

Indigenous Women and Access to Legal Services

- 3.1 The distribution of ATSILSs' resources between criminal, family and civil law matters has a direct impact upon Indigenous women's access to ATSILSs. Women and children are generally victims of violence who require legal services that will protect them against offenders through family and civil law processes such as restraining orders, child custody orders and criminal compensation claims.
- 3.2 Statistics provided by Mr Cuomo showed that the breakdown of ALSWA's clients by gender and case type showed that in the nine months to 31 March 2005, 26 percent of criminal law cases, 59 percent of family law cases and 47 percent of civil cases were for female clients.¹
- 3.3 WALs indicated a trend in the different requirements of Indigenous men and women for legal services:
- the percentage of criminal law clients we represent who are female is between 25 and 30; in the civil and family law area it is approximately 50.²
- 3.4 The sole ATSILS in Victoria, the Victorian Aboriginal Legal Service (VALS), stated that:
- 26 percent of ... criminal law matters are for female clients.
Over 50 percent of [our] civil and family clients are female. As criminal matters are more common than civil and family

1 Mark Cuomo, *Exhibit No. 51*.

2 WALs, *Transcript*, 30 March 2005, p. 3.

cases this means that 27 percent of all cases are for women. however due to the higher time required to do civil and family law matters over 37 percent of lawyer time is allocated to female clients.³

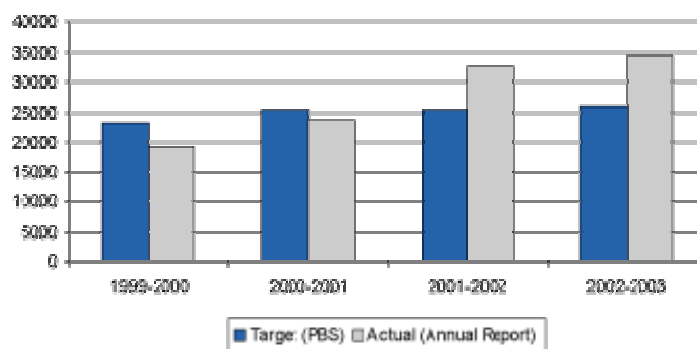
- 3.5 SEALS confirmed the legal requirements of Indigenous women lay, in the main, outside criminal law:

Of the people who call up on the phone or come to our office for non-criminal advice, 85 percent would be female ... We appear for six percent of women.⁴

Increase in Women Clientele to Aboriginal and Torres Strait Islander Legal Services

- 3.6 ATSILSs experienced a steady and significant increase in the number of female clients between 1999-2000 and 2002-03.⁵ Not only have the numbers of ATSILSs' clients who are women increased, but since 2001-02 the legal services have exceeded the Portfolio Budget Statement (PBS) target number of women clients they have handled.

Table 1 Number of Legal Matters for Women Handled by ATSILSs



Source ANAO, *ATSIS Law and Justice Program, Audit Report No. 13, 2003-04*, p. 100

- 3.7 The increase in the proportion of women who are handled by ATSILSs is reflected in increased rates of contact with the criminal justice system.

3 VALS, *Submission No. 15*, p. 17.

4 SEALS, *Transcript*, 9 June 2004, p. 43.

5 ANAO, *Audit Report No. 13, 2003-2004*, Para. 6.59, p.100

- 3.8 An indicator of the increased levels of contact of Indigenous women with the criminal justice system is manifest in the dramatically disproportionate rise in incarceration rates. ATSIIS stated that:

From 1991 to 2001 the number of Australian women in custody increased by 147 percent (Indigenous women included), the corresponding increase for Indigenous women alone was 225.8 percent. Incarceration levels for men also increased over this time period both Indigenous and non-Indigenous but at much lower rates.⁶

Family Violence and Child Sexual Assault

- 3.9 Rates of family violence and child sexual assault are difficult to determine because of the unknown rates of unreported offences. Levels of known family violence and child sexual assault will obviously be higher in populations who have contact with the legal system either as victims or as offenders than in the general population.
- 3.10 ATSIIS referred to an apparent change of attitude to family violence in Indigenous communities:

I have seen a groundswell against family violence and other criminal activities in a way that I have not seen in a long time. It almost seems like people have hit the wall and enough is enough, whereas there are probably fewer pockets that I have come across where some people in some communities think that family violence is acceptable behaviour. While that may still be the case in some communities, I would say that overwhelmingly it is not being seen as acceptable.⁷

- 3.11 Sydney based Warringa Baiya Aboriginal Women's Legal Centre disagreed:

domestic violence is starting to increase ... That is because of the acceptance of it. We have seen the adults, the parents, go through it and the mother keep returning to the perpetrator. Now the children are thinking that that is what you do, that is

6 ATSIIS, *Submission No. 18*, p. 18.

7 ATSIIS, *Transcript*, 9 June 2004, p. 10.

what a relationship is all about. I believe that domestic violence is increasing.⁸

- 3.12 Ignorance of legal rights was cited as a fundamental hurdle to combating family violence by the community based East Dubbo Women's Group:

Domestic violence in our community and in other communities like ours where the population is predominantly Aboriginal has been an acceptable way of life.⁹

- 3.13 Alice Springs based Central Australian Women's Legal Service (CAWLS) concurred:

There are still a lot of pressure points and a lot of myths about who is responsible for what is occurring, and I think there are still beliefs amongst a range of members of the community and service providers that the victim in fact has contributed to this occurring.¹⁰

- 3.14 Darwin based Top End Women's Legal Service (TEWLS), which runs a FVPLS, highlighted the extent to which ignorance of the unacceptable character of family violence could extend:

at a recent conference in Sydney ... two workers from two different Aboriginal Legal Aid Services expressed the following opinions:

- it is appropriate behaviour (and therefore there should be no police or legal intervention) for a man to hit his wife if she is "nagging him" or "chewing his ear";
- when a man and woman are arguing and violence is involved in a public place it is inappropriate for there to be police or legal intervention;
- men in many remote communities are disempowered because women groups have (finally) gained some power and say in how funds may be distributed within those communities;
- there are as many male victims of family violence as there are female victims; and
- family violence is the fault of women and it is women taking out restraining orders which causes family violence.¹¹

8 Warringa Baiya, *Transcript*, 13 July 2004, p. 26.

9 East Dubbo Women's Group, *Transcript*, 30 March 2005, p. 40.

10 CAWLS, *Transcript*, 22 July 2004, p. 10.

11 TEWLS, *Submission No. 26*, 21 July 2004, p. 4.

- 3.15 The Many Rivers Aboriginal Legal Service (MRALS), which services the north eastern area of New South Wales, explained the increasing incarceration rates for Indigenous women as responses to high incidences of family violence and child sexual assault:

we are starting to see the flow-through into older ages of a lot of child victims of sexual assault, physical assault and systems abuse from having been made state wards and left high and dry.¹²

- 3.16 Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service (Warndu), which is based in Port Augusta, provided some indication of the levels of child sexual assault among its clients. It reported that out of their most recent 200 clients 44 percent had suffered from sexual abuse as children. Of 25 cases involving males, 70 percent had suffered sexual abuse as children.¹³

Impediments to Indigenous Women Accessing Aboriginal and Torres Strait Islander Legal Services

Conflict Issues

- 3.17 The predominance of criminal law cases handled by ATSILSs has resulted in conflict issues that restrict access of parties seeking family and civil law services.
- 3.18 Conflict issues arise when one of the parties to a dispute has already made contact with a legal service provider thus 'conflicting out' or preventing access to the service provider by the other party.
- 3.19 Conflict issues restrict Indigenous women from accessing ATSILSs particularly in instances of family law and family violence matters because the nature of the criminal justice system means that the accused usually makes first contact with available legal services.
- 3.20 The Northern Territory Legal Aid Commission (NTLAC) suggested that conflict issues in family violence matters invariably worked to the disadvantage of women:

If an offence is committed, the police act fairly quickly to charge somebody. The offender therefore appears at the

12 MRALS, *Transcript*, 13 July 2004, p. 54.

13 Warndu, *Transcript*, 19 August 2004, p. 45.

Aboriginal Legal Service beforehand, either in custody or because they have been required to go to court. This then means that, by the time the victim of the offence – which, tragically, is invariably a woman – appears, Aboriginal Legal Services is then conflicted from providing any assistance in family, crimes compensation or domestic violence matters.¹⁴

- 3.21 Conflict issues can even restrict the access to an ATSILS in the event that both parents are seeking representation against a state agency that has removed children considered to be at risk:

If there has been any history of domestic violence between husband and wife then to appear for both of them can create a conflict, so we bail out totally in that situation.

Unfortunately, it is often the case that there has been a history of domestic violence which has, to some extent, led to the child being in need of care in the first place.¹⁵

- 3.22 Referrals to pro bono solicitors or LACs are means of ensuring that victims receive legal advice and representation. However, referrals will almost always be directed to a provider that is not as equipped to provide legal services to Indigenous people as an Indigenous specific provider.

- 3.23 The general effectiveness of referring Indigenous people to non-Indigenous service providers was questioned by ALRM:

The chances of a person dropping out in a referral process are enormous. It is a high-risk approach to enforcing or exploring legal rights. The ability to provide comprehensive casework when needed as one smooth operation is essential to the smooth delivery of services.¹⁶

- 3.24 Matters involving family violence and child sexual assault demand that victims are as comfortable as possible with their legal representatives, an outcome that is achieved through Indigenous specific providers. SEALS stated that Indigenous women:

tell their own kind a lot more than they will tell outsiders and it takes a long time to get the understanding or their faith so they can actually tell you things.¹⁷

14 NTLAC, *Transcript*, 21 July 2004, p. 43.

15 WALs, *Transcript*, 30 March 2005, p. 7.

16 ALRM, *Transcript*, 19 August 2004, p. 40.

17 SEALS, *Transcript*, 9 June 2004, p. 34.

- 3.25 Furthermore, pro bono and LAC resources were not available to ATSILSs operating in some regional and remote locations. ALRM stated:

Access to pro bono services in South Australia are virtually non-existent, unlike in the Eastern States. We cannot even get firms to accept ALRM briefs because we pay the rate the Legal Services Commission was paying in 1998, and people are not available to take our briefs when we seek to brief private practitioners.¹⁸

- 3.26 NSWLAC confirmed the lack of funding for briefing out family law cases:

In Commonwealth family law, we pay \$130 an hour. That is way below market rate.¹⁹

- 3.27 Warndu stated that only 25 percent of its clients were eligible for legal aid through the Legal Services Commission (LSC) because of merit and guideline requirements. Under the LSC guidelines requirements:

Legal aid is provided for criminal matters and some family matters, but it is not provided for clients who come to our service, say, for immediate protection, for a restraining order or if they have debt related matters. Many of our clients have several thousand dollars worth of property damage or, because of joint and several liability principles, they are left holding the baby of debt, so to speak, while the other party takes off. Property damage is an area that they need to face. No legal aid funding is provided for issues like housing and immediate shelter ... very little of our work, perhaps 25 per cent, could be legal aid funded.²⁰

- 3.28 The Committee heard evidence from a number of Indigenous specific and mainstream providers of legal services to Indigenous people suggesting the implementation of 'Chinese Walls' strategies to overcome conflict issues. Chinese Walls are put in place within an organisation to effectively isolate family law from criminal law areas. This would allow an ATSILS or LAC to act for both parties.

18 ALRM, *Transcript*, 19 August 2004, p. 29.

19 NSWLAC, *Transcript*, 13 July 2004, p. 80.

20 Warndu, *Transcript*, 19 August 2004, p. 46. Also ALRM, *Submission No. 11*, p. 12.

- 3.29 The Darwin based Northern Australian Aboriginal Legal Aid Service (NAALAS) described the magnitude of conflict issues and referred to a policy of Chinese Walls as its response:

Women would come to us for advice and then we would realise that we had actually acted for the other party. It could have been up to 10 years ago in a criminal matter, but because we had that information about the other party that precluded us from being able to represent these clients. We have now spent considerable amounts of money on putting up a Chinese wall. We have separated all the files. We have criminal matters on one floor and civil and family matters on the second floor.²¹

- 3.30 NSWLAC expressed reticence at implementing a Chinese Walls policy because of current legislation:

I would like to see a situation where we can build technological and practical Chinese Walls, so that, if I needed to, I could have a legal aid family lawyer acting for the woman, say out of our Dubbo office, and someone acting for the man, if that was appropriate, out of our Wagga office. Things would be totally confidential and separate as part of our IT system and as part of our processes and procedures. Ultimately, to get that I think we will probably need some sort of legislative amendment, because the state of the law is so ... confused on conflict of interest.²²

- 3.31 NTLAC qualified the effectiveness of Chinese Walls in remote communities because of the perception of conflict:

One plane comes out with the magistrate. If you have two lawyers from the same service saying 'But we've got Chinese walls between us,' the perception is terrible ... In those cases ... you do need two separate services.²³

- 3.32 The Ngaanyatjarra Pitjantjatjara Yankunytjattjara (NPY) Women's Council referred to the way in which remote areas exacerbated perception of conflict issues:

Geographically [our area] is a large place but, population wise, it is a very small place ... I think the reassurance and

21 NAALAS, *Transcript*, 21 July 2004, p. 3.

22 NSWLAC, *Transcript*, 13 July 2004, p. 79.

23 NTLAC, *Transcript*, 21 July 2004, p. 43

safety of women and kids is one reason for separation [of services] and also so that there is seen not to be a conflict. I know you can have Chinese Walls and all the rest of it, but you have got a pretty small population and you have got Aboriginal people working in organisations who are often related to clients ...²⁴

- 3.33 MRALS argued that Chinese Walls contravened the basic expectation of an adequate legal service:

the Chinese Walls analogy ... is justice that no other group in Australia is expected to put up with and indeed should not be. I think that is a terribly discriminatory basis upon which to be providing legal services...²⁵

- 3.34 In response to concerns raised by services providers and other stakeholders AGD stated that:

Providers of legal services are subject to the usual conflict of interest provisions that apply in the particular jurisdiction in which the service is provided.²⁶

Indigenous on Indigenous Prohibitions

- 3.35 Some ATSILSs have met the challenges of finding themselves in conflict by refusing to support either party where both parties in a case are Indigenous.

- 3.36 SEALS and SRACLS stated that they have a policy of briefing out all 'black on black' matters.²⁷

- 3.37 WALs stated that:

In criminal matters we will represent a defendant even though the alleged victim of his crime is also an Aboriginal person. In civil matters, because of funding shortfalls, we apply a policy of not representing people if the other party to the proceedings is Aboriginal.²⁸

- 3.38 NSWLAC explained:

24 NPY Women's Council, *Transcript*, 22 July 2004, p. 23.

25 MRALS, *Transcript*, 13 July 2004, pp. 50-1

26 AGD, *Submission No. 44*, p.24.

27 SEALS, *Transcript*, 9 June 2004, p. 47 and SRACLS, *Transcript*, 13 July 2004, p. 68.

28 WALs, *Transcript*, 30 March 2005, p. 2.

With crime you have the state against an individual, so in some respects it is easy to choose a side. You can run into incredible difficulties in civil – it is an individual against an individual, almost invariably. In family ... it is always individual against individual.²⁹

- 3.39 ALRM informed the Committee that it had revoked its policy of not taking on cases where both parties are Indigenous. However, the policy:

has caused a high number of complaints ... because for 30 years it has been a case of us not taking sides. We are now taking sides and some people are unhappy with that. Other people think it is fantastic.³⁰

- 3.40 The feedback on ALRM's policy change was 'in the vicinity' of 95 percent complaint and five percent approval.³¹

- 3.41 The practice of refusing to take cases where both parties are Indigenous has been proscribed under the terms of the Request for Tender of Indigenous Legal Services in Western Australia and Victoria and Queensland.³²

Social Pressures

- 3.42 A number of factors operate within Indigenous communities beyond the usual taboos associated with family violence and child sexual assault issues that make these matters even more difficult to address through the justice system. The close knit social connections that operate in Indigenous communities can operate in particularly forceful ways in restricting access to legal services and the justice system by victims of family violence.

- 3.43 Warndu outlined the difference between dealing with victims of family violence in Indigenous and non-Indigenous communities:

Indigenous people live in a close and what you might describe as a fairly discrete community ... They have very close family ties. Because of that, sometimes you get quite

29 NSWLAC, *Transcript*, 30 March 2004, p. 65.

30 ALRM, *Transcript*, 19 August 2004, p. 38.

31 ALRM, *Transcript*, 19 August 2004, p. 38.

32 AGD, *Request for Tender No. 04/29 for the Purchase of Legal Aid Services to Indigenous Australians in Victoria and Western Australia*, Appendix A, Sect. 2.4, p.63 and AGD, *Request for Tender No. 04/01 for the Purchase of Legal Aid Services to Indigenous Australians in Queensland*, Appendix A, Sect. 2.4, p. 65.

immense pressure from the families to try to deal with the matter internally. Sometimes that conflicts with the best advice given by our service. Sometimes we try to work with the client within their community ... it makes the time for dealing with issues lengthy when you are not only dealing with the client, the children and other outside agencies, but almost with the community itself.³³

- 3.44 The Dubbo Women's Housing Programme referred to social pressures in close knit communities that may be brought to bear upon individuals who report unlawful activity:

If somebody in the community reported a law-breaking activity that may be happening then that family might be targeted ... if they have had a breakdown in the relationship with their partner and the partner's community is in that area ... they are targeted with regard to the breakdown of the relationship.³⁴

- 3.45 The intense character of social connections in Indigenous communities can also operate to prevent access of victims to legal services in small isolated communities:

a woman may not want to go to the Aboriginal Family Violence Service and she may come to [the mainstream WLS] even though she is eligible for the other one. There are perceptions of confidentiality...³⁵

- 3.46 A further impediment to Indigenous women accessing legal services to alleviate a family violence or child sexual abuse situation was a concern that involving authorities could result in the removal of children:

no matter how many resources we provide, we are still not getting women with the children who have been the victims of sexual abuse coming to use our service. One of the reasons for that is that it is a Department of Community Services case and therefore it has to go to that service and they will use their solicitors.³⁶

33 Warndu, *Transcript*, 19 August 2004, pp. 44-5.

34 Dubbo Women's Housing Programme, *Transcript*, 30 March 2005, p. 34.

35 WLS South Australia, *Transcript*, 19 August 2004, p. 25.

36 Wirringa Baiya Aboriginal Women's Legal Centre, *Transcript*, 13 July 2004, p. 25.

Representation of Victims

Police and Prosecution Services

- 3.47 MRALS argued that victims of family violence had their interests at least in part represented by police and prosecution services. Whereas if offenders received no representation from ATSILSs they faced the possibility of being left without any professional representation whatsoever:

there is no body other than ATSILSs ... defending the accused person in a court of law. The victim of domestic violence and sexual assault should be getting the full force of the police and prosecutorial services of the state ...³⁷

- 3.48 SEALS pointed to the improved police procedures in ensuring that offenders were prosecuted for acts of family violence as evidence of the increased representation of victims' interests in New South Wales:

Up until, say, six years ago, if there was domestic violence the perpetrator was charged. If the woman did not turn up at court ... The charges could go on but, when it came time for a hearing, if the victim did not turn up the matter was thrown out of court ... over the last four or five years ... if a matter is set down for hearing and the victim does not turn up, the magistrate ... will issue a warrant for her arrest to bring her along so that she can follow through the process. Secondly, in serious assault matters or even where there is physical violence, the police now take the victim back to a police station and interview them on videotape. So, if the victim does not turn up, there is still evidence of what she said; there are pictures of the damage ... it also makes it easier to discuss with the defendant that it is a matter they should plead to, because the evidence is there.³⁸

- 3.49 Dubbo Women's Housing Program referred to:

a Domestic Violence Court Assistance Scheme attached to which are two specialist Aboriginal workers. We also have the Domestic Violence Counselling Service, attached to which is one Aboriginal position ... within [the Dubbo Women's

37 MRALS, *Transcript*, 13 July 2004, p. 51.

38 SEALS, *Transcript*, 9 June 2004, p. 35.

Housing Programme and the Grace Cottage Family Health Services] Aboriginal workers outweigh non-Aboriginal workers...³⁹

- 3.50 The Rural Women's Outreach Project auspiced by WLS South Australia countered suggestions that police and judicial support for victims of family violence was satisfactory. In South Australia:

there is not much support for women to obtain restraining orders or to report incidents to police. There generally seems to be a failure with enforcing breaches, and even granting restraining orders can be very difficult ... I have had police officers tell me it is easier for private practitioners to get restraining orders than the police, because the magistrate is more lenient in terms of the evidence required from a private practitioner than from the police.⁴⁰

- 3.51 The lack of support for Indigenous women who are victims of crime could be even more pronounced in smaller communities where:

police have developed relationships with the men in communities and so are more reluctant to take them up in front of the court system.⁴¹

- 3.52 Warndu explained that:

sometimes we see situations that need to be dealt with where police are not privy to all of the information or, if they are, have made the decision that the matter is not as serious ... there are times with some clients when they say, 'Look, we don't really think the grounds are there.' Police have a different standard, I suppose, from a lawyer. We look at intimidation, harassment and those types of things.⁴²

- 3.53 The inadequacy of support for women who are victims of violence was affirmed to WLS South Australia by a court officer:

at Coober Pedy, the magistrate who was doing the court circuit brought us to the front of the court and said ... There is no support for women when they go to court.⁴³

39 Dubbo Women's Housing Programme, *Transcript*, 30 March 2005, p. 30.

40 WLS South Australia, *Transcript*, 19 August 2004, p. 22.

41 WLS South Australia, *Transcript*, 19 August 2004, p. 23.

42 Warndu, *Transcript*, 19 August 2004, pp. 49-50.

43 WLS South Australia, *Transcript*, 19 August 2004, p. 26.

Family Violence Prevention Legal Services

- 3.54 TEWLS outlined the need for a discrete service for victims of family violence:

if you have a service which is always seen as representing the perpetrator of a criminal offence, the victims of those offences are not going to feel comfortable going to that same service.⁴⁴

- 3.55 Warndu provided an example of the type of work carried out by FVPLSs:

mostly personal safety issues, which are immediate, and we need to deal with the police and women's shelters and perhaps representations in the magistrate's court. There are often children's issues where we try to seek negotiation and/or if necessary representation in some sort of court to resolve those. There can be debt problems arising from property damage perhaps from a history of domestic violence. There might be personal health issues and sometimes post-traumatic stress and emotional issues. Frequently there are long-term housing problems and extended family problems and sometimes underlying social issues or even sexual assault issues...⁴⁵

- 3.56 FVPLSs assisted at least 7 100 people in 2003-04. AGD was unable to provide a breakdown of cases by type. However, the Committee notes that the Many Rivers Family Violence Prevention Legal Unit provided assistance to 97 clients on criminal law matters, 36 clients on civil law matters and 190 clients on family law matters.⁴⁶

- 3.57 VALS pointed out that:

The Office of Evaluation and Audit report (Pg 111,OEA, 2003) stated that there was more unmet need for civil and family law than family violence services but this was rejected by ATSiS with no explanation in their response to the report.⁴⁷

- 3.58 AGD stated that:

44 TEWLS, *Transcript*, 21 July 2004, p. 31.

45 Warndu Wathilli-Carri Ngura Aboriginal Family Violence Legal Service, *Transcript*, 19 August 2004, p. 44.

46 ATSiS, *Annual Report*, 2003-04, pp. 129-30.

47 VALS, *Submission No. 15*, p. 18.

Where matters extend to family or civil law matters unrelated to family violence, this will be the responsibility of alternative service providers.⁴⁸

- 3.59 Mr Cuomo suggested that the wider breadth of services provided by FVPLSs should not override their character as providers of legal services:

I have to say that I would like to see some more casework out of ... [the FVPLSs at Geraldton, Fitzroy Crossing and Kalgoorlie]. We get a lot of calls from people who get to the courthouse steps and then want representation. For conflict reasons and for reasons of volume, it has always been very hard to deal with that. I always hoped that the alternative centres might pick up a bit more of that case load, but that does not seem to have happened.⁴⁹

- 3.60 AT SIS conceded that the provision of a holistic service including counselling together with legal services had the potential to confuse whether the character of family violence was seen primarily as a criminal matter or a social work matter:

I suppose [holistic service provision] does have the potential to confuse [the status of family violence]. I do not think anybody involved in any of that process is confused about the seriousness of those issues ... there is the potential for that confusion and that the mostly anecdotal advice we get back from communities is that these are serious issues. People want them cleaned up, but people are really struggling because they do not want people ending up in jail as well. This is trying to deal with the issue within the seriousness of the crime itself, and people do need to be dealt with properly within the law ... Where it does get confusing at the local level from anecdotal evidence I am getting is around the very issue that no-one wants anyone to be locked up. They want this stopped and cleaned up.⁵⁰

- 3.61 The emphasis on the family violence prevention aspect of FVPLSs rather than the legal service element of the program was borne out by the fact that some FVPLSs did not possess permanent or full-time solicitors:

48 AGD, *Submission No. 44*, p.5.

49 Mark Cuomo, *Transcript*, 31 March 2005, p. 5.

50 AT SIS, *Transcript*, 9 June 2004, p. 9.

many FVPLS units have entered into agreements with solicitors on a fee-for-service basis or pro bono arrangement to provide services ... if no full-time permanent solicitor is available.⁵¹

3.62 However, AGD stated that:

The funding allocation for new FVPLS units took into account the Department's experience in administering current services, with particular focus on sustaining a lawyer, coordinator and sexual assault worker.⁵²

3.63 AGD also informed the Committee that:

The Indigenous Family Violence Partnership Program [administered by the Department of Family and Community Services (FaCS)] provides a flexible funding pool of \$37.3 million over four years for the Australian Government to pursue agreements with State/Territory governments to fund family violence and child protection initiatives in Indigenous communities. The Family Violence Regional Activities Program [also administered by FaCS] provides non-legal services to Indigenous women and children, with \$3.8 million allocated in 2004–05..⁵³

3.64 FVPLSs are located almost without exception outside urban areas. WLS New South Wales acknowledged the high levels of need for Indigenous legal services in rural and regional Australia but argued that potential client need should be taken into account:

We understand that there are fewer services in the rural sectors of New South Wales. But I do not think you can say that, just because a person is living in the city, they do not want to access a service that is appropriate to their culture.⁵⁴

3.65 ALRM reported that in South Australia:

the majority of potential clients for [FVPLS] services actually live in suburban Adelaide and surrounding areas.⁵⁵

51 AGD, *Submission No. 44*, p. 9.

52 AGD, *Submission No. 44*, p. 14.

53 AGD, *Submission No. 44*, p. 16.

54 WLS New South Wales, *Transcript*, 13 July 2004, p. 13.

55 ALRM, *Submission No. 11*, p. 8

An Indigenous Women's Legal Service?

- 3.66 The Committee received evidence canvassing both sides of a debate concerning the desirability of a legal service that would be specific to Indigenous women.
- 3.67 The Law Society of South Australia suggested that a women's specific service was needed more urgently than a family violence service:
- the family violence service model that we have operating in Port Augusta is inadequate for servicing Indigenous women's needs ... Indigenous women require a service that is specific to them. There are real conflict issues if you expect Indigenous males and females to be in the same service ... the ideal needs to be that they have separate funding and they are in a different location ... It is extremely difficult for women to share the same offices with male perpetrators of violence, for example, or even with their spouses in a family law situation. They perceive it as an inadequate service for them ...⁵⁶
- 3.68 WLS South Australia supported the idea of a legal service that is specific to Indigenous women:
- there is a real need to have a service that caters specifically for Indigenous women's needs, especially when we have high conflict rates between the different legal service providers.⁵⁷
- 3.69 NACLC and WLS New South Wales supported this view:
- Because of the conflict issue ... and because it is referred to as women's business, separate programs are needed.⁵⁸
- 3.70 The Law Council of Australia supported an Indigenous women's legal service on the grounds that only a separate women's service would defeat the perception of conflict:
- the concept put forward by the Law Council as being particularly important is the identification in the eyes of the consumer that it is separate and distinct and they can approach it with confidence. It is all very well for us as

56 Law Society of South Australia, *Transcript*, 19 August 2004, pp. 4-6.

57 WLS South Australia, *Transcript*, 19 August 2004, p. 15.

58 WLS New South Wales, *Transcript* 13 July 2004, p. 11.

lawyers to talk about Chinese Walls; that means nothing to most consumers of legal services.⁵⁹

- 3.71 Countering arguments for a legal service that was specific to Indigenous women, ALRM suggested that gender specific legal services would mean that ATSILSs would effectively become legal services for Indigenous men and thus deprive Indigenous women of access to their expertise in criminal law matters:

The [ALRM] has become highly specialised in representation in criminal matters. The increasing profile of Aboriginal women within the criminal justice system needs to be factored into the question of whether it makes sense to split the service to be gender specific or whether there is a better model. There is certainly a critical need for a service whose primary focus is service provision to Aboriginal women and children.⁶⁰

- 3.72 Warndu argued that establishing gender specific legal services would likely restrict the access of Indigenous men to family law services:

The major group that suffers in family violence is the children ... We frequently have male clients whose visitation rights or contacts with their children are completely denied ... We believe that the children have got a right to see both parents, which is enshrined in the Family Law Act ...⁶¹

- 3.73 The Alice Springs based Central Australian Aboriginal Family Unit (CAAFLU) distinguished itself from CAWLS in that acting for men seeking restraining orders as well as women.⁶²

- 3.74 AGD stated that:

The FVPLS units are expected to provide services to victims of family violence whether male or female.⁶³

59 Law Council of Australia, *Transcript*, 19 August 2004, p. 56.

60 ALRM, *Transcript*, 19 August 2004, p. 31.

61 Warndu, *Transcript*, 19 August 2004, p. 50.

62 CAAFLU, *Transcript* 22 July 2004, p. 32

63 AGD, *Submission No. 44*, p. 15.

Committee Comment and Recommendations

- 3.75 Sadly, Indigenous women are increasingly requiring the criminal law services offered by ATSILSs.
- 3.76 The increase in women clientele to ATSILSs shows that they are not perceived by women as exclusive services for men. This is reinforced by ATSILSs having exceeded PBS targets for handling matters involving women in 2001-02 and 2002-03. Rather, the lion's share of ATSILSs' work in criminal law is not an area required by women, although this is changing.
- 3.77 The Committee acknowledges the importance and high quality of the work done by ATSILSs in representing the rights of the accused, whether men or women, in the criminal justice system. However, it is of the view that within the overall provision of legal aid the rights of the accused should not be focused upon to the extent that rights and safety of persons in danger of violence or the rights of injured parties to compensation are ignored.
- 3.78 The Committee believes that it is paramount that Indigenous people have available to them organisations that can provide legal representation and advice on criminal, family and civil law matters, not only in a culturally appropriate way, but that are community based.
- 3.79 The Committee is not convinced that legal services that are specific to Indigenous women would progress the accessibility of criminal, family and civil law services to Indigenous Australians.
- 3.80 However, the current situation in which access to family and civil law services is restricted because of conflict issues is not satisfactory.
- 3.81 In the view of the Committee an Indigenous specific legal service that focuses on civil and family law matters as well as providing support for victims of family violence is a preferable arrangement to a gender specific legal service because it:
- maintains women's access to ATSILSs, with their expertise in Indigenous criminal law matters; and
 - means that Indigenous men have access to family and civil law services as well as family violence services provided by FVPLSs.
- 3.82 FVPLSs have a wide ranging role in responding to family violence both in the capacity of social work units and legal services. The

Committee accepts the importance of treating family violence holistically but is concerned that the primary function of FVPLSs is the provision of legal services.

- 3.83 Provision of legal services should be enhanced through clear lines of communication between FVPLSs and providers of social support under the Indigenous Family Violence Partnership Program and Family Violence Regional Activities Program administered by FaCS.
- 3.84 The Committee is not suggesting that FVPLSs withdraw from providing services such as counselling for victims of family violence but rather that the focus of these organisations as providers of legal services be affirmed and acknowledged in their funding and required outputs.

Recommendation 3

- 3.85 **That the Attorney-General's Department ensure that Family Violence Prevention Legal Services focus on the provision of family and civil law services to Indigenous Australians, particularly through the legal representation of clients.**
- 3.86 If FVPLSs are to be considered as major Indigenous specific providers of family violence prevention, family and civil law services, these services should not be confined to regional and remote Australia but rather, like ATSILSs, be located in all areas of significant need.

Recommendation 4

- 3.87 **That the Attorney-General's Department acknowledge that urban Indigenous populations also require family violence, family and civil law services and locate Family Violence Prevention Legal Services accordingly.**
- 3.88 The Committee understands the motives behind prohibitions on black on black cases by ATSILSs, particularly in regional areas but finds this strategy constitutes evidence of the inability of smaller regional ATSILSs to meet the full legal requirements of the communities they service.

- 3.89 The Committee supports the Commonwealth's proscription of the practice of refusing to take on cases where both parties are Indigenous.
- 3.90 The Commonwealth's stated preference for a smaller number of providers per state and territory is considered at Chapter Six.
- 3.91 Further to the second dot point of paragraph 3.79, the Committee is aware of situations in which Women's Legal Services provided or auspiced FVPLSs. For instance, TEWLS provides the FVPLS in the Top End of the Northern Territory and will auspice the new FVPLS for Melville and Bathurst Islands and Nhulunbuy. The Walgett based Walanbaa Yinnar Wahroo Family Violence Prevention Legal Service is auspiced by WLS New South Wales as will the new FVPLS for Bourke/Brewarrina.⁶⁴
- 3.92 It is important that FVPLSs do not become gender specific services.

Recommendation 5

- 3.93 **That the Attorney-General's Department ensure that Indigenous men are provided full access to all Family Violence Prevention Legal Services.**

64 AGD, *Submission No. 44*, p. 14.