

Chapter 3

Unmet legal needs and barriers to legal assistance

Introduction

3.1 This chapter outlines the areas of unmet legal needs for Indigenous people and discusses some of the barriers to Indigenous people accessing legal assistance services, namely:

- a lack of awareness of legal matters;
- geographic barriers;
- a lack of interpreters;
- conflict of interests; and
- a lack of culturally appropriate services.

Unmet legal needs

3.2 The committee heard overwhelming evidence about the legal needs of Aboriginal and Torres Strait Islander people which are not being met. The Indigenous Legal Needs Project (ILNP) referred to the work it has done in 32 remote, regional and urban Indigenous communities in Northern Territory, Victoria, Western Australia and Queensland, as well as a pilot study in eight communities in NSW:

ILNP quantitative data has identified priority areas of Indigenous civil and family law need in ILNP focus communities as housing (tenancy), discrimination, credit/debt (and associated **consumer issues**), **child protection, social security and wills and estates**.¹

3.3 The ILNP outlined how service priorities and geographical reach of the four types of legal assistance service providers combined to result in these unmet needs:

[T]he ILNP has identified that ATSILS and LACs often have some focus on providing criminal rather than civil or family law services beyond city centres, whether that be through their permanent offices or outreach. Community legal centres (CLCs) and [Indigenous] FVPLS may take on more civil and family law work, including outside major centres. CLCs, however, are usually unlikely to be engaging with local Indigenous communities to the same extent as Aboriginal legal services, and the scope of work [Indigenous] FVPLS are able to undertake is in some senses constrained as it must have some connection with family violence. This leaves large geographic areas in which Indigenous people live without any access to civil and family law legal assistance.²

3.4 Submissions and evidence reflected these findings of the ILNP. For example, Victoria Legal Aid (VLA) stated:

1 *Submission 19*, p. 2. Emphasis in original.

2 *Submission 19*, p. 5. See also Public Interest Advocacy Centre, *Submission 17*, pp 6-7.

[T]here is increasing evidence of unmet (or unidentified) legal need experienced by Aboriginal people in Victoria, particularly for civil and family law services. Research commissioned by VLA and the Victorian Aboriginal Legal Service (VALS) on the civil and family law needs of Indigenous Victorians found high levels of unmet legal need in housing, disputes with neighbours, credit and debt, discrimination, child protection, social security, victims compensation and wills. The report found significant difficulties for Aboriginal and Torres Strait Islander Victorians in accessing legal assistance services and highlighted the need for mainstream agencies such as VLA to better engage with Aboriginal and Torres Strait Islander clients.³

3.5 In a joint submission, North Australian Aboriginal Justice Agency (NAAJA) and the Central Australian Aboriginal Legal Aid Service (CAALAS) outlined the lack of civil law services throughout the Northern Territory:

NAAJA civil lawyers travel to remote communities in the Top End at best once a month for one day. CAALAS civil lawyers have even more limited capacity for remote service delivery in Central Australia. There are no other general civil law services operating in these communities and clients otherwise need to travel many hours by road to seek legal assistance. Many people lack the resources to make this journey.

Even if people had better access to our services, our staff do not have capacity to take on more work. In the area of civil law, there are few other options available. The NT Legal Aid Commission can provide only initial legal advice in general civil law matters. Community Legal Services do not provide services to remote communities, are often limited in the areas of law they cover and have no capacity for more clients. The cost of seeking private legal assistance in common civil matters such as tenancy disputes, social security matters, consumer law and debt issues is prohibitive for the vast majority of Aboriginal people in the NT.⁴

3.6 Mr Jonathon Hunyor, Principal Legal Officer, NAAJA, stated that it was very hard to estimate the level of unmet legal need in NAAJA's civil practice:

[T]hat is an area where if we tripled our staff they would all be just as busy as they are today. We go to Wadeye to offer civil services once a month for one day—that is the biggest Aboriginal community in the Northern Territory, and we go there one day a month. If you are not there on that day you have to wait for the next month. The level of unmet need there is absolutely massive.⁵

3.7 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of WA (ALSWA), explained that in regional and remote Western Australia, family civil law needs were 'completely unmet':

3 *Submission 35*, p. 2.

4 *Submission 31*, p. 5.

5 Senate Finance and Public Administration References Committee Inquiry into the Indigenous Advancement Strategy tendering processes, *Committee Hansard*, 16 February 2016, p. 14.

We try and do some civil law from our Perth office on an outreach basis where we only have six civil lawyers in the service. They are trying to service the entire state on an outreach basis. You are literally scratching the surface; so in areas in relation to tenancy, discrimination, Centrelink issues, criminal injuries compensation, matters that routinely happen in WA where Aboriginal people are discriminated against by the local hotel, or by the local shopkeeper, or by...some charlatan who comes in and sells them a mobile phone or a car—those sorts of civil law needs are completely unmet, and that is not overstating it. Unless the funding is increased, we are going backwards. We are losing lawyers all the time. We have lost lawyers this year, and that places extraordinary strains and pressures on existing staff, and the people who miss out are blackfellas.⁶

3.8 Mrs Mary McComish, Director of the Daydawn Advocacy Centre, supported Mr Collins' assessment of the situation in Western Australia:

In relation to access to legal services, there are not any, really, for areas of civil law like tenancy, [Department of Child Protection] matters and family law matters. Unfortunately, the Aboriginal Legal Service is not able to provide tenancy legal assistance. Even with other assistance that we try to obtain for our clients, there is a problem in that the Aboriginal Legal Service has more than likely acted for a partner or a relative and therefore is conflicted out of providing legal service to our clients.⁷

3.9 The committee also received evidence going specifically to the unmet needs in relation to family violence law matters. NFVPLS noted that geographic limits meant that there are service gaps:

There are a number of very high needs rural and remote areas that are not among the 31 locations that are currently serviced by FVPLSs, including but not limited to the Torres Strait, Shepparton in Victoria, Halls Creek in WA and the Anangu Pitjantjatjara communities in South Australia. Where FVPLSs have been able to secure additional funding to fill service gaps, the funding is often uncertain and short term. All National FVPLS Members have identified considerable demand for FVPLS specific services in communities where we are currently not resourced.⁸

3.10 The North Australian Aboriginal Family Violence Legal Service (NAAFVLS) stated that several 'relatively large communities' do not have access to legal assistance services offering family violence services:

This means, for example, that alleged perpetrators of family violence in these communities may have access to (criminal) legal assistance services but the alleged victim has no available legal assistance.⁹

6 *Committee Hansard*, 4 August 2015, p. 24.

7 *Committee Hansard*, 4 August 2015, pp 47-48.

8 *Submission 46*, p. 13.

9 *Submission 3*, p. 2.

3.11 At the public hearing in Sydney, Ms Monique Hitter, Executive Director, Civil Law Division of Legal Aid NSW, referred to the recognised problem, and consequences, of unmet civil and family law needs of Indigenous Australians:

In 2008 Legal Aid commissioned a report into the civil and family law needs of Aboriginal communities. Since then there has also been other research [by bodies like the Law and Justice Foundation and the Productivity Commission] which consistently identified that there are very high levels of unmet civil law needs in Aboriginal communities. [This research has] also demonstrated the impact of not addressing those legal problems—problems like debt and fines—and that not addressing those problems leads to more serious problems like family breakdown, removal of children and ultimately incarceration. Those legal problems often come in clusters. The research showed that when you have a housing problem you also often have a debt problem or a social security problem. The problems are also complex. They relate to other kinds of issues like mental health issues or drug and alcohol issues or homelessness. So there is this complex interrelationship between multiple legal problems and other social problems. And we recognised the extent of these problems, but we struggled with providing an effective service to Aboriginal communities to address those problems.¹⁰

3.12 Similarly, the Law Council of Australia (Law Council) set out the effect of these unmet civil law needs:

A major consequence of legal assistance services being under-resourced is that legal problems of disadvantaged people, when they arise, cannot be quickly identified and resolved, and so they remain unresolved until they escalate and multiply. Major areas of civil unmet need for Indigenous people include housing and tenancy disputes, consumer matters, employment disputes, and family law issues. Unresolved legal problems can balloon into more significant issues, including homelessness, family disputes, loss of work or income, alcohol or drug problems and ultimately to criminal behaviour and imprisonment.¹¹

Barriers to legal assistance services

3.13 In its report on the Access to Justice Arrangements, the Productivity Commission outlined in detail the significant barriers that Aboriginal and Torres Strait Islander people face in accessing justice. Those factors include:

- a lack of awareness about family and civil issues;
- communication barriers;
- socio-economic disadvantage and geographic isolation; and
- differences between traditional law and the Australian legal system.¹²

10 *Committee Hansard*, 23 September 2015, p. 26.

11 *Submission 41*, p. 27.

12 Productivity Commission, *Access to Justice Arrangement*, 2014, Vol 2, pp 762-766.

3.14 Barriers to accessing law and justice services were also acknowledged by the Australian National Audit Office (ANAO) in its report on the administration of the Indigenous Legal Assistance Program. Barriers identified by the ANAO included: financial capacity; language barriers; and mainstream services being less culturally sensitive or not delivering services to remote parts of Australia. Other barriers listed included:

...anxiety, lack of familiarity, fear of detention, and reluctance to use available services are seen as further contributors to Indigenous people not fully accessing mainstream legal services. In this setting, a cycle of disadvantage can arise as barriers to justice lead to poorer outcomes and high imprisonment rates, which in turn negatively affects wellbeing, opportunity and community safety – potentially resulting in further engagement with the justice system.¹³

3.15 Submissions to the committee reiterated these factors as barriers to legal assistance services for Aboriginal and Torres Strait Islander people. For example, National Association of Community Legal Centres (NACLCL) listed the following factors as barriers:

- intergenerational and multi-faceted disadvantage;
- remoteness;
- lack of awareness;
- language and interpreters; and
- mistrust of government and justice systems.¹⁴

3.16 ALSWA identified additional factors which act as barriers to Indigenous people being able to access legal assistance:

Referring to barriers restricting Aboriginal people from accessing legal assistance services the following can be, but is not limited to: previous unpleasant experiences, lack of awareness, lack of confidence in the legal system, failure of recognition in the Australian legal system of Aboriginal cultures and traditions, lack of available childcare, the location of such services, physical disability, education, lack of internet access, income, and language.¹⁵

3.17 The Law Council noted further factors which affect access to legal assistance services:

13 Australian National Audit Office, *Administration of the Indigenous Legal Assistance Program: Attorney-General's Department*, Report No. 22 of 2014-15, p. 13.

14 *Submission 42*, pp 2-3. See also Redfern Legal Centre, *Submission 30*, p. 4.

15 *Submission 10*, p. 5.

...significant disadvantage faced by many Indigenous communities as a result of unemployment, substance abuse, mental health issues, lack of education, over-crowded housing and family violence.¹⁶

Lack of awareness

3.18 The committee received evidence that one of the barriers to legal assistance services for Aboriginal and Torres Strait Islander people is a lack of awareness that a legal problem existed. As the ILNP explained:

A further significant barrier to Indigenous access to civil/family law justice is the lack of awareness in most Indigenous communities of what civil and family law actually is, how to address relevant issues arising and where to get help to do so.

...

Without sufficient knowledge, Indigenous people are unlikely to take the important first step of identifying issues relating to (for instance) housing, child protection, consumer law or discrimination as legal problems, for which there may be a legal remedy and to which are attached certain legal rights and responsibilities.¹⁷

3.19 Ms Polly Porteous, Chief Executive Officer, NACLCLC, highlighted that people will often not be alert to the fact that the initial problem is a legal issue:

[P]eople in general, regardless of whether they are Aboriginal or not, but particularly disadvantaged people, do tend to wait till until the last minute [to seek assistance]. They also do not recognise that it is a legal issue and therefore a lawyer can help. Even when I was a lawyer, when we would talk to people about whatever their legal problem was...they would mention, 'I have got this phone bill thing they are chasing me for.'¹⁸

3.20 As the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) explained, the lack of awareness is compounded by a reluctance to engage with the legal system:

[T]here is a significant lack of awareness and understanding amongst Aboriginal and Torres Strait Islander communities in relation to their legal rights and the avenues that are available to realise them. This means that there is not only a high level of unmet need but also a high level of unidentified need.

The effects of such a lack of understanding about the civil and family law system among Aboriginal and Torres Strait Islander peoples is also exacerbated by resistance to engagement with, and even fear of, civil and family law system services. In the context of the past history of forced removal of Aboriginal and Torres Strait Islander children and the contemporary extent of non-voluntary engagement with the criminal justice

16 *Submission 41*, p. 12.

17 *Submission 19*, p. 5.

18 *Committee Hansard*, 23 September 2015, p. 28.

and child protection systems among Aboriginal and Torres Strait Islander peoples, there is significant resistance to voluntary engagement with government and justice system services.¹⁹

3.21 The ILNP outlined the consequences of failing to address legal issues:

In measuring legal need in Indigenous communities it is necessary to consider not just the regularity with which specific legal issues are experienced, but also the way in which different types of legal problems run alongside each other and, at certain points, come together or coincide, causing legal need to intensify...[The ILNP] has identified numerous instances of Aboriginal and Torres Strait Islander people being affected by multiple legal problems simultaneously, with often one or all of these problems set aside and left unaddressed, for a range of reasons, until perhaps they reach a crisis point such as eviction from a tenancy or escalation to a criminal law matter. This has implications for service delivery, including requiring that legal services expend additional resources on working with Indigenous clients to effectively address need. They must, for instance, spend time 'unpacking' the complexity of the issues in question, they should approach this need holistically and should ensure greater access to legal help as soon as possible after issues arise.²⁰

3.22 Ms Porteous, NACLC, set out one approach to addressing this issue:

All of the research actually shows that instead of waiting until someone approaches the legal service, you actually need to get out into the community health centres, into the hospitals, talking to the GPs, working with welfare services, and try to actually get those front-line welfare workers to talk to clients and say: 'While I am helping you with your housing issues, by the way, can you just answer these questions. Do you have this issue? Do you have that issue?' I think that for Aboriginal people in particular, there is this historical fear of about walking into a legal centre.²¹

3.23 Ms Hitter, of Legal Aid NSW, explained the initiatives that Legal Aid NSW has to encourage engagement so that people are addressing legal problems earlier:

We form relationships with the health services and actually provide a legal service, for example, within the Aboriginal medical service. We have a lawyer embedded in the Aboriginal medical service in Mount Druitt so that when the doctor sees the person and they mention they have a housing issue—'I'm about to get kicked out of my place'—they can say, 'Go and see the lawyer that is in the office next door.' Also, by giving these sorts of pamphlets and postcards, and placing them everywhere in a community, then it is much easier for GP to say, 'You should go and have a chat to these people. They are here every Tuesday and they will sort you out with your fines.'²²

19 *Submission 13*, p. 6.

20 *Submission 19*, p. 3.

21 *Committee Hansard*, 23 September 2015, p. 28.

22 *Committee Hansard*, 23 September 2015, pp 28-29.

Consumer credit/debt matters

3.24 One particular area in which the committee received a number of examples demonstrating how a lack of awareness of legal problems was impacting on some Aboriginal and Torres Strait Islander people was in relation to consumer credit/debt matters. The North Australian Aboriginal Family Violence Legal Service (NAAFVLS) provided the following case study:

[L]egal information on consumer rights, employment, discrimination and credit/debit issues is virtually non-existent in remote communities. The accrual of debt can have serious long-term ramifications. NAAFVLS is aware that members of communities, have no knowledge of how to manage a Telstra contract, and may not know that they must continue payments if their mobile phone is damaged, lost or stolen, which can lead to serious financial and legal consequences. One resident of an isolated community was being harassed by a debt collection service and demands for payment over a six month period regarding payments on a car loan he had taken out some years previously. He owed over \$20,000.00, had recently lost his job, and did not know about his rights under bankruptcy.²³

3.25 The Northern Territory Legal Aid Commission's submission provided information from the commission's outreach project which dealt with consumer credit/debt issues:

Clients at many of the communities visited reported financial stress as a result of debts that they were struggling to repay.

The types and quantity of debts varied from client to client; however, there were common themes amongst some different communities, including:

- Predatory sales practices (Door to door and phone)
- Misleading and deceptive conduct in relation to debt recovery
- Unfitness for purpose (for example phone plan agreements in regions where there is no phone coverage)
- Warranty issues in relation to motor vehicles
- Unserviceable loans which had been approved outside of the remote lending criteria
- Assistance arranging repayment of fines.

In general we encountered poor levels of financial literacy and a lack of access to services that could assist with renegotiating payment rates when clients were suffering financial hardship. Where possible clients are referred to the appropriate consumer protection body.²⁴

3.26 At the public hearing in Sydney, Ms Jemima McCaughan, Executive Director, Civil Law Division, Legal Aid NSW, gave the follow example of consumer leases for household goods:

23 *Submission 3*, pp 2-3.

24 *Submission 29*, pp 24-25.

The example is of two traders who went into communities in western New South Wales. They went door to door selling essential items basically. Yes, it can be a more affordable weekly or fortnightly payment, but we see huge misleading conduct about what they are actually signing up to. Clients often do not understand how much they will pay over the whole contract. There is misleading conduct about what the terms and conditions are around ownership of those goods. Clients are using consumer leases to acquire goods when there is no right to purchase or own those goods at the end of the contract.²⁵

3.27 Ms McCaughan noted, however, that consumers did get to keep those goods at the end of the contract because the traders do not want the goods back at the end of two years. Ms McCaughan also explained to the committee that the lack of an interest rate cap on consumer leases was problematic:

[I]f it is a consumer lease you do not [get the benefit of the 48 per cent interest rate cap]...We have seen loads of contracts where it has been between 300 and 400 per cent of the value of the goods. The clients are never told that. They are not told what the total cost is or what the retail value is, and they have no way of working out what the retail value is because there is no alternative in terms of purchasing those goods in a reasonable vicinity.

...

In the two years we have done work in Aboriginal communities we have assisted approximately 150 clients on consumer lease issues. We were able to get refunds, ownership of the goods and termination of contracts without further liability. It is such a widespread issue.²⁶

Geographic barriers

3.28 Geographic isolation is a major obstacle to Aboriginal and Torres Strait Islander peoples' access to legal services. NATSILS, for example, noted that 21.3 per cent of Aboriginal and Torres Strait Islander people in Australia live in remote or very remote communities, compared to just 1.7 per cent of the non-Indigenous population.²⁷

3.29 The joint submission by NAAJA and CAALAS set out some of the challenges of servicing remote areas:

Many of our clients live in communities or outstations that are hundreds of kilometres by dirt road to the nearest regional centre and can be inaccessible by road for significant parts of the year: particularly in the Top

25 *Committee Hansard*, 23 September 2015, p. 30.

26 *Committee Hansard*, 23 September 2015, p. 30. Ms McCaughan noted that the Australian Securities and Investment Commission has a current review which incorporates consideration of this matter.

27 *Submission 13*, p. 3, citing data from Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage, Key Indicators 2014 Report*, Figure A3.2.

End's 'Wet Season' (roughly December – April). Flooding, storms and cyclones are common challenges in servicing remote communities. Remoteness makes regular face-to-face contact with legal assistance services difficult and often expensive, while also posing a formidable barrier to other services, courts and tribunals that may only be accessed in major centres.

...

With geographical remoteness also comes a lack of basic services or unreliability in those services – such as electricity and telecommunications. The availability of technology such as audio-visual links and services such as Sykpe is limited, the quality of the connections available often poor and as is the quality of communication achieved. Most of our clients do not have landlines but will have mobile phones. However, this does not give them easy access to government and other agencies – the 'free' 1800 or 1300 numbers are not free for mobile phone users.²⁸

3.30 The submission by the National Family Violence Prevention Legal Services (NFVPLS) also emphasised the geographic challenges Family Violence Prevention Legal Services (FVPLS) face in providing legal services:

Geographic issues lead to considerable resource challenges for FVPLSs in the provision of legal services and providing access to justice. The costs of travelling to remote communities are high. Some services are required to charter flights, or spend many hours travelling by road to reach community...

Funding levels mean that some services are only able to visit communities once a month. This results in limited time to spend with individual clients, delays in progressing legal matters with potential safety implications, and impedes the process of building trust between the client and the lawyer.²⁹

3.31 NFVPLS highlighted that face-to-face contact with clients was important and outlined why other forms of communication were inappropriate, particularly with the matters with which FVPLS deal with:

Face-to-face contact allows parties to engage with each other in ways that are not possible through telephone conferencing. Telephone contact may also be inappropriate in the context of family violence, where the subject matter is traumatic, and there is a need to build trust between the lawyer and the client. In addition, many FVPLS clients do not own phones, or can be reliant on limited pre-paid credit. They may need to use pay phones in their communities, where there is little privacy.

Other usual forms of communication, such as email, are often inappropriate. Many clients have little or no access to computers or the internet. Emailed communication, especially when clients are using public or shared computers, may even put the client's safety at risk. Clients may

28 *Submission 31*, p. 4.

29 *Submission 46*, p. 12.

also experience low levels of literacy, making written communication difficult. To address these challenges, lawyers and client support workers are often required to spend many hours driving to communities to contact clients, to advise them about court dates or take advice.³⁰

3.32 Geographic barriers exist not only in remote areas, but also in regional Australia. The Hunter Community Legal Centre (HCLC), which operates in the Newcastle, Lake Macquarie, Hunter Valley, Port Stephens and Great Lakes regions of New South Wales, noted that its clients sometimes have difficulty traveling to HCLC's office:

The HCLC has a large catchment area, with most clients living in rural and regional places. Clients living outside of Newcastle have in the past disclosed to the HCLC that they found it difficult to travel to the Centre's office to complete documents or receive face-to-face legal advice. The HCLC has for the past few years been able to offer outreach legal advice clinics in a number of more remote locations, but more recently looming funding cuts and uncertainty have meant that the Centre has had to reduce the number of outreach clinics, and ultimately will have to cease offering outreach services entirely if current funding levels continue or anticipated funding cuts eventuate.³¹

3.33 To address these geographic barriers, ILNP advocated increased funding for outreach services:

In this context, more funding could be used to extend outreach services, to establish a greater number of permanent legal service offices in regional and remote locations (which also employ more civil and family lawyers), to fund more civil and family law positions in existing legal service offices located outside centres or to fund training and employment of local Indigenous people who could be employed as 'triage workers'. These workers would know 'whether or not there are avenues to address things that appear' in a particular community and could work collaboratively with and for legal services.³²

Lack of interpreters

3.34 Another significant barrier for Indigenous people accessing legal assistance services is a lack of interpreters. As NATSILS explained in its submission:

Central to effective engagement and provision of quality services to Aboriginal and Torres Strait Islander peoples is effective communication. For a proportion of Aboriginal and Torres Strait Islander peoples, this will be unachievable without the assistance of an interpreter. However, there is a

30 *Submission 46*, p. 12.

31 *Submission 22*, p. 6.

32 *Submission 19*, p. 5.

shortage of Aboriginal and Torres Strait Islander interpreter services around Australia to meet this need.³³

3.35 Similarly, the Northern Territory Anti-Discrimination Commission noted:

Other issues affecting access to legal services is the recognition of the need for and availability of professionally trained interpreters to travel with or be available to Aboriginal service providers when they are providing services to Aboriginal people. This is critical to ensure understanding and full participation in the process including the identification of the area of legal need, advice and participation in the Court process or with complaints resolution [processes].³⁴

3.36 The joint submission by NAAJA and CAALAS provided the following information from their lawyer's experiences in servicing Indigenous communities:

In the NT, many Aboriginal people speak English only as a second or third language and require interpreters. In a number of communities that are serviced by NAAJA and CAALAS (including communities like Wadeye, the NT's largest Aboriginal community), almost all people seeking legal assistance require an interpreter. Unfortunately, there is a shortage of appropriately trained and qualified interpreters in Aboriginal languages, including in some of the major language groups.³⁵

3.37 The Hon Wayne Martin AC, Chief Justice of the Supreme Court of Western Australia (WA), indicated that he has repeatedly made representations to the WA state government about properly funding an interpreter service for that state. In terms of the importance of having an interpreter, Chief Justice Martin informed the committee:

The law on that is clear. The process is not fair unless the accused person understands the language in which the process is being conducted and in significant areas of this state there are people who do not have an adequate command of English to understand court processes. They may have an adequate command of English to get by in daily life [but] Productivity they do not have sufficient English to comprehend the court processes. Those people are not being provided with the interpreter services they need, as a result of which a lot of the proceedings being conducted in our courts are invalid. The law on that is clear, so I agree entirely [that it is essential to have access to interpreters].³⁶

3.38 The Chief Justice did acknowledge the difficulties with providing qualified interpreters:

Aboriginal interpretation is very difficult because in the Kimberley, for instance, there are about 30 spoken languages, some from very small language groups. So finding qualified interpreters in those language groups

33 *Submission 13*, p. 7. See also Western Australian Council of Social Service, *Submission 25*, p. 3.

34 *Submission 23*, p. 3.

35 *Submission 31*, p. 3.

36 *Committee Hansard*, 4 August 2015, p. 36.

is the first problem. Finding a qualified interpreter who is not connected with either the victim or the offender is almost impossible. So we have enormous practical difficulties in finding appropriate interpreters who are not disqualified by conflict of interest and reducing resources in this space seems to me to be a step in the wrong direction, but the executive government holds the cheque book.³⁷

3.39 National Legal Aid noted that interpreters were needed not only to enable the taking of instructions and the giving of legal advice, but also for the provision of community legal education to communities.³⁸

3.40 NATSILS also highlighted the importance of having interpreters for hearing impaired Aboriginal and Torres Strait Islander people:

Hearing loss can result in the same communication barriers as those produced by language difficulties and cross-cultural differences. Given the high rate at which Aboriginal and Torres Strait Islander peoples suffer from hearing loss this is an issue that must be addressed[.]³⁹

Conflicts of interests

3.41 The committee also received evidence that conflicts of interests may prevent Aboriginal and Torres Strait Islander people being able to access legal assistance services, as Legal Aid NSW noted:

Conflict of interest remains a significant issue for service delivery in such areas where the [Aboriginal Legal Service] is precluded from providing representation and there are few alternative legal practitioners available to act on behalf of those Aboriginal clients.⁴⁰

3.42 At the public hearing in Sydney, Ms Hitter, Legal Aid NSW, noted that such conflicts arise 'all the time' in small communities where more than one person is involved in a criminal offence.⁴¹ Ms Hitter indicated that in such situations Legal Aid NSW would not leave people unrepresented, but would facilitate some option for legal representation.⁴² Ms Porteous, NACLC, added:

In some regions, there is both the Aboriginal legal centre, the Legal Aid Commission and a community legal centre. So having them does help sometimes when there are those conflicts. But also there are private lawyers. They are still able to get legal aid. It is just that the actual Legal Aid Commission cannot.⁴³

37 *Committee Hansard*, 4 August 2015, p. 36.

38 *Submission 37*, p. 3.

39 *Submission 13*, p. 8. See also Northern Territory Anti-Discrimination Commission, *Submission 23*, p. 3.

40 *Submission 36*, p. 4. See also Hunter Legal Community Centre, *Submission 22*, p. 4.

41 *Committee Hansard*, 23 September 2015, p. 29.

42 *Committee Hansard*, 23 September 2015, p. 29.

43 *Committee Hansard*, 23 September 2015, p. 29.

3.43 In particular, evidence highlighted the importance of the FVPLS, so that women and children were able to access legal assistance services in family violence matters. Mr Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner, explained:

ATSILS provide services in rural and remote areas, sometimes where no other legal services exist. However, this often presents issues for clients or the ex-partners of clients as ATSILS are unable to act for both parties, due to a conflict of interest. Women or children who are affected by an issue such as family violence have been denied legal assistance through ATSILS or Legal Aid because those organisations have already represented the perpetrator in previous or related criminal, family or civil matters. This conflict of interest means that, often, FVPLS are the only available legal service for Aboriginal and Torres Strait Islander women and children, where they exist. For this reason FVPLS needs to be adequately funded, even in locations where ATSILS or Legal Aid exist.⁴⁴

3.44 The National Justice Coalition also emphasised this point:

It is important to note the vital importance of having two culturally competent streams of legal assistance services available for Aboriginal and Torres Strait Islander people, particularly in the context of family violence. The existence of conflict of interest issues, which can frequently arise in family violence matters, means that multiple parties are not able to access legal assistance from the same service. FVPLSs provide a vital alternative service, and an avenue through which Aboriginal and Torres Strait Islander victims/survivors of family violence can access culturally appropriate and specialised legal assistance. In effect, the existence of two culturally competent legal assistance services ensures that all parties are able to access culturally competent legal assistance services, as is their right.⁴⁵

A lack of culturally appropriate services

3.45 As noted earlier in this chapter, Aboriginal and Torres Strait Islander people have a preference for Aboriginal and Torres Strait Islander Legal Services (ATSILS) and FVPLSs due to those services being culturally competent. Evidence indicated that a lack of culturally appropriate services may be a barrier to Aboriginal and Torres Strait Islander people accessing legal assistance services. For example, the National Justice Coalition stated:

[M]any Aboriginal and Torres Strait Islander people prefer, but cannot access Aboriginal and Torres Strait Islander community controlled legal services. It is vital that Aboriginal and Torres Strait Islander people be offered the option of a culturally safe legal service (community controlled) to ensure their matter is dealt with in a culturally appropriate way. This is especially important due to the history of trauma and dispossession

44 *Submission 5*, p. 7.

45 *Submission 40*, p. 7.

experienced by Aboriginal and Torres Strait Islander people. Greater investment in community controlled services is needed to address this.⁴⁶

3.46 To this end, a number of submissions strongly advocated for the adequate resourcing of ATSILSs and FVPLSs.⁴⁷ For example, Mr Gooda stated:

It is particularly important that ATSILS and FVPLS be adequately resourced because Aboriginal and Torres Strait Islander people need not just any legal services, but culturally competent legal services. There are many complex factors involved in the contact between Aboriginal and Torres Strait Islander people and the justice system.⁴⁸

3.47 In particular, in relation to FVPLSs, Mr Gooda argued:

FVPLS are particularly important for Aboriginal and Torres Strait Islander women and children because of the disproportionate rates of family violence they experience. ATSILS specialise in providing criminal law assistance and therefore women and children facing family violence situations rely on the targeted and specialised legal services of FVPLS rather than ATSILS. FVPLS have the cultural competence as well as the specific expertise in family violence, and even more specifically, family violence in in Aboriginal and Torres Strait Islander communities.⁴⁹

3.48 While ATSILSs and FVLPSs are dedicated providers of legal assistance services to Aboriginal and Torres Strait Islander people, other legal assistance services are also available. To this end, National Legal Aid indicated its commitment to 'working with Aboriginal and Torres Strait Islander organisations to ensure coordination of service delivery to Aboriginal and Torres Strait Islander communities and to providing services that are as culturally appropriate as possible'.⁵⁰

3.49 Community Legal Centres (CLCs) also highlighted the work that they are doing to provide culturally appropriate services.⁵¹ At the public hearing in Sydney, Ms Nancy Walke, Director, National Association of Community Legal Centres, spoke about the work she did in her previous position at the Northern Rivers Community Legal Centre:

...I am not a solicitor. I am a Bundjalung woman and there are 13 communities in the Bundjalung nation that we serve, which is fairly widespread.

46 *Submission 40*, p. 4.

47 See, for example, National Aboriginal and Torres Strait Islander Legal Services (NATSILS), *Submission 13*, pp 5 and 6-7; Victoria Legal Aid, *Submission 35*, pp 3-4; Kingsford Legal Centre, *Submission 38*, p. 9.

48 *Submission 5*, p. 7.

49 *Submission 5*, p. 7. See also Indigenous Legal Needs Project, *Submission 19*, p. 9; Northern Territory Anti-Discrimination Commission, *Submission 23*, p. 3.

50 *Submission 37*, p. 5.

51 See for example Kingsford Legal Centre, *Submission 38*, p. 3.

[The legal access] program was funded for 12 hours a week, which is not much. We went out to communities, following the cultural protocols, talking to people there, having a yarn, asking them what they needed, and then we provided a program that those people needed. We would go in with a solicitor, and I would go because they knew me, until they got to know the solicitor. The centre itself has changed over the years. We have cultural awareness every year and the solicitors there are culturally competent to deal with Aboriginal people. The environment is friendly and includes all the things that Aboriginal people feel comfortable with, like art and pamphlets specifically for them.

One of the problems was that we never really ever had time. We needed time, and that meant more staff and more hours having an Aboriginal person there. The other thing is that the centre has, built into their strategic plan, issues for Aboriginal people, and they actually do work with their strategic plan in that respect. So not only do we have specific programs that have Aboriginal people in it; we also have non-Aboriginal jobs that are staffed by Aboriginal people. For example, our front-desk person is Aboriginal. She talks to everybody, of course, but it is really nice for people to come in and know that there is someone there who will understand what they want.⁵²