it convey to the Department a true reflection of the needs and demands of the client population. Unless the legal services feel free to demonstrate to the Department in concrete terms (that is, on the basis of accurate statistical data) that client needs and demands do not necessarily reflect the Department's perception of those needs and demands, the Department has no basis on which to consider possible policy changes.

565 The Committee urges both the Department and the Aboriginal legal services to give urgent attention to these problems. It stresses that the Aboriginal legal services have a responsibility to account for the expenditure of public money and are therefore obliged to provide the Department of Aboriginal Affairs in its capacity as the funding organisation with accurate statistical information so that it can carry out its monitoring role. On the other hand, when services request technical advice and assistance in establishing statistical systems, the Department should endeavour to assist the services, wherever possible, in setting up statistical systems which will not only facilitate its monitoring role but will also enable the legal services to evaluate their own operation and performance so that they are better equipped to identify priority areas within their programs and in any proposed expansion or redirection of programs. As discussed previously, it is apparent that the Department's interest in establishing statistical systems is limited and arises from its own concern to obtain statistics for departmental monitoring purposes, for funding and accountability for funds rather than from any concern to assist the legal services (and indirectly the Aboriginal people) in monitoring their performance and assessing client needs and demands. The Committee considers that self-evaluation by the Aboriginal legal services is essential to effective self-management in any program designed to promote the advancement of Aboriginal people.

Need for evaluation

566 The Committee is also concerned that no systematic evaluation of the legal services has been carried out either by the Department or the legal services themselves to assess the services' accessibility and acceptability to the client population and measure the needs and demands of Aboriginal people within the jurisdiction of each Aboriginal legal service. The Department has not undertaken or sponsored any surveys to gauge acceptance or non-acceptance of particular legal services by Aboriginal communities. It suggested that if Aboriginals are not happy with the performance of their legal service, they are entitled to indicate this through their right to vote for members of the legal service councils. While this is true in theory, the Committee's inquiry has revealed that in practice few Aboriginals, particularly those in non-metropolitan areas, have the means to attend legal service meetings nor sufficient comprehension of or experience in administrative and operational procedures to express their satisfaction or dissatisfaction with the service's operation, and the legal services have been loath to divert resources to assist them.

567 Financial monitoring, levels of expenditure, and caseload and workload statistics do not by themselves provide a reliable indicator of legal services' effectiveness. There is a need to measure the needs of the client population, to ascertain whether the legal services are accessible to those in need, and whether Aboriginals' legal needs are being met by the legal services. It is important to determine the extent to which Aboriginals' access to legal aid is inhibited by geographical or socio-cultural factors, to assess the degree of awareness amongst Aboriginal communities of the availability of a legal facility and the inclination of different groups within each community to utilise that facility. Efforts should also be made to measure whether the legal services' activities are having an effect on community development, whether they are promoting an awareness of Aboriginals' legal rights and obligations and whether, as a result of the services' activities, Aboriginal people are more confident and competent in dealing with legal and related non-legal matters. The effectiveness of the legal services should be evaluated not only on the basis of utilisation rates but also on the attitudes of potential clients in the Aboriginal population.

568 Proper evaluation is essential to the implementation of the Government's policy of self-management, to the fiscal accountability of the legal services, and to the establishment of priorities for funding purposes (a) within each legal service, (b) between different legal services, and (c) between the various functional areas in which government financial assistance is provided for Aboriginals. It seems unreasonable to ask the Aboriginal legal services to justify their priorities, their role and their method of operation in the absence of a departmental evaluation framework which takes into account the appropriateness of the legal services to their client population, their effectiveness in meeting the population's needs, and their accountability to the Aboriginal people, in terms of quality as well as quantity of service.

Need for a co-operative approach to evaluation

569 The evaluation of legal services which is undertaken by the Department of Aboriginal Affairs is conducted by personnel who have neither experience in legal practice nor expertise in the administration of a legal agency. It appears that proposed new projects for inclusion in legal aid programs are also accepted or rejected without recourse to legal opinion. The Department stated that legal

advice is sought from officers of the Attorney-General's Department when Aboriginal legal services request ministerial approval and additional funding for costly, protracted cases. It sees no need to appoint an experienced lawyer within the Department. The present lack of legal knowledge and expertise within the Department points to a need for the Department of Aboriginal Affairs to take alternative steps to ensure such knowledge and expertise is available to it in the evaluation of existing legal programs and the assessment of any proposed modifications to those programs. The Department stated that it has approached the Commonwealth Legal Aid Commission concerning evaluation procedures. Departmental representatives considered, however, that while the Commission would have expertise in legal aid, it would not have expertise in Aboriginal affairs nor necessarily in providing a legal aid service to Aboriginals. The Committee suggests that these problems might be overcome by a co-operative approach to evaluation.

570 The Committee recommends that:

- *the Department of Aboriginal Affairs seek the co-operation of the Aboriginal legal services to design and implement an evaluation program to gauge the accessibility and acceptability of the legal services to the Aboriginal client population, the present and future needs and demands of Aboriginal people in criminal and civil law matters and related non-legal matters, and the effects of legal service activities on Aboriginal community development; and*
- *the advice and assistance of the Commonwealth Legal Aid Commission be sought through the Attorney-General in the design and implementation of an appropriate evaluation framework.*

Cost-effectiveness of Aboriginal legal services

571 On a comparative cost per case basis, the Aboriginal legal services compare favourably with other legal aid agencies. However, cost per case comparisons between the various agencies must be approached with some caution and must be qualified by the following considerations:

- there are potential differences in definition of cases;
- a few very expensive cases (or a number of inexpensive cases) can significantly raise or lower the average cost;
- cost per case varies according to the ratio of work done 'in-house' to work referred to outside solicitors;
- cost per case is affected by the geographical coverage of the service (for example, travel and accommodation expenses are incurred if the agency services remote areas), the density of the client population, and the similarity of matters in which assistance is sought; and
- costs are affected by office arrangements and expenditure on staff salaries.

Most Aboriginal legal services refer a minimum of work to outside solicitors. They also pay outside solicitors a lower percentage of costs than other agencies. Their overheads in terms of administration costs and staff salaries are lower than those of other agencies. For these reasons, the Aboriginal legal services are significantly more cost-effective than other legal aid agencies.

Alternative sources of funds

572 In view of the financial difficulties experienced by the Aboriginal legal services in recent years, it is important to investigate potential additional sources of income. Two possible sources are available: charging clients for services rendered, and seeking support from communities in receipt of royalty payments.

Charging clients for services

573 There are several possible methods of imposing charges on clients of the Aboriginal legal services: charging a standard service fee, charging fees based on means tests, or charging special categories of clients. In view of the financial and social circumstances of the majority of Aboriginal people, these alternatives need to be subject to the proviso that those who are unable to pay need not do so. This leads to the vexed question of how to determine inability to pay. It is also important that the effect of this source of revenue on the future funding of Aboriginal legal services be clarified.

STANDARD SERVICE FEE

574 In his report on the Department of Aboriginal Affairs Sir David Hay recommended as an option the introduction of a standard service fee for Aboriginal legal service clients. This has now been given effect by the Interim Charter for the operation of the legal services which requires that:

> In respect of each case undertaken the services will levy a standard service fee, the amount of which will be determined annually by the Minister for Aboriginal Affairs.

The Interim Charter also provides that the standard service fee may be waived in cases of demonstrated inability to pay. The standard service fee requirement raises questions concerning how the fee should be applied. The Department of Aboriginal Affairs nominated the following guidelines for the collection of the fee which has been set at an initial level of $5 per case:

- The fee will apply in all representation cases where the client is in receipt of wages or other income including income maintenance benefits, for example, unemployment benefit, age pension, sickness benefit, invalid pension, supporting mothers pension.
- Representation should be taken as including cases where a solicitor enters into some action on the client's behalf, for example, conducting negotiations or writing letters, as well as representation in court.
- Persons who can demonstrate genuine hardship may be exempted from payment, for example, a person who can demonstrate difficulty in meeting immediate family commitments. The onus of proof in such instances should be on the client.
- In order to avoid complications arising from holding trust monies the fee should be charged only after the service has been provided.
- The fee should be collected on the spot or, if a client is unable to pay, he should be issued on the spot with an account for payment within 14 days of the time of service delivery.
- The services should use their own judgment as to steps to be taken following up unpaid fees. Costs should be weighed against benefits.
- The Department expects a genuine effort by the services to collect fees from clients but acknowledges the need for some common sense in implementation of the Government's decision.

The Minister for Aboriginal Affairs has stated that he does not wish to lay down detailed rules relating to the collection of the fee and exemptions but expects the legal services to use the term of the Interim Charter to devise sensible rules which meet the practical difficulties facing the legal services and the spirit of the Interim Charter.

575 Although the Minister has advised that fees collected in 1979–80 may be used by the legal services to supplement Government grant funds, only one organisation, the St Mary's and Districts Legal Assistance, is levying the standard

service fee. Others appear to be awaiting the outcome and advice of the Committee's inquiry. Other witnesses accepted the idea of a standard service fee provided that those who are unable to pay are exempted and, from the Aboriginal legal services' point of view, provided that the need to demonstrate inability to pay does not involve them and their clients in complicated administrative procedures.

576 Most of the Aboriginal legal services argued against the proposal for a standard service fee on the grounds that the proposal detracts from the ideal of Aboriginal self-determination; it does not give due weight to the disadvantages and injustices suffered by Aboriginal people in the legal system due to poverty and other factors; it would cause embarrassment to the services and lead to a breakdown in the good relations between the services and the community; and it would alienate Aboriginals and lead them to regard the legal services as another bureaucratic organisation controlled by government rather than by the Aboriginal community. Given high Aboriginal unemployment, the majority of clients would be unable to pay, while many in employment would face difficulties due to extended family responsibilities. Objections to the introduction of a fee were also expressed in relation to the collection of fees. It was suggested that the administration of such a scheme would be more costly than the revenue it would yield.

577 In response to objections to the imposition of a standard service fee, the Minister said:

> I do not think there can be any argument against the service fee where a client has capacity to pay. I am fortified in that view by the attitude adopted by the National Aboriginal Conference when it gave evidence to the House of Representatives Committee. I believe that the collection of the fee should improve the public image of the Services by reducing criticism and backlash against the free services provided to Aboriginals, while the Australian Legal Aid Office requires a minimum fee of $20 from other needy persons. The fee has been set at a nominal level and applies only in those cases where representation is involved. No charge is required where advice only is provided by the Services.

The Department of Aboriginal Affairs has made no assessment of the amount which Aboriginal legal services could collect from the application of a standard service fee under any definition of Aboriginal clients' ability to pay. It has made no evaluation of the cost of administering the collection of a service fee and no assessment of the amount of revenue which could be derived from this source. It was also unable to provide the Committee with any estimate of the proportion of the total Aboriginal population which would be able to pay a fee or of the proportion of unemployed Aboriginals in receipt of pensions or benefits and employed Aboriginals in receipt of regular income who would be able to do so.

578 A number of legal services raised the point that there is some doubt whether the services can legally charge or collect a minimum standard service fee as they are not themselves firms of solicitors. If the solicitors rather than the services charge the fee, they must open a trust account which is subject to various auditing controls under the respective State legal practitioners Acts. It was further suggested that if solicitors were to charge a fee, they would be bound to charge at full rates or be liable to charges of undercutting and unethical conduct. As these matters are controlled by State legislation, there are likely to be variations from State to State. The Minister for Aboriginal Affairs has suggested that in order to obviate putting money into a trust account the collection ought to be made after the service is rendered. The disadvantage of this approach is that if the person does not have the cash in hand at the time the service is provided, it is necessary to render an

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account with all the consequent difficulties of collecting such fees. Nothwithstanding discretion, the legal services must meet the costs of maintaining an accounting system for collecting those moneys or at least making the initial attempt to collect moneys.

579 One legal service suggested that incorporation as a statutory authority (i.e. a State Aboriginal legal aid commission) would overcome these difficulties. The Department of Aboriginal Affairs stated that such an option would be difficult in States where more than one service operates and a statutory body may not permit the broad Aboriginal membership preferred for Aboriginal legal services and could inhibit the self-management concept. A solution may be to amend the *Aboriginal Councils and Associations Act* 1976 which provides for the incorporation of Aboriginal legal services, embodying in the Act a broad charter for the legal services. These problems were drawn to the Committee's attention too late in the inquiry for it to investigate fully. However, it is clear that before any action is taken to require the services to collect fees or make charges, the Department must determine the legality of the legal services charging fees.

MEANS TEST

580 The National Aboriginal Conference stated that it favours the introduction of a means test for those whose income permits the payment of a fee without causing undue hardship. While the Conference is aware of the inherent difficulties in enforcing such a scheme, it considers that the introduction of a means-tested fee would help to ensure that the maximum number of Aboriginals benefit from the facilities provided by the Aboriginal legal services and would encourage Aboriginal independence and self-reliance. The Aboriginal Legal Service of Western Australia and the North Australian Aboriginal Legal Aid Service have at various times in the past considered or attempted to impose some form of fee for service based on a means test but, because of problems in administering the means test and because so few clients could pay, no fees were ever collected.

581 The Department of Aboriginal Affairs recognises that it would be unsatisfactory to apply a means test system of the type used by the Australian Legal Aid Office to assess disposable income and is working on a simple, readily definable test for the Aboriginal legal services to use. The Law Society of Western Australia stated that its duty counsel scheme and legal advice bureau use a flexible and informal means test to determine contributions from clients. No precise financial formula is used and no charge is levied on people in custody seen by duty counsel. Determination of ability to pay is left to the lawyer's discretion. The Law Society commented, however, that in the case of Aboriginals there would be automatic waiver in almost all circumstances. Some witnesses believed that most of those Aboriginals able to contribute to the cost of their defence would prefer to do so as a matter of pride. Professor Tatz suggested that in the long term Aboriginals will come to want to pay for the services they receive, and that in doing so they will wish to exert greater control over 'their' service.

CHARGING SPECIAL CATEGORIES OF CLIENTS

582 At present, those services which handle land transactions charge full costs. Similarly, clients in successful recoverable actions are required to reimburse the

services' costs. The Committee raised the possibility of the services charging all or a proportion of costs to certain other categories of clients, such as habitual offenders or Aboriginals with obvious means.

583 The Committee recognises that the fact that an offender has been represented on several previous occasions does not detract from his need or right of representation again. However, at times a disproportionate amount of at least one Aboriginal legal service's funds have been devoted to representing a small number of habitual offenders. Several witnesses also suggested that some habitual offenders make maximum use of the system for their own benefit. The Committee considers that Aboriginal legal services should not be under any compulsion to charge costs to habitual offenders and in fact this section of the services' clientele may be less able to pay or contribute to costs than other clients. However, the requirement for habitual offenders to pay or contribute to costs may in some instances act as a deterrent. The Committee suggests that the legal services make provision to charge habitual offenders at their discretion.

584 There are a number of Aboriginal people whose occupation and income place them in a relatively privileged economic position compared with the majority of Aboriginals. Many of these people have a special identification with the Aboriginal legal services and prefer to seek legal assistance from them rather than from an alternative legal service or the private legal profession. Bearing in mind the financial constraints within which all the Aboriginal legal services operate, the Committee feels that such people should not expect the Aboriginal legal services to provide them with assistance at the expense of more needy clients. Nor is it inappropriate for the Aboriginal legal services to provide a legal service to these people. However, the Committee believes that Aboriginal people with obvious means should be required to pay for services rendered by the Aboriginal legal services on a commercially competitive basis. The Aboriginal legal services should accept their responsibility to those clients whose disadvantage and need for legal assistance are greatest. Some legal services stated that in the past clients who appeared to be able to contribute towards the cost of their cases have been asked to do so and have usually complied. Others refer Aboriginals with obvious means to private solicitors. However, the proportion of Aboriginals falling into this category is small.

Effect of the collection of fees and charges on funding

585 The legal services believe that any amounts collected in fees and charges will be deducted from the following year's allocation of funds as is the case with State legal aid commissions. Although the Minister has advised that standard service fees collected in 1979–80 may be used to supplement Government grant funds, it is not clear whether revenue from fees will affect the legal services' funding in subsequent years. It is therefore necessary for the Government to clarify whether revenue obtained from charges to clients will be deducted from future levels of funding.

586 The Committee considers that income derived from the collection of fees and charges should not be deducted from subsequent funds provided through Government grants. This approach not only provides an incentive for Aboriginal legal services to collect fees for service, but also offers them a potential alternative source of revenue from the Aboriginal community and can therefore be seen as promoting Aboriginal independence and self-reliance.

587 The Committee recommends that:

- *the Government seek advice on the legality of Aboriginal legal services in all States and the Territories charging fees;*
- *the Department of Aboriginal Affairs seek the co-operation of the Aboriginal legal services in developing a flexible and informal means test for Aboriginal legal services;*
- *Aboriginal legal services apply properly means-tested charges for legal services provided to clients; and*
- *revenue from the collection of charges be used to supplement government grants-in-aid and not be deducted from future levels of funding.*

Royalty payments

588 The Committee considered the suggestion that Aboriginal communities receiving royalty payments be asked to contribute to funding the Aboriginal legal services either by subsidising Commonwealth funding of their legal service or by paying all or a proportion of the costs of legal aid provided to members of the communities. Those witnesses who were sympathetic with this idea tended to favour communities subsidising the funding of the legal service rather than paying the costs of community members using the service.

589 The Department of Aboriginal Affairs stated that:

> The situation in the Northern Territory at present is that payments in the nature of mining royalties are insufficient to cover the purposes for which these moneys are expended. The allocations to the Land Councils from the Aboriginals Benefit Trust Account are insufficient to cover their administrative expenses, and the 30% applied to or for the benefit of Aboriginals living in the Northern Territory is insufficient for their needs; having to be supplemented by grants-in-aid. If that 30% were used to fund Aboriginal Legal Aid Services in the Northern Territory, it would be necessary to increase the amount of grants-in-aid by an equal amount.

The Department also commented that while the suggestion is not practicable at present, the situation will be different if in the future royalty moneys increase to the point where a surplus accumulates in the Aboriginals Benefit Trust Account and grants-in-aid are phased out. At that time it will be necessary to decide whether, as a matter of policy, Aboriginals in the Northern Territory should be required to fund their own legal aid service when in other States the Aboriginal legal services are funded by the Government.

Conclusion

590 The Department has agreed that generally the Aboriginal legal services are providing an effective service. It has also acknowledged that the preservation of existing departmental priorities is not crucial and there should be a continuing review and adjustment of priorities on the basis of community priorities, both in grants-in-aid and State grants programs. Despite appeals from the Aboriginal legal services for additional funds to expand their operations, extend their coverage or improve the quality of service they are able to provide in certain areas or to certain sectors of the client population, significant additional funds have not been forthcoming. The Committee considers that the provision of legal aid is of vital importance to the Aboriginal people and fundamental to Aboriginal community development and that the importance of this area of Aboriginal affairs

should be acknowledged in increased levels of financial assistance to the Aboriginal legal services. The Committee recommends that *increased levels of financial assistance be made available to the Aboriginal legal services through the Government's Aboriginal legal aid program.*

591 The Committee has also concluded that the legal needs of Aboriginals in rural areas are presently least effectively met, both in the criminal and civil jurisdictions, and is concerned to ensure that in the future the Aboriginal legal services give greater attention to the delivery of legal aid in these areas. The Committee believes that the fact that the legal needs of Aboriginals remain unmet in many areas can be attributed in part to the current levels of funding for the legal aid program. However, it is also attributed to deficiencies in the structure of some legal services which are reflected in their failure to give priority to the delivery of legal aid in rural areas. The Committee therefore recommends that *additional funds allocated to the Aboriginal legal aid program be directed towards meeting the legal needs and demands of Aboriginal people in rural areas.*

17. National Co-ordination

Proposed establishment of a national secretariat of Aboriginal legal services

592 Proposals have been made on numerous occasions to co-ordinate the activities of the Aboriginal legal services through the establishment of a national co-ordinating agency. In March 1973 the Department of Aboriginal Affairs proposed that a national secretariat be established. In April the same year a conference of Aboriginal legal services agreed to the proposal. Further resolutions supporting the establishment of a national secretariat were carried by a conference of Aboriginal legal services in December 1973, by a conference on 'Aborigines and the Law' held at Monash University in July 1974, and by a further conference of Aboriginal legal service delegates held in Canberra in August 1975. Even though there has been such long-standing and consistent demand for a national secretariat, it has not yet been established.

593 It was envisaged that a national secretariat would:

- facilitate communication and co-ordination between the legal services in relation to day-to-day matters affecting their operations and the pursuit of common interests;
- maintain liaison with both central and regional offices of the Department of Aboriginal Affairs;
- facilitate greater communication and exchange of ideas on a variety of matters of common concern to all legal services, such as Aboriginal-police relations;
- collect and publish statistics, provide back-up research facilities and disseminate information of common interest;
- make submissions and present proposals to inquiries, governments, etc. on behalf of all Aboriginal legal services;
- co-ordinate proposals for future funding; and
- develop an overview and broader perspective of Aboriginal legal aid, particularly in respect of questions such as class actions, group rights and preventive campaigns and policies.

594 The 1975 Aboriginal legal service conference proposed that a national executive be established to determine policy and give direction to the activities of the national secretariat. The executive was to consist of the State presidents of each Aboriginal legal service (or their nominees) and meet every three months. The national secretariat was to comprise three full-time staff members appointed by and responsible to the national executive. It was considered preferable for the secretariat to be located in Canberra rather than being attached to one of the legal services. The secretariat would then be seen to be independent of any particular legal service's operation and influence. It would also have ready access to the Department of Aboriginal Affairs, the Attorney-General's Department and other national organisations based in Canberra. Delegates to the Aboriginal legal services conference held in August 1975 also resolved that the Department of Aboriginal Affairs be requested to fund the national executive and secretariat but not at the expense of allocations to the Aboriginal legal services.

A budget was prepared for the proposed national secretariat based on the assumption that the secretariat would come into operation on 1 January 1979. It was estimated that a budget of $206 050 would be required to fund the national secretariat and its executive in 1979.

595 The establishment of a national secretariat has primarily been inhibited by cost factors. The Department of Aboriginal Affairs stated that the funding of a national secretariat would result in a diversion of funds from the legal services' allocation for their existing program commitments. It proposed that, alternatively, liaison with the Commonwealth Legal Aid Commission might be developed with the Commission carrying out for the services some of the functions it is committed to undertake generally in the area of legal aid. The Committee supports this proposal which is discussed later in the chapter.

Other proposals for a national co-ordinating agency

596 In 1975 the Commission of Inquiry into Poverty[1] recognised the need for the establishment of a body free from the day-to-day pressures imposed on the legal services which could facilitate communication and exchange of ideas between the services, provide research facilities, collect and disseminate information of common interest and develop community legal education programs. It recommended the establishment of a back-up centre designed to assist the legal services in performing these functions. The Commission also suggested that consideration be given in the future to the creation of a statutory commission or corporation with a predominantly or wholly Aboriginal membership designed to oversee the operations of the legal services but which at the same time would enable each legal service to retain a large degree of autonomy.

597 The National Aboriginal Conference supported the establishment of a national co-ordinating agency which it believed would minimise the effects of State and community differences and thus ensure the provision and continuation of a complete and balanced legal facility to all Aboriginals regardless of financial status and geographical location. It further suggested that a national organisation should be responsible for allocating funds provided by the Department of Aboriginal Affairs for legal aid between the respective services.

Objections to the establishment of a national co-ordinating agency

598 Reaction by the Aboriginal legal services to the proposal for the establishment of a national Aboriginal co-ordinating agency was mixed. While all the legal services recognised the potential benefits resulting from co-ordination and liaison through a national body, many were concerned about the management and operation of such a body. Some considered there was a danger that the organisation could become another bureaucratic channel through which they would have to operate, particularly if it were responsible for allocating funds. Others suggested that it could become a national forum for one group or another to promote its own point of view at the expense of others and that it might provide scope for nepotism and factiousness, allowing regional or other particular interest groups to dominate.

599 Some observers of the development of Aboriginal policy and administration stated that in the past universal, expedient, monolithic legislation, policies or

[1] Sackville, *Law and Poverty in Australia*, pp. 286–7.

programs in Aboriginal affairs have generally failed. This is partly because of a natural tendency amongst Aboriginal groups and organisations to decentralise. Although superficially similar, Aboriginal groups and organisations are inherently disparate and it is questionable whether national organisations are able to sufficiently take account of all points of view. It was suggested that Aboriginal legal service activity could be more effectively co-ordinated through the establishment of flexible, voluntary co-operative arrangements.

600 Those who favoured the establishment of a national co-ordinating authority considered it unreasonable that the legal services' allocations of funds for their day-to-day operations should be reduced to finance the establishment of such an organisation. The legal services stated that because their effectiveness in meeting clients' demands for legal assistance is already impeded by limited resources they have had to forego the advantages which would have resulted from the establishment of a national co-ordinating body including financial savings accruing from the elimination of duplication of resources in specific projects with national significance and application. The Committee accepts this argument and appreciates that the legal services are unwilling to deprive clients of legal assistance by allocating a proportion of already insufficient resources to constructive long-term projects even though the services recognise the need to adopt long-term measures and a broad comprehensive approach to the provision of legal aid for Aboriginal people.

601 The Department of Aboriginal Affairs considers existing consultative machinery provided for in the Ministerial Directive[2] is adequate to achieve the objectives sought by the National Aboriginal Conference through the establishment of a national co-ordinating agency. Sections 13 to 17 of the Directive provide for extensive consultation with Aboriginal communities and representative bodies such as the National Aboriginal Conference and the Council for Aboriginal Development in the development of programs. While these sections, with the exception of section 14, provide for consultation with Aboriginals on a regional, area or community basis, there is no provision for national consultation or co-ordination of activities except by the Department of Aboriginal Affairs. Section 14 states:

> DAA has the responsibility for the development of national policies, the administration of these policies, and the co-ordination of programmes, namely, the services delivered to Aboriginals by both Commonwealth and State functional departments and agencies. The purpose of this co-ordination is to ensure that the total aid program takes account of Aboriginal needs and priorities in an integrated way, without duplication.

It is significant that this section places effective responsibility for co-ordination and integration of programs with the Department and not with Aboriginal people.

602 The need for liaison, co-operation and co-ordination between the Aboriginal legal services, particularly in professional matters, is clear. During the inquiry it became apparent to the Committee that there is little communication or exchange of ideas between the 12 Aboriginal legal services and surprisingly little awareness of variations in their separate programs, methods of operation, goals and problems. The dissemination and sharing of information and experience is considered essential to improving the effectiveness and efficiency of the Aboriginal

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[2] *Ministerial Directive and Programming Guidelines, Government Financial Assistance to Aboriginals* 1980–81, Department of Aboriginal Affairs.

legal services. Co-ordination of the activities of the Aboriginal legal services would minimise duplication of effort by the separate legal services, particularly in the development of statistical collections, the preparation of training programs, manuals and other material, the design and publication of community legal education materials, and the development of annual funding programs and proposals. The Committee is not convinced, however, that the establishment of a separate national body is the most suitable or appropriate way of fulfilling this requirement. It believes national co-ordination and co-operation can be achieved more effectively through the establishment of co-operative arrangements between the Aboriginal legal services, the Commonwealth Legal Aid Commission, State and Territory legal aid commissions and other legal agencies. The Committee also considers other benefits would be derived from Aboriginal legal services' close liaison and co-operation with these organisations.

Establishment of co-operative arrangements with the Commonwealth Legal Aid Commission

603 The Commonwealth Legal Aid Commission has an advisory, co-ordinating and monitoring role in the delivery of legal aid services throughout Australia. In particular it is responsible for ascertaining and keeping under review the extent of the need for legal assistance in respect of Commonwealth matters and of recommending to the Attorney-General the most effective, economic and desirable means of satisfying that need.[3] It also has the function of liaison and co-operation with legal aid commissions as well as other bodies providing or interested in the provision of legal aid and of making recommendations concerning their co-ordination.[4]

604 In its second annual report, the Commission stated it wished to extend its activities in the areas of liaison and co-ordination with all legal aid services in Australia.[5] It sees this as essential to taking advantage of successful innovative methods which are being adopted by various legal aid organisations and to achieving the desirable object of providing legal aid to persons in the Federal area on as uniform a basis as possible. The Commission reported that consultations had been held with the Western Australian, South Australian and Australian Capital Territory Commissions and with the Assistant Director and Deputy Directors of the Australian Legal Aid Office as part of its liaison and co-ordination function. The Chairman and Deputy Chairman also visited and held detailed discussions with many other legal aid services throughout Australia.

605 To date the Aboriginal legal services have not been involved in consultation with the Commonwealth Legal Aid Commission or participated in programs and discussions promoted by the Commission. The Commission has not sought the views or co-operation of the Aboriginal legal services nor have the Aboriginal legal services taken any initiatives to establish co-operative arrangements with the Commission or to seek its advice on the delivery of legal aid.

606 The establishment of co-operative arrangements between the Commonwealth Legal Aid Commission and the Aboriginal legal services would be beneficial to the legal services, the Commission and other legal aid agencies. The Aboriginal legal services could participate in, contribute to and benefit from

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[3] *Commonwealth Legal Aid Commission Act* 1977, section 6 (a).
[4] *ibid.*, section 6 (f)
[5] Commonwealth Legal Aid Commission, *Second Annual Report* 1978–79, AGPS, Canberra, 1979.

developments in those areas for which the Commission has direct responsibility, such as the collection and publication of statistics, the development of education programs, the conduct of research, and the evaluation of legal aid schemes. The arrangements would also provide an opportunity to promote within the Commonwealth and State legal aid commissions greater understanding of the nature and operation of Aboriginal legal services and appreciation of the special legal needs and demands of Aboriginal clients; allow and encourage the Aboriginal legal services to participate in conferences, seminars and workshops sponsored by the Commonwealth Legal Aid Commission; provide for the Aboriginal legal services to contribute to and benefit from the Commission's collection of legal aid research material, information and resources; and facilitate discussion of matters of mutual interest.

607 Although the Aboriginal legal services operate separately from the comprehensive legal aid commission scheme and do not have any formal relationship with the Commonwealth Legal Aid Commission, the Committee believes that it would be appropriate for the legal services to enter into special co-operative arrangements with the Commission. It suggests that suitable arrangements be determined by consultation between each Aboriginal legal service and the Commonwealth Legal Aid Commission with the objective of promoting liaison, co-operation and co-ordination between the Aboriginal legal services, the Commonwealth Legal Aid Commission and other legal aid agencies. The Committee does not envisage the Commonwealth Legal Aid Commission being responsible for funding or directing the allocation of funds between the Aboriginal legal services. However, it urges the Aboriginal legal services to seek the advice and assistance of the Commonwealth Legal Aid Commission in the estimation and preparation of annual budgets. It also urges the Aboriginal legal services to draw on the expertise of the Commission particularly in the fields of management, budgeting, staffing, methods of operation and evaluation techniques.

608 The Committee recommends that:

- *Aboriginal legal services seek the co-operation and assistance of the Commonwealth Legal Aid Commission in such matters as the development of statistical collections, the evaluation of legal aid programs, the collection and dissemination of information, the development of community legal education programs, and the conduct of research; and*
- *the Commonwealth Attorney-General direct the Commonwealth Legal Aid Commission to consult and negotiate with Aboriginal legal services in response to initiatives from Aboriginal legal services which express an interest in entering into co-operative arrangements with the Commonwealth Legal Aid Commission and participating in, contributing to and benefiting from activities arising from the Commission's functions.*

18. Government Policy on Aboriginal Legal Aid

The policy of self-determination

609 The Commonwealth Government's present policy on Aboriginal affairs is based on the principle that all Aboriginals and Torres Strait Islanders should be as free as other Australians to determine their own varied futures. The Government recognises the fundamental right of Aboriginals to retain their racial identity and traditional lifestyle or, where desired, to adopt partially or wholly a European lifestyle.[1] In the long term, the objective of Government financial assistance is to provide Aboriginals with opportunities and options for the individual and the community in the fields of economic, social and cultural development which are equal to those available to other Australians.[2] To meet this objective the Government aims to secure for Aboriginals:

(a) access to Government services equal to that accorded to other Australian citizens, together with additional services appropriate to their state of extreme disadvantage;

(b) certain special benefits not available to other citizens, where such special benefits are needed to overcome special disadvantage.[3]

610 For the implementation of all its programs, the Government sees 'self-management' as a major objective. On 24 November 1978 the then Minister for Aboriginal Affairs, the Hon. Ian Viner, stated in the House of Representatives:

> In essence, the policy of self-management requires that Aboriginals, as individuals and communities, be in a position to make the same kinds of decisions about their future as other Australians customarily make, and to accept responsibility for the results flowing from those decisions . . . The Government sees this policy as offering to Aboriginals a means of breaking out from the state of dependence which has for so long enchained them. In any society, decision-making and responsibility are essential to the restoration of self-respect and to the removal of the social maladies of despondency, inertia and resignation.[4]

611 In its party platform the Government stated that, in encouraging Aboriginal initiative and enterprise, the maintenance and, where appropriate, the expansion of Aboriginal-managed enterprises and services such as Aboriginal medical services, Aboriginal legal services and Aboriginal housing, building and pastoral projects are high on the list of priorities. The Government has recognised that if a policy of self-management is to be effective Aboriginals must play a significant role in their affairs, particularly in setting the long-term goals and objectives which the Government should pursue and the programs it should adopt in such areas as Aboriginal education, housing, health, employment and legal aid; in setting the priorities for expenditure on Aboriginal affairs; in evaluating existing programs and formulating new ones.[5] The Government has stated that it will, within the limits of available finances, fund programs which develop Aboriginal self-sufficiency and which represent initiatives that Aboriginals themselves believe will enhance their dignity, self-respect and self-reliance.[6]

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[1] The Liberal and National Country Parties, *Aboriginal Affairs Policy*, November 1975.
[2] *Ministerial Directive and Programming Guidelines, Government Financial Assistance to Aboriginals* 1980–81, Department of Aboriginal Affairs, section 3.
[3] *ibid.*, section 4.
[4] Australia, House of Representatives, *Debates*, 1978, Vol. 112, p. 3443.
[5] The Liberal and National Country Parties, *Aboriginal Affairs Policy*, November 1975.
[6] *ibid.*,

Development of government policy on Aboriginal legal aid

612 The Commonwealth Government has provided financial support to the Aboriginal legal services since the first grant was made to the Aboriginal Legal Service (N.S.W.) Ltd in 1971. At that stage no comprehensive Aboriginal legal aid program or plan was developed for the guidance of the Aboriginal legal services or the funding authority, the Department of Aboriginal Affairs.

The Aboriginal Legal Service Program

613 In March 1973 an Aboriginal Legal Service Program was prepared for the Department of Aboriginal Affairs by the Attorney-General's Department. The Program was amended by representatives of the Aboriginal legal services and officers of the two departments at a conference on Aboriginal legal affairs held in Canberra in April 1973. The Program was prepared having regard to the statement in the Australian Labor Party policy speech delivered by the Hon. E. G. Whitlam on 13 November 1972:

> To ensure that aborigines are made equal before the law, the Commonwealth will pay all legal costs for Aborigines in all proceedings in all courts.

The Program envisaged that the Aboriginal legal service would be self-governing bodies, having a majority or complete Aboriginal membership on their controlling bodies and that staff would be employed by them. The Program provided that each service was to have flexibility in its development to meet the needs of Aboriginals for legal assistance. These facilities were to include, as funds permitted, arrangements with legal practitioners in private practice for representing applicants in individual cases, with legal practitioners on a retainer basis, and the direct employment of legal practitioners, field workers, social workers and administrative staff. Preference was to be given to Aboriginals or to those persons who showed an affinity with Aboriginals. It was also envisaged that research would be conducted into the special legal problems of Aboriginals and that publicity and relevant educational activities would be directed to Aboriginals and persons or groups who deal with Aboriginals.

614 Legal aid was to be available for representation in courts and tribunals throughout Australia where an Aboriginal had grounds for such representation; for advice on matters in which an Aboriginal had or was likely to have a direct interest, whether personally or as a member of a group; and for assistance in non-contentious matters where this was likely to be of direct benefit to Aboriginals. Legal assistance, other than to ascertain if the Aboriginal had reasonable prospects of success, was not to be available in respect of proceedings by way of appeal if in the view of the legal service no good purpose would be served by prosecuting or taking part in the appeal. Actions to be taken on behalf of an Aboriginal community or a substantial Aboriginal group were to be considered on an individual basis by the Australian Government following an approach by an Aboriginal legal service. The Program stipulated that in all matters an Aboriginal who was reasonably able to make some contribution towards the cost of legal service rendered be required to do so. The Program provided for the allocation of funds by the Australian Government through the Department of Aboriginal Affairs to each Aboriginal legal service on the condition that the funds be applied in accordance with the requirements laid down in the Program. Each service was required to submit annual budget proposals for approval by the Department of Aboriginal Affairs. The full text of the Program is given in Appendix 22.

615 After the implementation of the Aboriginal Legal Service Program in 1973 and following major increases in funds to Aboriginal legal services in 1974–75, the legal services which had until then been established only in the capital cities, began a rapid and continuous expansion in order to meet the needs and demands of clients in other areas. The increase in funds at this time can be seen in the table of grants made to the legal services during the period 1972–73 to 1979–80 (Appendix 8). Over time the Aboriginal Legal Service Program has lapsed and been superseded by other directives and guidelines issued at various times by the Department of Aboriginal Affairs and the Minister for Aboriginal Affairs.

Report of the Auditor-General and the Hay Report

616 Initiatives to introduce subsequent guidelines for the operation of the Aboriginal legal services have arisen as a result of the Report of the Auditor-General upon the Department of Aboriginal Affairs in March 1974 (in particular, his comments on the Department's administration of the Aboriginal legal services)[7] and recommendations of the Hay Report. Representatives of the Department of Aboriginal Affairs also stated that the Government felt it necessary to have a document which set down for the benefit of the legal services in summary form the purposes for which the Government provides public funds to these organisations.

617 Following the Auditor-General's report on the Department of Aboriginal Affairs, stricter financial requirements were introduced by the Department which became operative in May 1975. These requirements consisted of a set of conditions which applied to all Aboriginal organisations in receipt of Government grants-in-aid made through the Department of Aboriginal Affairs. In his inquiry into the effectiveness of the delivery of services financed by the Department of Aboriginal Affairs, Sir David Hay commented on the organisation and funding of the Aboriginal legal services and stated that the Department interpreted the present objective of the Aboriginal legal services as being more limited than that which prevailed under the former Government. In particular, the report recommended that the provision of assistance to Aboriginals in superior courts be subject to certain conditions, for example, that it be mandatory for Aboriginal legal services to seek assistance for eligible clients from any legal aid agency which provides legal assistance in these courts and that, where aid was not available, the Aboriginal legal services could only act for clients with the prior approval of the Minister for Aboriginal Affairs. The report also recommended that the Department and the Aboriginal legal services agree upon a schedule of case categories which the services were not to handle; that stricter budgetary controls be implemented; and that a fee be determined for each case category and charged to clients of the services.

Department of Aboriginal Affairs' Programming Guidelines

618 In September 1976, the Department of Aboriginal Affairs distributed to the Aboriginal legal services a draft document entitled 'Programming Guidelines: Legal Aid'. The Department's guidelines laid down operational parameters and priorities for funding. They stated the Department's views on such matters as priorities in casework; priorities in providing assistance to rural and urban clients; eligibility criteria to be applied to prospective clients (including a means test requirement, contribution rates, and a restriction on the number of times an

[7] *Report of the Auditor-General upon the Department of Aboriginal Affairs*, March 1974, AGPS, Canberra, 1974.

Aboriginal legal service may represent a client); directions for the services' scope of operation; the exclusion of certain civil law matters and all ancillary activities; and restrictions on the types of courts in which Aboriginal legal services were to represent clients. The guidelines were to have been discussed with the Minister at a conference of Aboriginal legal services in October 1976, but the document was unanimously rejected by the legal services and discussion postponed until February 1977 to allow the services time to prepare their own set of guidelines which they saw as appropriate to the provision of legal aid to Aboriginals.

Draft Operational Guidelines prepared by the Aboriginal legal services

619 The legal services prepared a document entitled 'Draft Operational Guidelines of Aboriginal Legal Services' which was considered at an Aboriginal legal service conference held in February 1977. The legal services' guidelines outlined the broad principles underlying the objectives of the Aboriginal legal services. The services' stated broad objective was 'To alter the conditions which keep the Aboriginal people powerless and the victims of injustice . . . the fundamental principle adopted by Aboriginal legal services to achieve their basic objective is self-determination.' The Aboriginal legal services further stated that 'the principle of self-determination is inseparable from the need for autonomy and as such the formulation and implementation of policy and priorities is the sole prerogative of the various Aboriginal Legal Service management committees'. The legal services claimed that, in view of the limited opportunity to effect or facilitate changes in social conditions through the traditional legal processes, they had accordingly adopted a role of 'economic, political, legal and social advocacy'. In respect of accountability, the Aboriginal legal services acknowledged in the document their responsibility and accountability to the Aboriginal people for the expenditure of Aboriginal funds.

620 The Minister for Aboriginal Affairs, representatives of the Department of Aboriginal Affairs and Aboriginal legal service representatives discussed areas of difference in the approach to the development of guidelines and basic principles underlying the guidelines. Although the Minister agreed with most of the objectives outlined in the Aboriginal legal services' guidelines, the legal services, the Minister and representatives of the Department were unable to reach agreement on the role of the legal services, the interpretation of self-determination, and the accountability of the legal services to the Aboriginal people.

Department of Aboriginal Affairs' Ministerial Objectives and Guidelines

621 In 1978 the Minister for Aboriginal Affairs issued a list of objectives and guidelines for the Aboriginal legal services which was included as part of the 'Government Financial Assistance to Aboriginals, 1979–80 Ministerial Directive'. Minor amendments were made to these objectives and guidelines in 1979. The amended directive includes the following provisions:

Objectives

(1) To provide Aboriginals with access to appropriate legal advice and representation, particularly in respect of criminal cases in the courts, and so eliminate disadvantages they may suffer under the existing legal system.
(2) To improve the situation of Aboriginal juvenile offenders before the law.
(3) To pay particular attention to Aboriginals in rural and remote areas who lack access to other forms of assistance generally available to the community. This should not be taken to exclude those Aboriginals in urban areas who, for social or other reasons, do not have ready access to such assistance.

(4) To promote improved relations between Aboriginals, the police and persons employed in the administration of justice.

Guidelines

(1) Projects selected for support should seek to establish:
  (a) the opportunity for Aboriginals to obtain legal representations, particularly in criminal matters and in cases of juvenile offenders;
  (b) the provision of assistance to Aboriginal parents relating to the custody and maintenance of their children;
  (c) training for Aboriginal staff in skills relevant to their employment in the Legal Services;
  (d) the maintenance of accurate statistics on the nature and frequency of Aboriginal involvement with the law;
  (e) the achievement of full liaison between the Legal Services and the police and other law enforcement agencies;
  (f) co-operative arrangements with general community legal aid services as to the sharing of resources, particularly in regard to the servicing of rural and remote areas and the maximum utilisation of the resources and services of other Aboriginal and community welfare organisations;
  (g) the conditions on which Aboriginal clients make financial contributions towards the cost of services rendered to them.
(2) Projects supported should identify clearly the area of operation and the priorities of the Legal Service concerned.

Interim Charter

622 Further guidelines of operation for the Aboriginal legal services were introduced by the Minister for Aboriginal Affairs in August 1979 in the form of a document entitled 'Aboriginal Legal Services—Interim Charter' (see Appendix 23). The Interim Charter sets out additional conditions under which the Commonwealth will provide finance to the Aboriginal legal services and prescribes how those moneys are to be applied. In effect the conditions laid down in the Interim Charter are similar to the Programming Guidelines prepared by the Department and rejected by the Aboriginal legal services after discussions with the then Minister and the Department early in 1977.

Reaction by the Aboriginal legal services to the Interim Charter

623 All the Aboriginal legal services, with the exception of the Aborigines and Torres Strait Islanders Legal Service and the St Mary's and Districts Aboriginal Legal Assistance opposed the Interim Charter both in principle and on the basis of its content. Most of the legal services expressed their disapproval of the terms of the Interim Charter and informed the Minister that they were not prepared to comply with the conditions contained in it. The services criticised the Department and the Minister for the lack of consultation on the Interim Charter before it was introduced and queried whether or not there was a need for such a document on the grounds that it was incompatible and inconsistent with the Government's policy of self-determination. Other criticism voiced by the legal services related to the need for such a document in light of existing departmental controls, the appropriateness of the priorities prescribed by the Department and the Department's role in setting such priorities, and the lack of recognition by the Department of the legal services' own objectives laid down in their respective constitutions, memoranda and articles of association. The legal services' reaction to the requirement in the Interim Charter that the services charge a standard service fee has been discussed in Chapter 16.

LACK OF CONSULTATION

624 The Aboriginal legal services protested to the Committee about the manner in which the Interim Charter was implemented. All the legal services criticised the Department for not involving them in the Interim Charter's formulation or consulting them before it was released. They objected to the approach taken by the Department and felt affronted by the fact that the Interim Charter was effectively handed to them as a *fait accompli* to be implemented immediately without any explanation. The services considered the introduction of the document showed complete disregard for the objections they had addressed to the previous Minister and his Department about the earlier draft programming guidelines. The legal services also objected to the Interim Charter on the grounds that there had been no further discussion on the introduction of additional operational guidelines since the conference in 1977 when the then Minister for Aboriginal Affairs had stated that he would further consider the draft operational guidelines prepared by the legal services and inform them of his deliberations.

625 A basic aspect of the Government's policy of self-management in Aboriginal affairs is the recognition of the need to consult Aboriginal individuals and groups concerning decisions about programs designed to assist them. This important aspect of the Government's policy was ignored in this instance. The Interim Charter was not only introduced without proper prior consultation with the legal services but it also failed to take account of the objections they had raised two and a half years earlier to a document containing similar conditions.

626 When the Interim Charter was introduced, however, the Minister stated publicly and in writing to each legal service that the Government's intention was to review the document after this Committee had completed its inquiry into Aboriginal legal aid, taking into account the legal services' reaction to the Interim Charter during its investigations, and after the proposed review of the operation of the Aboriginal legal services in New South Wales which was to have been undertaken by Mr Justice Wootten.

AUTONOMY

627 In evidence to the Committee, the Department of Aboriginal Affairs stated that the legal services are autonomous organisations and that they can obtain and use their own resources in their own way. In response to questioning about whether the Interim Charter is compatible with the Government's policy of self-determination and self-management, the Department stated that every time the Government provides money it impinges on the autonomy of the recipient and that complete self-management is something attained only with complete self-sufficiency, when organisations have their own resources and do not depend on the Government for funding. It was put to the Department that other Aboriginal organisations providing professional services funded through the Department such as the Aboriginal medical services do not have similar documents imposing additional conditions of funding on them. The Department suggested that perhaps the introduction of a charter for the legal services could in fact lead to consideration of whether grants for other purposes should be related to a more elaborate set of conditions than is now the case.

628 The Redfern Aboriginal Legal Service stated that while the Department acknowledges that the Aboriginal legal services are autonomous bodies, their autonomy is subject to many conditions and constraints. It considered that although

the Interim Charter is generally worded, it gives the Minister power to intervene in an area where he has not intervened in the past. The Legal Service objected to the fundamental philosophy underlying the charter which allows the Minister to direct in a general fashion the way in which the Service should conduct its affairs.

629 The Victorian Legal Service claimed that it has operated successfully without a charter for a considerable time and that, apart from its responsibility to account to the Department for the use of funds, the operation of the Service itself is a matter which should be determined by the Aboriginal community. In a letter to the Minister dated 10 September 1979 it stated that 'if the Service is indeed an autonomous service, managed by the Aboriginal community, then it would seem that matters such as those raised in the charter should be decided by the Service itself, rather than being arbitrarily imposed'.

630 Other Aboriginal legal services stated that, while recognising that the Aboriginal legal services are autonomous organisations, the Interim Charter provides that the services will be eligible for financial assistance so long as they provide legal advice and assistance in accordance with priorities set out in the Interim Charter. If the Commonwealth Government, through the Minister, is to set the priorities for the Aboriginal legal services, the authority and decision-making functions of the services' boards of directors and committees of management will be seriously undermined.

631 The fundamental problem which has arisen from the implementation of the Interim Charter relates to its effect on the autonomy of the Aboriginal legal services and the ability of the Aboriginal people to be self-managing in the area of legal aid. At the same time, the legal services are required to be accountable to the Government for the public funds they receive from it. It is difficult and perhaps impossible to strike a balance between the extent to which organisations such as the Aboriginal legal services should be permitted to exercise their autonomy and the extent to which their activities should be directed or monitored to ensure their accountability for the use of public funds. In some respects, it is misleading to consider that such organisations can be autonomous while they are dependent on government financial support. However, since the Government had espoused a policy of self-management in Aboriginal affairs, it is important that the funding body does not act in such a way as to unreasonably inhibit an Aboriginal organisation's capacity for self-management and community control by imposing unnecessarily restrictive conditions of funding. While it is true that the composition of some legal services' boards of directors and committees of management is not as broadly representative of the Aboriginal community as the Committee would consider desirable, the Committee believes it is important that the role of these controlling bodies is not rendered ineffectual and that the autonomy of the legal services is preserved as far as possible. The Department of Aboriginal Affairs itself has stated that Aboriginals must be involved in the programs that concern them; they must determine their own priorities, develop initiatives and take responsibility for the decisions they make.[8]

EXISTING CONTROLS

632 The legal services questioned the need for a charter in light of existing controls governing the operation of the legal services and their accountability for the

[8] *Background Notes*, Department of Aboriginal Affairs, No. 7, November 1979.

expenditure of funds. Control is already exercised by the Department firstly, through financial rules set out in the 'Conditions for Grants from the Department of Aboriginal Affairs' and the 'Ministerial Directive and Programming Guidelines' which are issued regularly; secondly, though the discretionary power of the Minister or his delegate in most areas of the legal services' operations as provided for in clause 26 of the Ministerial Directive; and thirdly, by State and Territory company legislation governing the incorporation of the legal services. The Department stated that the legal services do in fact follow departmental financial rules and only occasionally has it been necessary to make trustee arrangements for a particular legal service because of financial problems. It is therefore questionable whether it is necessary or beneficial to introduce additional conditions of funding.

PRIORITIES

633 Objections to the Interim Charter also related to the list of priorities laid down by the Minister and contained in sections four, five and six of the Interim Charter. The legal services questioned the Department's interpretation of the legal services' role. They also questioned the appropriateness of a department which employs no experienced senior legal officers or persons with expertise in the administration of a legal aid agency setting priorities for a professional organisation such as an Aboriginal legal service.

634 There was no dispute about the importance of the need for the legal services to give priority to the provision of assistance in the criminal area. Evidence received by the Committee from the Aboriginal legal services shows that the legal services' time and resources are overwhelmingly devoted to providing legal assistance in criminal matters although there are still some shortcomings in meeting Aboriginals' needs in this area of the law. The services consider that the provision of legal assistance in criminal matters is their primary function and will continue to dominate their workload in the forseeable future. However, they are increasingly aware of the need to take preventive measures and give attention to non-criminal legal matters arising from and contributing further to the disadvantaged social and economic status of Aboriginals in Australian society; that is, they perceive a need to attack the causes rather than the symptoms of Aboriginals' conflict with the law.

635 There was considerable confusion about the intention of section six of the Interim Charter which relates to the legal services' role in civil matters. Problems of definition and interpretation relating to the relative priority accorded specific areas of civil law have been discussed in Chapter 9. In that chapter the Committee also concluded that the urgent need to provide legal assistance to Aboriginals in criminal matters should not preclude any need for legal assistance in other areas of the law. While Aboriginal legal services must endeavour to meet the needs of Aboriginals who require legal representation in criminal matters, it is also important that they facilitate the access of Aboriginals to legal aid in non-criminal matters, particularly matters within the civil jurisdiction and problems arising from administrative decisions involving social security matters which affect Aboriginals' ability to function effectively in the Australian community. The Committee reiterates its belief that if Aboriginals' disadvantaged position within the Australian community is to be improved it is essential that they have the same access to civil remedies to protect and enforce their rights as other members of the community.

636 Most of the legal services stated that it was neither practicable nor realistic to set priorities as the Interim Charter attempts to do. The legal services maintained that a major strength in their operation has been that they are able to respond quickly to particular needs and demands of their clients. Legal services' boards of management have set priorities and have been responsive to the needs of their electors—the clients of the legal services. As far as the allocation of priorities is concerned, the legal services stated that they rely on their own constitutions, memoranda and articles of association which list the objectives of the services and have been approved by the Aboriginal communities they serve. However, the legal services also claimed that in practice it is difficult to follow a set list of priorities. The services must be flexible enough to meet each situation as it arises and to attempt to provide assistance to all Aboriginals who approach them. Although day-to-day criminal matters take priority because they are the most urgent matters dealt with by the Aboriginal legal services, other matters are handled as they arise. The legal services stated their clients' needs change and therefore priorities change not only from year-to-year but almost from week-to-week and from day-to-day. In this respect, each solicitor exercises his own professional judgment and uses his experience to determine where priorities lie. The priorities of the legal services are therefore determined by the needs and demands of their clients, by the solicitors' judgment on each matter before them.

637 Some legal services suggested that it is unwise to introduce a list of priorities across the board for all Aboriginal legal services because priorities between the services vary. For example, the Victorian Aboriginal Legal Service stated that while the provision of legal aid to juvenile offenders is high on their list of priorities and would probably become higher with the present increase in the Aboriginal youth population, the provision of assistance to Aboriginal parents relating to the custody and maintenance of their children is not a particular problem in Victoria. Because there is considerable demand for assistance with landlord and tenancy matters, especially by housing commission tenants, this area is accorded high priority by the Service although the Interim Charter accords most civil law matters low priority. Although Victorian Aboriginal Legal Service considered it is not possible to provide a list of graded priorities, it suggested that the following matters receive lowest priority: conveyancing, probate, defamation, company and commercial matters.

638 The Aboriginal Legal Service of Western Australia stated that matters relating to motor vehicle insurance and clients' problems with the housing commission are as important as other matters listed in section five of the Interim Charter. It also objected to the Interim Charter because it precludes the Service's involvement in mining matters such as negotiating with mining companies on behalf of Aboriginal communities and preparing agreements between Aboriginals and mining companies. It considered that the Interim Charter fails to recognise that each Aboriginal legal service faces a range of problems, some of which are shared by all while others are unique to particular areas.

639 The allocation of priorities is crucial to the effectiveness of the Aboriginal legal services. The Committee believes that if the Aboriginal legal services are to meet the needs and demands of Aboriginal people, Aboriginals must participate in decisions concerning the allocation of resources. The community-based structure of the Aboriginal legal services and constitutional provisions for community representation on their controlling bodies allow the services to set goals and

objectives which meet the needs and demands of the Aboriginal people. The Government has stated in its policy of self-management that Aboriginals must play a significant role in their affairs by setting the long-term goals and objectives which the Government should pursue and the programs it should adopt in such areas as legal aid. The Minister for Aboriginal Affairs has also stated that, although departmental officers have a contribution to make in ascertaining the needs and priorities of Aboriginal communities and groups, they must 'respect the fact that decisions on needs and priorities rest with the community or group'.[9]

640 The Committee has some reservations, however, about the Aboriginal legal services' comments on the impracticality of ordering priorities in the delivery of legal aid to Aboriginals. There is a danger in assuming that by meeting demand as it arises, a legal service is catering for those in greatest need. While the Committee appreciates the legal services' concern not to discourage clients or prospective clients from utilising the services, it is important that through this approach they do not restrict their activities to meeting the diverse legal (and non-legal) needs of a relatively small proportion of their clients who have ready access to a service and are aware of the wide range of assistance available to them. In this respect, the allocation of priorities on the basis of expressed demand, while increasing the access of certain individual clients to a wide range of legal services, may effectively restrict the composition of the legal services' clientele and deny those in greatest need access to even a minimal level of legal aid, particularly in the rural sector.

641 The Committee believes that in their operations the legal services should adhere to the priorities determined by their elected bodies. It is equally important that these priorities reflect the legal needs and demands of the Aboriginal client population throughout a legal service's jurisdiction. Unless the legal services provide for effective community representation on the controlling bodies of the services and give due attention to the legal needs of those Aboriginals who are less articulate and less able to make their needs known, this will not be achieved.

Involvement in other programs

642 Many found section four of the Interim Charter ambiguous and confusing. The section states:

> The primary purpose of the Aboriginal Legal Services is to provide Aboriginals with access to appropriate legal advice and representation; therefore the Services should not become involved in other programs which might detract from this objective and should in any event seek the prior concurrence of the Minister for Aboriginal Affairs should they wish to provide services other than legal services. This does not, however, preclude the making of co-operative arrangements with other Aboriginal organisations in regard to the provision of complementary services.

The legal services thought that from their previous experience, the section was probably intended to exclude their involvement in any non-legal matters, particularly activities that fell within the welfare area. This interpretation was confirmed by officers of the Department who stated that section four was directed towards discouraging 'the extension of legal services into welfare areas and the employment of non-lawyers to carry a greater welfare load'.

643 In their guidelines prepared for the then Minister for Aboriginal Affairs in 1977, the Aboriginal legal services stated that they 'maintain their right to conduct

[9] *Ministerial Directive and Programming Guidelines, Government Financial Assistance to Aboriginals 1980–81*, Department of Aboriginal Affairs, section 13.

an independent and comprehensive service in all matters' and included within the scope of their functions and priorities the provision of assistance in welfare matters. They stated that because many conventional welfare agencies are negative, ineffectual and remote in their relations with Aboriginal people, the Aboriginal legal services should be supported in implementing positive programs, in assisting Aboriginal communities to establish welfare organisations, and in attempting to make existing programs more accessible and effective. While the then Minister for Aboriginal Affairs had acknowledged that legal, social and welfare services overlapped to some degree, he considered that the establishment of welfare agencies by the legal services themselves would not be acceptable.

644 While the Committee does not suggest that the legal services should themselves establish welfare agencies, or be funded as such, it considers that the importance of the Aboriginal legal services' contribution to the wellbeing of Aboriginals in this area should not be underestimated. Evidence received by the Committee indicates that conventional welfare services are not meeting the special needs of Aboriginal people, particularly in remote areas; that Aboriginals are subjected to injustices through administrative decisions; and that the intervention of the Aboriginal legal services in this area has been of considerable benefit to Aboriginals. It is also fostering an awareness of and responsiveness to the problems of Aboriginal people amongst conventional welfare services.

645 The Department of Aboriginal Affairs informed the Committee that because the Parliament appropriates moneys for Aboriginal aid programs under ten functional headings which are based on United Nations' classifications, it is axiomatic that programs or projects comply strictly with the guidelines or formula appropriate to the particular function. The Interim Charter reinforces the Department's requirement as to the use of funds and resources. In some respects, this approach appears inconsistent with the Department's statement that programs are not straightjackets—they are merely convenient aggregations for describing how appropriations are to be spent; for assessing total calls on resources; for analysing and evaluating expenditure; and for ensuring parliamentary control.[10]

646 The Committee believes it is inevitable that the Aboriginal legal services which are essentially poverty law practices will be required to provide advice and assistance in non-legal matters contributing to or arising from associated legal problems. It also believes that preventive projects which seek to deal with the causes underlying Aboriginals' conflict with the law, especially where juveniles are concerned, reflect a recognition by Aboriginal people of the need to adopt long-term measures to deal with the problems which may give rise to criminal and anti-social behaviour by Aboriginals and that such projects should not be discouraged. The Committee considers that initiatives by the Aboriginal legal services in this area should be promoted and, where necessary, funded in conjunction with other program areas or through co-operative funding arrangements with State agencies responsible for the delivery of welfare services.

Constitutions, Memoranda and Articles of Association

647 The functions of the legal services and their objectives for the delivery of legal aid are contained in their respective governing constitutions, memoranda and articles of association. The objectives of the Aboriginal legal services are essentially similar and cover most of the matters raised in the Interim

[10] Department of Aboriginal Affairs, *Annual Report* 1978–79, AGPS, Canberra, 1979, p. 72.

Charter: Aboriginal–police relations, collection and publication of statistics, training of staff, establishment and maintenance of co-operative arrangements with other legal aid agencies, and provision of general advice on any legal matter. The first objective of all the constitutions is to assist Aboriginals in need of legal advice, representation or other legal services. However, unlike the Interim Charter, the constitutions do not rank the legal services' activities relating to court work. Other points raised in the Interim Charter which are not provided for in the services' constitutions relate firstly, to the introduction of a standard service fee, and secondly, to the implied preferential allocation of resources to provide assistance to Aboriginals in rural areas.

648 When questioned about the contents of the legal services' constitutions, memoranda and articles of association and, in particular, the legal services' own objectives of operation, the unfamiliarity of officers of the Department of Aboriginal Affairs with the constitutions and objectives of the legal services became clear. Officers from the Department's Central Office who appeared before the Committee in fact admitted that they had not read the constitutions but stated that regional and area officers would be reasonably familiar with them. Representatives of the Department assured the Committee that when the legal services were first established and funded, the Department would have called for the constitutions and checked all aspects to ensure that the objectives were satisfactory from the Department's point of view and that the procedural matters which were contained in the constitutions satisfied their financial requirements. It is significant that in 1974 the Auditor-General found that the Department had not obtained and examined some of the constitutions of the then existing Aboriginal legal services. At that time the Department reported to the Auditor-General that it would obtain and examine the constitutions. It is apparent from the Department's lack of knowledge about the contents of the legal services' constitutions, memoranda and articles of association that these documents have still not been properly considered by the Department. The Committee believes that had the Department studied the terms and conditions of the various constitutions, memoranda and articles of association, it may have found the inclusion of some of the requirements of the Interim Charter unnecessary.

Terminology used in the Interim Charter

649 It became readily apparent to the Committee that the meaning of some of the terms and phrases used in the Interim Charter is obscure, particularly those relating to the list of priorities set out in sections four, five and six. One legal service's senior solicitor stated that some sections within the Interim Charter are 'unintelligible and impossible of definition'. In many respects the terminology used is vague and ambiguous. As a consequence the legal services adopted differing views about the interpretation of the conditions set out in the Interim Charter. The Department was unable to provide any satisfactory definition of some phrases and words used. One senior officer stated to the Committee that the legal services could guess what the Department was referring to in the Interim Charter. On the other hand, the Department stated that it thought the Interim Charter was clear and unequivocal. The Committee suggests that the legal services may have interpreted the document too strictly. Notwithstanding this, it considers that clarity of definition is essential in a document purporting to set down special conditions of funding which are to be used as directives, guidelines and controls of organisations by the funding body and that the document must therefore be able to stand up to examination. For such a document to be effective it is

important that each legal service understands exactly what is required of it and what conditions are intended to be applied, and that there is no inconsistency in its interpretation between the services.

Need for the Interim Charter

650 As it presently stands, the usefulness of the Interim Charter as a document intended to provide direction and guidance to the Aboriginal legal services is limited. Its terminology is vague and confusing and indicates a lack of thought and care in drafting. The Interim Charter also demonstrates the limited capacity of departmental staff who are inexperienced in the administration of a legal aid agency to direct and instruct organisations comprising people who are professionals in their field and who have over the years developed a high degree of expertise and sophistication in the delivery of legal aid to Aboriginal people.

651 The constitutions and/or memoranda and articles of association governing the Aboriginal legal services are settled by the organisations' membership and submitted to the Minister for Aboriginal Affairs for approval. Apart from prescribing normal statutory requirements as incorporated organisations, the constitutions and memoranda and articles of association contain principles of operation based on the stated objectives, goals and priorities of the Aboriginal legal services. Funding is made available to the organisations on the basis of the acceptance of such documents by the Minister for Aboriginal Affairs. It is assumed that organisations notify any changes to constitutions to the Department or Minister for Aboriginal Affairs and that continued funding is dependent upon continued compliance with such documents. It is the Committee's view that this procedure provides for all the supervision which the Government anticipated would flow from the adoption of the Interim Charter.

652 The Committee therefore believes that, consistent with the Government's policy of self-determination by Aboriginal people, subject to the Department of Aboriginal Affairs' present funding instructions contained in 'Conditions of Grants', and in compliance with the Aboriginal legal services' respective constitutions and/or memoranda and articles of association, the formulation and implementation of policy, objectives and priorities be the prerogative of the Aboriginal legal services. The Committee also considers that any amendments to Aboriginal legal services' constitutions be approved by membership of the services and submitted to the Minister for Aboriginal Affairs for approval, and that continued funding be dependent on such approval and on the compliance of the organisations with their respective constitutions.

653 As well as providing the Minister for Aboriginal Affairs with audited accounts and financial statements of their operations for the past year, some legal services present annual reports describing their activities over that period. The Committee sees merit in the preparation and presentation of such annual reports by the legal services. It considers this is an appropriate way of maintaining close liaison with the Minister and his Department, and an avenue through which Aboriginal legal services can draw to the Minister's attention proposals for future development and change, problems encountered in the delivery of legal aid to clients within their State, Territory or region (including problems relating to Aboriginal–police relations, Aboriginal juvenile offenders, Aboriginal customary law, co-operation with other legal aid agencies, and the collection of statistics), and other difficulties experienced in attaining their organisations' objectives.

654 The Committee accordingly recommends that:

- *Aboriginal legal services be required to submit annual reports on their operations and activities to the Minister for Aboriginal Affairs in which proposals for future development and problems relating to the delivery of legal aid and other matters can be drawn to the Minister's attention; and*
- *the Minister for Aboriginal Affairs respond to proposals and grievances raised by the Aboriginal legal services in their annual reports and provide the necessary advice and assistance to the Aboriginal legal services which will enable them to attain their objectives.*

Implementation of policy by the Department of Aboriginal Affairs

655 During the inquiry the Committee received evidence directly or indirectly relating to the role of the Department of Aboriginal Affairs; the Department's interpretation and application of the Government's policy on Aboriginal legal aid and on Aboriginal self-determination; and the attitudes of departmental staff towards the Aboriginal legal services in particular and the Aboriginal people in general. This evidence revealed shortcomings in the Department's ability to carry out its functions and responsibilities and implement effectively the Government's policy on Aboriginal affairs, particularly in the specialised field of legal aid.

656 The Committee is concerned about the Department's interpretation and application of the Government's policy of self-determination. In response to questions about lack of departmental support and initiatives in the area of Aboriginal field officer training, the Department stated that this was a matter for Aboriginal initiative according to the policy of self-determination and that the Department would wait to respond to moves taken by the legal services in this area. However, in 1975 the Department stated it was preparing special training schemes for Aboriginal field officers.[11] No comprehensive training programs have been developed. In 1975 the Department also stated that a computer based statistical system was being established to assist the legal services in defining their priorities and to enable the Department to assess the effectiveness of the services.[12] There is still no nationally co-ordinated comprehensive statistical system. The Department stated to the Committee that it is now waiting for the Aborigines and Torres Strait Islanders Legal Service to design an appropriate system. While the Committee believes Aboriginals should be permitted to take initiatives in all areas affecting them, it does not believe the policy of self-determination absolves the Department from is responsibility to design and promote projects which will assist Aboriginals towards self-management, particularly projects which have significance for all Aboriginal legal services.

657 The Committee is also concerned that at times when the legal services have taken initiatives in proposing projects, the Department has been reluctant to support them or offer encouragement despite the fact it may acknowledge the need for such projects. The Department's appraisal of proposals tends to be more on the appropriateness of the legal services' involvement in such projects on the basis of funding arrangements, than on the merits of the proposal. For example, in 1978 the Department announced that it was 'assessing the nature and effectiveness of the special protections available to Aboriginal juveniles with a view to developing guidelines for use by State and Territory authorities' and in particular 'systems

[11] Department of Aboriginal Affairs, *Annual Report* 1974–75, AGPS, Canberra, 1975, p. 15.
[12] *ibid.*, p. 16.

designed to divert Aboriginal juveniles from the court process'.[13] A proposal by the Aborigines and Torres Strait Islanders Legal Service to develop an aid program for Aboriginal juveniles was rejected by the Department. While the Department acknowledged the need for such a program, it considered the Service was not the appropriate organisation to operate it. No consideration appears to have been given by the Department to establishing the program through another Aboriginal agency possibly in conjunction with the Aborigines and Torres Strait Islanders Legal Service.

658 The Committee gained the impression that the Department was more concerned to contain the Aboriginal legal services by restricting the scope of their operations than to encourage their efforts and initiatives to secure the legal rights of Aboriginal people. The Department has made little real attempt to initiate and promote training schemes for Aboriginals employed by the legal services nor has it adopted an active public relations role to promote in functional government departments and other agencies and institutions awareness and understanding of the special legal needs of Aboriginals and thus facilitate liaison between the legal services and these bodies. It has offered minimal support and encouragement to the legal services in their efforts to secure law reform and administrative changes which will improve the social, economic, political and legal status of Aboriginals and thus enhance their dignity, self-respect and self-reliance. It has provided limited assistance to the legal services in their attempts to improve race relations problems encountered by Aboriginal people, particularly in country areas and has taken few steps to demolish unnecessary bureaucratic barriers between Aboriginals and the programs intended to assist them towards self-management. The Committee believes that departmental initiatives in these areas could be valuable and would not impinge on Aboriginal people's right to determine their own future.

659 Although the Department of Aboriginal Affairs is a decentralised department with an elaborate network of regional and area offices, officers from the Department's Central Office who appeared before the Committee were generally unfamiliar with the aims and objectives of the legal services as described in their constitutions, and uncertain about the Department's policy on specific issues affecting the legal services' management and operation. Some comments reflected a lack of understanding and appreciation of the nature and extent of Aboriginals' demands on the legal services and of problems faced by the services in their attempts to meet those demands. However, the Committee found that departmental staff in the field (that is, those employed in country areas and remote communities) were familiar with the special needs of Aboriginal people and the problems they encounter, concerned about the wellbeing of Aboriginals, determined to promote Aboriginal initiatives and control, and extraordinarily dedicated.

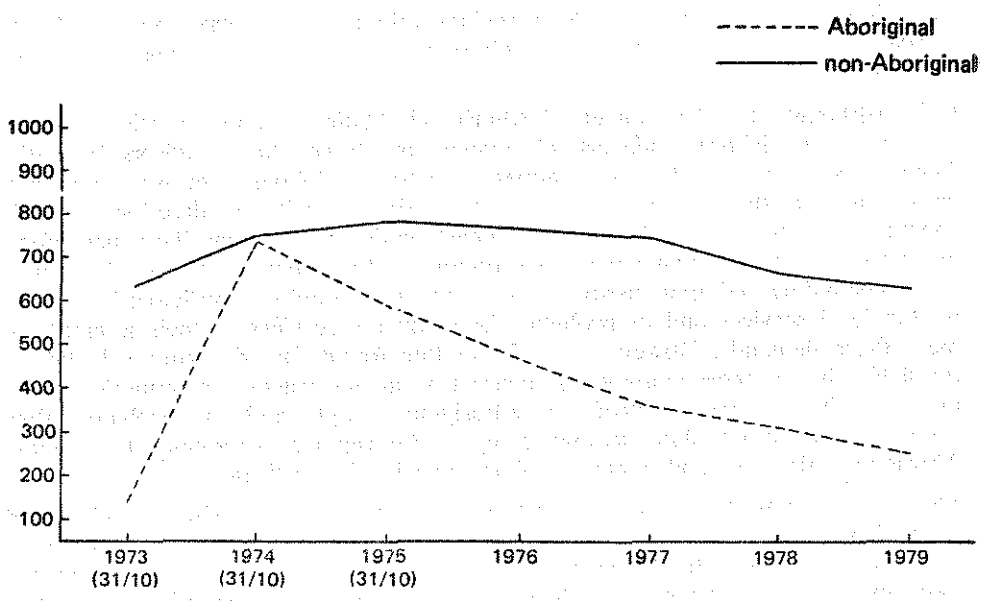
660 The Department does not employ any senior legal officers and stated in evidence that it sees no need to appoint a lawyer within the Department to advise and assist the Aboriginal legal services and the Department in the development and evaluation of legal aid programs. The Committee considers that the Department's ability to assess the legal services' funding requirements, to evaluate the legal aid program, to make decisions concerning the allocation of priorities, and to provide advice and assistance on the operation of the legal services is therefore severely limited. It believes there is a need to employ within the Department a suitably qualified legal practitioner with experience in an

[13] Department of Aboriginal Affairs, *Annual Report* 1977–78, AGPS, Canberra, 1978, p. 35.

Aborginal legal service or some other legal aid agency, who could assist the Aboriginal legal services and the Department in maintaining, evaluating and, where appropriate, expanding the Aboriginal legal aid program. The Committee recommends that *the Department of Aboriginal Affairs employ a full-time senior lawyer who is experienced in legal aid matters and familiar with the special legal needs and problems of Aboriginals to advise both the Aboriginal legal services and the Government on the operation of the Aboriginal legal aid program.*

661 Although the Committee did not investigate the administration of the Department nor its effectiveness and rate of growth over recent years, it is concerned to ensure that sufficient emphasis is being placed on the expansion of Aboriginal-controlled organisations through which Aboriginal self-determination can be realised, and that the Department of Aboriginal Affairs' administrative role and non-Aboriginal staff requirements are not increasing at the expense of Aboriginal programs. The Committee notes that the proportion of Aboriginal staff employed by the Department has decreased significantly in recent years. In 1975 Aboriginals comprised 43% of the total staff employed by the Department; in 1979 Aboriginals accounted for only 27% of staff. While there has also been an overall reduction in the number of staff employed by the Department of Aboriginal Affairs, the table below illustrates that there has been a disproportionate decrease in Aboriginal staff employed by the Department compared with non-Aboriginal staff.

Aboriginal and non-Aboriginal staff numbers – 1973 to 1979



Source: Department of Aboriginal Affairs (See Appendix 24, Staff numbers of the Department of Aboriginal Affairs at 30 June 1973-79).

662 The Committee supports the comments of the Royal Commission on Australian Government Administration concerning the need for increased Aboriginal participation in the processes of government which deal with Aboriginal affairs, especially in matters relating primarily or exclusively to Aboriginals and

to the need to employ a higher proportion of Aboriginals at all levels of governmental work and responsibility.[14] The Commission also commented that special and urgent action is needed to train Aboriginals for Public Service work and made a number of specific recommendations on this matter including the design and implementation of a 5-10 year program of special recruitment and training of Aboriginals in the Department of Aboriginal Affairs, other departments with significant Aboriginal to total client ratios, and government administration generally; the recognition of Aborigianality in the recruitment of persons to positions for which an Aboriginal background is a significant factor in the efficient performance of the duties concerned; and the development of programs of general education, specialised training and graduated experience to equip different categories of trainees to enter, at various levels, Commonwealth Government employment and Aboriginal incorporated organisations.[15]

663 The Committee considers there is a need to investigate promotion and career structures within the Department of Aboriginal Affairs and within Aboriginal organisations. One of the problems facing Aboriginal organisations is that their scope for providing suitable career structures for staff, particularly Aboriginal staff, is extremely limited, and this inhibits the capacity of Aboriginals to assume greater control of their own affairs.

664 It was also suggested that the Department's effectiveness could be improved through the development of a staff exchange program between Aboriginal organisations and the Department of Aboriginal Affairs' central and regional offices. For example, the secondment of departmental officers to the Aboriginal legal services for a specific period of time would increase the Department's understanding and appreciation of the legal services' role, their management and operation, and the legal needs and demands of Aboriginal clients. The temporary transfer of Aboriginal legal service staff to departmental offices would allow Aboriginals to improve their management skills and increase their knowledge of departmental policy and procedures.

665 The Committee endorses this proposal and considers it would be beneficial to the advancement of Aboriginal self-management and would hasten the transfer of control from the Department to Aboriginal people. This proposal would also give effect to the Minister's directive[16] that the Government contribute to the development of management skills by increased employment of Aboriginals in Government departments and authorities, and increased Aboriginal involvement in the development of policies and the design, delivery and evaluation of services affecting them.

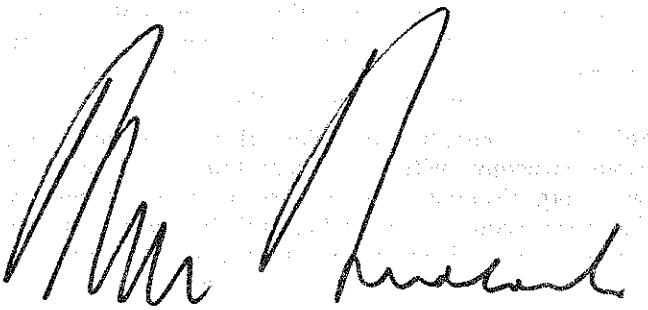
666 The Committee recommends that *the Government review the promotion and career structures for Aboriginal people within the Department of Aboriginal Affairs and Aboriginal organisations and that the Department of Aboriginal Affairs, in consultation with the Public Service Board, develop a program for the interchange of Aboriginal and non-Aboriginal staff between the Department of Aboriginal Affairs and Aboriginal organisations.* The Committee further recommends that:

- *the Minister for Aboriginal Affairs seek an inquiry into the present structure, role, composition and future of the Department of Aboriginal Affairs and*

[14] Royal Commission on Australian Government Administration (Chairman: Dr H. C. Coombs), *Report*, AGPS, Canberra, 1976, pp. 341–2.
[15] *ibid.*, p. 188.
[16] *Ministerial Directive and Programming Guidelines, Government Financial Assistance to Aboriginals* 1980–81, Department of Aboriginal Affairs, section 18 (c).

its interpretation and application of the Government's policy of self-determination; and

- *the inquiry into the Department of Aboriginal Affairs be conducted by a small group of Aboriginal people and experts drawn from outside the Commonwealth and State Public Service structures who are familiar with Aboriginal affairs and experienced in the organisation and delivery of programs designed to assist disadvantaged people.*



July 1980

PHILIP RUDDOCK
Chairman

Dissent by Mr A. C. Holding MP, Mr S. J. West MP, and Mr J. S. Dawkins MP.

We are unable to agree with the recommendations in Chapter 16, paragraph 587 of the Committee's report that:

- *the Department of Aboriginal Affairs seek the co-operation of the Aboriginal legal services in developing a flexible and informal means test for Aboriginal legal services; and*
- *Aboriginal legal services apply properly means-tested charges for legal services provided to clients.*

Our reasons for dissenting from these recommendations are based on the weight of evidence received by the Committee.

All witnesses who appeared before the Committee on behalf of Aboriginal legal services spoke of the efforts made by the legal services to build up confidence within the Aboriginal communities they serve by creating an awareness of legal rights and fostering readiness to seek legal advice and assistance in the enforcement or protection of those rights. This process is often painfully slow, having regard to the history of the treatment of Aboriginals within the legal system of a dominant white community. However, the Aboriginal legal services' efforts in this area have undoubtedly been aided by the fact that legal advice and assistance have been provided to Aboriginal people without charge. The announcement by the Minister for Aboriginal Affairs of the requirement that, in respect of each case, the Aboriginal legal services levy a standard fee (initially set at $5 per case) and of guidelines for the collection of the fee, has been dealt with very charitably by the Committee. It appears to us, having regard to the evidence given to the Committee by Aboriginal legal services, that the refusal of the legal services to implement this condition in the Interim Charter was not so much dependent upon the outcome of this Committee's inquiry, as it was due to problems of bookkeeping and administration which made attempts to collect the $5 service fee an administrative nightmare which only hampered the efficiency and effectiveness of the delivery of legal aid by those services to the most socially deprived group in Australian society.

These arguments have not changed, nor to our minds has there been any other evidence which would alter our view about the difficulties involved in 'developing a flexible and informal means test for Aboriginal legal services'. The fact is that the overwhelming body of cases dealt with by Aboriginal legal services deal with citizens living well below the poverty line. In the Report, the Committee has recommended that the Aboriginal legal services should be expanded to take in a more extensive range of services and we support that view. We see no benefit in encouraging further discussion between the Aboriginal legal services and the Minister for Aboriginal Affairs or his Department in an endeavour to create a new scale of legal charges based upon some view of what is an appropriate 'means-tested' legal fee. While such an attempt might satisfy the reasoning upon which the ill fated $5 standard service fee was rationalised, it is doubtful that it would have any significant effect in increasing either the range of legal services available to Aboriginal people or improving the quality of services provided by the Aboriginal legal services.

We believe that the Aboriginal legal services are staffed by competently trained members of the legal profession who are aware of the range of professional fees currently being charged for legal services. The rare occasion when an Aboriginal legal service is called upon to provide legal services to an Aboriginal whose level of income is such that he could afford to pay for such services, can be provided for by allowing the Aboriginal legal service either to charge a proper legal fee or to refer the case to a private practitioner. The appropriate decision can, we feel, best be left to the Aboriginal legal service itself and its professional staff.

A. C. HOLDING M.P.

S. J. WEST M.P.

J. S. DAWKINS M.P.

July 1980

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MARTIN-JARD, Mr F. W.	President, North Australian Aboriginal Legal Aid Service, Darwin, N.T.
MERRITT, Mr R.	Field Officer, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
MILES, Mr B. R.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd Redfern, N.S.W.
MILES, Mr D. A.	Council Member, Law Institute of Victoria, Melbourne, Vic.
MINYIPIRRIWUY, Mr P.	Executive Member, National Aboriginal Conference, Elcho Island, N.T.
MITCHELL, Mr B. J.	Area Officer (Metropolitan Area), South-East Region, Department of Aboriginal Affairs, Melbourne, Vic.
MONKS, Mrs R. L.	Cabinet Member, Central Australian Aboriginal Legal Aid Service, Alice Springs, N.T.
MOORE, Miss N. J.	Youth Worker, Youth Division, Department of Community Welfare Services, Melbourne, Vic.
MORGAN-PAYLER, Mr W.	Solicitor, Victorian Aboriginal Legal Service Co-operative Ltd, Fitzroy, Vic.
MORIARTY, Mr J.	Acting Regional Director, South-East Region, Department of Aboriginal Affairs, Melbourne, Vic.

MUNRO, Mr L. J.	Chairman, National Aboriginal Conference, Moree, N.S.W.
MUNRO, Mr L. T. Jnr	Acting Secretary to Board of Directors, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
NAYDA, Mr L.	Greenacres, S.A.
NELSON, Mr R.	Cabinet Member, Central Australian Aboriginal Legal Aid Service, Alice Springs, N.T.
NEWBY, Ms H. E.	Cottesloe, W.A.
NICHOLAS, Mr B. E.	Project Officer, Constitutional Section, Department of Aboriginal Affairs, Canberra, A.C.T.
NICHOLLS, Mr D. M.	Manager, St Mary's and Districts Aboriginal Legal Assistance Ltd, St Mary's, N.S.W.
NORRISH, Mr S.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd Redfern, N.S.W.
OAKES, Mr W. K.	Assistant Secretary, Evaluation Branch, Department of Aboriginal Affairs, Canberra, A.C.T.
O'DONOGHUE, Mrs L., A. M.	Executive Member, National Aboriginal Conference, Quorn, S.A.
O'GORMAN, Mr T. P.	Solicitor, Queensland Law Society, Brisbane, Qld.
O'NEILL, Mr N. K. F.	Balmain East, N.S.W.
O'SHANE, Ms P. J.	Artarmon, N.S.W.
OWENS, Mr L. N.	Project Officer, South Australian Regional Office, Department of Aboriginal Affairs, Adelaide, S.A.
OWENS, Chief Inspector N. J.	Director of Legal Service, Northern Territory Police Force, Darwin, N.T.
PAGES-OLIVER, Superintendent L. M.	Superintendent-in-Charge, Prosecuting Branch, Police Headquarters, Perth, W.A.
PALAMARA, Miss A.	Co-ordinator, Aboriginal Family and Adolescent Services, Department of Community Welfare Services, Melbourne, Vic.
PARSONS, Mr D. A.	Senior Solicitor, North Australian Aboriginal Legal Aid Service, Darwin, N.T.
PATTEN, Mr C. R.	General Manager, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
PELLETIER, Mr G. C.	Darwin, N.T.
PERKINS, Mr C. N.	First Assistant Secretary, Policy II Division, Department of Aboriginal Affairs, Canberra, A.C.T.
POWELL, Mr B. J.	Regional Director, South Australian Regional Office, Department of Aboriginal Affairs, Adelaide, S.A.
RICHARDS, Mr J. C.	Vice-President, The Law Council of Australia, Melbourne, Vic.
RICHARDS, Mr P.	Solicitor, Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd, Brisbane, Qld
RILEY, Mr R. S.	Executive Field Officer, Aboriginal Legal Service of W.A. Inc., Perth, W.A.
ROBERTS, Mr R.	Director, North Australian Aboriginal Legal Aid Service, Darwin, N.T.
ROBINSON, Mr R.	Charleville, Qld
ROSE, Mr G. D.	Field Officer, Aboriginal Legal Service, (N.S.W.) Ltd Redfern, N.S.W.

ROSE, Mr R. J.	Accountant, North Australian Aboriginal Legal Aid Service, Darwin, N.T.
ROWLEY, Professor C. D.	Hawker, A.C.T.
SANDERSON, Mr G. A.	Superintendent, East Gippsland Regional Centre, Department of Community Welfare Services, Bairnsdale, Vic.
SEGAL, Mr P.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
SHARKEY, Mr P. J.	Director, Legal Aid Commission (A.C.T.), Canberra, A.C.T.
SIMPSON, Mr A. D.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
SLICER, Mr P. W.	Solicitor, Tasmanian Aboriginal Legal Service, Glebe, Tasmania,
SMITH, Mr M. D.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
SOMERS, Ms P. A.	Assistant Secretary, Policy Branch, Department of Aboriginal Affairs, Canberra, A.C.T.
STANLEY, Mr J. H.	Chairman, Aboriginal Legal Rights Movement Inc., Adelaide, S.A.
STEIN, Mr D. L. F.	Goondiwindi, Qld
STEVENS, Mr R.	Secretary, Pitjantjatjara Council, Alice Springs, N.T.
STEWART, Mr L. C., M.B.E.	Chairman, Queensland Aboriginal Advisory Council and Cherbourg Council, Cherbourg, Qld
SUTTON, Dr A. J.	Director, Bureau of Crime Statistics and Research, Department of the Attorney-General and of Justice, Sydney, N.S.W.
TATZ, Professor C. M.	Armidale, N.S.W.
TEMBY, Mr I. D.	Member, The Law Society of Western Australia, Perth, W.A.
TERRY, Mr J. G.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
THOMAS, Mr B. K.	Director, Constitution Branch, Department of Aboriginal Affairs, Canberra, A.C.T.
THOMSON, Mr J. F.	Acting Assistant Director, General Law and Special Categories and Public Defence Branches, and Acting Officer-in-Charge, Central Office of the Australian Legal Aid Office, Attorney-General's Department, Canberra, A.C.T.
TILMOUTH, Mr S. W.	Senior Solicitor, Aboriginal Legal Rights Movement Inc., Adelaide, S.A.
TONKINSON, Dr M.	Garran, A.C.T.
TOOHEY, Mr R. F.	Acting Assistant Secretary, Programs Branch, Department of Aboriginal Affairs, Canberra, A.C.T.
TOWERS, Mr W. P. J., S.M.	Alice Springs, N.T.
TOYNE, Mr P.	Lawyer, Pitjantjatjara Council, Alice Springs, N.T.
VALE, Mr R., M.L.A.	Alice Springs, N.T.
VANZYL, Mr A.	Area Officer, Central Region, Department of Aboriginal Affairs, Alice Springs, N.T.
VARVARESSOS, Mr S. T.	Solicitor, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.

VASS, Mr F. J.	Welfare Officer, Aboriginal Support Services, Correctional Services Division, Department of Community Welfare Services, Melbourne, Vic.
WALLWORK, Mr H. A.	Nedlands, W.A.
WALSH, Dr M.	Red Hill, A.C.T.
WARNER, Mr F.	Christies Beach, S.A.
WATSON, Mr L. J.	Executive Officer, Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd, Cairns, Qld
WATSON, Mr K. S.	Assistant Statistician, Population Census Branch, Australia Bureau of Statistics, Canberra, A.C.T.
WATSON, Mr S. W.	Mount Gravatt, Qld
WAUCHOPE, Mr J. L.	Acting Regional Director, Northern Region Department of Aboriginal Affairs, Darwin, N.T.
WEIR, Mr S. J.	Semaphore Park, S.A.
WHITE, Mr J. P.	Deputy Chairman, Legal Services Commission of N.S.W., Sydney, N.S.W.
WHYMAN, Mr H. R.	Field Officer, Aboriginal Legal Service (N.S.W.) Ltd, Redfern, N.S.W.
WILLIAMS, Mr D.	President, Central Australian Aboriginal Legal Aid Service, Alice Springs, N.T.
WILLIAMS, Dr N. M.	Macquarie, A.C.T.
WILLIS, Mr B.	Director, Central Australian Aboriginal Legal Aid Service, Alice Springs, N.T.
WILSON, Mr E.	Solicitor, Western Aboriginal Legal Service, Dubbo, N.S.W.
WILSON, Mr G. I.	Glenside, S.A.
WINTERS, Mr T. M.	Field Officer, Brewarrina Branch, Western Aboriginal Legal Service, Dubbo, N.S.W.
WOOD, Mr L. C.	Branch Head, Legal Aid Commission, Perth, W.A.
WOODWARD, Ms C. R.	Social Work Student, Tasmanian Aboriginal Legal Service, Hobart, Tas.
WYER, Mr G. C.	Assistant Commissioner, Office of the Commissioner for Community Relations, Canberra, A.C.T.
WYNNE, Mr A. W.	Acting Deputy Chairman, Commonwealth Legal Aid Commission, Canberra, A.C.T.
ZAHRA, Mr P. R.	Kogarah, N.S.W.
FOUR ABORIGINAL PRISONERS	Goulburn Training Centre, Goulburn, N.S.W.

REVIEW OF OPERATIONS OF THE ABORIGINAL LEGAL SERVICES IN N.S.W. TERMS OF REFERENCE

1. Assess the demand for legal aid for Aboriginals in New South Wales having regard to the numbers of Aboriginals appearing before the courts (including Children's Courts), the nature of the offences with which they are charged, the percentage of Aboriginals in prisons and child welfare institutions, and the volume of requests for advice or assistance with civil legal problems.

2. Categorise the Services' work and determine the resources deployed within categories, for example, legal representation and advising on behalf of individuals, civil liberties, constitutional test cases on behalf of Aboriginal people, policy submissions to Government and other enquiries, welfare related to advisory and referral work, etc.

3. Bearing in mind reference (1), report and make recommendations on priorities including especially as between criminal and civil law cases, and between the needs of urban Aboriginals and Aboriginals in rural and remote areas.

4. Assess the potential for other legal aid agencies, e.g. ALAO and public solicitors to brief Counsel as an agent of an Aboriginal Legal Service, in criminal and civil proceedings, without diminishing the quality and acceptability to Aboriginals of such services.

5. Having regard to (1) to (4) and the efficient delivery of legal aid and advice to Aboriginals, make recommendations on the level of financial assistance that should be provided to Aboriginal Legal Services in New South Wales and on the deployment of resources within and between the respective Aboriginal Legal Services.

Department of Aboriginal Affairs
May 1978

Aboriginal and Torres Strait Islander Population, Capital Cities and State/Territory balances (1976 National Census of Population and Housing and Projection to June 1980)

State/Territory	*Census 30 June 1976*	*Projection (a) 30 June 1980*
New South Wales		
Sydney	13 021	14 200
balance	27 429	29 900
Victoria		
Melbourne	8 712	9 500
balance	6 048	6 600
Queensland		
Brisbane	5 904	6 500
balance	35 441	38 700
South Australia		
Adelaide	4 206	4 500
balance	6 508	7 000
Western Australia		
Perth	5 612	6 100
balance	20 514	22 300
Tasmania		
Hobart	680	700
balance	2 262	2 500
Northern Territory		
Darwin	2 418	2 600
balance	21 333	23 300
Australian Capital Territory		
Canberra	651	700
balance	176	200
Total—		
capitals	**41 204**	**44 800**
balance	**119 711**	**130 500**

(*a*) Based on 1976 Population Census estimates and National Population Inquiry 'best estimates' of Aboriginal mortality. The 1976 Census estimate for each State or Territory was reverse-survived to 1971 to produce notional 1971 estimates compatible with the 1976 estimates. The implicit rates of growth were used to produce the projection to 1980. The proportionate split between the capital city and the balance of each State or Territory is the same for the 1980 estimates as for the 1976 ones: the projection takes no account of interstate or rural/urban migration.

Source: Department of Aboriginal Affairs, May 1980

POPULATION OF NON-METROPOLITAN ABORIGINAL COMMUNITIES(a),* SECOND HALF OF 1978p.

State or Territory	Type of community						
	Urban (b)	*Urban camp (c)*	*Pastoral property*	*Major Aboriginal centre (d)*	*Decentralised community (e)*	*Other (f)*	*Total*
New South Wales(g)—							
communities	102	25	..	11	..	..	138
population	22 200	2 300	..	2 200	..	..	26 700
Victoria—							
communities	21	..	..	1	..	..	22
population	2 700	..	..	90	..	..	2 800
Queensland—							
communities	122	8	1	38	8	2	179
population	36 800	400	10	14 100	270	40	51 600
South Australia—							
communities	49	..	2	12	6	..	69
population	3 400	..	40	2 600	110	..	6 100
Western Australia—							
communities	71	3	17	28	7	4	130
population	14 600	220	1 200	5 700	220	160	22 100
Tasmania—							
communities	4	..	..	3	..	..	7
population	1 700	..	..	180	..	..	1 900
Northern Territory—							
communities	10	18	73	39	113	1	254
population	900	900	3 900	15 400	3 300	20	24 400
Total—							
communities	**379**	**54**	**93**	**132**	**134**	**7**	**799**
population	**82 300**	**3 900**	**5 100**	**40 200**	**3 900**	**210**	**135 600**

(a) Excludes communities in Sydney, Melbourne, Brisbane, Adelaide, Perth and Hobart. (b) Communities in urban areas, possibly including urban reserves or camps where these do not form communities meaningfully distinct from the total Aboriginal and Torres Strait Islander population of the urban centres concerned. (c) Reserves and camps in or near urban areas, treated as units distinct from the total Aboriginal and Torres Strait Islander populations of the centres concerned. (d) Predominantly Aboriginal communities other than most pastoral property communities and decentralised outstations. (e) Outstations of major Aboriginal centres. Some communities which are frequently described as 'decentralised', but which do not operate as outstations of other communities, have been included as 'major Aboriginal centres'. Does not include outstations which were temporarily abandoned (through death of community leader or other cause) at the time they were surveyed. (f) Communities which cannot be classified as one of the above. (g) Includes the Australian Capital Territory.

p Provisional estimates. Subject to revision.

Note: Any discrepancies between sums and totals of components are due to rounding.

.. Nil.

*For the purpose of the inquiry the Committee has combined the communities described as urban and urban camp and classified them as communities within or on the fringes of country towns, and combined the communities described as pastoral property, major Aboriginal centre, decentralised community, and other and classified them as remote traditionally-oriented communities.

Source: *Department of Aboriginal Affairs, Statistical Section Newsletter*, No. 8, April 1979.

NEW SOUTH WALES BUREAU OF CRIME STATISTICS AND RESEARCH— 'ABORIGINAL' TOWNS SURVEYS

In 1974, the New South Wales Bureau of Crime Statistics and Research identified ten country shires with the highest known concentration of Aboriginals based on the 1971 Census figures. Thirteen towns with courthouses were selected in those shires and classified as 'Aboriginal' towns. These towns were later redefined according to the 1976 Population Census and increased in number to eighteen. The percentage of Aboriginals in each area ranged from 36.5 percent at Brewarrina to 6.9 percent at Warren (the State Aboriginal population figure is 0.8 percent). One other town, Wee Waa, was included in the survey because it was representative of those communities which periodically experience an influx of Aboriginal seasonal workers, even though it was not in one of the ten shires selected. New South Wales towns were categorised by the Bureau as inner city, suburban, Aboriginal and other, and are listed below.

Categorisation of N.S.W. towns using 1971 Census

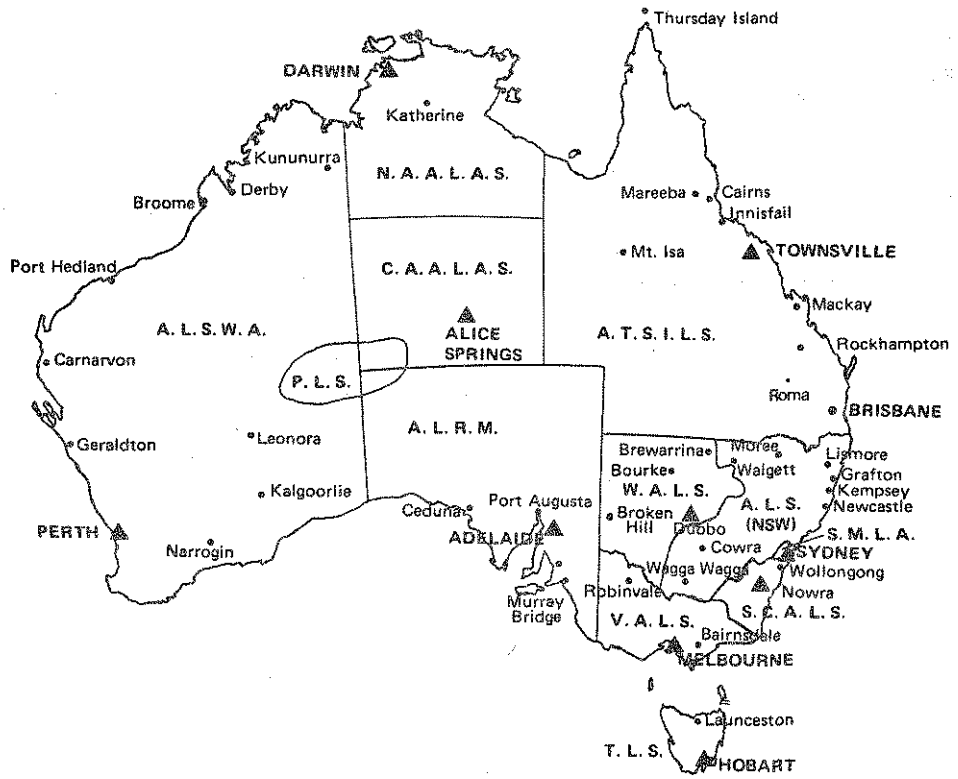
Inner City	*Suburban*	*'Aboriginal' Towns*	*Rest of State*
Balmain	Bankstown	Boggabilla	All other Courts of
Central	Blacktown	Bourke	Petty Sessions in
Glebe	Burwood	Brewarrina	New South Wales
Newtown	Camden	Collarenebri	
North Sydney	Campbelltown	Condobolin	
Paddington	Campsie	Coonamble	
Redfern	Fairfield	Gulargambone	
	Hornsby	Lightning Ridge	
	Kogarah	Moree	
	Lidcombe	Peak Hill	
	Liverpool	Tenterfield	
	Manly	Walgett	
	Parramatta	Wee Waa	
	Penrith	Wilcannia	
	Richmond		
	Ryde		
	Sutherland		
	Waverley		
	Windsor		

Categorisation of 'Aboriginal' towns using 1976 Census

Boggabilla	Burren Junction*
Bourke	Carinda*
Brewarrina	Cobar*
Collarenebri	Enngonia*
Condobolin	Goodoonga*
Lightning Ridge	Ivanhoe*
Moree	Menindee*
Walgett	Mungindi*
Wee Waa	Warren*
Wilcannia	

* 'Aboriginal 'towns included in 1978 Court Statistics and not included in previous years. Aboriginal towns in previous analyses and no longer included are Coonamble, Gulargambone, Peak Hill and Tenterfield.

ABORIGINAL LEGAL SERVICE BOUNDARIES & OFFICES



A.L.S.W.A. - Aboriginal Legal Service of Western Australia Inc.
N.A.A.L.A.S. - North Australian Aboriginal Legal Aid Service Inc.
C.A.A.L.A.S. - Central Australian Aboriginal Legal Aid Service Inc.
P.L.S. - Pitjantjatjara Legal Service
A.L.R.M. - Aboriginal Legal Rights Movement Inc.
A.T.S.I.L.S. - Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd
W.A.L.S. - Western Aboriginal Legal Service Ltd
A.L.S. (NSW) - Aboriginal Legal Service Ltd (Redfern)
S.M.L.A. - St. Mary's and Districts Aboriginal Legal Assistance Ltd
S.C.A.L.S. - South Coast Aboriginal Legal Service Ltd
V.A.L.S. - Victorian Aboriginal Legal Service Co-operative Ltd
T.L.S. - Tasmanian Legal Service Inc.

▲ Central Offices

• Branch Offices

Aboriginal Legal Services' Staff, May 1980

State/Territory	Aboriginal Legal Service	Solicitors	Field Officers(a) F/T	Field Officers(a) P/T	Field Officers(a) Hon.	Office management staff	Accountant/ Bookkeeper	Welfare staff	Secretarial staff	Other	Aboriginal	Non-Aboriginal	Total
New South Wales	*Aboriginal Legal Service (N.S.W.) Ltd*												
	Head Office: SYDNEY	2	1	..	2	2	2	..	3 (1 P/T)	(b)1	7	6	13
	Branch Offices												
	Sydney	4	2	..	..	..	..	..	1	..	3	4	7
	Cowra	1	1	..	..	..	..	..	1	..	2	1	3
	Wagga Wagga	..	1	..	..	..	..	..	1	..	2	..	2
	Walgett	1	1	..	1	..	..	..	(c)1	..	3	1	4
	Moree	1	1	..	1	..	..	..	(c)1	..	3	1	4
	Grafton	1	1	..	..	..	..	..	(c)1	..	2	1	3
	Kempsey	1	1	..	1	..	..	..	(c)1	..	3	1	4
	Newcastle	..	1	..	..	..	..	..	1	..	2	..	2
		11	10	..	5	2	2	..	11	1	27	15	42
	Western Aboriginal Legal Service												
	Head Office: DUBBO	5	1	..	..	..	..	..	1	..	2	5	7
	Branch Offices												
	Broken Hill	..	1	..	..	..	..	..	1	..	2	..	2
	Brewarrina	..	1	..	..	..	..	..	1	..	2	..	2
		5	3	..	..	..	..	..	3	..	6	5	11
	South Coast Aboriginal Legal Service Ltd												
	Head Office: NOWRA	1	1	..	..	1	..	..	1	..	3	1	4
	Branch Office												
	Wollongong	..	1	..	..	..	..	..	..	..	1	..	1
		1	2	..	..	1	..	..	1	..	4	1	5
	St Mary's and Districts Aboriginal Legal Assistance Ltd												
	Head Office: ST MARY'S	..	1	..	..	..	..	..	1	..	2	..	2
		..	1	..	..	..	..	..	1	..	2	..	2
Victoria	*Victorian Aboriginal Legal Service Co-operative Ltd*												
	Head Office: MELBOURNE	6	2	..	..	(d)1	1	..	6	..	8	8	16
	Branch Offices												
	Robinvale	..	1	..	..	..	..	..	..	..	1	..	1
	Bairnsdale	..	1	..	..	..	..	..	..	..	1	..	1
		6	4	..	..	1	1	..	6	..	10	8	18

Aboriginal Legal Services' Staff, May 1980 (*continued*)

State/Territory	Aboriginal Legal Service	Solicitors	Field Officers(a) F/T	Field Officers(a) P/T	Field Officers(a) Hon.	Office management staff	Accountant/ Bookkeeper	Welfare staff	Secretarial staff	Other	Aboriginal	Non-Aboriginal	Total
Western Australia	*Aboriginal Legal Service of Western Australia Inc.*												
	Head Office: PERTH	6	5	..	..	..	(e)1	..	6	(f)1	10	9	19
	Branch Offices												
	Carnarvon	1	1	..	..	..	..	..	1	..	2	1	3
	Derby	1	1	..	..	..	..	..	1	..	2	1	3
	Kalgoorlie	1	1	..	..	..	..	..	1	..	2	1	3
	Kununurra	..	1	..	..	..	..	..	..	..	1	..	1
	Narrogin	1	1	..	..	..	..	..	1	..	2	1	3
	Port Hedland	1	1	..	..	..	..	..	1	..	2	1	3
	Geraldton	..	1	..	..	..	..	..	1	..	2	..	2
	Broome	..	..	..	..	..	..	..	..	(g)1	..	1	1
	Leonora/Laverton	..	..	1	..	..	..	..	..	..	1	..	1
	Meekatharra	..	..	..	1	..	..	..	..	..	1	..	1
	Pinjarra	..	..	..	1	..	..	..	..	..	1	..	1
	Onslow	..	..	..	1	..	..	..	..	..	1	..	1
	Roebourne	..	..	..	1	..	..	..	..	..	1	..	1
	Medina	..	..	..	1	..	..	..	..	..	1	..	1
	Mount Barker	..	..	..	1	..	..	..	..	..	1	..	1
		11	12	1	6	..	1	..	12	2	30	15	45
Queensland	*Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd*												
	Head Office: TOWNSVILLE	..	..	..	..	1	..	..	1	..	2	..	2
	Branch Offices												
	Townsville	2	1	..	..	..	..	1	4 (1 P/T)	(f)1	6	3	9
	Cairns	2	2	1	..	1	..	..	3	(h)1	8	2	10
	Mount Isa	1	4	..	..	..	..	1	3	..	7	2	9
	Mackay	..	2	..	..	..	..	..	2	..	4	..	4
	Rockhampton	1	1	..	..	..	..	..	3	(h)1	4	2	6
	Roma	1	4	..	..	..	..	..	1	..	5	1	6
	Innisfail	..	..	1	..	..	..	..	..	..	1	..	1
	Mareeba	..	..	1	..	..	..	..	..	..	1	..	1
	Thursday Island	..	1	..	..	..	..	..	..	..	1	..	1
	Brisbane	3	2	1	..	..	..	1	9	..	10	6	16
		10	17	4	..	2	..	3	26	3	49	16	65

Aboriginal Legal Services' Staff, May 1980 (*continued*)

State/Territory	Aboriginal Legal Service	Solicitors	Field Officers(a) F/T	Field Officers(a) P/T	Field Officers(a) Hon.	Office management staff	Accountant/ Bookkeeper	Welfare staff	Secretarial staff	Other	Aboriginal	Non-Aboriginal	Total
South Australia	*Aboriginal Legal Rights Movement Inc.*												
	Head Office: ADELAIDE	4	5	..	..	1	1	..	5	..	6	10	16
	Branch Offices												
	Port Augusta	1	2	..	..	..	..	..	2	..	3	2	5
	Ceduna	..	1	..	..	..	..	..	..	..	1	..	1
	Murray Bridge	..	1	..	..	..	..	..	..	..	1	..	1
		5	9	..	..	1	1	..	7	..	11	12	23
Tasmania	*Tasmanian Aboriginal Legal Service*												
	Head Office: HOBART	1	1	..	..	..	..	..	1	..	2	1	3
	Branch Office												
	Launceston	..	1	..	..	..	..	..	1	..	2	..	2
		1	2	..	..	..	..	..	2	..	4	1	5
Northern Territory	*Central Australian Aboriginal Legal Aid Service*												
	Head Office: ALICE SPRINGS	3	3	..	..	2	..	(i)2	4	..	10	4	14
		3	3	..	..	2	..	2	4	..	10	4	14
	North Australian Aboriginal Legal Aid Service												
	Head Office: DARWIN	4	3	..	..	1	1	..	6 (1 P/T)	..	10	5	15
	Branch Office												
	Katherine	1	1	..	..	..	..	..	..	..	1	1	2
		5	4	..	..	1	1	..	6	..	1	6	17
	Pitjantjatjara Legal Service												
	Head Office: ALICE SPRINGS	1	..	..	..	..	..	..	1	..	1	1	2
		1	..	..	..	..	..	..	1	..	1	1	2
Total											164	84	249

(a) Field officers employed on a full-time, part-time and honorary basis. (Honorary field officers in Western Australia receive an honorarium of $500 per annum except the officer at Mount Barker. Honorary field officers elsewhere receive no remuneration.) (b) Legal research officer. (c) Assisted through the NEAT scheme. (d) Executive officer currently receives no remuneration. (e) Acts as office manager. (f) Training officer. (g) Legal assistant. (h) Articled Clerk. (i) Aboriginal community workers, seconded from the *Department of Community Welfare.*

Table of Grants made to and amounts requested by Aboriginal Legal Services 1972–73 to 1979–80*
(Amounts requested shown in brackets)

Aboriginal Legal Service	*1972–73*	*1973–74*	*1974–75*	*1975–76*	*1976–77*	*1977–78*	*1978–79*	*1979–80 (estimates)*
Aboriginal Legal Service (N.S.W.) Ltd	110 076	260 375	810 375	943 070	837 000	655 648	597 000	621 900
	(*a*)(NR)	(*a*)(356 175)	(*a*)(NR)	(*a*)(NR)	(*a*)(NR)	(*a*)(NR)	(*a*)(580 700)	
St Mary's and Districts Aboriginal Legal Assistance Ltd	..	..	..	..	..	37 750	59 000	71 400
	..	..	..	..	..	(*a*)(NR)	(*a*)(63 815)	
South Coast Aboriginal Legal Service	..	..	..	72 929	93 000	113 500	110 000	127 000
	..	..	..	(*a*)(73 289)	(*a*)(92 530)	(*a*)(202 185)	(*a*)(115 000)	
Western Aboriginal Legal Service	..	..	..	..	..	141 102	207 000	232 200
	..	..	..	..	..	(*a*)(NR)	(*a*)(200 000)	..
Aboriginal Legal Service (Brewarrina)	..	4 500	..	7 600	..	..	..	..
	..	(*a*)(NR)	..	(*a*)(NR)	..	..	..	..
Victorian Aboriginal Legal Service	120 000	123 000	246 150	308 883	(*b*)316 111	(*c*)338 285	341 000	397 200
	..	(130 000)	(288 610)	(407 515)	(453 135)	(502 314)	(390 000)	
Tasmanian Aboriginal Legal Service	50 330	40 815	65 710	85 000	(*d*)107 000	(*e*)108 750	110 000	111 800
	(NR)	(NR)	(NR)	(233 096)	(232 627)	(195 167)	(125 000)	
Aborigines and Torres Strait Legal Service (Qld) Ltd	122 500	324 910	555 681	774 988	817 828	880 000	912 000	1 046 000
	(NR)	(NR)	(580 898)	(732 120)	(1 121 560)	(1 283 700)	(964 000)	
Aboriginal Legal Rights Movement Inc.	127 000	62 720	219 051	358 600	410 000	440 000	430 000	480 000
	(NR)	(NR)	(NR)	(358 600)	(414 300)	(502 450)	(542 000)	
Aboriginal Legal Service of Western Australia	110 930	189 330	417 078	(*f*)607 178	592 500	679 000	704 000	749 000
	(NR)	(NR)	(457 604)	(*g*)(573 232)	(*h*)(732 876)	(*i*)(740 200)	(763 000)	
North Australian Aboriginal Legal Aid Service	60 000	120 000	172 945	302 546	300 000	255 000	334 000	424 500
	(NR)	(NR)	(NR)	(300 400)	(301 000)	(319 000)	(506 000)	
Central Australian Aboriginal Legal Aid Service	40 000	110 000	183 759	195 100	260 000	261 347	283 000	390 700
	(NR)	(NR)	(NR)	(222 954)	(260 000)	(260 000)	(382 000)	
Pitjantjatjara Legal Service	..	..	..	..	..	..	33 700	53 300
National(*j*)	..	..	..	..	..	..	41 000	76 000
Total Grants	**740 836**	**1 235 650**	**2 670 749**	**3 655 894**	**3 733 439**	**3 910 382**	**4 087 000**	**4 781 000**

Notes:

* The totals of grants for each year differ from figures used in the report because of the inclusion in the above table of amounts paid to three legal services for Special Works Projects, Welfare allocations and in some cases expenditure from the national component.

NR No record available.

(*a*) DAA Eastern Regional Office advised requests are either not possible or relevant to ascertain because (*i*) requests in earlier years were not realistic and were complicated by substantial trading and legal debts incurred, and (*ii*) recent budgets have been drawn up by the Services under the constraints of an indicative planning figure so that budget requests now approximately equal grants. (*b*) Includes $1 111 for SWP. (*c*) Includes $8 285 for SWP. (*d*) Includes $22 000 for Welfare. (*e*) Includes $17 000 for Welfare, $1 750 for SWP (*f*) Includes $2 000 Welfare disbursements, $74 971 Laverton Royal Commission costs. (*g*) Includes $74 971 Laverton Royal Commission, $2 661 for Aboriginal delegates to discuss Mining Bill with Premier. (*h*) Initial request $764 200. After program level known revised request of $721 376 plus later additional request of $2 500. (*i*) Initial request $818 200. After discussion revised request of $700 700 plus later additional requests of $39 000 and $500. (*j*) Legal expenses involved in national issues.

Source: DAA (transcript of evidence, pp. 2082–83) and Funding Program 1979–80.

CRIMINAL CHARGES, NEW SOUTH WALES, 1975 AND 1978

Table 1: Appearances in 'Aboriginal' towns, 1978

	Drink/ driving	*Drugs*	*Drunkenness*	*Other criminal charges*
Boggabilla	12	0	38	56
Bourke	58	0	874	208
Brewarrina	5	0	1 645	141
Collarenebri	0	0	86	38
Condobolin	36	0	436	75
Lightning Ridge	37	0	60	63
Moree	196	14	444	352
Walgett	67	3	1 660	287
Wee Waa	31	1	438	94
Wilcannia	13	1	551	195
Goodooga	0	0	2	0
Enngonia	0	0	402	53
Burren Junction	0	0	0	1
Carinda	0	0	0	3
Mungindi	0	0	0	2
Menindee	0	0	0	0
Ivanhoe	0	0	35	11
Cobar	26	5	67	77
Warren	18	0	76	33
State Total	**499**	**24***	**6 814**	**1 689**

* Preliminary figures only, includes some juveniles.

Source: New South Wales Government Submission

Table 2: Sex of Drunkenness Offenders by Area, 1975

	City		*Suburban*		*Country*		*'Aboriginal' towns*		*Total*	
	No.	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*No.*	*%*
Male	28 067	94.1	7 679	97.5	10 106	95.8	4 550	87.8	50 402	94.4
Female	1 744	5.9	197	2.5	439	4.2	631	12.2	3 011	5.6
Total	**29 811**	**100.0**	**7 876**	**100.0**	**10 545**	**100.0**	**5 181**	**100.0**	**53 413**	**100.0**

Sex unknown in 747 cases.

Sex of Drunkenness Offenders by Area, 1978

Male	23 313	95.4	8 471	98.0	10 059	96.1	5 856	85.9	47 699	94.7
Female	1 128	4.6	174	2.0	404	3.9	958	14.1	2 664	5.3
Unknown	18		0		2		0		20	
Total	**24 459**	**100.0**	**8 645**	**100.0**	**10 465**	**100.0**	**6 814**	**100.0**	**50 383**	**100.0**

Source: *Aboriginal people and the New South Wales Criminal Justice System: A Review of Existing Information*, Statistical Bulletin No. 3, Nov. 1979, New South Wales Department of the Attorney-General and of Justice Bureau of Crime Statistics and Research.

CHARGES PROCEEDED WITH AND DECIDED IN MAGISTRATES' COURTS(a), WESTERN AUSTRALIA, 12 MONTHS ENDED DECEMBER 1973 TO 1976

Table 1: Charges resulting in imprisonment

	Aboriginal				*Non-Aboriginal*			
Offence	*1973*	*1974*	*1975*	*1976*	*1973*	*1974*	*1975*	*1976*
Unlawful carnal knowledge	3	9	(b)	..	13	5	4	9
Indecent assault	..	(b)	..	..	(b)	..	..	..
Indecent dealing	(b)	(b)	(b)	..	14	8	19	5
Assault	309	281	305	313	136	131	131	118
Other offences against the person	(c)	(c)	4	(c)	3	1	2	3
Robbery	7	..	3	2	3	4	(d)	11
Burglary, breaking, entering and stealing	184	172	227	348 63	716	521	605	619
Unlawfully on premises	90	82	83	214	62	77	72	51
Stealing	351	244	180	351	1 302	923	1 082	1 267
Unlawfully using motor vehicles	291	266	321	..	338	308	322	404
Unlawfully using other vehicles	..	..	..	..	(d)	..	3	2
Arson	..	..	..	49	..	..	..	..
Wilful damage	72	79	41	(c)	42	38	42	80
Other offences against property	..	..	(c)	4	3	(c)	(c)	..
Forgery	4	(e)	3	..	44	21	31	178
Other forgery and offences against the currency	(c)	(c)	..	..	32	32	6	4
Drunkenness	1 731	1 590	1 190	1 167	462	428	131	118
Habitual drunkenness	270	257	75	38	36	29	(f)	5
Disorderliness	932	545	606	632	80	42	51	63
Vagrancy	87	98	57	26	102	87	66	27
Indecent behaviour	3	(f)	4	4	10	6	7	3
Escaping legal custody	104	79	104	122	104	108	93	127
Offences against the police	155	81	130	118	67	84	65	58
Other offences against good order	(c)	3	(c)	..	31	14	19	30
Breach of traffic act	120	103	156	172	264	246	180	321
Breach of liquor laws	6	11	15	13	(c)	(c)	6	3
Gaming	..	..	..	..	..	3	(c)	..
Maintenance	3	..	8	(c)	4	(c)	3	..
Other offences	7	32	18	50	68	184	143	184
Total	**4 729**	**3 932**	**3 530**	**3 686**	**3 936**	**3 300**	**3 083**	**3 690**

(a) Figures relate to the number of charges recorded and not to the number of persons charged. (b) Not available for publication; included in 'Other offences against the person'. (c) Not available for publication; included in 'Other offences'. (d) Not available for publication; included in 'Other offences against property'. (e) Not available for publication; included in 'Other forgery and offences against the currency'. (f) Not available for publication; included in 'Other offences against good order'.

Source: Department of Aboriginal Affairs Statistical Section Newsletter No. 5, June 1978, p. 28.

Table 2: Total charges

	Aboriginal				*Non-Aboriginal*			
	1973	*1974*	*1975*	*1976*	*1973*	*1974*	*1975*	*1976*
Unlawful carnal knowledge	13	21	20	9	133	139	135	120
Indecent assault	..	4	(*b*)	4	5	6	7	21
Indecent dealing	5	10	8	8	85	52	77	60
Assault	659	685	803	912	1 178	1 265	1 366	1 728
Other offences against the person	2	7	2	41	19	22	12	199
Robbery	17	6	5	15	17	19	15	132
Burglary, breaking, entering and stealing	882	1 264	1 392	1 417	3 750	3 402	3 748	4 110
Unlawfully on premises	257	263	205	238	508	566	465	519
Stealing	1 174	1 286	1 055	1 168	7 863	7 561	7 789	9 199
Unlawfully using motor vehicles	915	1 209	1 403	1 338	1 972	1 943	1 707	1 777
Unlawfully using other vehicles	36	3	8	12	25	24	37	45
Arson	(*c*)	..	3	..	(*c*)	14	13	35
Wilful damage	271	388	384	425	1 016	1 151	1 224	1 375
Other offences against property	5	6	7	4	12	17	6	22
Forgery	8	3	18	11	257	174	207	645
Other forgery and offences against the currency	(*d*)	..	(*d*)	2	120	137	53	53
Drunkenness	8 336	9 180	8 128	6 671	6 444	6 685	4 912	4 252
Habitual drunkenness	319	291	94	50	57	58	8	8
Disorderliness	2 646	2 363	2 850	2 739	2 017	2 196	2 048	2 243
Vagrancy	122	145	106	71	379	485	430	365
Indecent behaviour	10	8	11	14	90	158	138	188
Escaping legal custody	128	115	155	183	182	188	189	289
Offences against the police	394	320	473	448	1 107	1 502	1 635	2 103
Other offences against good order	5	8	14	35	480	569	829	1 159
Breach of the traffic act	1 402	1 383	2 037	2 282	45 832	52 167	59 575	52 488
Breach of liquor laws	483	635	830	1 075	1 069	1 150	1 206	1 332
Gaming	21	7	36	9	515	439	357	712
Maintenance	19	16	18	3	1 893	1 764	3 099	29
Other offences	107	172	261	291	8 596	8 307	8 989	11 671
Total	**18 236**	**19 798**	**20 326**	**19 475**	**85 621**	**92 160**	**100 276**	**96 879**

(*a*) Figures relate to the number of charges recorded and not to the number of persons charged. (*b*) Not available for publication; included in 'Other offences against the person'. (*c*) Not available for publication; included in 'Other offences against property'. (*d*) Not available for publication; included in 'Other offences'.

Source: Department of Aboriginal Affairs Statistical Section Newsletter No. 5, June 1978, p. 30.

24964/80—9

CASES FINALISED BY THE CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE BY NATURE OF MATTER, 1973 TO MID-1979

	Nature of matter					
	Matters not involving offences(a)	*Offences against property and environment(b)*	*Offences against the person(c)*	*Motor vehicle and traffic offences(d)*	*Other offences(e)*	*Total*
1973 (part)	60	60	20	20	20	190
1974	280	300	230	170	670	1 650
1975	320	280	180	130	590	1 500
1976	130	220	120	200	130	810
1977	80	200	80	260	300	940
1978	120	240	110	320	250	1 040
1979 (part)	60	60	110	120	20	370
Total(f)	**1 150**	**1 410**	**850**	**1 250**	**2 070**	**6 730**

(*a*) Includes civil matters, workers' compensation cases, family matters, etc. (*b*) Includes illegal use of motor vehicles. (*c*) Homicide, assault, rape, etc. (*d*) Illegal use of a motor vehicle is classed as an offence against property. (*e*) Includes offences relating to liquor on reserves, offensive conduct, and other matters. (*f*) Includes 230 cases not allocated to years.

Source: *Statistical Report to the Central Australian Aboriginal Legal Aid Service, Casework and Clients* 1973–1979, Department of Aboriginal Affairs Statistics Office, September 1979, p. 5.

PENALTIES FOR DRUNKENNESS BY AREA, NEW SOUTH WALES, 1978

	Inner city	*Suburban*	*Aboriginal towns*	*Rest of State*
	%	%	%	%
Recognisance forfeited	77.7	94.9	61.7	86.1
Admonished and discharged	7.0	4.0	13.9	6.3
Fined, in default, sentenced to rising of the court	15.1	0.6	6.9	2.9
Recognisance	0.0	0.0	0.1	0.0*
Fine and recognisances	0.0*	0.0*	0.4	0.1
Remand for inebriate action	0.0*	0.0	0.0	0.0*
Fined in default 24 hours imprisonment	0.1	0.4	11.5	2.6
Fined in default 48 hours imprisonment	0.1	0.1	5.6	2.0

* This percentage not exactly equal zero.

Source: New South Wales Government submission.

PRISONERS IN GAOL ON THE NIGHT OF 30 JUNE 1977, WESTERN AUSTRALIA

	Aboriginal			*Non-Aboriginal*			*Total*	
Sentence	*Males*	*Females*	*Persons*	*Males*	*Females*	*Persons*	*Males*	*Females*
Less than 3 months	61	13	74	60	3	63	121	16
3 to 5 months	51	6	57	58	2	60	109	8
6 to 11 months	69	4	73	72	..	72	141	4
1 year, less than 2	62	2	64	104	1	105	166	3
2 years, less than 3	33	..	33	89	..	89	122	..
3 years, less than 4	16	3	19	58	..	58	74	3
4 years, less than 5	16	1	17	41	2	43	57	3
5 years and over	27	..	27	120	4	124	147	4
Life	7	..	7	24	..	24	31	..
Governor's pleasure	1	2	3	20	..	20	21	2
Trial and remand	12	3	15	82	6	88	94	9
Total	**355**	**34**	**389**	**728**	**18**	**746**	**1,083**	**52**

Source: Department of Corrections, Western Australia.

ABORIGINALS AND NON-ABORIGINALS IN PRISON, MAJOR OFFENCES, SOUTH AUSTRALIA, 30 JUNE 1976

	Under sentence		*Not under sentence*	
	Aboriginal	*Non-Aboriginal*	*Aboriginal*	*Non-Aboriginal*
Homicides—				
Murder	5	38	..	3
Other homicides	2	15	..	2
Assaults—				
Assaults, serious	5	17	(*a*)	4
Assault, police	7	2	..	(*a*)
Assault, minor and unspecified	9	7	..	5
Rape	4	11	..	..
Other assaults	2	18	2	4
Robbery and extortion—				
Robbery with serious assault	5	29	(*b*)	9
Fraud, forgery and misappropriation	..	28	..	9
Theft, breaking and entering—				
Motor vehicle, unlawful use of	19	36	(*c*)	3
Theft, other	4	21	(*c*)	10
Breaking and entering	9	123	6	33
Other theft, breaking and entering	..	12	(*b*)	4
Property damage—				
Wilful damage	(*d*)	(*d*)	..	(*d*)
Other property damage	2	3	..	(*b*)
Driving and related offences—				
Driving whilst suspended (licence)	(*e*)	20	(*e*)	..
Other driving etc. offences	6	38	2	(*b*)
Other offences—				
Drunkenness	4	7	..	..
Indecent behaviour	5	4	..	2
Breach of probation, parole, bail, etc.	9	19	..	2
Suspended sentence revoked	4	13	..	..
Other	1	31	3	9
Males	94	489	11	95
Females	8	3	2	4
Total	**102**	**492**	**13**	**99**

(*a*) Not available for publication; included in 'Other assaults'. (*b*) Not available for publication; included in 'Other offences'. (*c*) Not available for publication; included in 'Other theft, breaking and entering'. (*d*) Not available for publication; included in 'Other property damage'. (*e*) Not available for publication; included in 'Other driving etc. offences'.

Source: *Department of Aboriginal Affairs Statistical Section Newsletter* No. 5, June 1978, p. 34.

STUDY OF THE CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE LTD, 1973 TO MID-1979

Table 1. Number of cases for each client

Number of cases for each client	*Clients*		*Cases*		*Average number of cases*
	Number	*Per cent*	*Number*	*Per cent*	
One	3 400	76	3 400	51	1
Two	570	13	1 130	17	2
Three	230	5	680	10	3
Four	170	4	680	10	4
Five or more	120	3	840	12	7
Total(a)	***4 490***	***100***	***6 730***	***100***	***1.5***

(*a*) If a column does not add up to the total shown, it is because the figures have been rounded.

Source: *Statistical Report to the Central Australian Aboriginal Legal Aid Service, Casework and Clients* 1973–1979, Department of Aboriginal Affairs Statistics Office, September 1979, p. 8.

Table 2. Address and sex of clients

Address	*Number of clients(a)*			*Per cent*	*Client/ population rate(c)*	*Multiple-case clients(d)*	
	Males	*Females*	*Persons(b)*			*Persons*	*Per cent of clients(e)*
Alice Springs	550	190	750	17	7.3	250	34
Hermannsburg*	360	10	370	8	9.5	120	32
Lajamanu*	220	70	290	6	8.2	50	17
Papunya*	450	70	520	12	20.0	130	25
Tennant Creek	160	40	190	4	9.7	40	19
Warrabri*	740	10	250	6	9.6	140	57
Yuendumu*	260	..	260	6	5.7	140	55
Central, n.e.i. Australia(*f*)	660	130	790	18	1.7	140	18
Other Places	170	70	240	5	0.2	10	5
Not Stated	540	280	820	18	n.a.	50	6
Total(b)	**4 110**	**880**	**4 490**	**100**		**1 080**	**24**

n.e.i.—not elsewhere included. n.a.—not applicable.

(*a*) Figures in this table refer to clients, not cases. That is, a client that was represented by the Central Australian Aboriginal Legal Aid Service more than once was counted only on the first occasion. (*b*) If a column or a row does not add up to the total shown, it is because the figures have been rounded to the nearest ten. (*c*) Number of clients as a percentage of population per annum. Population figures were derived from 1976 census results for the Aboriginal population. (*d*) Clients who were represented by the Central Australian Aboriginal Legal Aid Service more than once. (*e*) Multiple-case clients as a percentage of total clients with each address. (*f*) No other locality turned up frequently enough to be shown separately.

* These are the only Aboriginal communities in Central Australia with a police station.

Source: *Statistical Report to the Central Australian Aboriginal Legal Aid Service, Casework and Clients* 1973–1979, Department of Aboriginal Affairs Statistics Office, September 1979, p. 9.

Table 3. Age and sex of clients

	Number of clients(a)			
Age group	*Males*	*Females*	*Persons(b)*	*Per cent*
0–14	130	..	130	7
15–19	540	60	600	32
20–24	430	120	550	29
25–29	280	20	300	16
30–39	180	20	200	11
40 and over	120	..	120	6
Sub-total	1 680	230	1 910	100
Age not stated	1 930	650	2 580	..
Total(b)	**3 610**	**880**	**4 490**	..

(*a*) Figures in this table refer to clients, not cases. A client that was represented by the CAALAS more than once was counted only the first time.
(*b*) If a column or a row does not add up to the total shown, it is because the figures have been rounded to the nearest ten.

Source: *Statistical Report to the Central Australian Aboriginal Legal Aid Service, Casework and Clients* 1973–1979, Department of Aboriginal Affairs Statistics Office, September 1979, p. 8.

Police Headquarters,
DARWIN.

15 May, 1979.

CIRCULAR MEMORANDUM NO. 13 OF 1979

INTERROGATION OF SUSPECTS

On 30 April 1976, Mr. Justice FORSTER handed down his reasons for rejecting typewritten records of interviews in the matter of QUEEN v. Angus ANUNGA, Sandy AJAX, Clancy AJAX, TJINGUNYA, Nari WHEELER and Frankie Miller JAGAMARA in the Northern Territory Supreme Court in August 1975.

Inter alia Mr. Justice FORSTER said:

'It seems to me now, however, to be important that the Court should put on record general guidelines for the conduct of Police Officers when interrogating Aboriginal persons.
I preface this statement of guidelines by pointing out that Aboriginal people often do not understand English very well and that, even if they do understand the words, they may not understand the concepts which English phrases and sentences express. Even with the use of interpreters this problem is by no means solved. Police and legal English sometimes is not translatable into the Aboriginal language at all and there are no separate Aboriginal words for some simple words like "in", "at", "on", "by", "with" or "over", these being suffixes added to the word they qualify. Some words may translate literally into Aboriginal language but mean something different. "Did you go into his house?" means to an English-speaking person, "do you go into the building?", but to an Aboriginal it may also mean, "Did you go within the fence surrounding the house?" English concepts of time, number and distance are imperfectly understood if at all by Aboriginal people, many of the more primitive of whom cannot tell the time by a clock. One frequently hears the answer "Long time", which depending on the context may be minutes, hours, days, weeks or years. In case I may be misunderstood, I should also emphasise that I am not expressing the view that Aboriginal people are any less intelligent than white people but simply that their concepts of certain things and the terms in which they are expressed may be wholly different to those of white people.

Another matter which needs to be understood is that most Aboriginal people are basically courteous and polite and will answer questions by white people in the way in which they think the questioner wants. Even if they are not courteous and polite there is the same reaction when they are dealing with an authority figure such as a policeman. Indeed their action is probably a combination of natural politeness and their attitude to someone in authority. Some Aboriginal people find the standard caution quite bewildering, even if they understand that they do not have to answer questions, because, if they do not have to answer questions, then why are the questions being asked?

Bearing in mind these preliminary observations which are based partly upon my own knowledge and partly by evidence I have heard in numerous cases I lay down the following guidelines. They apply, of course, to persons who are being questioned as suspects.

1. When an Aboriginal person is being interrogated as a suspect, unless he is as fluent in English as the average white man of English descent, an interpreter able to interpret in and from the Aboriginal person's language should be present, and his assistance should be utilised whenever necessary to ensure complete and mutual understanding.
2. When an Aboriginal is being interrogated it is desirable where practicable that a "prisoner's friend" (who may also be the interpreter) be present. The "prisoner's friend" should be someone in whom the Aboriginal has apparent confidence. He may be a mission or settlement superintendent or a member of the staff of one of these institutions who knows and is known to the Aboriginal. He may be a station owner, manager or overseer or an officer from the Department of Aboriginal Affairs. The combinations of persons and situations are variable and the categories of persons I have mentioned are not exclusive. The important thing is that the "prisoner's friend" be someone in whom the Aboriginal has confidence, by whom he will feel supported.

3. Great care should be taken in administering the caution when it is appropriate to do so. It is simply not adequate to administer it in the usual terms and say, "Do you understand that?" or "Do you understand you do not have to answer questions?" Interrogating police officers, having explained the caution in simple terms, should ask the Aboriginal to tell them what is meant by the caution, phrase by phrase, and should not proceed with the interrogation until it is clear the Aboriginal has apparent understanding of his right to remain silent. Most experienced police officers in the Territory already do this. The problem of the caution is a difficult one but the presence of a "prisoner's friend" or interpreter and adequate and simple questioning about the caution should go a long way towards solving it.
4. Great care should be taken in formulating questions so that so far as possible the answer which is wanted or expected is not suggested in any way. Anything in the nature of cross-examination should be scrupulously avoided as answers to it have no probative value. It should be borne in mind that it is not only the wording of the question, which may suggest the answer, but also the manner and tone of voice which are used.
5. Even when an apparently frank and free confession has been obtained relating to the commission of an offence, police should continue to investigate the matter in an endeavour to obtain proof of the commission of the offence from other sources. Failure to do this, among other things, led to the rejection of confessional records of interview in the cases of Nari WHEELER and Frank JAGAMARA.
6. Because Aboriginal people are often nervous and ill at ease in the presence of white authority figures like policemen it is particularly important that they be offered a meal, if they are being interviewed in a police station, or in the company of police or in custody when a meal time arrives. They should also be offered tea or coffee if facilities exist for preparation of it. They should always be offered a drink of water. They should be asked if they wish to use the lavatory if they are in the company of police or under arrest.
7. It is particularly important that Aboriginal and other people are not interrogated when they are disabled by illness or drunkenness or tiredness. Admissions so gained will probably be rejected by a court. Interrogation should not continue for an unreasonably long time.
8. Should an Aboriginal seek legal assistance reasonable steps should be taken to obtain such assistance. If an Aboriginal states he does not wish to answer further questions or any questions the interrogation should not continue.
9. When it is necessary to remove clothing for forensic examination or for the purposes of medical examination, steps must be taken forthwith to supply substitute clothing.'

Although these guidelines are not absolute rules, departures from them without reason will probably lead to the evidence of the interrogation, whether it be oral or in the form of a statement or record of interview, being rejected.

Much of what is laid out in the guidelines applies equally to the interrogation of migrants whether European or Asiatic.

It should be understood that compliance with the rules is not considered to make the role of the investigator more difficult of performance; therefore, in the interests of fairness to the accused, members shall apply these recommendations, when questioning persons suspected of having committed offences. The guidelines are to be given the broadest interpretation particularly where persons are being spoken to in the first instance during preliminary enquiries as even at that stage suspicion is often attached to persons so being questioned.

It should be clearly understood that the qualities that should be met by a person acting as a 'prisoner's friend' are:

1. He should be 'someone in whom the Aboriginal has apparent confidence . . . by whom he will feel supported'.
2. He should be a person 'who knows and is known to the Aboriginal'.

When a Police Liaison Assistant is used as a 'prisoner's friend', the use on each occasion should stand on its own merits and circumstances.
The member in charge of the interrogating of an Aboriginal suspect is to ensure that a documentary record is to be kept on each occasion that a Police Liaison Assistant is used, relating to:

1. Tribal or family affinities with the person interviewed.

2. Knowledge and understanding by the interviewed and the Police Liaison Assistant of the language used for communication.
3. Any surrounding evidence or circumstances which in clear terms shows the acceptance of the person interviewed of the presence and assistance of the Police Liaison Assistant.

It is not desirable to use another prisoner as a 'prisoner's friend' unless very good reason exists to do so.

When the interview is in relation to a very serious matter, it would be prudent to have present also at the interview, a 'stranger', well versed in the language used, to act as a 'friend' or 'additional friend'. This action could prevent the loss of a case through a technicality.

During any interrogation members are to make appropriate notes. The failure of police officers to take notes has been the subject of criticism in the courts and must not be neglected.

R. McAULAY
Commissioner of Police

P.C.O. CIRCULAR NO. 354

Police Commissioner's Office,
ADELAIDE.

24th March, 1975.

SUBJECT: ABORIGINAL LEGAL RIGHTS MOVEMENT—
FIELD OFFICERS AND POLICE LIAISON OFFICERS

(P.C.O. 1/1/302583)

1. INTRODUCTION

For some time past a committee representing the Police Department and the Aboriginal Legal Rights Movement has conducted discussions aimed at improving the relationships between Aboriginal members of the community and members of the Force. This liaison has been deemed desirable because of conflict sometimes arising out of transactions in which the police come in contact with Aborigines allegedly in breach of the law. It is felt that in some instances particular Aborigines, due to unfamiliarity with the English language and our culture (including legal procedures), may suffer a handicap by comparison with other members of the community. In order to offset any such disadvantage, the committee has agreed upon the observance by police personnel of certain rules with regard to Aborigine people in their custody.

2. POLICE POLICY

In interpreting these instructions members should be aware it is not Force policy to discriminate in favour of Aborigines any more than it is to discriminate against them. It is the function of the police, within the confines of the law, to deal equitably with all suspected offenders regardless of race, colour or creed. This maxim is not abrogated by the rules set out herein; rather they have been devised to ensure equality of treatment. The instructions are to be observed according to the practicalities of any given situation, it being realised that (with the exception of the situation adverted to in paragraph 8) it is important that the prerogative to involve any third parties in any particular case must always rest with the individual who is the subject of proceedings. It is not deemed proper for police to divulge, without consent, the fact and circumstances of any person in their custody.

3. ABORIGINAL FIELD OFFICERS

In furtherance of its aims for the betterment of Aboriginal people, the Aboriginal Legal Rights Movement has appointed a number of persons as field officers. In so far as police personnel are directly concerned, it is the function of field officers to render assistance to any Aborigine in police custody who desires it. Such assistance will normally take the form of advising relatives/friends of the person's predicament, arranging bail and/or legal assistance. Where language difficulties are encountered either during police interrogation or in court proceedings, the field officers will endeavour to arrange the attendance of an interpreter to watch the interests of the suspected offender.

4. Field officers who have been officially appointed by the Movement are issued with identification cards. These include the name, signature and photograph of the holder. Production of such a card by the person to whom it has been issued shall be sufficient to identify a field officer for the purpose of these instructions. Although a field officer's prime responsibility will be to serve the interests of Aborigine offenders, it is hoped they will be instrumental in maintaining a healthy relationship and a reliable communication channel between the police and members of the Aboriginal community. Should a field officer conduct himself with impropriety the details should be reported to the appropriate Police Liaison Officer.

5. POLICE DISTRICT LIAISON OFFICERS

Various members of the Force have been designated district liaison officers with a special responsibility for maintaining communication between the Department and Aboriginal people. Any problems affecting relationships between Aborigines and the police should be brought to their attention. In addition, they will be expected to keep themselves informed of activities in their districts involving Aboriginal groups and, upon invitation, to attend meetings or discussion as representatives of the Force. Those members presently appointed as district liaison officers are: (Names here stated).

6. POLICE ABORIGINAL AFFAIRS FIELD OFFICER

(Particulars here given.)

7. INTERROGATION OF ABORIGINES

The presence of third parties during the interrogation by police of a suspected offender must always be governed by the practicalities of the situation and the observance of certain general principles. These are that the suspect being interviewed must consent to the third party being present and the attendance of such a person should not be permitted where it is likely to seriously impede the administration of justice. Subject to these considerations, no obstruction should be placed in the way of a field officer attending an interview with a suspected Aboriginal offender in those cases where the suspect declines to answer, except in the presence of a third party, e.g. a legal advisor or field officer, they have no right to persist in questioning, except under the conditions specified by the suspect. In cases involving the interview of Aboriginal juveniles, members shall adhere to the requirements of General Orders 65 and 259, and, in the absence of a parent or guardian, endeavour to secure the attendance of a field officer at such interview.

8. Situations involving the interrogation of tribal or semi-tribal Aborigines present a special problem. Where such a person, who apparently has an imperfect grasp of the English language or is unfamiliar with our culture, is sought to be questioned in regard to a serious crime, every effort must be made to have an independant third party present at the interview. If practicable, such a party should be either a solicitor or a field officer. Alternatively, if no such person is available, then a representative of the Department for Community Welfare or the Department of Aboriginal Affairs should be obtained. Preferably, he should also be a person who has some understanding of the suspect's native language.

9. ABORIGINAL PRISONERS

When an Aboriginal person is arrested upon a charge of committing any offence, the officer in charge of the station who receives the prisoner into custody shall enquire of him whether he has any objection to his name and the nature of the charge being supplied to the Aboriginal Legal Rights Movement. Upon receiving an answer that there is no objection, the officer in charge shall, if and when requested by a field officer, furnish those particulars, together with information as to the time and place the prisoner is to appear before a court on the charge.

10. Where approved printed information explaining the availability of the services of field officers has supplied to a police station, all Aborigines when charged at the station shall be given a copy of such material. Distribution of such printed information will be dependent upon its delivery to the Police Department by the Aboriginal Legal Rights Movement. Members need not requisition for supplies in the first instance. However, where and when supplies are made available to a police station from the Officer in Charge, Community Affairs and Information Service, these instructions are to be complied with.

11. Where an Aboriginal person is held in custody at a police station, pending the hearing of a charge against him, and requests the attendance or assistance of a field officer to arrange bail or legal advice, the officer in charge shall make every practical endeavour to communicate the requests to the nearest field officer. Other than for local calls, the prisoner

shall be required to pay telephone costs unless the field officer agrees to accept a "reverse charges" call. It is understood that Aboriginal authorities will accept such reverse charge calls subject to the discretion of the field officer being called. If a field officer attends at a police station for the purpose of interviewing an Aboriginal prisoner, he shall be granted the same facilities as are customary for solicitors and prisoners' relatives.

12. PARTICULARS OF CHARGES

Where an Aborigine has been charged with an offence and has indicated his consent to such action, the prosecuting member shall be at liberty to furnish such particulars of the case to an accredited field officer as would ordinarily be made available to a solicitor acting for the defendant. The nature of particulars supplied must be left to the discretion of the prosecutor. However, normally they would include such information as a copy of the charge(s), intention to oppose bail or otherwise, and any intention to apply for remand, etc.

Deputy Commissioner of Police.

APPENDIX 18

AUSTRALIAN LEGAL AID OFFICE
BREAKDOWN OF APPLICATIONS APPROVED 1978-79

	Approved/referred					*Approved/ALAO*					
State	*Family Law*	*Other Federal Law*	*State Criminal Law*	*State Civil Law*	*Total number referred*	*Family Law*	*Other Federal Law*	*State Criminal Law*	*State Civil Law*	*Total number by ALAO*	*Total number of approved applications*
New South Wales	11 263	202	1 107	835	13 407	2 028	1 054	598	600	4 280	17 687
Victoria	7 031	15	2 559	1 611	11 216	526	22	288	1 371	2 207	13 423
Queensland	5 141	6	1 360	908	7 415	1 773	38	733	456	3 000	10 415
South Australia	684	8	517	165	1 374	166	5	58	58	287	1 661
Tasmania	1 508	16	1 192	710	3 426	1 112	43	400	851	2 406	5 832
Northern Territory	124	..	156	148	428	300	..	491	287	1 078	1 506
Australia	**25 751**	**247**	**6 891**	**4 377**	**37 266**	**5 905**	**1 162**	**2 568**	**3 623**	**13 258**	**50 524**

Note: Statistics for Queensland and Victoria are estimates only. Statistics for South Australia are for the period 1 July 1978 to 31 October 1978 only.

Source: Commonwealth Legal Aid Commission 1980.

ANALYSIS OF COMMONWEALTH GOVERNMENT EXPENDITURE ON ABORIGINAL LEGAL AID 1970-71 TO 1979-80

($'000)

Year	Actual expenditure	Necessary expenditure to maintain service at 1975–76 levels (a)	Shortfall in expenditure (b)
1970–71	24	n.a.	n.a.
1971–72	28	n.a.	n.a.
1972–73	715	n.a.	n.a.
1973–74	1 190	n.a.	n.a.
1974–75	2 582	n.a.	n.a.
1975–76	3 746	3 746	..
1976–77	3 711	4 263	552
1977–78	3 890	4 668	778
1978–79	4 208	5 051	843
1979–80(est.)	4 781	5 556	775

n.a. not applicable

(*a*) Expenditure necessary to maintain Aboriginal legal aid services at the same level as existed in 1975–76 given increases in the cost of providing such services. If the cost of providing Aboriginal legal aid services increases at the same rate as general cost increases in the community (as measured by the Consumer Price Index) then expenditure on Aboriginal legal aid services would have to be at the level shown above in order that the same level of services is provided. (e.g. if the cost of providing a service increased by 10% in one year then expenditure on that service would have to increase by 10% if the same level of service is to be provided.) (*b*) Difference between actual expenditure necessary to maintain services at 1975–76 level and actual expenditure.

Note: Expenditures are adjusted by movements in the Consumer Price Index on the assumption that costs for Aboriginal legal services are moving in accordance with general cost movements as measured by the Consumer Price Index.

Source: Commonwealth Parliamentary Library Statistical Service, May 1980.

ANALYSIS OF ABORIGINAL LEGAL SERVICES' PER CAPITA EXPENDITURE 1978-79

Aboriginal legal service	*Programmed expenditure*	*Estimated population served**	*Per capita expenditure*
	$		$
Aboriginal Legal Service (N.S.W.) Ltd	597 000	27 398	22
South Coast Aboriginal Legal Service Ltd	120 000	3 185	38
Western Aboriginal Legal Service	207 000	5 552	37
St Mary's & Districts Aboriginal Legal Assistance Ltd	59 000	5 142	11
Victorial Aboriginal Legal Service Co-operative Ltd	341 000	14 759	23
Tasmanian Aboriginal Legal Service	110 000	2 942	37
Aborigines & Torres Strait Islanders Legal Service (Qld) Ltd	922 420	41 345	22
Aboriginal Legal Rights Movement Inc.	430 000	10 714	40
Aboriginal Legal Service of Western Australia Inc.	704 000	26 126	27
Central Australian Aboriginal Legal Aid Service	303 000	12 000	25
North Australian Aboriginal Legal Aid Service	380 500	15 305	25
Total	**4 173 920**	**164 468**	**25**

* 1976 National Population and Housing Census.

Source: Department of Aboriginal Affairs, transcript of evidence, p. 3829.

ANALYSIS OF ABORIGINAL LEGAL SERVICES ESTIMATED COST PER CASE, 1978-79

Aboriginal legal service	*Estimated expenditure*	*DAA estimated number of cases and costs(a)*				*Committee estimated number of cases and costs(b)*			
		Court cases	*Advice cases*	*Total*	*Cost per case*	*Court cases*	*Advice cases*	*Total*	*Cost per case*
	$				$				$
Aboriginal Legal Service (N.S.W.) Ltd	597 000	5 500	8 500	14 000	43	5 500	8 500	14 000	43
Western Aboriginal Legal Service	207 000	780	1 220	2 000	104	780	1 220	2 000	104
South Coast Aboriginal Legal Service Ltd	120 000	390	610	1 000	120	560	610	1 170	103
St Mary's and Districts Aboriginal Legal Assistance Ltd	59 000	160	240	400	148	160	240	400	148
Victorian Aboriginal Legal Service Co-operative Ltd	341 000	2 700	400	3 100	110	1 166	1 000	2 166	157
Tasmanian Aboriginal Legal Service	110 000	800	790	1 590	69	699	460	1 159	95
Aborigines and Torres Strait Islanders Legal Service (Qld) Ltd	922 420	8 000	9 000	17 000	54	6 753	8 062	14 815	62
Aboriginal Legal Rights Movement Inc.	430 000	1 400	1 600	3 000	143	1 295	1 000	2 295	187
Aboriginal Legal Service of Western Australia	704 000	6 500	7 500	14 000	50	8 950	9 660	18 610	38
North Australian Aboriginal Legal Aid Service	380 500	11 106	n.a.	11 106	34	n.a.	n.a.	..	..
Central Australian Aboriginal Legal Aid Service	303 000	4 500	n.a.	4 500	67	n.a.	n.a.	..	..
Total	**4 173 920**	**41 836**	**29 860**	**71 696**	**58**	..	..	..	..

(*a*) Department of Aboriginal Affairs, transcript of evidence, p. 3829. (*b*) House of Representatives Standing Committee on Aboriginal Affairs' records.

THE ABORIGINAL LEGAL SERVICE PROGRAM

This service establishes a legal facility to meet the special needs of Aboriginals and Islanders, with funds provided primarily by the Australian Government. The service is to be operated through an Aboriginal Legal Service in each State and Territory in Australia on Government grants given on these terms:

1. Each Service will be responsible for the provision of the facility in its State or Territory but may make arrangements with Services in other places to avoid problems arising from geographical boundaries.

2. Each Service is to have flexibility in its development, to meet the needs of Aboriginals who stand in need of legal assistance. The facilities are to include, as funds permit, arrangements with legal practitioners in private practice for representing applicants in individual cases, with legal practitioners on a retainer basis where the usual arrangements for individual cases cannot readily be made, the direct employment of legal practitioners, field workers, social workers and administrative staff. In the latter three cases preference will be given to Aboriginals or to those persons who show an affinity with Aboriginals. Research assistance into the special legal problems of Aboriginals and the provision of publicity and relevant educational activities directed to Aboriginals and persons or groups who deal with Aboriginals is also envisaged.

3. 'Aboriginal' means a person who stands in need of legal assistance and who is a member or descendant of the Aboriginal race. It includes Torres Strait Islanders and, where it is in the interests of justice in the circumstances of a particular case, includes a person who lives in a domestic relationship with an Aboriginal.

4. Legal assistance to Aboriginals is to be available for:
   (a) representation in courts and tribunals throughout Australia where the Aboriginal has grounds for such representation;
   (b) advice on matters in which the Aboriginal has or is likely to have a direct interest, whether personally or as a member of a group;
   (c) assistance in non-contentious matters where this is likely to be of direct benefit to the Aboriginal.

5. Restrictions—
   (a) legal assistance, other than to ascertain if the Aboriginal has reasonable prospects of success, shall not be available in respect of proceedings by way of appeal if in the view of the Service no good purpose would be served by prosecuting or taking part in the appeal;
   (b) actions to be taken on behalf of an Aboriginal community or a substantial Aboriginal group will be considered on an individual basis by the Australian Government following an approach by a Service.

6. The affairs of an Aboriginal in relation to the Service shall be kept confidential.

7. Each Service shall keep its accounts in a form or forms approved by the Minister for Aboriginal Affairs so as to show:
   (a) sums received from the Australian Government and from other sources for the operation of the Service;
   (b) the cost of legal expenses in operating the Service;
   (c) the other costs of administration of the Service.

8. Each Service shall have its books and records audited by a qualified auditor.

9. The financial year of each Service shall run from 1 January to 31 December.

10. An annual report of its operations shall be supplied by each Service as soon as possible after the end of the financial year to the National Co-ordinating Committee for Aboriginal Legal Services, for transmission to the Minister for Aboriginal Affairs.

11. Fees payable to legal practitioners in private practice will be subject to a reduction of 20 per cent of normal solicitor and client costs. Reasonable disbursements will be paid in full.

12. In all matters an Aboriginal who is reasonably able to make some contribution towards the expense of his legal assistance may be required to do so.

13. Legal assistance may be cancelled where it appears that the Aboriginal is no longer in need of assistance or that further expense on his matter is no longer justified.

14. Applications for assistance shall be made in such form or manner as the Service may accept in the circumstances of the Aboriginal and his case.

15. Payment of claims for legal costs without prior application may be made to legal practitioners for amounts not exceeding $50.00 in a summary matter or $100.00 in a Superior Court matter where it appears that it was not practicable to make application before the event or where the expense of making such an application did not at the time appear to be justified.

16. Each Service may reimburse existing facilities for the provision of legal aid to Aboriginals at the rate of the cost to that facility of assisting the Aboriginal in a particular matter, plus an amount equal to the estimated cost of administration by the facility of that matter not exceeding 5 per cent of the legal account.

17. Each Service may delegate to persons on terms its powers of approving applications for assistance or claims made without prior application and of requests for expenses of an unusual or unduly expensive nature in a matter.

18. There shall be a National Co-ordinating Committee for Aboriginal Legal Services with duties and membership to be determined. Its duties will include:

(a) making recommendations on budgeted claims to the Minister for Aboriginal Affairs for grants from the Australian Government;

(b) acting as a liaising body to assist each Service with inter-State arrangements and to work to a national level of legal assistance to Aboriginals;

(c) determining in co-operation with the Services, guidelines and priorities for the scope and availability of legal services as funds permit.

9 April 1973.

ABORIGINAL LEGAL SERVICES—INTERIM CHARTER

Purpose

This Charter sets out the conditions under which the Commonwealth Government will provide finance to the Aboriginal Legal Services, and how those moneys may be applied.

Introduction

2. The Government provides financial support to Aboriginal Legal Services to meet the special needs of Aboriginals in gaining access to appropriate legal advice and representation.

Financial Principles

3. (a) Subject to the terms of this Charter, the Aboriginal Legal Services are recognised by the Commonwealth Government as autonomous organisations, eligible for Commonwealth Government financial assistance for services provided in accordance with the priorities set out below.

(b) Grants to the Services will be made under such terms and conditions as may be imposed by the Minister for Aboriginal Affairs or his delegate.

(c) In respect of each case undertaken the Services will levy a standard service fee, the amount of which will be determined annually, by the Minister for Aboriginal Affairs. This fee may be waived in cases of demonstrated inability to pay.

(d) The Services are required to account for the use of public moneys in accordance with the financial rules attached hereto and which form part of this Charter.

(e) The Services have full responsibility for the management of finance provided in accordance with their approved budgets. No additional grants will be made to cover expenditure in excess of the Services' approved budget allocations unless prior written consent to such expenditure is obtained from the Minister or his delegate.

Priorities in Respect of Commonwealth Funded Activities

4. The primary purpose of the Aboriginal Legal Services is to provide Aboriginals with access to appropriate legal advice and representation; therefore the Services should not become involved in other programs which might detract from this objective and should in any event seek the prior concurrence of the Minister for Aboriginal Affairs should they wish to provide services other than legal services. This does not, however, preclude the making of co-operative arrangements with other Aboriginal organisations in regard to the provision of complementary services.

5. The following areas are to be given priority:

(a) representation of Aboriginals involved in criminal cases in the courts;

(b) improving the situation of Aboriginal juvenile offenders before the law;

(c) provision of assistance to Aboriginal parents relating to the custody and maintenance of their children.

6. Civil cases, and in particular, conveyancing, divorce, probate, letters of administration and action between two Aboriginal parties may only be undertaken to the extent that adequate provision is made for the priorities set out in 5(a)–(c) above, or where cost recovery makes such cases self-supporting.

7. Nothing in the above should be taken as precluding the provision of general legal advice on any matter.

8. In assessing cases against the above priorities the Services are entitled to have regard to the merits of the case.

9. The Services will:

(a) liaise and promote good relations between Aboriginals and police;

(b) train Aboriginal staff in skills relevant to their employment in the Services; and

(c) maintain accurate statistics on the nature and frequency of Aboriginal involvement with the law.

10. In allocating resources provided by the Commonwealth Government, particular attention should be given to Aboriginals in rural and remote areas who lack access to other forms of assistance generally available to the wider community. This should not be taken to exclude those Aboriginals in urban areas who, for social or other reasons, do not have ready access to such assistance.

11. In providing legal aid, the Aboriginal Legal Services should seek to establish and maintain co-operative arrangements with general community legal aid services as to the sharing of resources, particularly in regard to the servicing of rural and remote areas. Such arrangements may include providing services for non-Aboriginals as part of complementary arrangements whereby other legal aid services provide services for Aboriginal persons.

Reports

12. Each Aboriginal Legal Service will, as soon as practicable after the end of each financial year, prepare and submit to the Minister a report of its operations during that year.

July 1979

MINISTER FOR ABORIGINAL AFFAIRS
CANBERRA, A.C.T. 2600

CONDITIONS FOR GRANTS FROM THE DEPARTMENT OF ABORIGINAL AFFAIRS JUNE 1979

A major reason for applying conditions to grants made through my Department is that Government regulations require my Department to account to Parliament for the proper use of public moneys. The rules are based on the requirements of Department of Finance Regulations, Government decisions covering the use of public moneys and my Department's responsibility for administration of the grants in aid to Aboriginal organisations.

As incorporated bodies, Aboriginal organisations are likewise responsible to their members for proper administration and the achievement of objectives and I hope that the conditions contained in this booklet will also assist organisations to adopt a business-like approach to their operations.

Government grants made through my Department are not welfare payments. They are provided to meet demonstrated needs within communities and to help them with social and economic development. I hope that through the responsible management of grants, organisations will become more self-sufficient.

Enquiries about the grant conditions contained in this booklet and about making applications for grants or establishing and running an organisation are welcome at any office of my Department.

(F. M. CHANEY)

GENERAL INTRODUCTION

The following pages contain a set of conditions which apply to each grant made by the Department to your organisation. This introduction attempts to explain why these conditions are necessary.

Government Regulations (or Laws)

2. The Department is required to show to Parliament that the money which it has been given for allocation to Aboriginal organisations has been used for the purposes for which it was given. You will notice that the grant conditions require the Department to reach an agreement with your organisation as to how you may spend the money provided, and for your organisation to provide, at a later date, a separate statement showing that you have used that money in the way that had been agreed. The separate statement is to be prepared by an accountant and certified by an auditor. In addition to the auditor's statement the Department requires a report from your Chairman/President (or another responsible person) on how successful you have been in using the grant. The grant conditions require that you provide regular progress reports on your activities and a signed statement from your Chairman/President at the end of the grant or the end of the financial year showing that the grant has been spent.

3. The Department cannot normally give your organisation all of the grant money in one payment. Except for grants for short periods the Department can provide funds for a project only when you can show that funds are needed. The Department therefore requires regular financial reports on your cash position very much like those which your organisation will prepare when making decisions on your project.

4. The Department requires your organisation to follow careful practices when buying equipment, vehicles, buildings and hiring consultants and other specialists. You will find included in this booklet conditions which cover obtaining quotations, inviting tenders and arranging certain types of contracts. The Department itself must follow such practices because it uses tax-payers' money.

Government Policies

5. The Government's policy is to make sure that grants are made for the benefit of Aboriginal communities. A number of conditions have been included to ensure that the interests of the total Aboriginal community will be looked after and to prevent individuals gaining undue personal advantage from the money given to your organisation.

6. It is likely that organisations receiving grants from the Department of Aboriginal Affairs will from time to time be involved in activities aimed at publicising the need they see for changes in government policies; organisations should, however, be careful to distinguish such activities from support of a particular political party. In this regard, paragraph 2.1.4 specifically excludes the use of grants for electioneering purposes. Should an employee wish to stand for election for a State or Federal Parliament, he should seek leave from his organisation for the duration of the campaign.

7. The Department has a limited amount of money available each year and it is important for it to give grants to organisations which most need assistance. This is a difficult task and a number of conditions are included to help the Department in making such decisions.

8. The Department is not responsible for the management of organisations but it is the Government's policy to help organisations to improve their financial administration and to be more responsible to their members. The Department can assist your organisation to improve its skills in financial management.

9. Many of the conditions in the following pages cover management practices which all organisations will normally need to follow, for example, your auditor or the law under which your organisation is formed may require them. Some conditions relate to business transactions and the Department requires your organisation to contact its officers before you do

certain things. The officers first contacted will normally approve your request, however, in some cases, these officers may have to seek approval from more senior officers in capital cities, or possibly from the Minister.

10. As your organisation gains experience in financial management and is able to manage Commonwealth grants satisfactorily, the need for frequent consultation with the Department may be lessened.

PART 1 THE PROVISIONS OF GRANTS

Organisations are reminded that the details contained in this part apply to each separate application submitted.

1.1 Approval of Grants

1.1.1 Each grant requires approval, in writing, of the Minister or his delegate.

1.1.2 Before approval is given the Department will reach an agreement with an organisation on the purposes of the grant and the amount of money required for these purposes. Details of the purposes of the grant will be set out in the agreed budget.

1.1.3 Approval is not to be anticipated. An organisation entering into any expenditure or financial commitment in relation to the application before approval is given may be obliged to meet such liability from its own resources.

1.1.4 Neither the lodgment of an application with the Department nor knowledge that an item has been included in the Department's estimates of expenditure, or approved program, is to be assumed to guarantee approval and payment of the grant.

1.2 *Acceptance of Grant Conditions*

1.2.1 The letter of advice notifying approval of a grant and the purpose for which it is to be used, will specify compliance with the conditions contained in this booklet as a general condition of acceptance of the grant and such other special conditions as the Minister or his delegate may consider necessary.

1.2.2 General terms and conditions separately laid down by the Department for grants for particular types of projects (such as Housing Projects or Special Works Projects) will be set out in a separate attachment to the letter of advice and will be additional to the conditions detailed in 1.2.1.

1.2.3 A copy of the agreed budget for the grant and covering the current financial year will be attached to the letter of advice and will set out the amounts approved for each budget item and the quarters in which the amounts will be released.

1.2.4 If an organisation wishes to vary the agreed budget or the conditions contained in the letter of advice before accepting the grant it should write to the Department setting out the changes proposed.

1.3 Release of Moneys

1.3.1 The release of moneys against agreed budgets will normally be by quarterly instalments.

1.3.2 The first payment will be made after receipt of a written acceptance, signed by the head of the Executive and one other officer of the organisation, of the conditions and purposes stated in the letter of advice.

1.3.3 Subsequent releases against agreed budgets, and approved variations to budgets, will depend on the acceptance by the Department of the financial statements and certificates described in Part 3, Accounting for Grant Money.

PART 2 USE OF GRANT MONEYS

2.1 Limitations on the Use of Grant Moneys

2.1.1 Grants are to be used only for the purposes covered in the agreed budget. Prior approval, in writing, of the Minister or his delegate is necessary to vary those purposes.

2.1.2 Liabilities incurred by an organisation for debts or commitments outside the agreed budget for a grant will not be accepted.

2.1.3 An organisation is not to make a loan, gift or donation from a grant unless specifically provided for in the terms and conditions laid down in the letter of advice and agreed budget.

2.1.4 Grant moneys, or equipment and premises purchased with grant moneys, are not to be used for electioneering purposes; employees are not to engage in electioneering while on duty; the name of the organisation likewise is not to be used for electioneering purposes by its directors, employees or members.

2.2 Banking of grant moneys

2.2.1 Use of grant moneys for the purpose of earning income is to comply with the provisions of 2.2.2 and 2.2.3.

2.2.2 Grant moneys are to be deposited with the organisation's bankers. Deposits are to be capable of being withdrawn on call and used for the agreed purposes within the period for which the funds were provided.

2.2.3 Where grant moneys have been released for the acquisition of a capital asset the acquisition of which is delayed for more than two months prior approval of the Department must be obtained for such moneys to be invested. Investments are to be with Government secured financial institutions or in Government securities.

2.2.4 Where grant moneys are invested in accordance with 2.2.3 details of the institution, type of investment and interest earned are to be shown in financial statements.

2.2.5 If moneys provided are not used within a reasonable time the organisation may be required to repay such moneys to the Department.

2.3 Purchase of Assets or Services

2.3.1 Where an agreed budget includes the purchase of an asset (whether new or second-hand), the purchase price of which is more than $1,000 details of the asset to be purchased (including specification, proposed use, estimated life, price etc.) are to be supplied to the Department for approval before moneys are released. Where land and/or buildings are to be purchased, the Department will require, in addition, a certified valuation from a registered valuer before approving the release of moneys.

2.3.2 When purchasing an asset or provision of a service is requested, quotations or tenders are to called whenever practicable. Prior departmental approval in writing is to be obtained where assets or services are to be purchased without obtaining quotations or calling tenders.

- At least three representative quotations are to be obtained when the purchase price of an asset or service is expected to exceed $250.
- Tenders are to be invited when the purchase price of an asset or service is expected to exceed $10,000.

The purchase price is the total price payable before the value of any trade-in has been deducted. If a transaction includes a trade-in proposal, full details are to be submitted to the Department. Copies of tenders and details of quotations are to be submitted to the Department as a prerequisite to the release of moneys.

2.3.3 All assets purchased from grant moneys and currently valued in excess of $250 are to be listed in an assets register. The Register should indicate the date of purchase, details of the asset and purchase price.

2.3.4 Assets purchased with grant moneys may not be used as security against mortgages or encumbered in any way without the prior approval, in writing, of the Minister.

2.4 Disposal of Assets

2.4.1 Disposal of an asset acquired with grant moneys the purchase price of which was more than $1,000 and the use of any proceeds from such disposal requires prior approval, in writing, of the Minister or his delegate.

2.4.2 If an asset purchased with grant moneys is no longer used for the purpose for which it was acquired the Minister or his delegate may declare the asset surplus and it may be transferred to another organisation or be disposed of in a manner the Minister or his delegate may determine.

2.4.3 In the event of the voluntary winding up of an organisation the disposal of assets acquired from grant moneys requires prior approval, in writing, of the Minister or his delegate and may be at his direction subject to the provision of the Act under which the organisation is incorporated.

2.4.4 Details of the sale of any asset acquired with grant moneys are to be included in financial statements.

2.4.5 Any lost or unserviceable assets acquired with grant moneys the purchase price of which had been more than $1,000 may not be written-off by an organisation without the prior approval, in writing, of the Minister or his delegate. Where the purchase price has been less than $1,000 write-off action may be taken by the organisation. The replacement of any lost item should be funded from an insurance claim. Details of such actions are to be included in financial statements.

2.5 Insurance

2.5.1 Assets purchased by an organisation with grant moneys are to be insured unless specific exemption is given, in writing, by the Department. Workers' Compensation and Public Liability Insurance are to be maintained.

2.5.2 Details of insurances held by the organisation are to be provided to the Department. The details are to include the name of the insurance company, types of policies, policy numbers, annual premiums and date of renewal.

2.6 Use of Surplus Moneys

2.6.1 If moneys provided for a particular purpose are no longer required or are surplus to the requirement of that purpose the organisation may be required to:—

- repay to the Department the unexpended balance
- offset the surplus against grants approved for the following quarter
- re-allocate the surplus to an alternative use approved by the Minister or his delegate.

2.7 Employment of Professional and Technical Services

2.7.1 Prior to the engagement of professional or technical services endorsement of their suitability for appointment by an organisation is to be in writing from the Department. These services include:—

- accountants
- auditors; any person who is engaged to conduct an audit is to be registered or a qualified accountant. Employees or members of the organisation may not be engaged as auditors.
- technical consultants.

PART 3 ACCOUNTING FOR GRANT MONEYS

3.1 General

3.1.1 An organisation is responsible for accounting to the Department for the use of grant moneys.

3.1.2 Financial statements are to be classified to distinguish between capital and recurrent items. A list of suggested receipts and payments headings is contained in Attachment 1.

3.1.3 Annual income and expenditure statements are to comply with accepted accounting practice.

3.1.4 Income from all sources is to be included in financial statements.

3.2 Quarterly Accounting

3.2.1 At the end of each quarter, or the end of such other period as is agreed with the Regional Director, an organisation has two months within which to supply to the Department the following:—

- a statement of receipts and payments. The statements are to include a comparison (year-to-date) with the approved budget so that the fourth quarter's statement becomes an annual statement. Approved variations to the budget are to be shown;
- a detailed list of debtors and creditors at the end of each quarter.

These documents are to be certified as correct by the treasurer or accountant and signed by the head of the Executive.

3.3 Annual Accounting

3.3.1 Within three months of the end of each financial year or as directed by the Regional Director, an organisation is to forward to the Department:—

- a certificate signed by the head of the Executive, that the grant has been used for the purposes for which it was provided and that conditions included in the letter of advice have been met;
- an Auditor's Report containing an audited annual statement of receipts and payments (or an income and expenditure statement for trading operations), and a balance sheet as at the end of the financial year;
- an audit certificate of the accuracy of the asset register and explanations of unserviceable or missing items;
- an audited list of debtors and creditors and amounts applying;
- an audited detailed statement of the insurance policies held at balance sheet date.

3.4 Accounting for Specific Purpose Grants

3.4.1 Organisations receiving grants for a specific item or items are required to certify that the purposes and conditions of the grant have been met and to provide a statement of expenditure on those purposes. The statement may form part of an audited statement of the organisation or be provided as a separate statement; a separate statement is to be supported by documentary evidence (or vouchers) of the purchase or accompanied by an audit certificate.

3.5 Reports on Progress

3.5.1 Reports on an organisation's progress are required from all organisations and the format and frequency of submission will be determined in consultation with the Department. They will normally accompany financial statements.

3.6 Access to Records

3.6.1 The Department may inspect or take extracts from the books of account or seek further information to clarify that grant moneys have been properly spent.

SUGGESTED LIST OF RECEIPTS AND PAYMENTS HEADINGS

The headings below list only the main items that could be included in the financial statement and future budgets. Expenditure must be shown to at least this level of detail but all headings may be adapted to the needs of the organisation as necessary.

1. CAPITAL PAYMENTS
   - Land
   - Buildings
   - Civil Works
   - Plant and Equipment
   - Furniture and Office Equipment
   - Stock
   - Motor Vehicles
   - Tools and Equipment
   - Building Materials
   - Other
2. RECURRENT PAYMENTS
   - (a) **Salaries, Wages and Allowances**
     - Salaries (incl. overtime)
       - (a) Aboriginals
       - (b) Non-Aboriginals
     - Wages (incl. overtime)
       - (a) Aboriginals
       - (b) Non-Aboriginals
     - Allowances
     - Superannuation
     - Pay Roll Tax
     - Workers' Accident Compensation
     - Staff Procurement
     - Other
   - (b) **Travel**
     - Fares
     - Charters
     - Travelling Allowances
     - Transport Operating Payments
     - Other
   - (c) **Repairs and Maintenance**
     - Buildings
     - Plant and Equipment
     - Transport
     - Other
   - (d) **Services**
     - Professional fees
     - —audit
     - —accounting
     - —consultants
     - —legal, etc.
     - Rental
     - —Equipment
     - —Buildings
     - Heating, Fuel, Power
     - Cleaning
     - Insurances
     - —Buildings
     - —Vehicles
     - —Plant and Equipment
     - —Other
     - Postal and Telephone
     - Advertising
     - Freight
     - Rates and Taxes
     - Other
   - (e) **Supplies**
     - Office Stationery
     - Material and Stores
     - Food and Clothing
     - Medical
     - Education
     - Other
3. RECEIPTS
   - Interest
   - Rents
   - Donations
   - Functions (net proceeds of raffles, etc.)
   - Sales (plant, stores, equipment, etc.)
   - Other

Department of Aboriginal Affairs' Staff Numbers as at 30th June 1973-79

	Total	*Aboriginal*	*Non-Aboriginal*
1973 (31/10)	771	133	638
1974 (31/10)	1 470	733	737
1975 (31/10)	1 391	599	792
1976	1 248	479	769
1977	1 102	363	739
1978	996	326	670
1979	891	247	644

Source: Department of Aboriginal Affairs, June 1980.