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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Legal aid and access to justice

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Tuesday, 11 November 2003

Members: Senator Bolkus *(Chair)*, Senator Payne *(Deputy Chair)*, Senators Greig, Kirk, Scullion and Stephens

Participating members: Senators Abetz, Mark Bishop, Brandis, Brown, Buckland, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Harradine, Harris, Humphries, Knowles, Lees, Lightfoot, Ludwig, Mackay, Mason, McGauran, Murphy, Nettle, Sherry, Stott Despoja, Tchen, Tierney and Watson

Senators in attendance: Senators Bolkus, Buckland and Scullion

Terms of reference for the inquiry:

To inquire into and report on:

The capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance, including:

a) The performance of current arrangements in achieving national equity and uniform access to justice across Australia, including in outer-metropolitan, regional, rural and remote areas;

b) The implications of current arrangements in particular types of matters, including criminal law matters, family law matters and civil law matters; and

c) The impact of current arrangements on the wider community, including community legal services, pro bono legal services, court and tribunal services and levels of self-representation.

WITNESSES

Committee met at 9.30 a.m.

CHAIR—This is the first public hearing of the Senate Legal and Constitutional References Committee's inquiry into legal aid and access to justice. The inquiry was referred to the committee by the Senate on 17 June 2003, and the committee is to report by 3 March 2004. The committee's terms of reference—copies of which are available from the secretariat—focus on the capacity of current legal aid and access to justice arrangements to meet the community need for legal assistance, including uniform access to justice across Australia, the effect on particular types of matters such as family law and civil law matters and the impact of current arrangements on community and pro bono legal services, court and tribunal services and levels of self-representation.

The committee has received 96 submissions for this inquiry, all of which have been authorised for publication and are available on the committee's web site. Witnesses are reminded of the notes that they have received relating to parliamentary privilege and the protection of official witnesses. Further copies of those are also available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

[9.32 a.m.]

HUME, Ms Marie Cecilia, Volunteer, National Council of Single Mothers and their Children

PARRY, Ms Yvonne Karen, Executive Officer, National Council of Single Mothers and their Children

McINNES, Dr Elspeth, National Convenor, National Council of Single Mothers and their Children

CHAIR—I welcome the representatives of the National Council of Single Mothers and their Children by teleconference. At this end we have Senator Scullion, Senator Buckland and me—Senator Bolkus. You have lodged submission No. 19 with the committee. Would you like to start off with any amendments or alterations to that submission?

Dr McInnes—No, we have no amendments to the submission.

CHAIR—Would you like to make an opening statement?

Dr McInnes—The National Council of Single Mothers and their Children continues daily to hear of situations where parents are unrepresented in very serious proceedings in the Family Court, where they believe their children are exposed to serious harm and they themselves are exposed to serious harm. Their capacity to do anything about that using the legal processes of the Family Court is very limited because they do not understand the legal proceedings. They do not understand how to get evidence into the court, how to subpoena evidence and get it produced. They do not know how to require certain procedures that would inform the court about the child's safety. The consequence is that the children—or any target of violence—continue to be exposed to serious harm. That is happening every day in the Family Court. It would be better for those people if they could at least have access to a lawyer who understood the proceedings and could help them.

CHAIR—Does anybody else from your end wish to make a statement?

Ms Hume—I just wanted to say that funding in relation to legal aid is not only related to the funding caps of legal aid, which are often insufficient to proceed right through a whole Family Court hearing. The decision made by legal aid about whether to fund parents is often based on a requirement for the dispute to be about a substantial issue. That creates an indirect gender bias. To apply for a contact order is considered to be a substantial issue but to apply for residence, and formalised residence and contact arrangements, is often seen to be not substantial and therefore legal aid is not granted. That can often leave a situation where women and children are at risk.

Ms Parry—As a counsellor with the National Council of Single Mothers and with Spark Resource Centre—which is a sole parent resource centre—I know that it is extremely distressing for these parents to be unrepresented when they are going through the court. They are often cases where there is extreme domestic violence. Their legal aid runs out before they even get to trial

because of the vexatiousness of the other litigant in dragging them in and out of court all the time in order to still be in their lives and wield power over them. The healing process cannot start until all that violence and the exposure to violence is stopped.

CHAIR—I will start with a question that flows from some of the things you have been saying about legal representation in matters before the Family Court and matters involving abuse or violence. Can you tell us, from your experience, how you see the current cap working and what recommendations you might put to us flowing from that experience?

Dr McInnes—I will start and Marie might like to follow. The cap is limited in the sense that it is unlikely to meet the demands of a complex case. One of the explorations of legal aid in matters involving abuse and violence was through the Family Court's Magellan project, which researched a different method of managing cases involving allegations of child abuse whereby they provided uncapped legal aid funds to all parties. That research, which is reported in the reference list of our submission, identified that the actual expenditure on legal aid dropped because there were fewer hearings involved in the case and parties were much more likely to settle when there was an active management focused around the issue of allegations of abuse and violence.

That study identified that providing a tightly managed and focused approach to addressing the issues of safety meant that less money was expended overall compared to leaving it to parties to find their way through the system—unrepresented at some point, represented at other points, but often reaching their legal aid cap before the hearing. So in the pre trial manoeuvring, in interim contact orders and variations to those, specific issues orders and perhaps breach of contact orders, the cap gets exhausted and then, come the trial, the person can be left literally in the middle of the trial without representation. And they have no capacity to deal with that.

Ms Hume—The other issue in relation to that is that of children's representatives. It is my understanding that where there are children's representatives there are some limits to the funding for the adults involved. So you have a situation where the child representative has been appointed because of allegations of violence and yet the parents cannot get adequate legal aid to put their case to court because of the child representative. I think that compounds the problem that Elspeth was talking about.

Ms Parry—I would like to add to that. I have a couple of clients at the moment who have had their legal aid stopped even though there have been child sexual abuse allegations raised. This is extremely distressing for them.

CHAIR—From your experience or research, can you give us any idea what percentage of cases involving abuse or violence do not have legal representation? Is it a major problem?

Dr McInnes—I do not have the figures before me. I note the Family Court's research—which is, again, quoted in our submission—that legal aid was refused or withdrawn before or during the hearing for one or both parties in 20 per cent of cases. The other bit of information we can match with that is that the Magellan research—which I have just referred to—showed that halfway through Family Court proceedings about 50 per cent of cases featured allegations of abuse or violence. This had reduced to one-third by the time of final hearings. We can say that of those final hearings around a half to a third involved serious allegations of abuse of children or

other parties and that, in 20 per cent of all cases at final hearing, there was no legal aid for one or both parties. We do not have the global figure, but we could say it is around a third of that 20 per cent if the representation flowed across the board. Although there is a further proposition that, because cases involving child sexual abuse or other allegations of violence are more complex and drawn out, these are the parties who would be most likely to run out of funding before there was a final hearing. Quite often there are a whole lot of applications and counterapplications and very high activity rates going on in these cases.

Ms Hume—I do not know any other figures that would confirm that. That is the only information I have available.

CHAIR—That is useful. Thank you.

Senator SCULLION—Thank you very much for your comprehensive submission. I would like to continue along this theme of parties running out of funding either part way through the trial or even before completion of the hearing. In your submission you stated that in a number of cases legal aid lawyers are not accountable to the clients for expenditure. Clearly, those issues are linked to the issue of budgeting, where we are up to. You also indicate that often lawyers do not listen to the instructions from their client but act on their own initiative. Could you give me some examples of that and perhaps give me an indication of how wide this problem is?

Ms Parry—From the clients I have been speaking to, it is often the case that they will go ahead and negotiate contact, even though they are aware of sexual abuse or violence. That certainly is not in the best interests of the child and it is certainly not what the parents want. There seems to be no accountability as to bringing up information to the Family Court. For instance, in a case, during a family assessment child sexual abuse allegations were brought up by the child. There is no process for that to be acted upon and no procedures that need to be followed through that would be accountable to the court to say, 'This is a procedure that has been done,' or, 'These things are ticked off and signed for.' So in that way, people are being left unprotected and it is almost as if they are saying, 'This is the amount of money, so we have to get through this quickly,' rather than, 'Gosh, this is what's being brought up, and we need to protect these children in these cases.'

Dr McInnes—I would add that, when people apply for legal aid, in my understanding and from accounts from people who have been in this situation, they have to agree to follow the advice of their legal representative. That means, in effect, that in contracting to agree to accept legal aid they have to say that they will 'do as they're told', which reverses the normal client-lawyer relationship. Then they are told, 'The child has a right of contact with both parents, so we need to make a contact arrangement,' rather than following the client's instruction.

Of course, when there are repeated applications or demands for letters or affidavits, the whole legal aid allocation can dribble out of the lawyer's office without the client ever actually being informed: 'Look, this is happening. Do you want me to spend money on this? If you get those photocopies yourself then we can keep the money for the trial.' Those kinds of cooperative, supportive responses that are possible when there is a limited amount of money do not seem to be accessible to many of the clients whom we deal with. I must say that we are not dealing with wealthy, literate, educated, middle-class, empowered populations, normally—although there might be one or two people who meet all those criteria. Quite often they are people from a non-

English-speaking background or minority culture. They are traumatised by their experiences of violence, have very little understanding and knowledge of the legal system, are really terrified for their child and just really hope that they will be protected. They do not know how to manage relationships, in a sense, with professionals who have so much power relative to them.

There is no attitude which says: 'I have to protect this client's capacity to be represented at trial. I need to supportively and proactively manage this small amount of money so that we can get a good result for the client.' It seems to be: 'Well, we just spend the money as it needs to be spent and then it's gone and, sorry, it's over for you.' That is a real problem, but it seems to be one that varies between individual lawyers. You will get some who are very supportive of their clients and others who are minimally interested in their clients and basically interested in continuing to receive the funds without really addressing the interests of their client. Marie, I do not know if you have other experiences.

Ms Hume—Yes, I think I would like to confirm that for many parties it is a really disempowering experience to go through the legal system. Their lack of information and knowledge about the legal system means that they are subjected to what would be considered a culture within the legal profession and within the court such that, if they say, 'I am not quite sure whether or not contact arrangements are safe for my child,' it is really not taken any notice of. The culture is: 'Well, if you're going to try to stop contact then that's not a reasonable case and that's not one we'll present to the court.' There will be pressure on parents to comply with the culture that contact arrangements should be made. Often, also, legal aid lawyers do not really have the resources and the time to explain how the court system works and what the reasons are for the advice they are giving. They have limited time and resources and, in effect, what happens is that parents who are going through the court are left feeling disempowered and not knowing how to instruct their solicitor correctly.

Senator SCULLION—I have a supplementary question. I note with concern that you seem to indicate that it is the timing of the process about the negotiation of the contact process, in that there may be allegations of abuse of some form that have not been dealt with by the courts—or are you telling me that these are allegations of sexual abuse of a nature that people may not wish to progress for one reason or another? I just want to get some clarity on that. Is it the process that we are going to deal with some sort of a contact arrangement prior to the resolution of allegations of child sexual abuse, or is the nature of the abuse such that there is no intention to lay criminal charges or to pursue those matters?

Ms Hume—I would say that often the issues come out in the Family Court after there has been a decision not to proceed with criminal charges for whatever reason. The Family Court is not in fact there to determine whether or not sexual abuse has occurred, but really to look at what is in the best interests of children and whether there is a risk of future abuse of children in that situation. The problem with the system is that often that information is not available to the court to make a decision because of the problems between that system and the state child protection system. In a lot of cases, no investigation is conducted because they see this as a federal matter and therefore the Family Court is left with making decisions without a proper investigation being conducted.

Dr McInnes—There is a further issue. I would like to confirm to you that our problem is that the court is making decisions without full access to information, rather than that these are minor

matters. In fact, the research in the Magellan project found that they were very serious matters, often compound forms of abuse and at the higher end of the scale, and that a significant proportion of children who were the subject of this abuse had never previously come to the attention of the state child protection authorities—so a different population with only a relatively small crossover.

What we find in the Family Court system at the moment is that, because of the pressures, they provide interim hearings on the papers—that is, there is no cross-examination of any parties on the content of their affidavits. That decision has been made to manage the volume of cases. Judges are very reluctant to order no contact on unsubstantiated or untested allegations. So, regardless of what is in those affidavits, the highest probability is that there will be contact ordered. The Rhodes et al research on the impact of the Family Law Reform Act found that there was a significant drop in the number of no-contact orders issued at the interim hearing stage. This is because the system does not allow for any of that to be tested in any way. Currently, the right-to-contact provision actually gazumps any notion of children's safety. At the moment we are preferring to risk further child abuse as opposed to an interrupted or stricter regime of contact to manage risks of abuse.

Firstly, we would want to see access to investigations promptly at an early stage, because it is really significant as to whether a child is exposed for a year or two, to the final hearing, to ongoing abuse. We know that, in child development terms, that year or two is much more significant than to experience two years of violence as an adult—although that is bad enough. In developmental terms, it is profoundly damaging to children. Further, we know that it is more likely to be younger children rather than older children who are subject to this, because their evidence is not available to be tested in criminal proceedings and neither are their statements to child protection workers given weight in and of themselves because of their age. So you can have two-year-olds and three-year-olds in that situation—and if any of you have children or grandchildren, you will know that they can speak quite well and tell you what has happened—but nobody will take that on board in and of itself because of a traditional suspicion of children's capacity to tell the truth.

So at that early stage we have no investigation by the Family Court of any allegations. There is also the fact that when child abuse allegations are made and referred to the state system, as Marie said, because of the pressures on the state system, as we know from the publications, they only investigate a relatively small percentage of high-risk, immediate danger to children. Where children are in the protective day-to-day custody of a person not perceived to be abusing the child, that does not meet the criteria of immediate high risk. So the majority of referrals from the Family Court to the state child protection system do not get investigated. The court simply gets information back which says, 'This has not been substantiated.' But it also encompasses the fact that it has never been investigated. As Marie said, the criminal justice system is not a reference point because, in the cases involving children under seven, there is no real capacity to cross-examine them to the standard of a criminal burden of proof, beyond reasonable doubt, and children do not withstand in the criminal court process the attacks of defence barristers. I am sorry: we have a testing of fire systems going on in the background.

Senator BUCKLAND—Thank you, ladies, for what you have been telling us. I will stay on these allegations of child abuse. It does disturb me. Doctor, you earlier on mentioned some numbers of cases going before the Family Court. What number of cases go before the Family

Court where children are involved and the allegations of either child abuse or child sexual abuse are raised after proceedings have been lodged with the court?

Dr McInnes—I do not have access to those figures. What I would say is that there is a pattern of information emerging after separation occurs. One reason for that is that it was in fact the exposure of abuse which precipitated the separation. Another is that abuse commenced after separation because the mother was no longer available to control, abuse and coerce but the child is accessible. Abusing the child not only harms the child but harms the mother and allows the abuser to exert power over her. So the commencement, or the apparent commencement, of abuse after separation is not uncommon.

Research was done by Patrick Parkinson, by Magellan and by Marie Hume—who is on the line—which showed that there was no difference in the probability of a false allegation whether or not there were Family Court proceedings. They compared allegations of violence across various settings—in international and Australian research—and found that around one in 10 has no basis. Nine out of 10 have some relationship to reality at some level, and there is no difference in that whether divorce proceedings are under way or not. It is a very powerful and common myth that women will allege this to get advantage in divorce proceedings.

But I would note that, if you want to analyse where the advantage actually exists, you would be hard put to come up with it. The child will see the parent in any case. The parent will spend a lot of money, undergo a lot of stress and spend a lot of time attending to these allegations, and at the end of the day it is unlikely that they will protect their child, because of the outcomes of the system. So to say that people do this for advantage ignores the fact that there is no presentation of advantage in outcome. What drives these people is their children stating to them what has happened to them. I meet mothers all the time who have heard their child disclose horrific abuse and who hand their child back to the person the child has said has done this to them. The child does not understand why, even after they have told Mummy, they still have to go and it still has to happen to them. That is what drives these people insane with grief—they cannot get their children safe, particularly when they leave a situation of abuse to try to protect their child and find that the child is ordered back into unsupervised contact without any protection whatsoever.

Ms Hume—I would like to reiterate what Elspeth has just said and say that there is no basis in fact that false allegations are common within the court. That has been seen in all the research that has been conducted.

Senator BUCKLAND—I actually have the answer to the question I asked. I was not for one moment wanting you to think that I was leading to false allegations. That was not the purpose of my question, and I would not make that allegation. The answer has been given. I will now turn to another matter in relation to your opening comments about parents from both sides being unrepresented in family courts. They can, however, have representation if they are prepared to pay. Is that what you are saying?

Dr McInnes—If they can afford to pay, yes.

Senator BUCKLAND—The score is that if one party is able to secure legal aid in some form, the other party cannot. Is that also the case?

Dr McInnes—I do not believe so. It goes on a means test. If you have property, you are expected to put up your property; when it is sold, they have access to recover the money. With legal aid, there are tests of the merits, the likelihood of success and whether it is a substantive issue.

Ms Hume—Some research was conducted in Queensland by Rendell et al which showed what I was saying before about whether or not the dispute is about a substantial issue. It is that determination of what is a substantial issue that can create some bias in how legal aid is funded. For example, if a parent is not getting any contact at all, that would be considered a substantial issue. Yet, if another parent is concerned about safety because of the current arrangements about contact and residence, it may not be considered a substantial issue and therefore they may not get legal aid funding if they want to reduce or stop contact for some reason because of safety concerns. In terms of legal aid making a decision about what is or is not substantial, the research found that there were some cases that were not funded, and that is seen as a bias.

Senator BUCKLAND—If child abuse is raised, is there an automatic investigation into that which would then necessitate the involvement of lawyers?

Dr McInnes—The act requires that any disclosure being reported must be reported to the state department. Then the Family Court officer has complied with the act, but the state department is not subject to the act. The state department looks at the referrals from the Family Court in the same way as it would look at referrals from any other source. They prioritise those referrals according to their criteria, which means that the majority of referrals from the Family Court do not rate an investigation, because they are not seen as immediate and serious on that day. The Family Court cannot instruct state departments to do anything, so a frequent outcome is that there is no investigation of those allegations.

Senator BUCKLAND—With regard to the parties to a Family Court matter not having access to legal representation, is the material that is provided to applicants in written form adequate—and I have to say to you that I have no idea what is provided—given that some probably would not read it anyway? If you read through the material, is it adequate as to how to present your case, how to put your evidence together?

Ms Parry—A lot of the clients that I have spoken to about this tell me that the amount of material is, in some ways, overwhelming. They are completely distressed about what is going on. They are distressed about their ongoing exposure to someone who has been violent and bullying towards them. In some ways, it would not matter what material you provided to them; it would just be all too much for them to deal with.

Senator BUCKLAND—I understand that very clearly, but, putting those things aside—and I know it is difficult to do that—is the material written in a form such that, if you can sit down in the cool afternoon with a bit of logic, you can follow through as to how to prepare your case?

Dr McInnes—I have seen some of the material and it does provide instruction. However, understanding the way that legal argument works—let alone the hundreds of regulations governing how the processes are conducted—and understanding what to do in the endless variations and possibilities when X or Y happens are not accessible. They can tell you how to prepare an affidavit, what the hearings process is and what is required of a witness, but they

cannot tell you which bits to challenge. They cannot teach you case law in an afternoon or how to work the legal process—that is, to use it. They can teach you how to exist in it but not how to use it.

Just knowing things like that sometimes family reports, which are done in cases where there are allegations of abuse, are factually wrong or draw conclusions which are not supported on the evidence presented. People have no access to: 'How do I challenge that? What are my rights in challenging that? How do I as a person with relatively little power, and who is disempowered by this process, challenge a professional who has sat in judgment on me?' You can tell people the rules, but you cannot teach them how to do this stuff. It is case law.

CHAIR—Is there anything more you would like to add to that answer before we move on?

Ms Hume—I was a Family Court counsellor in the Adelaide registry for 12 years. I have experience in giving evidence in court, but I would not be confident in presenting a case to court despite my experience within the court.

CHAIR—Thank you. I think that sums up pretty well the position on that point. Thank you very much for your submission and also for your time this morning.

[10.07 a.m.]

CANNY, Mrs Gabrielle Zita, Policy and Research Officer, Legal Services Commission of South Australia

DUFFY, Mr Peter, Senior Solicitor, Whyalla Office, Legal Services Commission of South Australia

GILMORE, Mr Hugh James (Hamish), Director, Legal Services Commission of South Australia

CHAIR—Welcome. You have lodged submission No. 51 with the committee. Are there any amendments or alterations you would like to make to it or would you like to start with an opening statement?

Mr Gilmore—I would like to start with an opening statement. Senators, thank you very much for the opportunity to speak to you today on behalf of the Legal Services Commission of South Australia. We are the largest service provider in the legal assistance area in South Australia. An efficient and cost-effective system of legal aid is as critical to our society as are our medical and educational systems. We are a big state with a comparatively small population. Most of our people live in and around Adelaide, but many small communities are spread throughout the state.

The provision of legal aid in South Australia is heavily reliant on the cooperation and generosity of private legal practitioners both through pro bono efforts and the acceptance of greatly reduced rates for the performance of legal aid work. No other government funded community support scheme is so dependent on the forbearance of the private profession to deliver its services. Unfortunately, due to the low rates paid, many private law firms have withdrawn from legal aid or only permit their junior lawyers to do it.

The federal government spends twice as much on lawyers for itself as it does on legal aid for the whole of Australia. In 2001-02, $243 million was spent on legal assistance to the federal government and $115 million was spent on legal aid. Why are there different rules and different rates of pay applied when advising governments as opposed to appearing for battling Australians?

This morning I will not repeat what we have detailed in our written submission but I wish to highlight the most significant points. Current legal aid funding in whatever form to legal services commissions, the community legal centres, to ATSILS, in our case ALRM, is totally inadequate to ensure that all South Australians have an equitable access to the justice system. Splitting legal aid funding into Commonwealth and state law types is divisive and inefficient and probably contributes to the inequity of access. The rationale of the distribution of scarce legal aid funds between legal aid commissions, community legal centres, ATSILS and other legally related projects is not transparent or based on logic but derived from politics and historical events.

Existing funding levels can only support aid for fewer people now than in 1995-96. Grants of aid peaked at 15,517 in 1995-96, amounting to 1.08 per cent of the South Australian population.

In 2001-02, grants of aid have reduced to 13,284 or 0.9 per cent of the population. A national needs analysis is urgently required to determine appropriate funding levels. Standards set by funding authorities for accountability and performance management vary significantly between service providers, resulting in an inability to assess the relative efficiency of different service delivery models.

There are major gaps in legal service available to the South Australian community. No legal representation is funded for any civil disputation—for example, householders versus builders, car dealers and insurance companies. You only get legal aid representation for a criminal offence where there is a strong prospect of a jail sentence being imposed. Many first offenders may receive convictions that could have been avoided with good legal representation, with serious consequences for their entire life and career prospects. You do not get representation for family law matters except where there are children involved.

The Commonwealth needs to accept that they have a special responsibility for Indigenous persons and increase Commonwealth funding to meet these costs. The state has been meeting an increase in proportion of the cost of representing Indigenous people in South Australia. Child protection is the responsibility of a humane society. In Australia, there are eight sets of child protection laws with fundamental differences in definition and procedure. It is unfortunate that there are occasions when the federal and state courts are dealing with the same people on the same issues.

There is an urgent need for the establishment of a duty lawyer advice scheme to operate in every family court registry and all magistrates' courts. The number of unrepresented litigants in both the magistrates' court and the Family Court is resulting in highly inefficient and potentially inequitable court proceedings, with court delays for everyone being inevitable.

Legal aid impact statements should accompany all proposals for legislative change; this rarely happens. Government policy to strengthen law and order initiatives and increase penalties has increased the cost of providing representation for an accused without commensurate funding increases. Legal aid is too often blamed for the inefficiencies of a complex legal system when the confidentiality provisions of our legal aid legislation, which are derived from the need to protect our clients' privacy and legal rights, render commissions powerless to respond to accusations of delay or inappropriate funding.

Our corporate plan identifies the need for and envisages expansion to rural areas and provision of services to remote areas. Restricted funding has meant that these plans have not happened. The Legal Services Commission has not opened a new regional office for 16 years. We are restricted by funding. The mandate of the Legal Services Commission of South Australia is to ensure that indigence does not become an insurmountable barrier to justice. Our vision is simple: to provide quality legal assistance to people in South Australia. With adequate funding, we can meet that goal.

CHAIR—Does anyone else want to make a statement at this stage?

Mrs Canny—No.

Mr Duffy—No.

CHAIR—Thank you for an enormously comprehensive submission. I have to confess that I do not know where to start. On page 4 you talk about shrinking access to representation for litigation and legal services in rural areas. You say that legal aid has been forced to implement other solutions, which have been partly successful. Can you give us an idea of how you are grappling with rural South Australia, recognising, as you say in your submission, that, because of the geography of the state—the sparse population in a whole range of outlying areas—there are special circumstances here? How are you handling it and what would you recommend as a way ahead? In that context, how would a duty solicitor scheme that you talk about operate in a state like South Australia, where pockets of population are wide apart and maybe the demand for a full-time duty solicitor would not be there in each location?

Mr Gilmore—This is a topic that the commission has been turning its attention to for the last two years. We have demographic information that indicates that we have growth areas in our metropolitan area—in the northern area of Playford and Elizabeth, and around Gawler and those areas. The Fleurieu Peninsula has also had a large growth in population and Mount Barker has a large growth in our client designated group. The Riverland and the south-east are the other two big growth areas.

We really do not have easy solutions to any of the questions you have asked. You are quite right that service delivery to the remote areas—or the ones with the lesser population—are very expensive when you do it on a unit basis. The provision of a duty solicitor service in Berri, for example, is one issue we have been exploring in some detail in recent months. Options would include trying to service it from the city by having somebody commute there. I believe that the Berri Court sits at least one week every month. You then have the associated costs of somebody travelling up there and accommodating them while they are there. It does mean that there is nobody there during the intervening period to provide advice to the clients that might arise from the duty solicitor service.

We have explored the option of asking local practitioners to the work for us, even on a rotational basis, but this has become increasingly more difficult when there are fewer and fewer practitioners, especially in the areas of expertise that we are looking at, living in rural areas. In years gone by there were more practitioners living in country towns. They used to attend court on a pro bono basis and quite often would provide the duty solicitor role that we are now being asked to try and provide. So we could do it by having a roster system from local practitioners and paying them a duty solicitor fee. In fact, we had that system in operation in Port Adelaide, where we paid a private firm to provide that service. The dilemma comes, of course, in smaller areas where obviously the duty solicitor could be in conflict—they might know the people too well and could not act for them. So there are restrictions on providing the service by using the local practitioners, both from the point of view that there are not many of them and from the point of view that they are going to potentially run into conflict situations fairly frequently.

Senator BUCKLAND—I do not want to interrupt you, but what you have described is exactly what Mr Duffy is working with every day. I would like his opinion of what you have just said about using local solicitors in the community. I know Mr Duffy lives with it, because I live in the same community—so I am little bit biased, I guess.

CHAIR—He gets you out of trouble, does he?

Senator BUCKLAND—Not yet, but I will keep friendly.

CHAIR—Do you want to do it at this stage, or would you like Mr Gilmore to finish first.

Mr Gilmore—I will finish what I was saying and then we can go back to this issue. Peter does know what the local situation is and, without stealing his thunder, I know that there are fewer and fewer lawyers in the Whyalla-Port Augusta area to do the work. We do have our only regional office in Whyalla. We were discussing whilst flying up that the south-east of South Australia is having a significant growth increase and that the state government is to reintroduce resident magistrates. We now have one resident magistrate in Port Augusta, soon to be two. We provide a judicial service from Peter Duffy's office in Whyalla. It is not ideally located, but Whyalla used to be the largest regional centre. It was the second biggest city in South Australia; I think Mount Gambier has now just surpassed it.

Now that we are going to have two magistrates sitting at the same time and we will only have one person—the duty solicitor—in Peter's office, we could end up with the dilemma of not quite having the capacity to cover two magistrates sitting at the same time in this regional area. When Peter goes north to do the circuit through the Pitjantjatjara lands, that person will have to act as the duty solicitor, the solicitor, the counsel and whatever. We would very rarely take multiple people to provide the different roles that you would normally see in a magistrates' court in a suburban area. We have been pressed in recent times to start looking at ways that we can service the Riverland area. You have no doubt had submissions from the Riverland CLC. I think they have been attempting to try to pick up some of the duty solicitor service there. I do not understand that it is their primary role to provide duty solicitor services. Between us, we will have to come up with a solution.

At the end of the day, for those areas where there is not a high volume throughput of work, and in a purchaser-provider model such as the Commonwealth has implemented in at least the family law area, the unit cost of production for those services begins to skyrocket significantly—whether it be for accommodation costs, travel costs or just the sheer low number of units that an expensive resource like a lawyer would process on a given day in a court.

The commission is mindful of these problems, which have grown. I think they have grown because of the movement of practitioners from the rural areas to the city or away from the rural areas. There is just not the same number of people that used to be there providing pro bono services. We did not have the same complaints arriving at our doorstep about the lack of duty solicitor services in the remote areas. It is high on the commission's agenda. It is a state funded area predominantly because most of the sittings involve criminal jurisdiction, not family jurisdiction. We will continue to seek additional funding from the state government and, as we achieve that, we will provide further services in regional areas.

CHAIR—Before we go to Mr Duffy, I was going to ask whether you could come back to us at some stage with crime statistics for rural South Australia to indicate whether there has been an increase and where that increase may have taken place. Also, has there been any increase in recent years in the levels of funding you receive from the state government?

Mr Gilmore—Yes, over the last four years the state government has increased funding—at least as a minimum in the last year by the 2.5 per cent that was indexed in line with CPI for all

government agencies. In the previous two years, the government did provide us with special funding. I think it was three years ago that we received an additional $1.7 million, which enabled us to do a significant catch-up in terms of the rate of remuneration we were paying private practitioners. We had fallen well behind the national average and we needed a significant catch-up, so for two years in a row the commission awarded an increase in the hourly rate paid to private practitioners of $10 in the first year and 10 per cent in the next year. That has been indexed to the CPI again for the last year. So the state government has continued to increase funding, at least to match CPI in the last couple of years and at a significantly greater rate in the two years before that, to enable us to catch up.

CHAIR—I notice the DPP got an extra half-a-million dollars this morning. You are not getting anything to—

Mr Gilmore—I have been listening to that with interest: an extra 200 police and the DPP beefed up. I will have to sharpen my pencil and write a submission very shortly. We have put a submission in to the state government for this next round of budgets. There is no doubt that our expenditure on the state criminal side has accelerated dramatically in the last nine months. We have taken out some statistics. Our hypothesis is that as the law and order campaign takes effect and new legislation is brought in for serious criminal trespass, which has elevated the penalties imposed by the courts on people trespassing on people's property when they are present—I will defer to Peter Duffy, a criminal lawyer, for that definition—the number of matters going to the district court has increased significantly, they are being contested hard and, because the emphasis is on longer sentencing, the sentencing submissions are being fought much harder. Our statistics have borne that out. We are getting the Office of Crime Statistics and Research to validate the research we have done. At the rate we are going, we have had to ask the government for $1 million more in the next financial year just to maintain the rate at which we are currently expending funds in the criminal jurisdiction.

CHAIR—Thank you for that. That is useful. Mr Duffy, we have kept you waiting for long enough.

Mr Duffy—Not at all. Senator Buckland knows much of what I am going to say. There have been some demographic developments in the area around here which have made the need for legal aid greater. One is that the population has changed in this area. That has been brought about largely by, perhaps, the disadvantaged people—people who are intellectually disabled, have some psychiatric disability or are simply unable to obtain work in the cities—who have been moving out into the country areas. The population of Whyalla has changed quite considerably since the days when Senator Buckland was first there. As the work force has gone down, housing has become available, so the people who are disadvantaged in Adelaide have all been moving up to Whyalla. That is also holding true, I think, of most country towns up here—the housing is cheaper; you can walk down to the shop—and because of those changing demographics the need for legal aid is probably far greater now in the country than it was before.

The trouble with providing a service in the country is that it is very expensive because it involves a lot of travelling. If you are going to open an office, obviously you have all the overheads associated with an office. You have secretarial fees, office rent, telephone and all the other things that are associated with that. So, to provide a service is very expensive. If we operate it all from Whyalla, which we have been doing, then we have to allow for lots of travel.

When we try to service the more outlying areas, we are talking about something like 3,000 kilometres, just in travel, in a week. For a solicitor to drive, say, to the Pitlands, do a circuit in the Pitlands and then come back, it is a 3,000-kilometre drive.

Mr Gilmore—Where they are not producing any units of output, so to speak.

Mr Duffy—And if someone looks at that solicitor and says, 'That solicitor's not working very hard because they haven't got a lot of work put out this week,' the reason is that much of that time has been spent in a car, driving. The other thing that has happened is that the number of solicitors in the country areas has gone down. It has gone down—in Whyalla, particularly—largely because of WorkCover and other changes to legislation. Before, there was quite a large firm there which employed three solicitors. There was another firm with two and another firm with one. There are now only two private lawyers left in Whyalla. Their work was largely work injury and personal injury related. They were making money on that, and they could then afford to do, perhaps, other work—legal aid work and other criminal work—as a sort of side issue. But those people have now gone.

Part of the effect of downsizing an office is that you then have to become more efficient because the office is going to cost the same amount of money to run and you now have fewer lawyers. Now they are saying, 'We can't afford to do legal aid work because, at the rates that you're paying, it is just not cost-effective for us. We can't do it. It's costing us a lot of money to run this office because we only have one lawyer there and we're still paying full office overheads. So, sorry, we can't do it.' Only this week I rang up and asked a solicitor in Port Augusta, who is usually very helpful to legal aid: 'Could you act for someone in the prison?' He said, 'Sorry, Peter, it is not cost-effective. By the time I go to the prison, wait to get into the prison and go through all the associated rigmarole, I can't do it. Not on the rates that you're prepared to pay.' So that has changed a lot. Shall I go on?

CHAIR—If you have something you want to tell us.

Mr Duffy—All right. The government has made some efforts to try and overcome some of those problems in relation to the medical services. They are subsidising doctors to stay in country areas. Doctors in Cowell and so on are being paid, I think, $1,000 or $2,000 a week to live in Cowell so that they can provide the service. Legal Services is trying to prop up the country, at quite a lot of cost to us, without all those subsidies. One advantage of the subsidies to the doctors is that everybody, regardless of income, gets access to that service. With legal aid, the problem is that there are a lot of people who may be just above the cut-off line for funding for legal aid who cannot get that service. If they want to get a private lawyer, they are going to have to go to Adelaide to get one. It is going to cost them money to drive to Adelaide to see the lawyer. Then, if they want the lawyer to come to court, the lawyer is going to charge them a lot of money to go to court in Ceduna or anywhere outside the city, because they want to cover their costs of travel and their accommodation costs, plus the cost of being out of the office. So it is much more expensive for them to get a lawyer than it is for someone in the city.

I think Legal Services has always tried to adopt that country doctor attitude to things. Good old country doctors! You could ring them up at two o'clock in the morning when your cow was sick and they would come out and try and fix it for you. Those sorts of people are leaving and the lawyers that were able to do that sort of thing have also got old and retired or left the country.

Legal Services and Legal Rights are probably the only people left in the country who will still do that sort of thing. They will not look after the cow but they will get out of bed and go down and help someone who is in the cells or do that extra bit. Private lawyers probably cannot afford to do that and they do not do it.

We continually provide an additional service for which we are not funded and for which we receive no recognition. If you are at the court and you are a legal aid lawyer and there are 10 people who need a bit of help you go and help them. You do not say, 'This one has funding and you can all go jump.' We go down and say, 'Do you need a hand? If you are not sure about something we will help you out.' Those sorts of benefits to the community are not reflected in our statistics.

CHAIR—They are not costed.

Senator BUCKLAND—I might seem to have a bit of favouritism for Mr Duffy but that is not the case. This region does affect us but some other questions I was going to raise affect us as well. To my simple mind, the appointment of the second magistrate to Port Augusta would suggest to me that there are going to be more and more cases dealt with, hopefully more speedily. If we do not have the related increase in legal representation, that is all going to be a waste of time. Am I correct in thinking that?

Mr Gilmore—The change is from the situation where magistrate did the circuit from Adelaide. So the rate of sittings in Port Augusta could slightly increase because of the convenience of having two magistrates in the city but the volume of work should not change significantly. I do not think we have a significant delay in people reaching court. Is that right, Peter?

Mr Duffy—Yes.

Mr Gilmore—There is not a delay in this area and we have been servicing it by magistrates travelling up from Adelaide. The difference is really between the magistrate living in Port Augusta and living in Adelaide.

Senator BUCKLAND—I can remember the days when a magistrate lived in Whyalla.

Mr Gilmore—That is right.

Mr Duffy—One significant change is going to happen. They used to go to the Pitjantjatjara lands six times a year; they are now talking about increasing that to 10, with the resident magistrate. That is logistically the most expensive and difficult area for us to cover. You go into a Pitjantjatjara community. There are 150 people on the list, none of whom have seen a lawyer. The court is there for something like four hours. There is an ALRM lawyer and a Legal Services lawyer. Sometimes there is an interpreter but quite often there is not an interpreter because we cannot get one—and it is very expensive to carry one with you. You have to try and deal with 150 matters in four hours, talking to people—whose culture is different to ours and who have all sorts of other issues that we do not fully comprehend—in a language which is foreign to them. The majority of them do not speak English or they speak very little English. The courts have recognised that that service is not appropriate and not fair and does not provide equal access to

justice. Legal Services, probably 10 years ago, started sending a lawyer up to try and help out with the problem in the Pitjantjatjara lands. But we are now going to have to look at that and it is going to be a very expensive exercise to provide representation in those lands.

Mr Gilmore—Getting to what Senator Buckland might be alluding to, we have a problem when the Magistrates Court, the District Court and the Family Court are sitting in Port Augusta—and the Supreme Court has sat at Port Augusta from time to time as well. If they all bowl up in the same month and there is a circuit to the Pitjantjatjara lands at the same time, we have to send lawyers up from the city and we generally do not cope terribly well. We normally have people being delayed and matters having to be put off because they cannot get legal representation. So there is a need for us to coordinate well with the courts. The Courts Administration Authority has been fairly cooperative in trying to keep us informed but inevitably with two magistrates, a District Court, a Supreme Court and the Family Court all possibly sitting in Port Augusta at the same time, Peter Duffy and his staff are often very stretched.

Senator BUCKLAND—I appreciate that because I do not think a lot of people understand that that happens. And I am sure the northern part of South Australia is not alone with that problem. We talked a bit about money being splashed around for law and order at the moment and you were suggesting you might sharpen the old pencil to see if you could buy into that. If you had that wish list—and you have already mentioned the difficulty in Berri—of having more regional offices, where do you think the greatest needs would be, in terms of location?

Mr Gilmore—There is certainly potential in areas such as Port Augusta and Whyalla. Port Augusta probably needs a regular office and we could make some sort of a transitory arrangement or find somewhere in Port Augusta where we could permanently locate a lawyer rather than having them all at Whyalla. We have employees who have been working with the office for a long time in Whyalla and they all live in Whyalla, so it is a bit difficult to move them permanently to Port Augusta. But it would be beneficial to have an office that is staffed—preferably with a lawyer—in Port Augusta. That could supplement the duty solicitor service that I was talking about before.

We would certainly be looking at somewhere in the Riverland; Berri is one place that comes to mind. Mount Barker up in the foothills of Adelaide has become a very busy court and does not have a duty solicitor service. It surprises me that we have quite a large court complex down at Mount Gambier, yet we have not really heard loud screams from down there. We know that they handle a large volume of work at Mount Gambier and I would envisage we should have an office down there as well. They are the primary sites.

We have a big office in Elizabeth but it is true that we could probably benefit from outreach services in the Gawler area, the Barossa Valley and also down at the Fleurieu Peninsula. Our other big office is at Noarlunga but that is now trying to service a fairly large area right down the Fleurieu Peninsula. There is nothing at Victor Harbour; there is nothing further down south. They would come in the second tier, but straight away you would need an office somewhere in the Riverland, somewhere at Mount Gambier or down in the south-east and probably something a bit further up in the far north.

Senator BUCKLAND—I did not read your submission until this morning, so please forgive me. I noted this morning that you mentioned that when some law firms provide solicitors to do

legal aid work or to act on legal aid work, they generally send out the juniors in the firm to do it—which is probably awfully good experience. Do more senior partners or associates in law firms attract a higher fee for legal aid or is it an absolutely flat rate?

Mr Gilmore—It is an absolutely flat rate. There are areas in criminal law and in family law where we pay what we call a lump sum—for example, we pay $356 for a guilty plea in the Magistrates Court. Obviously a very experienced person might be able to do that very quickly and efficiently, as opposed to a more junior lawyer. There are some lawyers who do a lot of guilty pleas and would say they actually earn good money doing guilty pleas because they are effective and efficient at them. But then you can have a guilty plea that might go all day and that would cost you a lot of money; that would be a very expensive day at the office.

Senator BUCKLAND—It might be the wrong plea, as well.

Mr Gilmore—That is always a risk if you get a junior that is not experienced and advises the client to plead guilty. But I am not aware of lawyers actually making decisions about how they advise their clients on the basis of the funding they get from Legal Aid. The monetary reward is not such that it is worth their while making a distinction between one path and another path depending on the funds they are going to get from Legal Aid. People anecdotally joke about spinning matters out. I do not think any lawyer who is trying to earn money spins matters out on Legal Aid rates. They get the Legal Aid job done as quickly and effectively as they can and look for a paying client.

Senator BUCKLAND—I was not suggesting that and I would not.

Mr Duffy—Arising out of that, I do not think that people should underestimate the resource that Legal Services provide in that respect. While it may be, particularly up here, that we may not be directly doing the plea, there is every possibility that the junior lawyer will ring up the senior lawyer at Legal Services and say, 'I've got this client. What am I going to do about it?' They will get all that sort of advice and assistance with the plea. None of that, of course, is costed. I do not think that anyone should underestimate the backup resource that Legal Services provide. If, suddenly, they are short of lawyers in Ceduna or somewhere else, and there is not anyone to do anything, Legal Services then provide the service somehow. We will scratch by and we will get it done. So it is essential that we are there as a backup, as well as doing the work that we do ourselves.

Senator BUCKLAND—I did not know that. I appreciate that you added that, because it is important for the committee to understand.

Senator SCULLION—It appears that the thrust of your submission is, effectively, that the Commonwealth government would increase the amount of funding available and the commission would extend the legal services to regional and rural Australia—something I completely support. However, in further evidence given to me this morning, you have indicated that, even with more funding, there are clearly some issues about the number of legal practitioners who are available and experienced or even want to work in regional and rural Australia. Mr Duffy pointed out that it is not unlike the circumstances that we find ourselves in with a whole range of services in regional and rural Australia.

Mr Duffy indicated that there are a number of incentives available, particularly with medical practitioners in these sorts of communities, and I can recall that there are return to service obligation scholarships now available to the medical fraternity to return work to those communities. Can you make some suggestions—perhaps even on notice—on how the Commonwealth might address the issue of a lack of legal practitioners in these communities? Could you make some suggestions in the area of practical incentives? As I said, you can take that on notice. I would prefer a more considered response than is perhaps available today.

Mr Gilmore—One quick response that goes directly to the heart of the problem is that at the moment we are very miserly in what we pay in the way of transport and accommodation costs. It would help just to have money available to enable people to get to the more remote locations, wherever they may be, so that there are adequate transport and accommodation costs to make things comfortable for lawyers. That is a starting point. We will take it on notice and think about the other aspects that you mention.

Mrs Canny—We need to be clear about the fact that there is a distinction between the private solicitors who are already in town—and, as we say, they are reducing—and legal aid staff. There is certainly no problem with employing solicitors in the city. When we had a recent call for duty solicitors in the city, we had 200 applicants for five jobs. There are vast numbers of graduates. If we could make a package attractive, and open a regional office, then the staff will certainly be there. That is not a problem. They will be more junior staff, but the way the Legal Services Commission works is that we have the supervision of senior staff. So we bring the junior staff through the duty solicitor scheme, and then they gradually take more senior matters.

Mr Gilmore—Just following on from that point: we also brief city solicitors to come and do the work in the country. For example, many barristers come up here to Whyalla, Port Augusta, Mount Gambier or wherever the court is sitting. As I say, though, they may be slightly harder assignments to get people to accept, because they involve that extra travel and the costs incurred there. We do pay an allowance, but I would not say that it was an overly generous allowance for getting to and from those locations.

Mr Duffy—I am aware that, in Whyalla at least—and, I think, in other country areas—the government subsidises country people to go down to Adelaide to see the doctor or the specialist. My understanding is that they give them some travel allowance and also some accommodation allowance to be down there. They subsidise the additional costs that country people have to pay for medical services. There is no subsidy similar to that for people with legal problems, as far as I am aware.

Mr Gilmore—We will take that on notice and think of some other ways of going about trying to achieve the same purpose.

CHAIR—You pay for interpreter fees yourselves. The Commonwealth does not provide any resources for interpreters?

Mr Gilmore—We put the cost of the interpreters onto the file costs. You will notice that elsewhere in the submission we talk about family caps. If an interpreter is needed in a family law matter then that cost will go onto the cost of that file, so you could say that it is not really legal assistance, it is just a straight-out interpreting cost. Somebody whose cap will be reached at

$10,000 will reach it that much more quickly if the fees for the interpreter are added to their file, which they are. Reading our submission I can see how that is not entirely clear. The Commonwealth do pay their share of interpreters fees where they are needed, but it is not really a legal service. We are saying that somebody needing an interpreter should be somebody else's problem. Somebody else should have the budget for that rather than us using up valuable dollars for legal aid on interpreters.

CHAIR—That is fair enough. You mention on page 13 and on page 8 a number of surveys and a report. Could you make those available to the committee?

Mrs Canny—Yes. I have them with me today so I will make them available.

CHAIR—Thanks. It is almost like finishing on the question, 'Where do we start?' You do recommend that there needs to be a needs analysis, and you refer us to the National Legal Aid submission and their proposed reference. From your perspective, where would we start in terms of prioritising terms of reference and a needs analysis?

Mr Gilmore—One of the things I would start with—which I alluded to in my opening address—is looking at the fact that there is money being put into the legal system in various different pockets. We have money for the legal services commissions, the ALRM and CLCs. The Attorney-General's Department have funded various projects and schemes over the last few years that I am aware of that I guess are coming out of their legal aid budget. What I do not get a sense of is that there is a master plan to make sure that the funds are allocated appropriately to meet the needs. All areas are underfunded; I am not disputing that. I think everyone needs more money. It is a matter of asking whether, if there is only a limited amount of money, it is being spread in a rational way that achieves the best access to justice for the most people. That would be a starting point—to look at the entire pot of money, not just at legal aid money, the money available for rural and remote telephone services or whatever it might be.

The needs analysis is important because everyone has talked about doing it. We have little nibbles at it. I think one of the CLCs in New South Wales is currently undertaking a study, and other attempts are being made to study various aspects of legal need. It is a very difficult thing to define, but it is something that I think would be well worth doing on a concerted basis nationally. When negotiating with the Commonwealth about agreements which we are entering into—the new four- or three-year funding agreement will need to be negotiated in the next few months—the Commonwealth has in the past just adopted a model for carving up and distributing the cake across the states based on what was called the Walker model.

That had some very strange coefficients in it such as a suppression factor. In the Eastern States more people thought legal aid was not available, therefore we needed to allow a suppression factor to multiply the amount we gave to New South Wales and Victoria. It was a very strange, 'out of thin air' factor. It had no science to it whatsoever. They have taken all that out and they have stripped the model back down to a fairly Grants Commission type document. Of course, because South Australia has not grown and the Eastern States have grown, we are going to be in a diabolical position if they adopt that model in the distribution of that cake. What I am driving at is that the funding is based on the available funds divided by some model, rather than on an assessment of need.

CHAIR—Is there any science in the split between the funding for, say, the commission and for the CLCs?

Mr Gilmore—None that I am aware of, and I have asked the question.

CHAIR—In terms of new technology, you use the Internet, and that is becoming more successful. Are there options in terms of greater use of the Net that you would recommend us to have a look at?

Mr Gilmore—The client base we are dealing with would have a limited computing ability in most cases. There are certainly lots of people who can benefit from it from a general public information point of view. We have online a terrific resource called *The Law Handbook*, which is quite a thick document that covers all aspects of law as it relates to South Australians. It covers anything from a fencing dispute through to divorce, estates, wills—the whole lot. It is almost encyclopaedic, and that, remarkably, gets about a million hits a year. It is a highly used resource, so a lot of people are getting legal information from that source. For getting to people who are really in legal trouble, there is nothing better than actually having a lawyer or having a person face-to-face to advise them. We tend to be dealing with people who are not so literate that they could use the Web. I would never dismiss the Web and IT as being an avenue for improving general legal education and access to the law, but I think it has limited scope as a remedy to people who are in trouble. I think people who are genuinely in trouble and who need legal advice need more than a computer.

CHAIR—Thank you for your submission and for your evidence this morning. I think all committee members have found it really useful. I also thank you for coming up from Adelaide.

[10.51 a.m.]

CHARLES, Mr Christopher Joffre, General Counsel, Aboriginal Legal Rights Movement Inc.

GILLESPIE, Mr Neil Eric, Chief Executive Officer, Aboriginal Legal Rights Movement Inc.

CHAIR—I welcome representatives from the Aboriginal Legal Rights Movement. I will ask you to commence your opening statement—which will take us to just before 11 o'clock—and, if necessary, to continue after 11 o'clock. We will adjourn for a couple of minutes at 11 o'clock on the 11th. At this stage, do you have any amendments or alterations to your submission?

Mr Gillespie—No.

CHAIR—Mr Gillespie, I now invite you to make an opening statement. If I interrupt you rudely, you will know why.

Mr Gillespie—I will be very brief. You have a copy of our submission to the Senate inquiry. It is my intention to address the key issues that we have raised in that submission, but I will preface that by saying that, in our view, ATSIC and now ATSIS itself are grossly under funded with regard to legal aid moneys. In reading most of the submissions from the ATSILS that have been submitted to the committee, there is a commonality amongst the ATSILS and, indeed, the Legal Services Commission report.

I do not think I need to go into any great detail, but I will mention that our national voice, NAILSS, which is the National Aboriginal and Islander Legal Services Secretariat, was recently defunded. I have written to the chair of NAILSS, asking that he convene a meeting of all the CEOs for ATSILS across the country, for the simple reason that we no longer have a national voice, that we do not have any lobbying. In that paper that I put to Frank Guivarra, I highlighted 11 issues that fundamentally affect our organisation—and I will provide a copy of this letter to your secretariat after the meeting. I am hoping that we can bring the CEOs together to further discuss our problems, because this links in with this Senate inquiry as well. We are very keen to pass on the message to the new minister, Senator Vanstone, and also to the CEO of ATSIS, Wayne Gibbons, so we are hoping that Frank Guivarra will convene that meeting and bring those two individuals to meet the CEOs.

Today, I have changed the approach that I was going to use to address this committee, for the simple reason that yesterday my office received an audit report on the ATSIS law and justice program for Aboriginal and Torres Strait Islander legal services. The Australian National Audit Office delivered this to me yesterday, and I have been up since three o'clock reading it from cover to cover. It tells me that I need to address that report and also ATSIC's own evaluation of the legal and preventative services program conducted by the Office of Evaluation and Audit, which was issued in January 2003.

Both these reports, particularly the Australian National Audit Office report, provide compelling evidence that, firstly, there are fundamental problems in the way funds are allocated across the country and, secondly, the funding is inadequate. It highlights also that organisations like ALRM are poor cousins to the general mainstream Legal Aid. I know that they are grossly underfunded and we are as bad, if not worse, in our funding compared with the Legal Services Commission. We are both at the tail end of society, if you want to call it that, in that we are picking up the pieces, in particular, for the most disadvantaged group in the country. I will be focusing my response today by highlighting some of the observations that are contained in both these reports. I do not wish to repeat what is in our submission because you have read that. These two compelling reports highlight the problems that we are facing on a day-to-day basis. Those are my general introductory remarks. If you wish to go for a break now, that is okay by me.

CHAIR—We might get one question in. You might want extra time to answer this. There seems to be three different issues that you are raising: one is the level of legal funds, two is the priorities and three is the process that you seem to be about to be encumbered with in terms of how you allocate those funds. Would you like to address those three aspects? Perhaps the first before 11 o'clock and we will come back to the others later.

Mr Gillespie—With regard to funding, I refer you to page 18, table 1 of our submission. You will note that since 1998-99 we have suffered a $50,000 reduction in our funding from $3.47 million to $3.42 million.

CHAIR—What is that in real terms?

Mr Gillespie—That is actual dollars. In real terms we have had a substantial reduction rather than just a loss of $50,000. Once you take into consideration the loss of purchasing power of our dollars you will understand why we exhibit frustration in the total funding of ALRM. We have staff, for argument's sake, who are on 30 per cent less than their counterparts in the Legal Services Commission. I was at a function the other day and I found out that I am on far less than my counterparts—CEOs in native title representative bodies. The average salary there is in the vicinity of $140,000. My salary is 50 per cent of that. That is indicative of the plight in our funding. We cannot afford to pay our people the dollars they command.

CHAIR—We will pause there and come back in three or four minutes.

Proceedings suspended from 10.59 a.m. to 11.05 a.m.

CHAIR—Mr Gillespie, you were answering the first part of the question.

Mr Gillespie—You asked about priorities and process, and I will hand those two sections over to my colleague, Christopher Charles.

Mr Charles—The point we would make about priorities is that the first port of call is our yearly funding submissions to ATSIC, now ATSIS, and what we say are needs for expansion of services. For many years past, we have been saying that we need another lawyer, we need another field officer in Port Augusta, we need to reopen our Coober Pedy office and we need to service the south-east of South Australia. We are appallingly aware that we have one family

lawyer in Adelaide who is supposed to deal with the needs of the aboriginal communities in the broader Adelaide area in respect of family law, let alone Murray Bridge, let alone the near north and let alone the York Peninsula and the communities around there. Our funding submissions year after year say that we can identify where the needs are, which are not being met. All of our funding submissions seeking extra resources for these areas are always rejected on the basis—and Neil will go into the process in more detail—that there is never, ever any negotiation over our funding submissions. There is a lump of money which is carved up between the states on the basis of a formula which is inadequate, and the fact that we identify further needs constantly is, frankly, ignored.

CHAIR—Who are the decision makers here?

Mr Charles—ATSIS. It was ATSIC; it is now ATSIS. That is the point we make about it. We are acutely aware, for instance, that there is an enormous unmet need in respect of family violence. There is an acutely unmet need in respect of the protection of women and children through the Family Court process. As I say, we have one lawyer—an exceedingly dedicated woman—who is working in the office most weekends, and she desperately needs assistance. It is outrageous that she is expected to do what she is doing in the face of enormous unmet need. That is one point about priorities. It is simply a matter of looking at our annual funding submissions and what does not get met and what gets ignored in respect of it.

In respect of the processes for the allocation of funding, the formulae that are used are inadequate. Again, a constant theme in our funding submissions to ATSIC and ATSIS is, 'What is a matter? What is the means that you use to measure the resources required to provide legal assistance to Aboriginal people in South Australia? How are you to compare a guilty plea done on a sausage machine basis on the north-west circuit with a complex family law matter in Adelaide? Are they both regarded as one matter when one would require enormously more effort than another?' There is no proper basis for measurement or for comparison within South Australia or between the states in respect of the differences in the jurisdictions—for instance, criminal law matters in New South Wales might operate on a different basis from that of South Australia. Again, there is no basis for comparison. We point to the fact that ATSIC was involved in working on a process called the ALSIS program to do measurements of these fundamental questions of proper measurement and commensuration. It was not proceeded with. It is a fundamental problem and we simply say, 'Go to our funding submissions year after year and you'll see what we think are the unmet needs,' but even if you were to do that we entirely agree with what our colleagues from the commission said about the need for appropriate and proper measurements of what is lacking in legal aid.

CHAIR—In terms of those unmet needs, your submission refers to the imprisonment rate of Indigenous people as opposed to non-Indigenous people as being 16.8 times more in respect of males and 24 times more in respect of females. Can you go behind those stats and help us with information as to whether that is happening in the cities or in the country? Are there any major causes for it that we should be alerted to? To what extent can you assist those people?

Mr Charles—Once again, we are in the same position as the commission. We are aware, in general terms, of the law and order campaign and the increase in criminal penalties. We are looking at a new bill at the very moment, talking about increasing penalties for aggravated offences, let alone what has been said about the serious criminal trespass. All these matters

indicate that the contestation of criminal matters is going to be the more difficult and the more expensive, because the stakes are greater, the penalties are greater. The imprisonment rate for Aboriginal people correspondingly rises, because we say that the matters which were to address the underlying issues behind Aboriginal imprisonment rates, which were identified in the Royal Commission into Aboriginal Deaths in Custody, were never properly addressed in this state.

CHAIR—I suppose the follow-up question is: this is your current environment, but how will the proposed tendering process affect what you are doing?

Mr Charles—Ironically there have been some useful effects and side processes. ALRM identified in the submission that we needed to deal with our internal operations, particularly in respect of the governing body. We are now getting some amendments to our constitution, which will be fundamental and far-reaching, which will go to the annual general meeting on 27 November. We think that they will have significant savings efficiencies, increase the standard of operation of the organisation in respect of corporate governance and make us better prepared to deal with the process of competition. We make the fundamental observation in our submission that provision of legal services to Aboriginal people is not an appropriate matter for a market whether you call it a quasi-internal market to a funding body or not. It is still not an appropriate matter to be considered as being a market, because it is not a matter that the private profession is really interested in at all—for the same sorts of reasons that our colleagues from the Legal Services Commission of South Australia have identified.

CHAIR—Will that new approach give you greater flexibility in catering to some of the needs or will it make it harder for the dollar to go as far as it has gone in the past?

Mr Charles—We are concerned that it may go the other way: it may provide the funding body greater means to control what we do and greater means to perhaps disregard our views as to what the real priorities are and the way they should be met.

Senator SCULLION—It is interesting that the South Australian government and other governments around Australia have dealt with a supposed increase in crime and trespass by increasing the penalties, and clearly that is supposed to decrease criminal behaviour. You indicate that, certainly in the short-term, this is not going to be the case and that it is going to increase the workload.

Mr Charles—There has been no consideration of extra funding at all.

Senator SCULLION—In the context of Indigenous communities, it is very difficult—particularly if you do not know about the increased penalties for certain activities, but even if you do—because clearly substance abuse diminishes your capacity to make that connection. From your work with Indigenous communities and clients, particularly in association with substance abuse, can you talk about some of those issues and how they are going to impact by increasing or decreasing the need for legal aid?

Mr Charles—These are matters of great importance. The fundamental point is, when you are dealing with a community which has massive social problems—I think I mentioned to you privately one example of a community that ALRM has assisted—it is a matter of getting the governing body, particularly, of that community to recognise that it has a problem and being

prepared to go through the hard yards of instructing the legal service to assist it, as we did, to go to the licensing court to get the licences of local liquor outlets changed to stop the massive amount of grog coming into the community. When you do that, you get the corresponding decreases—which were measured in the community we acted for in relation to domestic violence and presentations to the clinic for alcohol related illness. A very simple point: once you have followed up the royal commission recommendations about addressing licensing issues, you can have an impact. It relies upon absolutely close consultation with the community and the community organisations. If they do not support it, it is going to get nowhere.

You also need to have a whole-of-government approach with support from ATSIC and ATSIS and the police department—and we are glad to say we have a very good relationship with police in respect of those issues in outlying communities. Welfare and other associated human services organisations need to be involved, as well as the courts. If you do that, you have a chance to give the community breathing space so that the community development operations, which are supposed to be behind CDEP et cetera, can get started in getting people away from substance abuse and thinking about changing their lives to being more sensible; otherwise legal aid is simply a guilty plea bandaid service. We point to the fact that, if you can get close cooperation between governments and organisations like ALRM, you are going to be able to make some headway. But you have to get the cooperation to make it work. These issues require more attention and more should be done about them, in our submission.

Senator BUCKLAND—You heard the earlier evidence today and you are aware that Legal Aid does the Pitjantjatjara land circuit; it does work in Coober Pedy and places like that. Is the ALRM called upon at times to represent non-Indigenous people? It may be just short appearances or whatever.

Mr Charles—There is provision in our funding guidelines, which are the basis of our charter for action, for us occasionally to act for non-Indigenous spouses. It does not arise very much. To take up your point in relation to the north-west circuit, ALRM was again privileged last year to act for the families in the petrol sniffing inquest. The coroner's findings at the inquest were of fundamental importance in terms of improving governments and improving outcomes. There needs to be strong monitoring of the state and federal government's responses to those findings to improve, in particular, things like the government's reactions to the assistance of community controlled organisations. This needs to be done to make a difference to the way in which people can live in communities, to help people who are already brain-damaged and to help stop the children from starting to sniff et cetera. As the police department's statistical survey showed, this is fundamental to the question of criminal representation in the APY lands.

If you can make some headway in relation to dealing with sniffing, you are going to be doing an awful lot about the criminal representation question. We say it is important to be dealing with the criminal representation effectively and well but, if you do not deal with the underlying issues properly, you will continue to be a bandaid. It is important that governments recognise that Aboriginal legal services know a great deal about the social policy implications and about affecting and going to underlying causes. Basically, governments should seek our advice and assistance in dealing with that. When we say monitor it, we mean it. You need to monitor it because, if it is not monitored, the impulses flowing from the royal commission and now the petrol sniffing inquest will just dissipate and be lost when there is a great opportunity to look at

the fundamental underlying causes. We say that is terribly important and goes to the means to prevent Legal Aid for from just being a bandaid.

Senator BUCKLAND—I would like to pick up the point you made that we were only applying a bandaid. The experience I have for framing this question is based mainly around Port Lincoln—where I have got fairly close relationships—and the west coast. I understand that we are dealing with the law and providing services to those who need help because the law has been broken or perceived to have been broken. Do you think one of their big difficulties we are confronted with here is post-sentencing assistance?

Mr Charles—That is terribly important. When I started work in Port Augusta in 1980 in the Aboriginal Legal Rights Movement, we had an alcohol rehabilitation farm at Baroota. Many of my clients would get bonds from the Magistrate's Court, they would spend six to nine months at Baroota, they would get off the grog and would come back into the community a lot better than when they went into Baroota. They would not be in prison for alcohol related offences—rather, they would be rehabilitated. That is gone. It is not there any more. It is a terribly sad loss.

Impulses towards having alcohol rehabilitation centres on the west coast have been talked about ever since the royal commission in about 1990. There has been lots of talk but it has not happened yet. Unless you have effective community based and community controlled organisations able to assist offenders to cease their behaviour—or to get away from the problems which lead to offending—then the best will in the world, the most sensible magistrates, the best legal aid services will get nowhere. You have got to have the underlying services based within and controlled by the communities that need them and know best how to deal with them. It is a fundamental point and I thank you for raising it. I make that point particularly in relation to the Nunga court process. Nunga courts are very effective; they are very good operations but they need to have community controlled organisations backing them up to provide the support and assistance to keep people away from the impulses that lead to criminality. It is a simple point.

Senator BUCKLAND—I thank you for that because it is something that disturbs me, particularly when I am in those two communities. It comes up time and time again, and my office has dealt with a number of those issues. Also, could you complete the answer to an earlier question about representing non-Indigenous people. You said something about sometimes being called upon to help the spouses.

Mr Charles—The Legal Aid guidelines, which we are bound by and which are provided by ATSIS, specify that in some circumstances we can act for non-Aboriginal spouses when to act for a non-Aboriginal spouse would assist in the life of an Aboriginal person who would be our client otherwise. So we can act for non-Aboriginal spouses and that is about it.

Senator BUCKLAND—Is the funding line the same for that—it is out of ALRM funding—or is there separate funding for it?

Mr Charles—No, that is from within ATSIS funding, within their guidelines.

Senator BUCKLAND—Thank you.

Mr Gillespie—Just to clarify what Chris said, the circumstances in which we provide that support are when, say, the parent of an Aboriginal child is a non-Aboriginal person and it is in the interests of the child that we provide that service. I thought I would just make that clear.

Mr Charles—I would like to make one point in summary in relation to these points about the way in which we work to look after people in the bush, and it is adding to what Peter Duffy said. There is a very strong historical relationship of cooperation and support between the Legal Services Commission and the Aboriginal Legal Rights Movement, particularly in Port Augusta and Whyalla. We have worked together for years; we have been friends for years. It is as simple as that. We always have to bend the rules to get the best possible results for everybody. We do so all the time. We always assist each other and support each other but again, if the system were properly funded, perhaps we would not have to do what we do in order to get the best results—by acting like country GPs, as Peter put it so well. Thank you.

Mr Gillespie—I would like to move to the Office of Evaluation and Audit report. On page 44, it highlights the efficiency and effectiveness of ALRM. According to this chart—and this is an independent assessment—we are regarded as the most effective and efficient legal service in the country. We were funded to the tune of $3.4 million for the year 2000-01. The value of the work that we provide, if it were provided by the private sector, is $9.1 million; hence there is an effectiveness measurement of $5.6 million. When you have those types of financial data, you would have to scratch your head as to the business sense of putting an organisation like ALRM out to tender. I will not go through all the recommendations within this report but it does highlight a couple of things. One is that the ATSIC board should continue to press the government for increased funding for ATSILS in the context of the Commonwealth budget, and a number of the recommendations reinforce that.

Another recommendation, No. 20 says 'that ATSIC should address, as a priority, the high levels of workload, staff turnover and dissatisfaction with working conditions among ATSILS legal practitioners'. We can attract newly graduated lawyers but we need experienced lawyers who are trained appropriately in Aboriginal culture. A case in point is that, for Ceduna, it took us in the vicinity of 12 months to attract an individual to take up an appointment there. The man lasted six months and suffered burnout, and, again, it took us almost another 12 months to replace the individual—firstly, because of the remoteness, secondly, because of the difficulty in dealing with some of our clients and, thirdly, because of the salary levels. I encourage the committee to have a look at that report and the various recommendations because it is—

CHAIR—Could you give us the full title, for the record?

Mr Gillespie—The full title is *Evaluation of the legal and preventative services program*. It was published in January 2003 by ATSIC's own Office of Evaluation and Audit. I mentioned earlier the National Audit Office's performance audit on ATSIC's law and justice program. Although I am a little bit blurry-eyed—if I bumble through, you will understand why; I got up so early—I wish to highlight a couple of the audit findings, which are quite relevant to your inquiry. On page 12 the National Audit Office found:

> … there was no current strategic or business plan, or risk assessment plan, for the Law and Justice Program that linked the objectives and planned outcomes to tasks for implementation.

ALRM, incidentally, follows best practice. We have a strategic plan. Yet we are being told that we as an organisation should pursue best practices. However, ATSIS itself does not follow its own instructions to us. The ANAO report found that, for the reforms that ATSIS is undertaking:

… implementation has been slow.

It also found that implementation of ATSIS's state direction strategy:

remains largely incomplete, and to date the Strategy has had little impact on the arrangements under which ATSILS operate.

Further, at point 8, the ANAO report said that, in June 2003, the ATSIC board approved the tendering process. This is a substantial shift from the existing grants process and, as well as providing new opportunities, presents new risks:

The timeline for the introduction of the new tendering arrangements is short and, as such, demands discipline in planning and risk management as part of a sound control environment.

This is something that we have been highlighting to ATSIC. They wanted to put us out to tender, but they overlooked the fact that there are legal obligations that our lawyers have to abide by in the event that we are an unsuccessful tenderer. Also, we have accrued liabilities. When funding ceases, we are still obligated to pay those liabilities. It is something that we have never been funded for. The ANAO report highlights the fact that there is a distinct lack of communication between ATSIS and their potential service providers, such as ALRM. Further, at point 11 in the key audit findings, the report says:

… many Regional Office staff—

within ATSIS—

considered that they did not have sufficient documented guidance and appropriate training related to the administration of the Law and Justice Program to do their job well.

Further, in relation to finding 13, the report said:

… the roles and responsibilities of the various areas of ATSIS involved in the Law and Justice Program had not been formally articulated, as better practice would dictate. Staff and grantee organisations—

like ALRM—

had mixed levels of understanding of these arrangements.

Hence our confusion as to the conduct of ATSIC in putting us out to tender.

Although generally adequate, there have been difficulties in communication between Regional Offices and other parts of ATSIS.

Further, at finding 15, the Audit Office found:

> … ATSIS has not given adequate consideration to determining the most efficient means of providing assistance to service delivery organisations. Annual funding of service providers under the Law and Justice Program (rather than multi-year funding) places an unnecessary and costly administrative burden on ATSIS and those organisations requiring the financial assistance.

This was one of our complaints about ATSIC, following the recommendations from the royal commission: that we need training or funding. It is good that the Audit Office recognises the problems that we face.

CHAIR—Is there much more that you need to read? Committee members have some questions.

Mr Gillespie—I will be quick. We have been pressing for professional indemnity insurance for ATSILS. Our insurance costs have been dramatic over the last few years. As we have indicated our funding has, in real terms, gone down. The Australian Cricket Board has put together a national program for cricket clubs. We have been pushing ATSIC, and now ATSIS, to provide something similar for us. The response is that we should provide for our insurance within our budget. This audit report is recommending some form of national scheme. A number of systematic problems exist within ATSIC—and this is not a bashing of ATSIS or ATSIC. The problems with regard to legal aid and ATSILS are such that they do not have a real basis—I think Hamish Gilmore highlighted this—and there needs to be some sort of analysis or diagnosis right across the country to identify needs and the gaps in those needs in service delivery and to come up with workable solutions. One of those workable solutions would be to provide adequate resources to legal aid organisations like the commission and specific organisations that tailor for specific clients like ALRM.

CHAIR—In terms of that assessment, you would recommend that the system prioritise family violence? That seems to be the one issue that you have both raised this morning.

Mr Gillespie—Most certainly.

CHAIR—There are no stats of the incidence of it in South Australia, but from your experience you would be looking at another person, at least, working in the area out of your office or would it be greater than that?

Mr Gillespie—I think we would need more than one person from the office to do—

CHAIR—What have you asked ATSIC for?

Mr Gillespie—From memory, we have asked for—

CHAIR—Come back to us on that, if you like.

Mr Gillespie—Yes. I am pretty certain that we have asked for at least two people in the family violence area. From what I can recall, approximately $300,000-odd within our budget. We put a lot of time and effort into our budget, and we asked for negotiations on the budget.

Unfortunately, we are allocated about two-thirds of what we ask for and then we have to reformulate our budget to fit within what has been allocated to us.

CHAIR—In terms of the competitive tender proposal, have you done any forward planning or forward thinking as to what that may mean to the level of work you do now and where you may have to cut back?

Mr Gillespie—We are a little bit more optimistic. We are hoping that ATSIS will recognise that we are a quality organisation. Chris alluded to the changes that are affecting our organisation with regard to governance, which has been a little bit of a problem for us in the past. We are keen to expand our service delivery in areas such as Coober Pedy, up in the Riverland—much the same as what the commission highlighted—in Berri, Mount Gambier, Whyalla and certainly in Port Lincoln. We are a little bit hamstrung here because we do not understand the requirements of ATSIC. They have not told us what they require in terms of outputs and outcomes. We have no problem with tendering. We have no problem with output based service delivery. However, we would like to understand the basis on which we are expected to provide the services. We have, for a long time, been seeking a revision and a realistic approach to performance and also to service delivery. The systems that we operate at the moment do not help us in providing a better service to our clients. This is highlighted, again, in both ATSIC's own internal document and the National Audit Office report.

Mr Charles—It is a bit early, in other words, to say what the effect of tendering will be because we do not know. They have said nothing to us about it yet, other than they intend to do it. So it is hard to say, other than guess and imagine what the consequences could be and to make generalised statements about quasi internal markets that do not exist.

Senator BUCKLAND—In relation to funding for cases where there is an argument between members of a family group or arguments between members of two separate family groups, how is that done? Is one side told to go away and get their own legal representation or does your office have to take on both parties?

Mr Gillespie—We have a conflict policy. If we have two clients seeking our service the first one that comes to us is the one that we provide for; the other we generally brief out. Have I misunderstood the question?

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

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

the male perpetrator will have to go elsewhere. That is a recent change in our policy which was consistent with our recognition of the need to look after the interests of women and domestic violence victims. I hope I have not muddied the waters.

Mr Gillespie—Sorry, I misunderstood your question.

Senator BUCKLAND—What about the financing for those you farm out? Do you pay that?

Mr Charles—This is another aspect of our problem. It is a point justly taken up by Hamish in his submission and is about the costs incurred by the Legal Services Commission. Of course, they have to pick up quite a lot of it. We have a briefing out budget of about $100,000 to $150,000 a year, which is, frankly, ludicrous. We do not have the resources to pay for the separate representation of the many people who we think under our properly formulated policies ought to be separately represented. We do not ever get a budget sufficient to enable us to provide for their representation and that gives rise to the Legal Services Commission picking them up. We do not in any way resile from the legitimate comments that the commission makes about that. We think that those statements are reasonable.

Senator BUCKLAND—This is a comment more than a question. It goes to you and Legal Aid. People seeking justice north of Gepps Cross are very much disadvantaged.

Mr Charles—That is absolutely so. Again, Peter's evidence about the decline in the standards and the availability of legal services in the Iron Triangle is particularly relevant. That is certainly consistent with our experience. The legal aid services of the commission and ALRM are becoming the major legal practices in these centres. That is fine, but if we were properly resourced to do it we would be a lot better at doing it. But we are grossly underresourced. For the last four or five years—I may be wrong—we have been consistently saying that we need another lawyer in Port Augusta and another field officer. We need more resources in our Ceduna office. We need a properly resourced office in Coober Pedy. We do not get the resources because our estimation of the actual needs of the Aboriginal community are ignored in the context of cutting up a very small budget—an inadequate ATSIC budget—on the basis of a funding formula which is, to say the least, opaque and difficult to understand. It has the problems that we have identified: the definition of what is a matter and the failure of the ALSIS process.

CHAIR—Thank you. Mr Gillespie, would you like to wrap up?

Mr Gillespie—To highlight the problems faced by legal aid generally across the nation, I refer to page 26 of the audit report. In 1997-98, there were 68,000 cases; in 2002-03, 113,000 cases. That is indicative of the growth of our work and our caseloads. However, our funding is reduced. In a nutshell, ALRM is grossly underfunded. Our staff are overworked and underpaid, and we are constantly being criticised both by ATSIS and also by the community because we are failing to deliver a service, but a number of our staff are suffering from burnout. Our service is characteristic in regard to ATSILS, not just in South Australia but right across the nation, in the degree of burnout and underfunding. As a legal aid service provider to the Aboriginal community, all we can do is to plead with the committee to make recommendations about this dramatic reduction in funding that has existed in the last few years, particularly for ATSILS like ALRM, and to encourage both government and a number of agencies to rectify this funding shortfall so that there is far more justice to Aboriginal people across this state.

CHAIR—Thank you for your submission. Before you go, though, with respect to that last set of statistics you mentioned—the 68,000 and the 113,000—could you take this question with you: is there any way of getting back to us with information as to where that increase has taken place? Which sorts of crimes or what sort of activity has led to that major increase? You may want to think about that.

Mr Charles—Would you please define precisely what you mean by 'that increase'?

CHAIR—The increase that Mr Gillespie mentioned.

Mr Gillespie—I will provide that to the secretary.

CHAIR—Thank you very much.

[11.43 a.m.]

PARNELL, Mr Mark Charles, Solicitor, Environmental Defenders Office (SA) Inc., Australian Network of Environmental Defenders Offices

CHAIR—Welcome. You have lodged submission No. 8 with the committee. Are there any amendments or alterations you wish to make to that?

Mr Parnell—I have emailed through to Louise some minor amendments which go to the numbers, basically. I needed to update some of the funding levels that some of the offices work under. I underestimated how much money Tasmania had and overestimated how much money Queensland and Victoria had, but the amendments will be tabled.

CHAIR—Would you like to make an opening statement?

Mr Parnell—Thank you. I am the solicitor at the Environmental Defenders Office in South Australia, and today I am representing the nine environmental defenders offices that form part of our informal network around Australia. There is one Environmental Defenders Office in each of the states and territories: that makes eight. The extra one is in North Queensland. If you have followed environmental issues in Australia at all over the last 10 years, I think that is a well-justified additional office, given the environmental problems they have in that state. We are a community legal centre. When people ask me what I do, I tell them I work for green legal aid, but we are certainly part of the CLC family rather than state-delivered legal aid. I would have to ask you all, I guess, to shift your minds a step—not a step to the right or left, but a step away from the sort of legal aid you have been hearing about, which has largely been in relation to people's relations with each other, people's behaviour in terms of criminal behaviour, how people deal with each other in family situations and the problems they get themselves into. That is not the type of legal work that we do.

Our legal centres—the EDO network—specialise in public interest environmental law. The sorts of issues that we take on are very much public law—very much administrative law. In fact, when people come to us looking for compensation for some wrong that has been done to them, we generally will not help them. The sorts of clients we help are public interest clients. They are people who come to us saying things like, 'The bushland on the outskirts of my town is about to be cleared. It contains endangered species. It's an important remnant of the biodiversity that used to be here. We want to protect it, not because of our own property values or for some selfish reason, but because we think it is the right thing to do for future generations.' It is very different type of legal service we provide from the traditional legal aid model.

When it comes to environmental law and access to justice, there are three things that you need. First of all, you have to have standing—you have to have the ability to take your issue before the umpire; to get into the courts. Secondly, you need access to legal representation and advice, and that is where the environmental defenders offices fit in. Thirdly, you need some protection from the costs regime that applies in the judicial system. Standing in most parts of Australia is on the improve. Citizens do have the right to go to court on environmental issues in most states. It is not uniform, and there are still some big problem areas, but standing is generally not an issue,

especially in states like South Australia. You can usually get before the court. I think the costs situation has been helped by the High Court's decision saying that public interest cases do not have to have costs awarded against them. Normally, the loser pays the winner's costs, but if it is a public interest case the court can vary that rule.

The bit that my submission is about is access to legal representation. The problem we face is that, since July 1997, none of the environmental defenders offices have been able to use Commonwealth legal aid funds for litigation or litigation related activities. In my submission I have talked about how that is defined. It is a very broad definition. If somebody comes to me with an environmental problem—a local community group, for example—I can go this far: I can say to them, 'Yes, you have a problem. Yes, it looks like a bad decision has been made. Yes, you have a right to go to the court and get this problem fixed up. I accept that you're acting in the public interest.' When they ask me if I can represent them in court using Commonwealth funds, I have to say no. When they ask if I can just help them fill out the appeal form, I have to say no as well. So it is not a question of the absolute level of funding; it is a question of the use to which we are allowed to put our existing funding.

That arrangement has been in place for the last six years. Apart from in New South Wales, legal aid is not available for environmental cases. But, necessity being the mother of invention, all of the EDOs around the country have explored other avenues to try to get money so that they can provide representation and a decent service. In many states, that has meant that state justice departments and legal departments have provided legal aid funding, and they have allowed some EDOs to use those funds. In South Australia we get a small grant of about $14,000, not from our law department but from our environment department. We are not allowed to use that money for litigation. They will let us help clients fill out appeal forms and they will let us help people represent themselves, but we are not allowed to represent clients.

Having said that, nearly all of the environmental defenders offices have run very important cases over the years. I have set some of those out in the submission. In South Australia we have brought a number of cases which have had major law reform ramifications. The whole aquaculture industry in South Australia has been reformed, largely as a result of legal challenges that were brought by the environmental defenders office, representing conservation clients. I have just said that we are not allowed to use Commonwealth legal aid money or state environment department money, so I guess the question is: how did we do it? We raffled a red BMW sports car. That is how we paid for the tuna cases. Earlier this year we saved 25 acres of beautiful bushland down at the foot of Eyre Peninsula. Again, we were not allowed to use any legal aid money. How did we pay for that one? We sold boxes of organic wine from the Langhorne Creek estates of Temple Bruer. The only money we need to make is $30 an hour, or whatever my hourly rate is. We do not need to make a whole lot; we do not need to make barristers' fees. We just need to be able to use our existing Commonwealth legal aid funds for court cases.

To a certain extent, this inquiry today has an element of deja vu about it. It has very similar terms of reference to those of the inquiry back in 1997 and 1998, when the Senate last looked at this, and I am saying very similar things to what a colleague of mine said at that inquiry. We raised the issue of the litigation restriction. We made the point that it had no basis in policy and that it was politically motivated, and the Senate committee at that stage recommended that that condition be removed. The minority Senate report recommended that the condition remain and

basically said that there is nothing that stops us running court cases if we can find other money. That is still the problem—finding the other money. I do not think that it is good enough to say that the environmental defender's offices have done well in securing other sources and that therefore lets the Commonwealth off the hook. I think it is a matter of some principle.

The only policy grounds for not letting us litigate with legal aid money seems to be the inherently political nature of environmental law. We are very often challenging the decisions of the executive. We are challenging decisions of statutory authorities and of ministers. We are challenging them on the merits and on legality. The view seems to be that public funds should not be used to challenge those sorts of decisions. The argument that I would put is that that is like saying that we should not publicly fund criminal defence work because it simply suggests that our law enforcement officers do not get it right sometimes and that there should be no public funds used for defence. It is exactly the same in relation to environmental law.

The only thing that has really changed since we spoke to the Senate committee last time about this restriction is that many of the states have found some other sources of funds, which they have used. But all of the states report that the number of cases they would like to run, and that are meritorious and deserve running, far exceed the resources that they have available to them. I do about one case a year. We try and make it a big one and a good one, but I would certainly like to do a whole lot more.

I should also say that in terms of bang for the bucks, we must be the leanest operation around. The total budget for my office is around the $100,000 mark, which employs a lawyer practically full time and an administrator, pays all of the office costs and pays all of my transport, because we serve the entire state. I am making the most of this visit and going down to Whyalla to talk to clients after this. We also have barristers on tap who will do representation work. I had two QCs lining up saying, 'Yes, can we please pro bono do this full court appeal for you?' That is not the problem. The problem is that I cannot brief them. I cannot do the legal work necessary to get the case up and running because of the litigation restriction that is imposed on Commonwealth funds. We have a panel of nearly 20 lawyers who come into my office every Thursday night on a rostered basis and give free legal advice. We provide an expansive service for a very small amount of money. So, whilst most people who are coming here are saying, 'We need more money'—and we need more money too—my No. 1 call is for us to be able to use the legal aid money that we have more efficiently.

Senator BUCKLAND—It could be that legal aid needs to start raffling off a few things to fund themselves, judging by what you are saying.

Mr Parnell—No, I do not think the lamington stall—

Senator BUCKLAND—That is not a genuine question, it is just a thought I had.

Mr Parnell—I appreciate the question. It raises this important issue about whether our clients should be privately funding these public interest cases. My view is that if the rationale is to protect groundwater and biodiversity and it is in the public interest, the public should at least give those citizens the opportunity to go to the umpire. They will not always get it right; the umpire might say, 'No, the decision maker did a good job. They've made a lawful decision. They've made a good decision on the merits,' but my experience is that there are lots of

mistakes. I have never lost a case in South Australia. Like I said, we pick good ones, and they have all resulted in law reform, whether it was the tuna industry or the native vegetation clearance regime. They have all been very significant. But I would have done a lot more cases if we had been able to use Commonwealth funds.

CHAIR—Moving on from raffles, on page 8 of your submission you talk about the new service agreement. I do not know how they would apply this without it having an enormously crippling effect on your organisation, but you say that the new service agreement:

> ... provides that service-related income, including membership fees and donations are also to be regarded as Commonwealth funds if they were in any way earned using other Commonwealth funds.

Mr Parnell—It is a fairly nonsensical condition. I can understand what they are trying to do: they are trying to get accountability to make sure that service agreements are complied with. My view is that my organisation existed before we got Commonwealth funding and people join us—they pay their $33 a year, which includes GST because we provide a service; a warm inner glow—because they like what we do. They do not join because we have cajoled them to join, using Commonwealth funds. My view is that our membership fees are our money and we can spend it how we will—and the same with donations.

CHAIR—Are they trying to get accountability or are they trying to render you ineffective as an enforcement agency?

Mr Parnell—I have not made that suggestion in my submission, simply because I do not know. I pointed out that we have colleagues interstate who are saying, 'If we run a law reform seminar or an education seminar and we make money out of it, we'd like to be able to put that money into a litigation account so that we can fight the next public interest case. But the service agreement says that because we did it in work time—in Commonwealth funded time—we have to apply that money to the Commonwealth service agreement; therefore, we shouldn't be litigating with it.' Those of us who are not full time or who have a large volunteer component can always say that we earned that money using volunteer effort. So there are ways around it, but it is not a very useful or helpful condition. It would not matter so much if our service agreement were not restrictive in relation to litigation.

CHAIR—You state that the test case fund is of limited value for a number of reasons. Would you like to elaborate on that?

Mr Parnell—The No. 1 reason is that it is relevant to Commonwealth cases. Certainly, Commonwealth cases will increase because we have the EPBC Act now, which does have some rights for citizens to bring cases. But the vast bulk of environmental law is still state law—pollution laws, biodiversity laws, planning laws are still, mostly, state jurisdiction. There are also questions about requiring the Attorney-General's fiat. I think that is one of the conditions in there as well. Given that most environmental law challenges tend to have somewhere in them, as a party, the executive arm of government—whether it be federal government, state government or a local council—we find that those restrictions mean that cases are unlikely to be approved. In fact, we have never had a case that has met the guidelines and we have not bothered applying.

Senator SCULLION—Whilst you indicate that, because of the Environment Protection Biodiversity Conservation Act, there may be some more Commonwealth cases, I am not sure whether they would necessarily be litigated by the nature of the act, but have any of the cases that you have won in South Australia been against the Commonwealth?

Mr Parnell—No, they have not involved the Commonwealth. But I make the point that the community sector beat Environment Australia to the post in terms of litigation. The community was in there litigating well before the Commonwealth brought its first enforcement action under that act. We have had a number of fact situations in Australia that have led me to believe that we could bring a case under this act that would protect the environment, but we have not brought any yet.

Senator SCULLION—Do you think that, with the advent of the Environment Protection Biodiversity Conservation Act, there is possibly less need for litigation because of the nature of the act and that the Commonwealth appears to be able to move, and seems to be moving, very strongly in those areas?

Mr Parnell—I do not think so. In the area of environmental law, because it is such a political area—and I do not mean party political—there will always be in many cases a reluctance of the proper authorities to enforce the law. It is not necessarily because they have been leant on by politicians or anything like that, but there is a natural reluctance in many cases. The EPA in South Australia states publicly that there are some cases it will not take on because of its own resource limitations. There are other cases which are too hard and which it sees as not being a good use of its funds. So there will always be the opportunities for citizens to step in where the proper authorities either cannot or will not take action themselves.

Senator SCULLION—Speaking again about Commonwealth matters, I know that you indicate in your submission that the Commonwealth test case fund and access to that is limited because it only deals with Commonwealth matters, but do you see access to that for Commonwealth matters as being of assistance at all?

Mr Parnell—Looking at the criteria, one is that the fund is not available to test settled law and that it is primarily for test cases. So you need to have a new or novel or different form of action to get up. A typical case that a citizens' group might bring would be the failure on the part of some developer to refer a matter to the Commonwealth, so the Commonwealth does not get to do its environmental impact assessment. That is the type of case that is likely to be brought. It is not necessarily a test case; it is a fairly routine sort of matter. I am not aware of any of our officers having tried this fund. That act has been in only for a little while, and there has been only a small number of cases. I think we would have to suck it and see, but it certainly might be worth a try. Again, I come back to the point that most environmental law is state law rather than federal.

Senator BUCKLAND—In relation to issues you mentioned earlier, such as land clearing on the outskirts of town and local fauna and flora being affected and its effect on property values, with people saying, 'We really want to protect the environment; we're not worried about property values,' is there a test to put in place to ensure that it is not property values before the poor little lizards and kangaroos?

Mr Parnell—It is always a hard call. If I were going to be flippant about it, I would say—

Senator BUCKLAND—I am very serious about this.

Mr Parnell—I know you are serious, but I would say, 'Do I like the cut of their jib?' What assessment can I make of what is driving them? The fact is that most people who get involved in environmental issues do so through some personal connection they have. For example, one of the clients I had in this land clearing case at Coffin Bay, which is the town I was talking about, lived a few streets back. This client was not overlooking it, so property value was not directly affected. This was not a poor person in terms of, I guess, traditional legal aid but a retired medical person. We took it on. Even though the person might have been able to use their own savings to fund the court case, we did not feel they should have to, because it was a public interest case that they were fighting. We have our own internal tests for determining whether a client deserves assistance. We try to help everyone we can but it is the level of assistance we provide, with the top of the pyramid being representation in court. We reserve those cases for conservation groups or for individuals who have satisfied us that it really is public interest rather than some private gain that they are after.

I will elaborate on one more point. Another thing that helps us with the test of public interest is that often we find we are batting in court for other government agencies. So if I take that land clearing case, the 25 acres, the native vegetation authorities in the state environment department put in a very firm recommendation saying, 'Don't clear this land; its biodiversity is too important.' If they do not have appeal rights, they are another government agency. The local council, desperate for development, goes ahead and approves it, so we find that by our going to court as private citizens we are in effect backing up what the environment department was saying. So that is another test of public interest—whether we have public agencies on our side.

Senator BUCKLAND—There is another thing I was going to ask you about—and I will just preface it by saying that I am well and truly on the record as to my views in relation to this issue. Have you or your office given any advice or assistance to parties that may be opposed to the proposed waste dump in the north of South Australia?

Mr Parnell—I will preface what I say by saying that our solicitor-client relationship is pretty much the same as any other solicitor-client relationship in terms of confidentiality, but one difference is that many of our clients want nothing more than for the whole world to know what they are trying to do, what area they are trying to save. The simple answer would be no, in recent times. I do not think I have a current file that relates to action in relation to the dump.

But what I can tell you—and this is something I will be raising tomorrow afternoon—is that we have been helping the Australian Conservation Foundation—which, as you know, would be one of the lead groups—with a freedom of information request that they have put in. They are trying to get information, not so much about the dump but more about the mines out there. One of the restrictions on our funding is that, if they get knocked back with their freedom of information application, I cannot appeal against it because that is regarded as litigation. So, certainly, I have a couple of files open, but they tend to be access to information type files rather than any pending court action to stop dumps. I think the South Australian government has nailed its colours to the mast pretty well on that, and they will be the ones taking legal action, not us.

Senator BUCKLAND—I am conscious of the time, but there is one more point I want to raise with you. It is very local to me, but it is well known to South Australians. You mentioned you are going to Whyalla this afternoon, and in private conversation earlier you mentioned that you were going there to discuss with clients the fugitive dust issue that exists from the pelletising plant. An observation is that—and, again, it comes down to what criteria are in place to make a determination that assistance will be given—it appears to me that it is people who are not exactly local to the area who are expressing the greatest concern; people who are not so local as Hummock Hill, for instance, but further back, and also people who have built their homes since the pellet plant has been in place and since the fugitive dust problem has been in existence. How do you grapple with determining to pursue it anyway? It is a community issue.

Mr Parnell—That is right. Certainly the group that I am representing, the Whyalla Red Dust Action Group, are on the record as saying that it is not their objective to shut down the One Steel plant, and I think that is to their credit. In terms of it being public interest, our pollution laws are a part of public law, and that raises an interesting question about whether people are entitled to as high a standard of environmental care regardless of where they live in Australia. This is an essay topic I set my students at university: should the citizens of Whyalla have to put up with lower air quality because they live in a company town? Because it is the biggest show in town—it is the main employer, it is the main industry and it is the main source of wealth for the town—should they put up with a lower standard of environmental health? The way I look at it is that it is definitely a public interest issue. The clients that I have dealt with all live very close to the plant, and they are the ones most affected by it. You could say, 'Maybe it is their property values that are affected.' I do not care about their property values; I am worried about their health. I am mainly interested in it because I think there are important health implications.

But going back to Senator Scullion's question, the proper authority for managing pollution is the EPA. Groups like mine step in to advise citizens about how the system works, who is responsible for what and what legal rights you have as an individual. Would a case like that go to court? It would only go to court at our suit if the EPA did not do their job. If my clients said, 'No, we are suffering. We have higher instances of asthma and all sorts of respiratory illnesses because of this pollution. The EPA won't help us, therefore we will bring private legal action,' then that is the type of case I can imagine taking on. But it is a last resort rather than a first resort. My view is that the EPA, in that particular instance, has taken strong action. They have issued orders against the company ordering them to clean up certain parts of their process, so I do not see that one going to court in the short term.

CHAIR—It is a pity you were not in Port Pirie 50 years ago. Thank you very much, Mr Parnell.

[12.09 p.m.]

BULLOCH, Mr David Allan, Managing Lawyer, WestSide Community Lawyers Inc.

CHAIR—Welcome. Is there any need to amend or alter submission No. 58, or would you just like to commence with a statement?

Mr Bulloch—There is no need to make any amendments. In short, our submission is very narrow. We have explicitly excluded from our submission—not from our general outlook or approach to our work and to the world—humanitarian or social equality considerations. We had little doubt that there would be many others, especially other community legal centres, who would turn their minds to those fundamental questions about fairness before the law and liberal society not being able to function if poor people do not have access to significant institutions like the courts and so on. We have assumed that others would say those things and we have assumed of course that, to a large extent, the committee endorses those kinds of concerns.

In short, what we have said is this. If people have an entitlement to appear before the courts, either as defendants or as plaintiffs, and if they appear before judicial officers, who after all have been trained as lawyers and who are there to apply legal rules, then the absence of legally trained advocates, of necessity, extends and makes more expensive that process. We have speculatively—although it is a speculation based on experience—suggested that there may be some simple utility in providing publicly funded lawyers before the courts explicitly for the purpose of making those proceedings, which would take place in any event, more efficient and less expensive. We have speculated that to go about it in that fashion would produce a less expensive judicial system. As I said, it is not that our entire outlook is, as an organisation or in our work, restricted to that view but it is the submission which we have chosen to place, we concede very narrowly, before the committee.

CHAIR—Are you saying that we are not talking about a social welfare right, but that we are talking about a right of citizenship when it comes to capacity to enforce one's rights before the law?

Mr Bulloch—Exactly. We know that there are many social equality arguments and we are conscious that there are all sorts of other things that one might say when the question is asked: how should legal aid be administered in Australia? But we have focused very narrowly on this question of the consequences of unrepresented litigants before the courts. As I said, we have speculated and done some amateur arithmetic of our own that there are consequences to the judicial system. One consequence is that it elongates processes and procedures. The courts are expensive to run, and any kind of extension or elongation of proceedings should be avoided or minimised. We say that one way that could be assisted is to provide publicly funded advocates.

CHAIR—You referred two quotes to us. The one from the Attorney-General identifies the cost issue as well as the complicating of the conduct of litigation issue. There was also that statement of Justice Bleby's in terms of the obligations on the judicial system. Is that burden on judges and magistrates one that is extremely difficult to fulfil when at the same time as hearing a case they also have to assist one of the participants in that case?

Mr Bulloch—I can only speculate about that, but my impression from my experiences is that it must be so. We do not have to imagine it, because courts do exist which are fundamentally inquisitorial in nature. There are presumably perfectly civilised judicial legal systems in other parts of the world. There is the European experience, particularly the Roman law or the Napoleonic code countries, in which inquisitorial processes are the feature whereby disputes are resolved before the courts.

In the common law system there is a fundamental assumption that parties will present their own cases and that those cases will be presented in the context of the procedural rules as well as the substantive law. When, if you will forgive the expression, amateurs are forced to do that job, the consequences are that the professional officer—I mean, the judicial officer who has trained inside the system as an advocate—finds himself or herself attempting to do what is most uncommon in our system: to be both an advocate and a decider of fact and law. I have not personally ever presided in judicial proceedings but there is a wealth of anecdotal material from judicial officers at all levels which indicates that they consider it most unsatisfactory.

CHAIR—From the location of your offices it is quite apparent that the people you would be helping would otherwise be unrepresented litigants. There is not a strong capital base in those three areas.

Mr Bulloch—I have worked from the post code 5010 for the last 10 years. We have the unhappy distinction of almost always leading—or the reverse perhaps—the negative social indicators. The area known as the Parks in Adelaide's west has, for many years, been an area of genuine social disadvantage. The other locations of our offices, if not quite so starkly disadvantaged, are certainly in the small end of town.

CHAIR—I recognise from that position that you would have enormous contact with otherwise unrepresented parties. How do you come to the conclusion of the quantities of the costs in 6.1? Is that something that your statistics show up?

Mr Bulloch—I was going to call you 'your honour', which is not quite right.

CHAIR—It could be a demotion in some circles!

Mr Bulloch—That was a bit of amateur arithmetic on our part. We attempted to take our own experience and some material which we acquired from public sources to make that fundamental assumption: that processes are ultimately elongated by, we guessed, at least 20 per cent when people are unrepresented before the courts. The 30 per cent figure was a figure which we estimated both from some public sources—there is some explanation earlier in our submission—and from our direct experience. This is especially so outside the metropolitan area. I think it is well recognised across Australia that courts continue to hold court outside the capital cities but services are not as generously provided outside the large towns as they are inside the larger centres of population. This is consistent with all sorts of things—presumably there is some analogy with the medical services, dentistry and the like.

CHAIR—You recommend that we investigate and quantify the financial costs. In the quote you have identified, Daryl Williams says that solutions must be sought. Have you given any thought as to how we would proceed down that road?

Mr Bulloch—Do you mean the statistical inquiry?

CHAIR—Yes.

Mr Bulloch—It is somewhat outside our ken, which is why we said others should do it. I am conscious that the Commonwealth has funded some research—for example, the research conducted by Dr Hunter from the University of Sydney some years ago into the provision of legal aid in the family law arena. It must be true that there are people with the kinds of skills and research capacity who, if they were provided with sufficient funds, would be able to provide some kind of answer to this question. We have only posed the question. We have posed the question partly as a consequence of what others have said, including the former Attorney-General, but also because of our direct experience.

Senator SCULLION—Let us make a reasonable assumption that, if we were to investigate and quantify this financial cost, it would be a lot.

Mr Bulloch—Yes, it probably is.

Senator SCULLION—What do you think we should do? We have decided it is a lot and that we should do something to rationalise how we spend our money. What are the steps you think should be taken?

Mr Bulloch—If that assumption is correct, and one guesses it is—of course, it is better to know for sure rather than just to assume—we do have two tentative or speculative proposals. One of them is that there be a decreasing emphasis, especially by the Commonwealth and its officers, on the provision of advice-only services. In my working life as a legal aid practitioner—which I am sorry to say is nearly 20 years long—it seems as though there has been a growth nearly every year in the provision of advice-only services. So one speculative or tentative suggestion, especially in an area that I know something about—the provision of community legal services—is that there should be, via the Commonwealth officers in particular, a decreased emphasis on the provision of those advice-only services.

Our other suggestion—again, this is tentative and feeling forwards rather than knowing—is that there may be merit in pilot studies in the provision of duty solicitor services. We propose three areas where pilots could be extended: firstly, in the rural parts of the country where people would otherwise receive criminal law duty solicitor services if they were in town; secondly, in the civil arena—and we are conscious of the work which is being done by the combined universities in Adelaide before the Adelaide Magistrates Court, but our understanding is that that has been effective and successful and should be extended; and, thirdly, that the duty solicitor services before the Family Court should also be investigated, piloted and, if successful, extended. Duty solicitor services have their shortcomings, of course, but we suggest that they should be tested.

CHAIR—What is the program being run by students in Adelaide before the court?

Mr Bulloch—I am not brilliantly familiar with it, but it is essentially a program of postgraduate students, and some of them are in their final year at the two law schools, under the supervision of a couple of employees of the university, providing duty solicitor or duty lawyer

advice to people in the non-criminal area—that is, before the Adelaide civil registry. There is a pretty strong relationship with one of the supervising magistrates, Dr Cannon. I understand that the representation or assistance is quite limited but it goes beyond mere advice. I had assumed that somebody else would have been able to give you some information.

CHAIR—We can search that out.

Mr Bulloch—Yes, indeed. I am sorry I cannot answer it better than that.

Senator BUCKLAND—I thought your submission was very observant in suggesting that the reduction in legal aid services is increasing the cost of our judicial system, which I think is entirely correct. Your group has been connected with Anglicare—and I think that is the church doing what it should be doing: helping those in need. Do you get funding separately from Anglicare to prop up the support services you provide?

Mr Bulloch—My organisation is almost exclusively funded by the Commonwealth and state attorneys-general. We receive funding from the Commonwealth Community Legal Centre Funding Program and the state Community Legal Centre Funding Program. I am sorry that was not made clearer in the submission.

Senator BUCKLAND—It might have been me.

Mr Bulloch—I do not think we gave sufficient attention to who we are and why we are here. But there has been a community legal centre functioning from what is known as the Parks Community Centre in the west of Adelaide for approximately 25 years. Our association with Anglicare is only two or three years old.

Senator BUCKLAND—That was in Port Pirie, wasn't it? They had a breakdown in the provider there.

Mr Bulloch—That is right.

Senator BUCKLAND—I cannot entirely recalled the circumstances but I think it was connected to one of the other church organisations at the time.

Mr Bulloch—If you will forgive the colloquialism, Senator, that is how we got the gig. The former provider from Port Pirie declined to provide the service beyond the end of the last financial year, a little more than 12 months ago.

Senator BUCKLAND—The service is not underwritten by the church?

Mr Bulloch—No, it is not underwritten by the church, but Anglicare is a large organisation that contains facets of expertise which it provides most willingly and unstintingly to us, particularly in the things which small organisations notoriously find difficult to manage: industrial relations, human resources, financial accounting and, to some extent, information technology and all that sort of stuff. It is the expertise of Anglicare which contributes to our efforts.

Senator BUCKLAND—I was interested to see that in your submission you talk about the various roles you take or the jurisdictions you act in with industrial relations. The demographics of the people who seek aid in this jurisdiction—

Mr Bulloch—In the unfair dismissal jurisdiction?

Senator BUCKLAND—Yes, mainly in unfair dismissal and underpayment. What sort of people are these in the main? Are they young people or older people, are they disadvantaged, are they casual, part-time or full-time employees?

Mr Bulloch—I am sorry I cannot give you a careful statistical answer but I can give you my impressions gathered over the last 10 years. By and large, there are more young people than older people. Of course, it is a legal aid service which is being provided, so the service is provided to employees who are probably best described as working class or lower-middle class. There are not too many casuals just because you have to be employed for at least six months on an ongoing basis to enjoy the benefits of the jurisdiction. As for what sort of workers they have mostly been, I am tempted to suggest that they are all sorts of employees. It ranges from people who are doing factory worker to people engaged in the security industry. There was a chap selling mobile telephones—the sorts of things you would expect in a wide range of the Australian work force. But generally they are in non-unionised employment. That is an important point to make.

Senator BUCKLAND—I was not trying to bring my old roots back into the equation.

Mr Bulloch—My point is that in that jurisdiction there are many union officials who are regularly there as advocates, so it is people not employed in the unionised parts of industry who mostly obtain our services.

Senator BUCKLAND—I certainly was not on a recruitment drive! Do you get any people with immigration related matters?

Mr Bulloch—Yes. A number of years ago, perhaps as an accident, the Commonwealth funded us to provide immigration services and advice, so yes, we do have a number of immigration inquiries.

Senator BUCKLAND—Do you know if that has increased at all in more recent times, particularly in the north of the state?

Mr Bulloch—It has indeed. One of my young colleagues here represented a number of people before the magistrates in Port Augusta on some immigration related matters. Simple immigration inquiries have certainly increased. I am also a member of the Legal Services Commission—not that I am here in that capacity today. I know from my involvement as a commissioner that the Legal Services Commission has received increased demand in that area over recent years.

Senator BUCKLAND—In paragraph 2.1 of your submission you list six areas: charged with criminal offence, involved in family disputes, sued by another person as a result of debt, denied welfare payment, involved in accidents and dismissed employees—which we have talk about; I

guess we could put immigration in there as well. With the workload and the funding that you have, do you find that you have to prioritise one matter over another?

Mr Bulloch—Indeed, and that is of some regret to us on occasion. We attempt to give emphasis to those matters where the party on the other side of the dispute has a significant advantage over our client or would-be client. For example, that is why we give priority to matters of employment—acting for the employee—rather than motor vehicle accidents. Most people who are involved in an accident—mostly; not always—can obtain speculative assistance from a legal practitioner. The kinds of matters that we give priority to are those matters where there is a real disparity between the people who are in dispute. We do not engage in neighbourhood disputes, for example, except on the occasion when Nanda was on the other side

CHAIR—Earlier in your submission you referred to something like 2,500 approaches per year. Does that show an increase over recent years of people coming to you?

Mr Bulloch—There has been a gentle increase. In our case it is somewhat skewed by the fact that we now have a larger constituency—more territory, so to speak. I think there would be very few people who would attempt to assert that there has been a decline in demand for the provision of legal services. Our point, however, is that it is not a simple or even demand. If there was less emphasis on advice only and more emphasis on ongoing assistance, we think that the combined legal aid dollar, if I can use that expression, spent on private practitioners, on in-house providers and legal aid commissions and money spent on community legal centres would be less. The money that is spent via community legal centres would be more effectively spent and the net benefit would be greater if there was a renewed emphasis on ongoing assistance and representation and a lesser emphasis on advice only.

CHAIR—Is domestic violence another issue that pops up in your client base?

Mr Bulloch—Yes, indeed; regrettably from both sides. Recently we appeared before the Supreme Court in Adelaide representing a man who had been in prison on a first offence. It was essentially a domestic violence offence, but the law makes it quite clear that first offenders should not actually be imprisoned. My point is this: domestic violence has significant consequences on the judicial system in lots of ways.

CHAIR—Thank you very much for your submission, your time this morning and your contribution, particularly some of those quotations.

Proceedings suspended from 12.34 p.m. to 1.25 p.m.

LENNON, Ms June, Board Chairperson, Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service Inc.

FORTH, Mr Mark, Senior Solicitor, Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service Inc.

CHAIR—I welcome to this afternoon's proceedings representatives of the Aboriginal Family Violence Legal Service. Would you like to start off with an opening statement, at the end of which we can bowl a few questions to you.

Mr Forth—Firstly, I would like to thank the committee for allowing us to attend. We were given quite late notice about this on Friday; however, we are pleased to be able to represent our organisation before the committee. Fundamentally, the issue of family violence facing the Indigenous community in particular is far more significant than I was aware before I commenced my duties with the service. I had a very limited understanding of family violence as a practitioner working in private family law firms. It came as somewhat of a shock to face the difficulties that violence introduces to families, and also the extent to which it invades the whole family and all aspects of family life.

Our funding is through ATSIC and our charter is to provide assistance to all family members who face family violence within Indigenous communities in the Port Augusta region—which is limited to Port Augusta and some of the very close townships. It is quite clear from the limited time I have been working at the service that there is a significant unmet need in rural Australia with Indigenous communities. Indigenous communities have their own particular complexities when it comes to family violence, but I believe this is the only family violence service in South Australia. I extrapolate from that there is a significant unmet need for non-Indigenous families and for Indigenous families outside this region.

Family violence does have its own particular issues and there are certain ways of dealing with aspects of it. It is a skill that I am still developing, and I have been working here for nearly 11 months. Particularly in Indigenous communities, it requires the involvement of the people in the community itself, because they want to get involved in order to rid themselves of this curse, so to speak. Although as a practitioner I have a lot of confidentiality issues, we certainly call upon many people—staff members and people outside the office—for help in dealing with the issue. So, while it is certainly a difficult legal problem, it is also a community problem; and it is something the community wants to address. My submission to the committee, from my experience and contacts I have with people in remote and rural communities, is that there is a very big unmet need for help in this area which we have limited resources or ability to deal with.

CHAIR—Ms Lennon, would you like to add anything at this stage?

Ms Lennon—As Mark said, we are funded by ATSIC, and our mandate is just for the area of Port Augusta. But we find that some areas are dealt with in two places, especially when you consider that in Port Augusta we have people from everywhere, so they are connected to all these communities outside Port Augusta. I think that that is where we are finding that, whilst we can provide a service within Port Augusta, as Mark mentioned, there seems to be an unmet need

that surrounds Port Augusta as well. The areas that we experience within our communities are different from a lot of the areas if they were going to a mainstream service.

CHAIR—Could you give me some idea of the background to the organisation? You mention Port Augusta as one area that is covered, and then there is some reference to links with outlying areas. Could you give us an idea of the areas you cover, how long you have been funded—you said that you have been funded by ATSIC—and how you may interlink with ALRM or the Legal Services Commission? I am just trying to get some contextual background to the organisation.

Ms Lennon—We started life as a pilot program. The reason Port Augusta was chosen, as opposed to Ceduna or Adelaide, was that we had 59 per cent of recorded Aboriginal violence, whilst they had something like 39 per cent. We were part of ATSIC's strategy to address the issue of family violence within our areas.

CHAIR—When was that?

Ms Lennon—I think we have been incorporated for about 2½ years now, but before then we were hosted by the Women's Legal Service. We were then able to establish ourselves on local ground, and that is when we became incorporated as the Aboriginal Family Violence Legal Service. Our service is managed totally by our Aboriginal board.

Mr Forth—I will just add that Port Augusta seems to be the capital of far north Indigenous regions, so to speak. There would be dozens of Indigenous regions. Many of those people come in and out of Port Augusta quite regularly for various reasons. Sometimes, when there is a crisis in the family, one of the members will come down to Port Augusta for support. While they are here they seek our services, so not only do we need to deal with matters that are with a client in Port Augusta but also there may well be components to the matter elsewhere in the state. Clients sometimes then go back to those areas. So, although it is limited to Port Augusta, we feel as though we are involving much of the north of South Australia, in particular.

CHAIR—You say that Port Augusta was chosen because it was identified that 59 per cent of families raised domestic violence issues in that city and there was 39 per cent in Ceduna. Is that right?

Ms Lennon—I believe it was.

CHAIR—What statistics are you referring to? Are they ATSIC statistics?

Ms Lennon—Yes, it was ATSIC statistics. I think they did a study at the time and that was what came out of it.

CHAIR—There is no similar service provided in Ceduna as a consequence of that?

Ms Lennon—I do not believe so. We are one of 13 prevention legal units that have been set up by ATSIC nationwide. At the moment I think there is only our service in South Australia.

CHAIR—Would it be fair to say that you are now doing most of the work in Port Augusta, or is it being done with the ARLM and the Legal Services Commission? What is the break-up of activities?

Mr Forth—ARLM in Port Augusta do not deal with family law matters. There is a family law section of ARLM in Adelaide. From my understanding I do not think they deal Aboriginal against Aboriginal, so they have some forms of limitation when it comes to their dealings in family law. I am not exactly certain of those facts though. Most of our cases are Indigenous clients against Indigenous partners, so it is slightly different in that regard from ARLM charters. ARLM in Port Augusta do not deal with family violence.

CHAIR—I think one of you referred to the need to work out how to best handle the issues. In that context, how do you best handle a situation in Aboriginal families where you can only act for one side? Are you looking at mediation approaches? How do cultural issues interact? What area should we look at prioritising for funding: should it be litigation or the other aspects of mediation?

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

CHAIR—In those circumstances, who normally acts for the other side?

Mr Forth—Many times the offender, if they are male—which is most of the time—does not respond, in which case you can get a court order. Then you can get the assistance of the police or some other authority to do something along the lines of recovering the children or asking the partner, the male, to leave the home or whatever is required to solve the problem. You can obtain some sort of order to restrain his conduct. There are a lot of aspects to it, but many times, if it is the male, they understand what has been going on in household but they often do not respond. Sometimes they do, in which case things are sorted out fairly quickly.

It is only vary rarely in these circumstances of family violence that it is a long-term process like it is in other family disputes. It is fairly clear-cut. There is often a very lengthy history of criminal behaviour. Often terms of custody have been served by the offender. In other words, there is not a lot of dispute in the process; it is just a matter of how to deal with the circumstances. It is essential that authorities do require some sort of authorisation to act on behalf of someone, and that is often a court order.

CHAIR—You said that quite often custody is the option. Are people put in custody in most circumstances?

Mr Forth—Usually there are two principal aspects. There is the personal security for, in most cases, the woman. The other aspect is the ability for the woman to recover the children if they are taken from her. If the children have been living with the woman for a quite extensive period

of time and it is established that she is the primary caregiver, it is not uncommon for them to need to recover those children for some reason. It might be as the result of a contact visit or somebody just comes. It may not necessarily be the perpetrator, it might be another family member or even a friend might come and remove the children or child. They may need to be recovered somehow, usually by the police, and usually they will not act unless there is a court order. So you are in the position where sometimes you need to seek a court order as an adjunct to the security aspects of the order that you are seeking.

Senator SCULLION—You seem to have filled a very interesting role not only as a legal adviser but also as a mediation service. Perhaps you would be able to give me an indication of the percentage of people, particularly women in these circumstances, that actually present for legal assistance in these matters. Out of 10 cases of domestic violence, how many people would either know about the fact that there are some alternatives or present to seek legal assistance? Could you give me a ballpark figure?

Mr Forth—That is not an easy question to answer. It is one of the reasons why this organisation was set up. Whether it is particular to Indigenous communities I do not know but, certainly, there is a lot of prodding required for some women to come and seek legal help. It may well be because of family pressure. After all, the partner may be the father of their children. They understand that there may well be a longstanding, ongoing relationship. The staff at our service in particular—because we have staff members from each of the major cultural groups in this area; we have tried not to exclude any of the groups—are very closely connected to their section of the community and they do talk to them about what our service provides. I see as a very important part of the service not just the legal aspect of it but having Indigenous people connected to communities who can go out and almost help them come back into the service, because that certainly is a difficulty. I do not think I could put a number on it.

Senator SCULLION—That is fine. What is your perception, just as an indication, as to how many would be aware that there is a legal aid service for those people suffering from domestic violence? How many people in the community would actually know about it? Are you well-known through the community? Would most people in the Indigenous community of this area know about it or not?

Ms Lennon—I think it is very well known now through the Aboriginal community. As well as the staff, we have board members who are connected to the community. If one of our family, if you like, is experiencing family violence or doing it, we try and refer them to this place because we think that—particularly as we focus on the victims of family violence and their children—they are more likely to go there if they know about what the service offers. Sometimes when you have the word 'legal' in the description of your service, they are not really sure of what type of legal service is provided.

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

explain to them why we are actually there. I feel that they are accessing our service more comfortably now than when they first started to.

Senator SCULLION—Do you think it has had an effect? Obviously—without citing specific examples—you would know of examples where the fact that a person has sought out legal services has affected the way that their family behaves, and particularly perhaps the way the male behaves in that relationship, knowing that there will be a consequence. Do you think that the fact that people can now seek legal services and seek some sort of retribution has had an impact on anything?

Mr Forth—There is no doubt about that. Anecdotally, there have been a number of instances, especially in recent months, where, as soon as they are aware the service is involved, it has only taken a phone call and the other side, so to speak, starts to come to the party, whereas prior to that they had just built up a brick wall. I have actually been quite surprised about the extent to which not all but some parties will start to deal once they realise that the service is involved.

Senator BUCKLAND—Earlier on you were talking about mediation and conciliation to try and resolve these matters. My attitude to most things in life is that, if you can sort them out through conciliation, you are much better off. Do you have any statistics that you have been able to put together as to the success rate of conciliation in domestic violence matters within the Indigenous communities you deal with as compared to conciliation for overall domestic violence situations?

Mr Forth—I should add that, if there is litigation or Family Court or Federal Magistrates Court action, all matters are referred to mediation in the first instance, as a part of directions hearing, so before the second appearance there will be some form of mediation. We have never taken statistics, but we have acted this year in around 200 family law matters at our service. Most of those would have gone off to mediation of some sort. Regarding the success rate for mediation—and this is just off the top of my head—less than a handful have succeeded at mediation to resolve some sort of issue. I find that that is not dissimilar to the sort of rate you get in the non-Indigenous community. Personally, as a solicitor, I have not found mediation that successful. Other solicitors may well have found it more successful, because their clients might be different.

Senator BUCKLAND—What is the difference in costs between mediating a matter and going all the way through to getting a court order one way or the other, do you know?

Mr Forth—If you had a private solicitor acting for you, there would be significant cost savings. Perhaps, in the private solicitor's world, that may be a motivation for you to reach some sort of solution quickly. It is hard for us to cost it because the service is there—we are providing the service. We try to attend as much as possible by telephone, therefore we do most of our work through the Federal Magistrates Court rather than the Family Court. We have not gone through the exercise of actually sitting down and costing what is the saving by reaching some sort of mediated agreement. That is not one of the powers that we hold: to be able to force or ask the client to reach mediation because it will save the service a lot of trouble. I always encourage clients to participate. That participation rate in mediation, too, is not very high, but I always write or speak to my clients about participating in mediation. I think you would find that would

be the case in most community type legal services, because it is a quick solution to the problem and that is what most of our services are out for.

Senator BUCKLAND—June might be better placed to answer this question, but I do not mind who answers. When there is domestic violence displayed toward the spouse—in most cases, sadly, it is the woman who has the act perpetrated against her—does that generally then carry on to violence towards the children of the marriage or relationship?

Ms Lennon—If you are asking me on a personal level—because I really cannot answer for the clients of the service—my own father was a perpetrator of violence on my mother, but it never extended to the children. Basically, I believe it is mainly between the two adults that the violence does occur. Usually, as a victim of domestic violence myself, I found that it was not the case that the violence extended to the children. In my case, it was just that I did not want them to experience that violence. That was the reason I left. But I do not think I could straight out say that that is the case, because—

CHAIR—You are dealing with family violence. I asked you earlier on who acts for the other side, but does anyone act for the kids? Do you find yourselves acting for the children?

Mr Forth—I would like to answer that, if I may. I would just like to add to the comments that June was making, that family violence is very harmful to children, because most children love their mother and their father. When they see their father beating up their mother it tears their heart apart.

CHAIR—Let us get to the point, though. Does your organisation act for children?

Mr Forth—No, it does not. I wanted to add that because I did not want the notion to pass that family violence does not involve the children.

CHAIR—That is why I am asking who acts for the kids in these circumstances.

Mr Forth—If it is a complex matter and there is a dispute that is wide apart and the Family Court is unable to determine from the evidence before it where the truth lies or where the difficulties lie, they will appoint a child representative. Our service does not act as the child representative.

Senator BUCKLAND—Thank you. That is an important point that Senator Bolkus raised. In relation to education, I watch television—Imparja. They often run programs on domestic violence, drugs and alcohol and things like that. I know that they put in a really big effort—I often think it is not broad enough—to try to show people that there are ways around this, and the dangers of this. Do you think enough is being done at the coalface—where the people are—to educate people about the effects of domestic violence? You have both made the point that with domestic violence it is not always the wife or the husband being beaten or abused that suffers the most. It is generally the children who have the long-term suffering from domestic violence, even if they themselves are not directly affected. Do you think the education programs go far enough and is enough money being put into that area?

Ms Lennon—I think there needs to be a whole lot more put into community education. Violence has become an accepted part of life. In Australia if you see people doing an act of violence it is not as shocking as it used to be when we were growing up. Violence happens for a number of reasons. When we talk about the violence that happens within our families, we are talking about all that stuff that people think is normal. That is why getting the community education side of it moving is really important. You are able to teach them that it is not a normal form of behaviour. Whether that is done through videos or ads on TV—there have been some to do specifically with gambling at this point—or getting into the schools, it is a really important process and it is the other part of family violence that we like to address. Until you bring it to people and say, 'This is not normal,' they still consider that it is normal behaviour.

Senator BUCKLAND—When these education programs like the advertisements are run on the TV they run for a period of time. Is there any noticeable drop-off in violence following those programs? Even the last one I saw about gambling had that domestic violence tag on it as a result of the gambling. Is there a drop-off in violence in the community when those programs are run?

Ms Lennon—That would be better answered by the staff, really.

Mr Forth—No, I have not noticed any. The pattern of domestic violence normally operates in cycles. Often it is caused by things in the family home for whatever reasons and usually the perpetrator is not even aware they are committing domestic violence. In fact, they do not recognise it. So I am not certain that has much of an effect.

Senator BUCKLAND—Okay. Thank you very much.

CHAIR—I have a couple to wind up. How many staff have you got and what is your budget? You might want to take that on notice.

Ms Lennon—Our budget is $361,000 and we have five staff at the moment.

CHAIR—All lawyers?

Mr Forth—One solicitor, one paralegal, an office person, a paralegal/sexual assault counsellor and a coordinator.

CHAIR—Has there been any evaluation done of your unit or the other units that were funded under the program since inception?

Mr Forth—We do that on a quarterly basis. We provide the amount of contacts, the amount of clients that we deal with and a breakdown of areas that we operate in.

CHAIR—It is not external evaluation; you provide information to ATSIC.

Mr Forth—There is an external ATSIC evaluation by a group that comes across from Canberra each year. They spend a day with us analysing our figures on the sort of work that we do and the outcomes we get.

CHAIR—Do they provide a report to you? Can we get a copy of that report, if there is one?

Mr Forth—I have not seen a report. As a solicitor I do not know that I would see it. It is more likely that the coordinator and the board would.

CHAIR—Thanks very much. Thanks for your advice.

[2.02 p.m.]

WRIGHT, Ms Marilyn, Acting Coordinator/Solicitor, Women's Legal Service SA Inc.

NGOR, Ms Zita Adut, Solicitor, Rural Women's Outreach Program, Port Augusta

CHAIR—Welcome. You have lodged submission No. 72 with the committee. Is there any need to amend or alter that?

Ms Wright—Before we start, may I acknowledge the traditional owners of this land we are sitting on and the 19 different language groups that walk this land still today. I want to thank you for coming to Port Augusta. It is to the Aboriginal people a very special place. It is also a place of great discrimination and lack of services, and injustice actually happens here. To answer your question, no, the submission stands as it is. I have a letter from the South Australian Council of Community Legal Centres to tender later, if I may.

CHAIR—Would you like to start off with an opening statement, before we start asking questions?

Ms Wright—I can tell you a bit about our service. The women's legal service in Adelaide came into being in 1996. In 2001 the Port Augusta Rural Women's Outreach Program and the Aboriginal Family Violence Program started here in Port Augusta. Our service auspiced both programs.

As June and Mark have put to you, the Aboriginal Family Violence Legal Service became incorporated later in 2001, and our services were co-located for a time. We have since relocated, so that now the Rural Women's Outreach Program—and my colleague will talk to you about that—has relocated to a different venue. We have one solicitor and one community worker in an office in Port Augusta. The Women's Legal Service works with women across the state of South Australia. We are a specialist service that addresses the needs of all women, mainly in the areas of family law, property, children's issues, domestic violence and discrimination. Generally, we give advice on a range of matters.

Ms Ngor—I am the solicitor at the Rural Women's Outreach Program. We—that is, me and a community worker, who also happens to be a paralegal adviser—service the whole north-west region of the state. We service an area that includes Roxby Downs, Oodnadatta, the AP Lands and Leigh Creek. Both of us do outreaches to those regions. One of the things that I have noticed from being in this position is that there is a significant lack of services available for women in rural, regional and remote areas.

For example, in Coober Pedy there is no private solicitor available at all. The Aboriginal Legal Rights Movement and the Legal Services Commission attend there bimonthly. They only look at criminal matters—and that is if there is a likely chance of conviction. So, basically, women in Coober Pedy have no access to family law lawyers or lawyers who can advise them on other matters, such as civil matters. We are trying to do outreaches twice monthly but, due to budget

constraints and limited resources, we have not been able to achieve that outcome. The most significant barrier is lack of access to resources and services for women.

Ms Wright—The Rural Women's Outreach Program receives $73,000 a year as its budget. Community legal centres across South Australia receive $2.5 million a year, which is probably what people buy a house for in Sydney these days, so it is a mere pittance. There is a great capacity to extend the work of community legal centres, particularly in remote and rural areas. I say this particularly because, even if someone is eligible for legal aid in this area, it is not always appropriate or there may not be a legal aid solicitor available. Zita is the only woman doing family law in Port Augusta. Women who have experienced domestic violence or sexual assault—particularly Indigenous women—say that they would prefer to talk with a woman solicitor. There are also issues of conflict in country towns. I think that that is probably one of the biggest issues: there just are not the legal services to go to. Women want to see a woman solicitor, who can understand the issues in a different way, I guess.

Senator BUCKLAND—You raised the interesting point that you do not have a solicitor in Coober Pedy. There are plenty of communities in rural South Australia with the same problem. When there is domestic violence, and advice is required, where is the first place that the sufferer of the violence generally runs?

Ms Ngor—In really remote areas like Coober Pedy, family members would be the first point of contact for most women, if they had the family support structures available. Otherwise they might look at services such as FAYS. They have one domestic violence worker, who is currently overworked—she has so many cases on—and that is another point of contact. But, unfortunately, because that she is non-Indigenous, Indigenous women there do not feel comfortable with her. Probably the first point of contact, in terms of an outside organisation, for Indigenous women in that situation would be FAYS.

Senator BUCKLAND—Have you found that the police are often called on to give advice? I know they will intervene if there is violence, and I understand their part of the law, but are you aware of them being called on to give advice? I am not asking about the quality of the advice, either.

Ms Wright—When the Aboriginal Family Violence Legal Service and the Rural Women's Program were first set up I was the rural women's solicitor, and there were always problems having the police act in domestic violence matters—it was 'just a domestic'. This applies across the country; it happens in Canberra and Sydney. Some places are better resourced to be able to deal with it. New South Wales, for example, has 14 specialist domestic violence workers in Attorney-General's. South Australia does not have that. In many ways we are still behind in resourcing. In Port Augusta back then we would do the affidavit for the women to take out a restraining order. That was the job of the police but, because the police for various reasons were unavailable or the women felt uncomfortable giving their statement to the police, we would do the affidavit. We then formed a relationship where the police would then take the matter to court. So the woman could give her details, it would go to court and the restraining order would be put in place.

There needs in most places to be a coordinated response as far as legal services, health services and counselling services are concerned, because they all cross over. We do not do

mediation. Quite often in mediation, if you work with two people and the matter ends up as a dispute in the Family Court, you cannot act for that person because you have given advice to the other person as well. So we are very clear that we only act for women as victims of violence. We are a women's legal service anyway, so we are not put in that position. But, yes, there certainly needs to be a coordinated response to domestic violence and there needs to be an extension of services. The rural women's program is inhibited—it does not have the funding to go on all the court circuits, and that is something that is crucial in this area. Zita, would you like to elaborate on that?

Ms Ngor—One thing I would like to draw attention to is that calls to the police station in Coober Pedy after eight o'clock get diverted to Port Augusta, which is a six-hour drive away. If any domestic violence occurs after eight o'clock you have very little chance of getting police to attend the scene, which causes quite a lot of trouble for women and which is in most cases why they go to FAYS. Sometimes, if they are lucky, they will get emergency accommodation from FAYS until the police phones are back on in the morning at 9 a.m.

Senator BUCKLAND—I am thinking of the situation such as in Coober Pedy where the Indigenous population is reasonably transient. You have a lot of people moving through and quite often there could be dangers, particularly for the children, in situations where there is no-one you can safely leave them with. Aboriginal culture has got that lovely attitude where the children can go to the auntie or whoever—you can go to your next mum—but it really does not translate where there is domestic violence, because there is not that security of knowledge of other people in a more settled area. Have you found that to be a problem? I might not be very clear with that.

Ms Wright—It is a problem, particularly in Coober Pedy. The Umoona community is there, and that is quite well set up in many ways. However, if somebody is a victim of domestic violence, there is really nowhere for them to go except to Port Augusta. There is no women's shelter, for example; there is no women's safe house. When I was in Coober Pedy with the community worker from the Port Augusta service, we met with the elders in that community, and they said that they wanted a women's shelter and a safe house for the kids, because it is the kids who suffer. As was discussed before, kids may not actually be hit, but they are indirectly affected by any violence around them.

Senator BUCKLAND—If it is found, through FAYS or whoever, that the best option would be to remove the victim and their children if need be from the community, is there any funding for that? It might be better to bring them down here to Port Augusta.

Ms Wright—FAYS has very limited funding. It has funding to put women in a motel if it is a safety issue such as that, but often it is the perpetrator who should be removed from the house. But the police tell the victim that she needs to go somewhere safe, so the woman and the three, four or six children leave the house and the perpetrator stays in the house. There is a problem in Leigh Creek, because there is no public transport at all in Leigh Creek. Because the director of the hospital has a particular sensitivity to the issues, the hospital has kept a room available for women to go to there, because there is no women's shelter, and they have to wait for somebody from the women's shelter in Port Augusta to drive up, collect them and bring them back to Port Augusta. There are problems all over. In the Nepabunna community, women do not necessarily have access to cars. Even here in Port Augusta, women do not necessarily have access to

telephones. There are profound hardship and housing issues that go along with it. In Port Augusta it is very difficult, because of the detention centre, to get housing. My colleague was at the housing tribunal this morning assisting a woman who was about to be thrown out of her house. There is nowhere to go from there.

Senator BUCKLAND—Has your organisation noticed that, over a period of time, particularly over the last 15 years—so I am asking you to stretch your memories a bit here—the decline in the industrial base of our country communities and the decline in the size of smaller country towns have impacted on domestic violence within rural and country South Australia?

Ms Wright—It is difficult to say. I have worked in other territories in the area of domestic violence and I would say that, even in the larger cities, domestic violence goes across the board. We talk about things like alcohol, unemployment, losing your house and the shrinking of country towns and people losing their pastoral properties. They are all triggers, in a sense, that create a stressful situation where violence could erupt, but they are not the cause of domestic violence. Domestic violence happens when somebody chooses to solve their problems through violent means, and it is across all classes. Somebody makes a choice to assault another person. Part of what the Women's Legal Service does is to provide community legal education. As you know, we are also involved in law reform, and we do this on a very minimal staff arrangement and tight budget, as do many other services.

Senator BUCKLAND—Where else are the women's shelters that we have in the non-metropolitan areas or country South Australia, if you like? I know there is one at Whyalla, because I see it quite regularly, and there is one at Port Lincoln, I think, from memory—I have been to that one. Of course, the one at Whyalla does not appear to be nearly big enough anyway. Where are they and is there a need for expansion of these services?

Ms Wright—There is a need for an expansion. There is a need for those organisations to be independently funded and to be autonomous, not attached to other organisations which have an agenda or brief—for example, Christian organisations. The ACT has a very good example of what I was talking about before: a collaborative response to domestic violence. It has a duty solicitor at the Magistrates Court. It has women's shelters in different areas of the ACT. It has a Domestic Violence Crisis Service that is well funded and it is a 24-hour service. It provides court support as well. Their workers attend with police on victims when there is a domestic violence call-out. There is a domestic violence coordinator, who is based at the Magistrates Court. There needs to be something in place that assists. We can only do so much. We see women mainly with family law cases and 90 per cent of those women, we would say, are victims of violence. Probably a small number of matters go to the Family Court. Many people resolve children's issues in an amicable fashion. But the ones that end up going to court are generally difficult, complex matters—matters where a child representative needs to be appointed.

Ms Ngor—Shelters are located in most of the major regional areas, such as Port Lincoln, and you have mentioned Whyalla. There is one in Port Augusta, which is very small. There is one in Port Pirie. But the major issue for most of the women that we see, especially if they are living in really remote areas, is transportation costs down to those shelters. About a week ago I got a call from a lady at old Aldinga. She asked us if we could assist her with possibly getting transport down to the women's shelter in Whyalla. We had to refer her to FAYS because we do not have a budget to fund women escaping domestic violence. Unfortunately for that woman, because she

had never reported the matter to police, FAYS said they were unable to help her because they needed a statement to be made to the police. It was not a very nice outcome for the women concerned because it meant she had to stay in the community with the perpetrator who, unfortunately, was stalking her.

The major issues for a lot of women are, firstly, being able to find a way to travel down to those shelters in the regional areas and, secondly, being able to find a room available at the shelters. They might come down, but there might not be rooms available at the shelters, which means then they have to find alternative accommodation, and they might not have any support structures in those regional areas. So those women face a lot of barriers when they are escaping domestic violence.

Senator BUCKLAND—Are you able to say if the trend or the causes of domestic violence change from location to location? If you go to Mount Gambier, are the causes different to what they would be in Port Lincoln or different to what they would be in the Riverland or is it generally related to those things that the white stereotype male, such as I am, think it is related to—that is, alcohol or gambling, in the main, or unemployment? Is there any way of being able to say, 'Gambling is worse at this centre, and it is alcohol over here that is the main cause of domestic violence'?

Ms Wright—Domestic violence is about power and it is about an abuse of that power. It is about lack of equal relationships. I guess that is why women, particularly Aboriginal women and women whose second language is English, are at a disadvantage because those power relationships may be accentuated. It is about the society we live in. I guess our leaders have not been particularly good at portraying a way of working out problems on a global level. Mediation is not thought of. I think it comes down to the kind of society we live in is about power. There is no cause except that we do live in a society that is still patriarchal. We have put in place a Westminster system of law in Australia and we expect Indigenous people to abide by that law. We do not recognise their law in an appropriate way. I do not think there are causes; it is a global thing that we are looking at. In the microcosm of the family home, there is another power play where people use violence to get their way or to get a resolution to a particular problem. As we know, it does not work; it creates more problems.

Ms Ngor—Things such as unemployment and alcohol are just triggers for domestic violence. Domestic violence can occur across all socioeconomic groups. It does not really distinguish between rich and poor. That has been pretty evident in Port Augusta and other regional areas. The thing that you could possibly say about domestic violence and the way that it appears across different groups is that probably in lower socioeconomic background groups it might be more visible than in higher socioeconomic backgrounds because those from higher socioeconomic backgrounds may use other forms of domestic violence such as financial or social abuse whereas those from lower socioeconomic backgrounds may tend to use more physical forms of domestic violence. But that is probably the only difference that you would find in regard to that. We have found that widespread domestic violence occurs in regional and rural remote areas. But we have found that in areas such as Roxby Downs and Leigh Creek, which are mining towns, the women are a lot more reluctant to come forward and it is a lot harder for women in those areas to come forward with claims of domestic violence. It is harder also for women from non-English-speaking backgrounds and Indigenous women.

Senator BUCKLAND—I have to insist on asking another question because you have raised Roxby Downs, which I think is a really interesting case. You said they were more reluctant to come forward there. That is a fairly affluent community, despite being in the middle of pretty harsh climatic conditions. And in normal circumstances—and in another environment—those people would not be at the higher end of the socioeconomic scale. They are pretty hands-on workers up there. Do you think that money has a major impact on how you deal with domestic violence? Dad can stop the money getting put into the bank for mum and use that as domestic violence through threat. Is that noticeable in places like Roxby Downs?

Ms Ngor—In areas such as Roxby Downs and Leigh Creek there tends to be a culture of silence around domestic violence, which is why we have had considerable difficulty in getting women to come to the service when we have gone there to do outreach. Women tend to call us after we have left the area. They feel more comfortable doing that than approaching us directly where other people could possibly see that they had sought assistance from us. There seems to be a culture that it is not acceptable to discuss what happens within the private sphere. That is pretty prevalent amongst all the different groups.

Senator BUCKLAND—It is very similar to some comments that the hospital has made about a couple of other issues.

Senator SCULLION—Ms Wright, I note with interest that in your submission you speak about Indigenous women being especially disadvantaged by not knowing about or even how to exercise some of their legal rights. What do you think can be done to increase the level of knowledge about simply what their rights are? In previous evidence this morning people have talked about people being used to the norm—'This is normal, so obviously it is okay.' How do think we might go about ensuring that people actually understand what rights they have and how to get access to that information?

Ms Wright—I have thought about it a lot, and I have to say that the more I think about it the more difficult and complex it becomes. It was put to me recently that something that could be put in place here in South Australia would be having particular domestic violence workers attached to each community—for example, the Nepabunna—who could then access the community legal centres or the Legal Services Commission, or outreach solicitors who could, on circuit, go up to those areas. Something needs to be put in place, but it does need to come from the communities themselves, from the women themselves. We have seen how strong the elders in Coober Pedy have been recently regarding the mining issue, the dumping of uranium. They are an incredibly strong group of women. So the potential is there within the communities to solve the problem, but it is a matter of having the support, the resources and access to services.

When we have tried to do outreach, for example, it happens, but it has to be consistent and the support has to be in place. You have to have a four-wheel-drive or a satellite phone if you want to go to Oodnadatta, because the journey can be fraught with danger. Basically, something has to change, but I do not know how you go about that. If we are taking about change in Aboriginal communities, it has to come from the actual communities themselves on the basis of self-determination, and most of the communities have incredibly strong groups of women. I know the National Network of Indigenous Women's Legal Services put in a submission, and we fully support their submission. It goes a long way to discussing that very question.

Senator SCULLION—Both in your submission and in some oral evidence today you have spoken about some very good examples elsewhere of how we can improve the processes and the structure so that people can move through this cycle of domestic violence. You spoke about the domestic violence court assistance in New South Wales; you briefly touched on Australian Capital Territory issues, such as having a duty solicitor, ensuring that the women's shelters are a 24-hour service and court services; and you touched on transport. So the committee is at least getting some alternatives to look at to improve the situation. Outside of those issues in your submission and that I have just touched on, can you think of other areas in which we can improve the circumstances at the moment for the delivery of legal services, particularly in regional and remote areas?

Ms Wright—I think there is a core base already, with community legal centres, women's legal services and legal service commissions. Again, I think there needs to be some kind of cooperative way of working. The Legal Services Commission and community legal centres are Commonwealth funded, but we have instances where we work with women who, as I said, may be eligible for legal aid because English is not their first language, but they do not want to have their solicitor in Adelaide when they are in Port Augusta. Aboriginal women may not have a telephone or a vehicle, so it suits them to come into the office in Port Augusta to give instructions and for the solicitor to take instructions. It is very important to have that service in that area.

A woman who was a former client and who was a victim of violence—she had witnessed as well as endured horrific violence—had to pay for the family assessment to be done. We have a very small budget as far as client disbursement goes and we only have that budget for our rural women program; we do not have it for our Adelaide office. We tried to seek a waiver of that particular fee. Our client was on a social security benefit, but legal services would not waive that fee. There should be more cooperation, if you like—this was a client who clearly would have been a legal services client but, for extenuating circumstances, we saw that client and then the woman was in a position where she had to pay the fee. Fortunately, somebody in our Adelaide office gave us a donation and we were able to pay a portion of that fee but, as I said, we do not have a budget for those kinds of things. Basically it is a resources problem in rural areas.

CHAIR—It is a resources problem. You mentioned a whole string of country towns in South Australia where that problem exists. Have you thought of any way that legally qualified people can be attracted to those areas?

Ms Wright—That is right; that is a huge problem. In fact, across the country at the moment, there are a number of family violence services—in the Pilbara and in other areas—where they are finding it very difficult to attract solicitors. The budget that community legal centres have and the wages that we can afford to pay are uncompetitive compared with the attraction of working in a private practice or in government. For example, a legal officer in government will earn often $20,000 a year more at the same level than a worker in a community legal centre. People who go into the area go into it for idealistic reasons—they want to change the world and all those kinds of things—but it is very hard to get people to go to remote areas.

We were very fortunate to have had a young Aboriginal woman work as a solicitor here. She did her degree at Adelaide University as the rural women's solicitor. Now we have Zita, so we have been extremely lucky and very fortunate. But it often is a great problem. I know the

charities bill has been discussed in parliament. It will have an effect on community legal centres because one way of attracting staff is by salary packaging, which makes a very low salary look a bit more attractive. If that goes, what then will we have to entice workers to rural areas? It is extremely hard and isolated. Quite often you do not have other like-minded practitioners around you. You rely on telephone communications for second opinions. There is the Internet, but it does not help when you do not have another colleague to talk with during the day about particular cases.

CHAIR—Thank you very much for appearing before the committee.

[2.41 p.m.]

BYRT, Mr Patrick, Convenor of Volunteers, Roma Mitchell Community Legal Centre Inc.

GRAHAM, Rev. Sidney George, Archbishop's Chaplain, Nunga Community of the Synod of the Diocese of Adelaide of the Anglican Church of Australia Inc.

TREVORROW, Mr Thomas Edwin, Manager, NLPA Camp Coorong Race Relations and Cultural Education Centre and Chairperson, Ngarrindjeri Land and Progress Association Inc.

CHAIR—You have lodged submission No. 15 with the committee. Is there any alteration or amendment you would like to make to that? If not, would you like to start with an opening statement?

Mr Byrt—Yes. The Roma Mitchell Community Legal Centre would first like to acknowledge the traditional owners of the land on which we are meeting, the Nukunu people. The Roma Mitchell Community Legal Centre wishes to concentrate on addressing volunteer and pro bono issues in the delivery of community legal services. We have three points to make and I will be brief. I will then ask the Reverend Sid Graham and Tom Trevorrow to speak from their points of view. Firstly, there is no legal aid safety net. This means there is a very strong deficiency in the current arrangements. We are justified in making this statement because we are meeting a growing need for legal advice and community legal education in an unfunded pro bono volunteer centre, especially from people who find that their needs cannot be met by other services. People are sent to us from ATSIC, the Law Society, the Legal Services Commission, other community legal centres and from Aboriginal legal centres across Australia. We fielded a call from the Northern Territory just the other day.

Secondly, in our experience, in the absence of a provision for a national safety net, the current arrangements are not sustainable over the long term. Our service deals with clients from the outer metropolitan regional and rural areas apart from the urban areas. As I have said, we field calls from interstate as well. We also field calls from the Adelaide Hills and outer Adelaide Hills for people who receive telephone appointments. For those who are unable to get to the centre, and we use common sense on who those are, we provide evening advisory service telephone appointments.

The third point I wish to make is that the absence of any safety net capacity increases the tensions and pressures in the wider community over day-to-day legal relationships and issues. This tension spills out more broadly into the community and we say that this results in an increasing demand for our services and we therefore suggest that the provision of the current services is insufficient. That is our basic position. If there are no questions on that position, I would like to ask Reverend Sid Graham to talk about current tensions in the community.

Rev. Graham—Thank you for having me speak. I am going to share a little bit on point 3, the tensions and pressures in the wider community. I would firstly like to point out that I am very familiar with the Norwood area in Adelaide. I was brought up in a boys' home for eight years in

that area. In 2001 this year I was involved with a reconciliation event at Norwood Primary School and, with the support of this Norwood legal centre, it went very well, not only for the Norwood Primary School but also for the Norwood community in the sense of reconciliation. As you know, I am a minister in the Anglican Church; I have been in that position now for over seven years and I can relate to the tensions and pressures of Indigenous people, who are facing everyday issues like these.

I am here today to support the Norwood legal centre for their ongoing support of Indigenous people, especially grassroots people—non-Indigenous also. I have seen our people suffer. To give you an illustration of that, I have conducted nearly 200 funerals in the time that I have been ordained; an ordinary clergyman would do that many over a lifetime of service in the church. Our people are affected by the pressures and tensions in our community and are very confused about where to find help in the Adelaide area. I know there have been increasing numbers of people starting to come to the Norwood legal centre for help. It is through that help that they are finding avenues to assist them with their legal matters. I can see that this legal centre is very capable of dealing with increasing numbers of Indigenous people in the future.

CHAIR—Is that the end of your presentation or would someone else like to speak as well?

Mr Trevorrow—I am from the Lower Murray Coorong Lakes region, a Ngarrindjeri person. I am Chairperson of the Ngarrindjeri Heritage Committee Inc., Chairperson of the Meningie Ngarrindjeri Land Council and I am Chairperson of the Ngarrindjeri Land and Progress Association Inc., which runs Camp Coorong Race Relations and Cultural Education Centre.

Being in all those positions, I find myself involved in a lot of matters to do with legal issues. As chairperson of those committees, I need to have those issues addressed to protect us and to protect my community. A lot of the issues are to do with land, with social issues and with work cover issues—you name it, that committee has to deal with it. At times I find it very difficult to be able to gather up enough legal advice to assist us with the problems that we have. I will speak honestly and truthfully: I have approached the Aboriginal Legal Rights Movement on many occasions, but I know the problem that exists there. I believe they are under-staffed and have an insufficient budget, so I have had to move out into other areas to find assistance to help me, my organisations and my people.

I found out that the Roma Mitchell Community Legal Centre offers pro bono assistance and that it is a voluntary organisation. Since I found out about the Norwood Community Legal Centre, I have been able to ring there and, even after hours, after five o'clock, I have been able to get legal advice and assistance to make life a bit easier for my community and for me in my position. I am here today to lend support to places like the Roma Mitchell Community Legal Centre and to state that we need these places to be helped in some way. I have been spreading the word around throughout my people that you can get on to the Roma Mitchell Community Legal Centre and they will direct you to a lawyer who can give you some pro bono assistance and advice. So, as I said, I am here today to support the Roma Mitchell Community Legal Centre.

CHAIR—Mr Byrt, I have to say that I find this is a curious presentation. I recognise that Indigenous issues are very important, but I also know Norwood. I know that Norwood is a fairly diverse suburb and that recent migrants or not so recent migrants are an important component of

that diversity. I notice, of all your clients, that four are Greek and two are Italian. Some of the greatest intensity of Italian and Greek migration is in that Norwood area. Don't you connect with your community?

Mr Byrt—It is a very difficult thing to undertake with zero funding. What we do is respond to the interest that is shown towards us. We are taking proactive steps towards that. Last year we were able to obtain a small grant from our local council to do exactly that, to increase our profile in the local community.

CHAIR—How have you done that, for instance, with the communities of Greek or Italian origin?

Mr Byrt—I am sure our volunteers back at the centre have an opportunity to assure you of that, because one of them has been involved in translating into Greek a new sign to go out the front of the premises. More recently, some Greek clients have come to us and we have been able to facilitate better contact with the Greek welfare centre and to find a resolution to legal issues.

CHAIR—I suppose it is more concerning in that what your work record seems to indicate is an enormous concentration on civil disputes. To that extent, I think you pay priority attention to an area which does not get attention anywhere else. My concern there is that, although I see from your work stats that something like nine out of 10 cases—almost 90 per cent—are civilly related, the part of the community that may not normally have access to legal resources because of lack of financial empowerment or language skills does not seem to be reflected in that workload. I am a little concerned: the issue is important, the civil stuff is important, but I was hoping that we might be able to get something out of this afternoon's presentation which would lead us to concentrate on migrants in the legal system, and that is not coming through in this.

Mr Byrt—It is regrettable. In relation to matters other than civil, we have fewer criminal lawyers and family lawyers who are willing to volunteer.

CHAIR—I think the civil stuff is very important, and other aspects of the legal support system do not seem to concentrate on it. But my concern is that, for an area with such diversity in migration, there does not seem to be any reflection of the issues that affect migrant Australia. I think the Northern Community Legal Service used to pay more attention to those issues in the past. Is that a deliberate policy shift on your part?

Mr Byrt—Only in the absence of funding to pursue that. People continue to ask us for pamphlets, and we would love to be able to leaflet the local area in community languages. I think our expenditure this year for information about what we were doing was $280 for business cards. It does become extremely difficult to do that in those circumstances.

CHAIR—Where does your funding come from?

Mr Byrt—We are disbursing the remainder of our reserves from pre-1997, before the Commonwealth agreements were introduced.

Senator SCULLION—I understand that the funding circumstances in which you now find yourselves started in February 2001. Whilst I do not know some of the background—you might

be able to help me with that—I understand that there was a federal and state rationalisation of the provision of community legal services.

Mr Byrt—That is correct.

Senator SCULLION—Is it a spatial sense—are there other community legal services operating adjacent to or within that area, so that the population that the Chair alluded to may perhaps be availing themselves of other community legal services that are currently funded by the Commonwealth and state governments?

Mr Byrt—I think there is an irony in that, because yes, calling legal centres names that reflected their community associations has been displaced by a nomenclature that says 'North', 'South', 'East' or 'Central'. There is a Central Community Legal Service, which is on Main North Road, Medindie.

Senator SCULLION—I am not very familiar with the area. How far away geographically would that be from your area?

Mr Byrt—It would be three miles away. The irony is that that centre refers people back to us. We find that the Law Society runs a 15-minute $5 interview scheme three nights a week. I think that is the correct price; it may have been brought up to $15. When they get people with whom they cannot effectively communicate over what the issues are, they tell them, 'Go back to Roma Mitchell; they'll help you.' So yes, there are other services available. There is the Law Society in the city, which is two kilometres away—the Central Community Legal Service.

Senator SCULLION—I notice that you claim that your cost per client is well below the figures reported by other legal advisory centres. Could you tell me what sort of indemnity insurance you carry?

Mr Byrt—The National Association of Community Legal Centres covers professional indemnity insurance from the South Australian Council of Community Legal Services. I think we pay an administration fee of $18. That is full PII insurance. Each of the practising solicitors who gives advice in the evening advisory service carries their own insurance, and we expend $2,000 a year on a broad form of public liability insurance for the centre.

Senator SCULLION—In terms of how you have achieved being able to provide per client legal services at a much lower cost than comparable legal centres, could you indicate to me some of the areas in which you think you have been successful in delivering more cost-effective services than others?

Mr Byrt—That is a difficult—perhaps I could say problematic—question to answer. The simple side of it is that we do not provide legal assistance; we provide legal advice on an interview basis. The centre is open for that purpose two evenings a week—Mondays and Thursdays—from six, and sometimes it goes on until seven or eight o'clock, depending on the particular lawyer. But, as the submission indicates, to arrange that we have the Roma Mitchell Human Rights Volunteer Service, which keeps the centre open and enables us to field calls, take bookings and rearrange appointments. I think the fact that we can integrate into the community

with volunteer input to enable service delivery to the client at that level means that we end up with more effective service delivery by way of legal advice at the end of the day.

If we did not have people in the office, we would basically only be functioning on an answering machine. If there was a mix-up with the lawyer or there was a need to change an appointment, no-one would find out until six o'clock. It would be chaotic, and I suggest that in about three weeks the centre would close. By being able to have people in during the day who can spend some time—which is unfunded but which is a cost time—those difficulties are avoided, which makes it more effective when we come to deliver that advice.

Senator SCULLION—I would like to clarify something, Mr Trevorrow. In your opening remarks you indicated that amongst your many leadership roles in the community, you were the chairman of a land council. Is that correct?

Mr Trevorrow—Yes.

Senator SCULLION—My association with land councils is that as part of their funding, or as part of the administrative arrangements, they normally set aside funds so they can actually retain mainstream legal advice on a number of issues. Obviously I am not across the nature or the size of the land councils you may be responsible for. Would that be the case with the land council?

Mr Trevorrow—No. When we formed ourselves as the Meningie Ngarrindjeri Land Council, we did it to make ourselves a land-holding body, so we can hold the land that was purchased through the Indigenous Land Corporation. We have no budget. We are like a voluntary land council with a voluntary committee. Unfortunately, we have got to work through Camp Coorong to find rates to help pay for our land to keep it. We have no budget whatsoever to even meet postage, legal advice or anything. That is why I am saying that I have to go out to find legal advice, especially if we are looking at doing cattle agistment on a property or things like that. We have to have those matters addressed to protect ourselves and to protect our land. So we do not have a budget.

Senator SCULLION—Have you indicated those challenges to ATSIS or to the ILC?

Mr Trevorrow—Unfortunately, the Indigenous Land Corporation have changed their structure now. They are looking more towards helping Aboriginal people with business plans so they are able to manage and maintain the land that they get. Before, the land was bought on cultural purposes. It was bought and given to you, but, as I said, there was no money to operate it and keep it going. They will give you money to manage weeds, to grow crops or do something like that, but there is still not a budget to address other issues.

Senator SCULLION—Should your centre close in December, do you think that the other community legal centres that are around will be able to pick up the shortfall in the services you provide?

Mr Byrt—No, and for that reason we have already drafted a resurrection plan for the centre that would take us back to 1979 and the beginning of the program. The centre commenced in 1979 with a submission on butcher's paper down at the St Vincent de Paul shop at the top of The

Parade. I saw the submission; I think it was 20 feet long. It was reduced to appropriate bureaucratic standard size and the centre began. It took a number of years before the centre became incorporated, but the legal advisory function from the solicitors was effective very immediately. A funding crisis then erupted before I joined the management committee in 1982. The state Attorney-General provided $3,000—as it was advertised in the local paper—to keep the legal centre going.

The Roma Mitchell Community Legal Centre is an incorporated body which is the heir to the Norwood Community Legal Centre. If we are forced to close, we will attempt to begin to the Norwood Human Rights Centre and seek to continue the evening advisory service, to agitate and work within the local community where that is possible. That may be idealistic and utopian, but I think there is a very strong sense within the volunteers—both the legal volunteers and those who are on the other end of the recording devices here today—that something is working here. It is a unique national experiment that has been inadvertently created by the decision of economic rationalists and there is a strong drive to see the benefit that it is producing continue, for the very reason that you have raised the question. That is, because the mainstream services, the law society, the legal services commission, the other community legal centres, the Aboriginal community legal centres and services outside this state cannot cope already.

Senator BUCKLAND—This was partly asked by Senator Scullion. Your submission indicates that in 2003 you will have more clients than in 2002 and no doubt, if you write a submission such as this next year, you will be saying you have more in 2004. It interests me greatly that you say that the work is done pro bono by solicitors, law students and so on. What interests me is why you can get that done. What is so special about the Roma Mitchell CLC that is different from other legal aid organisations, where they are struggling to farm out legal aid work to existing solicitors?

Mr Byrt—If I may answer that, I think the chair, Senator Bolkus, really disclosed that. It is the core relationship in the community. The way in which the Roma Mitchell Community Legal Centre commenced as the Norwood Community Legal Service created these bonds between people speaking different community languages and between the different social strata—the different range of organisations, if you like, in the locality. Then, having established that base, the centre set out to provide innovation and service delivery for clients through the institution of statewide mediation, which grew out of the Roma Mitchell CLC. We ended up having the state disability discrimination act service and the South Australian and Northern Territory Employment Law Service. I mention that because it meant that, over a period of 20 years, a number of millions of dollars of public funding went into the centre and were properly and adequately disbursed to encourage, on the core base, service delivery to clients that was satisfactory across an increasing range of areas.

While we did that, we set about planting seeds. I think—if I can say this, even if it is presumptuous—that I have been very much encouraged by the Indigenous people who mix with the centre, because that is the message that they bring from their culture. You need to plant seeds now when the times are good. It was not, in a particular sense, Indigenous people who brought that rationale and morale of organisation service delivery; it was the people from the communities in the different community language areas who worked in the beginning to do that. So the fruits were born while the service was expanding. When the cutbacks came those fruits were still around and there was a lot of strong motivation for people to continue.

Fortunately for the service and the people that it serves, we managed to take up a mainstream activity in reconciliation. The Norwood Community Legal Service caused the buses in Adelaide to kneel. That is quite a feat—buses are inanimate. If you put your mind to it and bring about a negotiation through the statewide disability discrimination act service and the buses kneel, you have achieved something. Sir Ronald Wilson, who was the presiding member of the HREOC hearing that ended up negotiating that outcome, offered to speak at a public meeting for the Roma Mitchell Community Legal Centre, which was then the Norwood Community Legal Service. Out of that came our input with Indigenous people.

So the answer is that we have tried to respect a cultural sensitivity that has been brought into these institutions, which obviously is not of a strong Anglo background. That cultural integrity and intelligence is exemplified by what the service was. It then negotiated successful developments with Indigenous people who found that a sympathetic way to proceed, and that is still there now.

Senator BUCKLAND—Over time I have built up a very great respect for the legal aid system that we have and the difficult circumstances they operate in. That respect is mainly based on the Aboriginal legal services that are provided in Port Augusta. My concern was raised when Mr Trevorrow said he referred people to the Roma Mitchell CLC. Where is the professional indemnity if advice is poor? I am not being critical here, so please do not misinterpret what I am saying, but what happens if someone is referred to the Roma Mitchell CLC and things go very badly? Is there any indemnity for the advice given?

Mr Byrt—Let me assure you we are fully covered with the relevant professional indemnity insurance. Perhaps there has been some misunderstanding—I certainly heard Mr Trevorrow indicate that the purpose of making those referrals was so that those people at the centre could refer that person to a lawyer for advice. Let me underscore this very strongly: no person at the centre is permitted to give any advice if they are not a legal practitioner and covered by professional indemnity insurance.

Senator BUCKLAND—All right.

CHAIR—On that note, we do have to wind up, so thank you for your submission and your time coming in here today.

Committee adjourned at 3.10 p.m.