



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Reference: Indigenous Law and Justice inquiry

TUESDAY, 13 JULY 2004

SYDNEY

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Tuesday, 13 July 2004

Members: Mr Charles (*Chairman*), Ms Plibersek (*Vice Chair*), Senators Hogg, Humphries, Moore, Murray, Scullion and Watson and Mr Ciobo, Mr Cobb, Mr Georgiou, Ms Grierson, Mr Griffin, Ms Catherine King, Mr Peter King and Mr Somlyay

Senators and members in attendance: Senator Hogg and Mr Charles, Mr Cobb and Ms Plibersek

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the distribution of the resources of Indigenous legal aid services between criminal, family and civil cases;
- (b) the coordination of Indigenous legal aid services with Legal Aid Commissions through measures such as memoranda of understanding;
- (c) the access for Indigenous women to Indigenous-specific legal services; and
- (d) the ability of Law and Justice program components to recruit and retain expert staff.

WITNESSES

BLAZEJOWSKA, Ms Louise, Executive Officer, Legal Aid Commission of New South Wales.....	75
BUGDEN, Mr Peter, Principal Solicitor, Sydney Regional Aboriginal Corporation Legal Service	59
CARNEY, Ms Catherine, Principal Solicitor, Womens Legal Services, New South Wales	2
CHRISTIAN, Mr Trevor Charles, Manager, Sydney Regional Aboriginal Corporation Legal Service	59
FRAIL-GIBBS, Ms Trish, Coordinator, Warringa Baiya Aboriginal Womens Legal Centre	20
GRANT, Mr William, Chief Executive Officer, Legal Aid Commission of New South Wales	75
HENNESSY, Ms Annette, Aboriginal Programs Officer, Indigenous Womens Programs, Womens Legal Services, New South Wales.....	2
INGLIS, Mr Robin, Victorian State Representative, National Association of Community Legal Centres	2
LEAHY, Ms Tracy, Coordinator, Hawkesbury Nepean Community Legal Centre.....	2
MATTHEWS, Aunty Gloria, Aboriginal Elder, Mount Druitt; Member, Indigenous Womens Programs Advisory Committee, Womens Legal Services, New South Wales.....	2
MATTHEWS, Miss Winsome, National Network of Indigenous Womens Legal Services Inc.....	30
McKENZIE, Mr John Francis, Principal Solicitor, Many Rivers Aboriginal Legal Service.....	46
MILLER, Miss Leanne, Committee Member, National Network of Indigenous Womens Legal Services Inc.	30
O'BRIEN, Ms Liz, National Convener, National Association of Community Legal Centres	2
PALMER, Ms Shirley, Aboriginal Legal Access Project Advisory Group, Hawkesbury Nepean Community Legal Centre	2
PORTEOUS, Ms Polly, Director, Combined Community Legal Centres Group New South Wales.....	2
SCOTT, Mr Ralph William, Finance Manager, Sydney Regional Aboriginal Corporation Legal Service	59

Committee met at 10.05 a.m.

CHAIRMAN—The Joint Committee of Public Accounts and Audit will now commence taking evidence as provided for by the Public Accounts and Audit Committee Act 1951 for its inquiry into Indigenous law and justice. I welcome everyone here this morning to the committee's second public hearing. The committee is particularly interested in determining whether Indigenous women have adequate access to legal services for domestic violence and family law matters. This morning the committee will begin taking evidence from organisations that are responsible for providing legal aid advice and representation to Indigenous Australians. Witnesses include representatives from peak bodies, some of the community legal centres that provide legal services to Indigenous women and youth throughout New South Wales, and an association that provides a national network for organisations and individuals providing legal services to Indigenous women. This afternoon we will hear from representatives of two Aboriginal and Torres Strait Islander legal services and the Legal Aid Commission of New South Wales. The public hearing phase of the inquiry will continue next week with hearings scheduled for Darwin and Alice Springs and thereafter with public hearings in Adelaide.

Before beginning, I advise witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will attract parliamentary privilege. Finally, I refer any members of the press who are present to a committee statement about the broadcasting of proceedings. In particular, I draw the media's attention to the need to fairly and accurately report the proceedings of the committee. Copies of the committee's statement are available from secretariat staff.

[10.07 a.m.]

PORTEOUS, Ms Polly, Director, Combined Community Legal Centres Group New South Wales

INGLIS, Mr Robin, Victorian State Representative, National Association of Community Legal Centres

O'BRIEN, Ms Liz, National Convener, National Association of Community Legal Centres

CARNEY, Ms Catherine, Principal Solicitor, Womens Legal Services, New South Wales

HENNESSY, Ms Annette, Aboriginal Programs Officer, Indigenous Womens Programs, Womens Legal Services, New South Wales

MATTHEWS, Aunty Gloria, Aboriginal Elder, Mount Druitt; Member, Indigenous Womens Programs Advisory Committee, Womens Legal Services, New South Wales

LEAHY, Ms Tracy, Coordinator, Hawkesbury Nepean Community Legal Centre

PALMER, Ms Shirley, Aboriginal Legal Access Project Advisory Group, Hawkesbury Nepean Community Legal Centre

CHAIRMAN—I welcome the witnesses. Do you have any comments to make on the capacity in which you appear?

Ms O'Brien—I am also currently the Chair of the Australian Legal Assistance Forum.

Ms Carney—Womens Legal Services is a community legal centre that services disadvantaged women and children, and our program is the Indigenous Womens Program in the Walgett crime prevention unit.

CHAIRMAN—Do any of you have a brief opening statement to make?

Ms O'Brien—Yes, I have a brief opening statement. First of all, thanks for the opportunity to address the committee today. Both the National Association of Community Legal Centres—NACLC—and ALAF have made submissions on the exposure draft for tender for the Aboriginal and Torres Strait Islander legal services, and I believe they have been taken on board by the committee as exhibits. We will not go over that ground except to respond to your questions.

Importantly, Australia-wide the community legal services cover a vast range of the needs of disadvantaged Australians, from child support lawyers through to social security, tenancy work and women's legal services, as we will hear today. Four per cent of our clients on an Australia-wide basis are Indigenous. Of those, 75 per cent are Indigenous women. You have received a lot of submissions from community legal centres and, in order to keep my remarks very brief, I will simply commend them all to you and say that one of our major concerns about the process of

investigating, tendering or reviewing Indigenous legal services in Australia at this stage has been the lack of consultation. I do not think that the AT SIS travelling roadshow qualifies as consultation with Indigenous communities or with service providers.

Robin, who works with the Victorian Aboriginal Legal Service, will be able to put forward some views on term of reference (a)—the distribution of services. Obviously we have experts on women's legal services and Indigenous women's legal services here. I would like to make a couple of remarks about coordination of services through legal aid commissions. We have taken that term of reference to include small 'i' and small 'a' legal aid providers like community legal services as well.

Our major cooperation or collaboration forum is the Australian Legal Assistance Forum, which is constituted by the Law Council of Australia, us, the legal aid commissions and the National Aboriginal and Islander Legal Services Secretariat. The purpose of that organisation is to consider legal assistance issues for Australians, to meet together, to cooperate, to collaborate and to make recommendations that are critical to the provision of access to justice in Australia. For us the terms 'cooperation' and 'collaboration' are critical. One of the first things children learn at kindergarten is that cooperation with others will provide more results for fewer resources than competitive tendering for the playground water fountain. We are talking about resources at that level here.

Without taking any more of your time, I would like to say that one of the things that is never said or acknowledged in public debate around AT SILSs and services for Indigenous people in Australia is the tremendous job that AT SILSs do. In the face of chronic underresourcing, chronic instability and constant carping, they provide enormous amounts of service to the most disadvantaged people in Australia. The Indigenous women's programs funded by the Attorney-General's Department likewise provide unique and culturally specific services that are world leaders. We would like to take this opportunity to congratulate our colleagues in the AT SILSs for the work they have done for the last 30 years and to point out something that this committee may already know: if you want to know how to deliver effective services to Indigenous people in Australia then perhaps the best thing to do is to ask the experts—those are the people who have been providing those services under those very adverse conditions for the last 30 years.

CHAIRMAN—Thank you very much for that. I would like to remind everyone that, while we understand that the issue of tendering out of these services is at the forefront of your minds, our terms of reference are in a sense more important to us, because they get to the heart of what is happening or is not happening. I note that the audit report on the AT SIS Law and Justice Program states that around 90 per cent of Aboriginal and Torres Strait Islander legal services work is in criminal law. Then you just said that something like four per cent of services were for Indigenous people.

Ms O'Brien—Four per cent of our clients are Indigenous people.

CHAIRMAN—Yes, and 75 per cent of that four per cent are women.

Ms O'Brien—Yes.

CHAIRMAN—But that is not a lot, is it?

Ms O'Brien—The number?

CHAIRMAN—Yes.

Ms O'Brien—The exact number is 4,600 Indigenous women.

CHAIRMAN—Have any of you done any research whatsoever that would help to give us a clue about the total amount of unmet demand, particularly in family law matters?

Mr Inglis—Liz has asked me to say something about the civil-family-criminal breakdown. That is a term of reference that I understand you are looking at. The issue of unmet legal need I think is something that has basically been ignored in Australia. There has been some work done in overseas countries about some of this. The last study I am aware that the Commonwealth government did was in 1980. Cass and Western looked at unmet legal need. They did not go into it in a quantitative way, but they identified the fact that there was a huge amount of unmet legal need because disadvantaged groups were unaware in many cases of what their entitlements were. If they were aware of their entitlements, they often did not seek assistance, because they were not confident or there were other accessibility problems. Our view is that the level of unmet need is very great.

In terms of the civil-family-criminal issue that you have raised, it fails to properly address the issue of family violence. Family violence can in fact be tackled within civil, family and criminal cases. Even though there is a separate category in some areas to collect that, there is also some ambiguity about what those numbers are. There is clearly a high level of unmet need in all areas and the fact that additional program money has been going to Indigenous women's services and family violence prevention services over the last seven years—and recently there was a big increase—highlights an awareness that that particular issue requires greater attention. However, civil law is something that basically the Commonwealth government has walked away from, in terms of providing legal aid for it. Legal aid commissions now do hardly any of it. Community legal centres do a significant amount of it and Aboriginal legal services do a small percentage of it, but arguably it is vital for males, females and the community that civil law is there, because it is a gateway to so many issues that are fundamental to people being able to protect their families. I guess this is one thing I would ask you to look at. If you simply look at the level of unmet need, it is not well researched or well understood. The questions that this committee is asking have not been asked in a thorough and systematic basis before in this country that I am aware of.

CHAIRMAN—Nor us.

Mr Inglis—Community legal centres, because of the different way they are funded, tend to have a focus on civil law. Legal aid tends to have a focus on criminal and family law. Aboriginal legal services are either somewhere in between those two or trying to cover both of those, doing a lot of case work and also trying to do some education and prevention and cover civil and family—although, as you have already heard, they have not done that to the same extent as criminal.

The fundamental problem that we are concerned about is the problem of simplistic rules being applied to try and work out what is happening. If you simply look at the number of cases that are done, any service that does crime cases is going to have among its clients an overrepresentation

of males. If you look at civil and family cases, the mix of people using Aboriginal legal services is more balanced—a fifty-fifty mixture—but far more time goes into those kinds of cases. We would estimate that the amount of time needed for civil and family matters is six or seven times greater than that needed for criminal matters. So if you just look at the number of cases you do not get a full picture. You have to look at the staff resources that go into it and you have to also look at the fact that there are very different service structures in each state. In some states, state governments have got involved more, in some states the level of cooperation is different and in some states there have been innovations that have led to some better definitions of what is happening.

One thing we would also like to highlight about the terms of reference—and the tender does this too—is the fact that there is no recognition of the importance of education, prevention, policy and networking. If you are going to have people working collaboratively and if you are going to affect the level of demand that is there and the confidence that people have in seeking assistance, you have to take those sorts of things into account as well.

Finally, I would like to say that 90 per cent of all the legal aid services are provided by Indigenous services, specialised legal aid services or specialised Indigenous services for Indigenous people. Where possible, Indigenous people will in most cases seek Indigenous services or specialised services. That is a very important thing, I think, to take into account when trying to get a truer picture of what is happening and what is needed.

Ms Leahy—In the area of looking at need, we actually did a small-scale survey of Indigenous clients in three areas. The report is called *Serious business*. I know that you probably will not get a chance to read it, but I will leave copies of it with you. One of the main areas that we find our clients need help in is family law. Family law and domestic violence is the main area for our clients. That is highlighted in this legal needs analysis. We find working with Aboriginal legal services that they mainly cover criminal law, whereas we do mainly family law. We have an Aboriginal worker who is an access worker. We have had this project for five years now. Most of the areas that she works in are supporting women through the courts, through AVOs, and also doing casework with our solicitors with clients with family law.

CHAIRMAN—I am particularly interested in the issues that were brought up by the Womens Legal Services, New South Wales, and I want to thank you for your submission. I thought it was quite comprehensive. You said at the beginning:

In the last financial year we provided legal services to over 23,000 disadvantaged women and children.

Ms Carney—That is the whole legal service. That is Womens Legal Services. That was Indigenous and non-Indigenous.

CHAIRMAN—That is over all of Australia?

Ms Carney—No, just in New South Wales.

CHAIRMAN—That is a lot, isn't it?

Ms Carney—Yes. We did an analysis of our telephone line recently, which was done for us for free by Telstra, which was very good. Out of every call that gets through, 24 do not get through. People say to us that we are always engaged and they cannot get through. So we are thinking: what is the kind of need out there? That is just one advice line.

CHAIRMAN—You cannot count all of those, can you, because many of them ring again and again.

Ms Carney—No. It is just an indication of people trying to get through.

CHAIRMAN—The submission referred to problems with the ideal situation of self-managed, locally run Aboriginal legal services. It said:

Aboriginal communities may be factionalised, have poor community leadership and committees and workers may not be adequately trained or experienced to manage funds and deliver services.

Can you expand on that for us?

Ms Hennessy—Basically, what we are saying is that, because we are an Indigenous program coming out of a mainstream service, we recognise that the resources are already there, but it also helps with the clients coming through. Even though it is a mainstream service, it does have the Indigenous unit in that service as well, which makes a big difference. We go around rural New South Wales a lot and it makes a hell of a difference, to know that there are Indigenous workers in an Indigenous unit, even though it is a mainstream service. We get a lot of clientele coming through.

CHAIRMAN—Are you saying that that is a cultural thing? Let me ask you this, and I am not being rude in any sense of the word: would we need a similar service for Greeks, Yugoslavs, Romanians, Russians and Ukrainians—need I go on?

Ms Hennessy—I can only give my point of view as an Indigenous person. I can understand what you are saying, but what I am saying is—

CHAIRMAN—I am not saying anything; I am asking questions.

Ms Hennessy—From an Indigenous point of view, it most certainly does make a difference that there is the specific Indigenous unit and that the workers are there. It makes for cultural appropriateness.

CHAIRMAN—But you said in your submission

Aboriginal communities may be factionalised, have poor community leadership and committees and workers may not be adequately trained or experienced to manage funds and deliver services.

If any of those things were true, wouldn't you be better off with a general provider service, rather than a specific service that was incompetent?

Ms Carney—I am trying to make the point that there are different models that may be appropriate for different communities. There may be a community with a strong base that is able to manage it and has all those skills. In Sydney you might find that, but if you go out to rural areas often you may not. We were asked to assist and we have been asked by several other groups of women in rural areas. The women are very smart. They say to us, ‘It’s white law. You deal with the white fella stuff. You deal with the white lawyers, the Canberra bureaucrats and the money, and we will do the community stuff.’ So, for example, in our Walgett unit we employ four local Aboriginal women who are basically running it, but we supply the lawyers.

We are lucky at the moment in that we have a lawyer based in Walgett. Before that we were flying lawyers in with the magistrates, to do the court sittings and to see the clients. We are supplying that supervision and doing the file work. We are taking back all the legal stuff that needs to be done. We are doing the accounting part in Sydney and we are reporting back and making sure the statistics and everything are done correctly. The four Indigenous women in Walgett are doing all the community work, and we have an advisory group of elder women in Walgett. We also have our advisory group in Sydney for our Indigenous women’s group. Gloria Matthews, who is here, is the elder on that consultation group too.

CHAIRMAN—I should not dominate this. I have one last question that is burning and I would like to ask it. I will then turn it over to my colleagues because it is not fair for me to hog the thing. Is it true that, because of the requirement to fund criminal cases, we spend immense amounts—a large proportion of the money sometimes—defending the same people over and over again? If so, does that then reduce the services we have available in this important area that we are talking about: that is, family law?

Ms Carney—I do not work in an Aboriginal Legal Service, which is the criminal service, but we have a good relationship with them and work closely with them in Walgett. They said they could not provide our service, because of legal conflict. If the Aboriginal Legal Services have family solicitors they represent the men, because the men have come through the system on a criminal basis and then, when a family law problem has come up, they represent them. Therefore, there has been no-one there to represent the women and children. In addition, if there has been that legal service available, women have been conflicted out.

From my observations, yes, they are coming through the system again and again. But, because of the Dietrich decision in the High Court, anyone facing a serious criminal charge has to be represented. There is no way out of that. It is the same situation with legal aid: people have to be represented when they have serious criminal charges against them. There is certainly an issue with regard to representing people on minor charges, because that is where children often come into the system.

All through our consultations elder Aboriginal women have been neglected for years. We need to provide services to help them. Everyone knows about research such as the Bonnie Roberts research, which shows the needs of numerous women out west and the terrible levels of violence that exist. We see shocking cases, which all our solicitors have to be debriefed on. Yet, while it is true that you would not imagine the violence these women and children suffer, they do not say that they do not want their sons, husbands and brothers to be represented when they are in trouble with the legal system. There is the dilemma. I know there is only a certain amount of money.

CHAIRMAN—There is. The pot is not limitless.

Ms Carney—No, that is your dilemma. There is a terrible need that has been neglected for a long, long time. They want help. They are angry about it—and they should be—and they want help. On the other hand, they are not necessarily saying, ‘Let our sons go to prison without representation.’

Ms O’Brien—I think some in our community are saying something quite counter to that. While all who are involved in the community or government sector are aware that there may be a limited pot of money, we think that there are decisions that could be made to put more money in different places. There is no way of getting out of the fact that these legal resources in Australia are chronically under funded and have been for some time. They have produced efficiency dividends until they are down to the wire. More resources are needed. I think we need to acknowledge that what is coming out is that there are different solutions for different communities and different problems. We have all found that one of the most effective ways to find solutions is to listen to what the community says.

CHAIRMAN—That is what we are trying to do.

Ms O’Brien—Yes, I know. Sometimes they say, ‘We want a safe house,’ and sometimes they say, ‘We want programs for perpetrators.’ Sometimes they want more representation for their menfolk in criminal matters and sometimes they want more work done to assist with domestic violence. So it is not a one-size-fits-all issue.

Mr Inglis—Ms Plibersek, perhaps I could respond to the questions you have asked. Firstly, as far as we can work out, something like 15 per cent of those who use the Aboriginal Legal Service in Victoria, in terms of violence related matters, re-offend. The male and female numbers making up that percentage would be roughly even. As for whether separate legal services are needed for Aborigines, Russians or Croatians and so on, the question asked over and over again at every level of government with every policy issue is: why should the treatment of Aboriginal people be any different from that of anyone else? That is something we have to continually explain and argue and go through, because there are significant differences. The community have expressed their views in a number of ways. It really is not a case of separatism; it is a case of specialisation, existing skill and credibility. With this argument, even though I know it has to be had again and again, you have to talk to people and find out what they are saying: it does make a difference and it is in everybody’s interest to have a range of specialist services.

Ms PLIBERSEK—At the beginning of your comments I think you mentioned that a lot of civil law matters do not get taken up. What sort of effect is caused by the gap in providing help with civil law? Can you give us examples of the sort of legal help people are missing out on?

Mr Inglis—One example we discovered earlier this year relates to utilities and unpaid bills and what to do about unpaid bills. That was reviewed, because the state government were looking at deregulating further. Around the state we discovered pockets of a very high level of lack of understanding of how to deal with those issues. Someone’s power was cut off for perhaps 30 days instead of two or three. They would then get someone else to reconnect the power; it would be reconnected in a different name, which would mean the original account holder then

had credit rating problems. That would then flow on to accommodation and problems in trying to rent housing.

When you are on a low income, anything in the civil area that has an impact on your income—like Centrelink or buying a car that is dodgy or some other service—is a real hardship if you cannot (a) find out how to protect yourself from the beginning and (b) get advice about how to remedy it. It then flows on into other things like being able to provide for kids at school or pay a fine, if you are fined for a criminal offence. There is quite a flow-on from that area.

One thing we are trying to do at the moment is work with a whole range of other civil providers in the state government—ombudsmen, consumer affairs and a whole range of others—to undertake ongoing regular and systematic outreach education in the country so that people can get the idea that they do have rights, that there are a range of people who can do it and that Aboriginal legal services and Indigenous services cannot do it all but can help by being a gateway to some of those other services. So linking into the Indigenous-specific services that exist in state government departments and other places like that is a fundamental gateway to people thinking they can protect themselves.

Ms PLIBERSEK—So you say that not getting help with civil law matters can confirm people in their poverty.

Mr Inglis—Yes; and there are flow-on effects to the rest of their family and community.

Ms PLIBERSEK—I want to ask a question of the Womens Legal Centre. One witness we had before us in Canberra—they represented an Aboriginal legal service—said that in an ideal world they would help everyone but they have limited funding and so they prioritise criminal law matters, taking into account that women have the help of police prosecutors and others. Is it likely that Aboriginal women in such situations would seek the assistance of mainstream services to help them with family law matters?

Ms Carney—It is our experience that generally they do not. Certainly they have trouble accessing or getting to talk to the police prosecutor. That is actually a role of one of our workers. A young Indigenous woman who has been trained into that role—and, I must say, is doing amazing work now—is able to go to court on her own and liaise with the police prosecutor. She speaks to the solicitor in the office and says, ‘These are the orders this woman should seek’—that is, if it is a police matter.

Many of them may not be police matters. If it is not a police matter, our solicitors represent women and children in getting a protection order, an AVO. But, if it is a police matter, someone is still needed to liaise with the police prosecutors. For a start, police prosecutors are immensely busy and are just running down through their files. They are really grateful. We have a great relationship with the prosecutors because they are so grateful that our worker is able to say, ‘This is the client, this is her problem and these are the orders she will be seeking in her instructions.’

Ms PLIBERSEK—Are you speaking of someone like a domestic violence court support worker?

Ms Carney—Yes.

Ms O'Brien—With the use of police prosecutors, one area that becomes very vexed is that obviously in remoter parts of Australia, like Cape York, the court is on a two-week rotation and the police prosecutor flies in and only sees the person from the community if that person has had the chance to travel the great distance required to come to court. It is a five-minute process, which is not adequate domestic violence support or family violence support.

Ms PLIBERSEK—One of this committee's concerns is that some Aboriginal legal services have argued that people will not seek mainstream help in criminal law matters but they also say that women have to seek mainstream service help with their family law and other matters. It is a bit of a contradiction.

Aunty Matthews—I have been with Womens Legal Services now for quite a while. I have travelled out to Walgett, Broken Hill, Dareton, Menindee and Bourke; just recently we have been to Wellington. It is sad to see that there is so much domestic violence in these places. Without our women solicitors being sent out there, it might be worse. Of course, drink is quite rife in those areas. In all the years I have worked in Aboriginal communities I have found that Aborigines have only ever had the crumbs from the different government tables and it has never been enough for us to improve ourselves.

Right now we are looking for reconciliation with the dominant race, and we have been doing that for quite a few years. When we started Womens Legal Services I thought that a star from heaven had landed in our laps, because we were then able to go out and do things for Aboriginal women in different areas. I have lived on nearly every Aboriginal settlement in New South Wales and in each place I have seen this going on. So when we got so many non-Aboriginal women solicitors it was really God sent.

Ms PLIBERSEK—You say that things would probably be worse if you had not had the women solicitors or Womens Legal Services come out and help you. Do you think that having the legal service has changed people's attitudes to domestic violence, that they now treat it more like a crime and less like a family problem?

Aunty Matthews—I think we have to treat it as a crime because it affects the whole family. Once the perpetrator is taken out of the environment, at least the family has some leeway and some peace and quiet. Perhaps I can tell you about the men's services. Of the men and women, the husbands and wives, it is the men that really get the services from the Aboriginal legal service; the women have to go to another service.

Mr JOHN COBB—That is because of the criminal issue.

Aunty Matthews—Yes.

Ms PLIBERSEK—And the conflict of interest.

Ms O'Brien—That is not necessarily the fault of the ALS.

Ms PLIBERSEK—This is a question for any of you. If we increase funding to Aboriginal legal services, should we quarantine some of that funding for family law and civil law matters?

Ms Carney—I think we need separate services because of the conflict issue and the historical issue, particularly for those living outside Sydney. In a small town there will be a police station, a courthouse and maybe an ALS, but there are no services for women. Women have never had any services. That is where you see the terrible disadvantage. Even women going to court on their own is difficult with one family lining up against another. There is no waiting-room, no safe room and no protection—all those sorts of things. Because of the conflict issue, because of the historical problems and because it is referred to as women's business, separate programs are needed. Otherwise you will get caught up in the conflict issue—the family violence—which has bedevilled women. If you are talking about other civil matters like debt, that is different.

Ms O'Brien—I agree with Catherine. I think money needs to be put into separate services. I also think there is a role for funding from the Attorney-General's Department through the Indigenous women's program projects, for example.

Ms PLIBERSEK—The Family Violence Prevention Legal Service.

Ms O'Brien—They are not all family violence services. Some of them have provided us with the opportunity to employ two Indigenous women in a generalist welfare rights centre, for example, because of what you are hearing from everybody: Indigenous women will come to Indigenous women. More resources to that program would give us more coverage of the whole gamut of civil issues. There are few people with family violence problems in the cities who do not also have tenancy problems, Centrelink problems and debt problems. It is a two-pronged thing. I think separate services need to be looked at, but there is also a role for more funding to specific programs that exist.

Ms PLIBERSEK—Do you think that the Walgett service that you run could be replicated in different towns in New South Wales? Is that the sort of thing that you mean when you talk about rolling out—

Ms Carney—With enough money to do it, yes. With the proper will and the proper people employed, yes, you probably could.

Ms PLIBERSEK—Catherine, I want to ask you about employing people. We received evidence from a few people that it has been very difficult to keep good staff in the ATSIILSs because they can get paid up to double just about anywhere else, including a legal aid commission. I noticed in your submission that you have managed to pay good wages and to keep people. How have you dealt with that?

Ms Carney—Within the community legal sector our wages are still low. Solicitors could still get paid much higher wages elsewhere. It is hard to keep solicitors. Our experience is that we get a lot of very young, keen solicitors who have their good points, of course, but have to be controlled and managed carefully; so we need senior solicitors. We are able to do that by giving mothers part-time work. Most of our more experienced solicitors are women who have left private practice. They say to us, 'I have children,' and we offer them part-time or flexible work practices. That is how we get our supervisors.

Ms PLIBERSEK—I always maintain that you get great work out of people with family commitments for that very reason. They could be earning more money elsewhere, but they would have to work 80 hours a week.

Ms Carney—We give them flexible hours and real work—and work that they can feel proud of. They are happy. They have client contact. If they get a part-time job in private practice they might be out the back doing precedents all day, whereas with us they are still getting client contact and doing cases.

Ms PLIBERSEK—I could ask a million questions, but I will just ask one more. The government have a proposal to tender out legal services. I would like to know what you think that would mean for the relationships of trust that people build up with solicitors. Do you think that it would be possible for, say, the sort of service that you have in Walgett to exist if you had basically different people flying in each week to provide legal services?

Ms Carney—No, I do not. The problem with the tender document that I have read is that they did not put in anything about employing Indigenous people or having consultation. I think that one of the great strengths of the Aboriginal Legal Services and our Walgett violence prevention units is that we employ what we call family support. In the ALS they are called field officers. They are Indigenous workers. You can go to them, they will bring the client in and they will know what is happening. I remember just recently our worker saying to a white solicitor, ‘You talk to me and I will tell it in our lingo.’ So in a way they are translating to the client, saying things like, ‘This is what the solicitor wants from you so that they can prepare for court.’ Without those people I do not think you could work. I do not think they would have any clients.

Ms PLIBERSEK—That’s one way to deal with demand, isn’t it!

Ms Carney—Yes. But they are not positions that are going to make money for you.

CHAIRMAN—What prevents you from tendering? You are making an assumption that it is going to go elsewhere.

Ms Carney—I was not. I was just trying to answer the question of it going elsewhere. My worry is that a large law firm or some other firm may tender. Their bottom line is to make a profit out of it. That is fair enough; that is why they exist. The field officer or family support worker or any of those workers do not make money for you. They are not fee earners. So I do not think they would factor them in. They may factor in one or two, but I think those positions are really crucial for family trust and support. For the solicitors to be able to do the work, they need those positions.

Ms PLIBERSEK—Also, there is a preference for a single tender for the whole state. So Womens Legal Services are not going to win that, are they, unless they diversify overnight?

Ms Carney—No, we are not big enough. That would be a massive bureaucracy.

Mr Inglis—Can I make a comment on the tender structure. It seems to me that the tender is saying, ‘We want one provider per state,’ but it is also saying, ‘We would consider others.’ If you look at the different states, obviously some states have multiple providers and some do not. If

you look at the fact that states are different and services are different, it would make more sense to look at how to build on what is there. There are weaknesses in a state wide model as well as a regional model, and there are strengths. If you looked at how you could build on the strengths and weaknesses and achieve something better, that would be a good thing.

The other thing I wanted to comment on briefly is that the comment was made the other day in the hearings about the dichotomy between having a crime version and a family problem version of how you look at family violence. I guess that one of the things that has also been said in Victorian Indigenous communities about the state developed strategy is that it should be seen as both a crime and a community problem, and something that has to be tackled from top to bottom. That includes civil law and prevention and other things like that. It is important. I think you have highlighted a couple of times in your questioning whether it is a good thing or a bad thing that you have women in family violence and men in ATSISSs. If there was ever going to be any community focus of Indigenous services, you would have to be able to say that you were doing something more than that and you would have to move towards something more than that. Otherwise, you are actually creating more areas. Where there is conflict of interest you have to have separate services, but there are common problems as well at a community education and a policy level. You really need to have a structure to make sure that the different players in the state are working together on that. That is the other dimension, I guess, to it being seen as a broader problem. It is structural as well as criminal.

Ms PLIBERSEK—Do you get any resources for that sort of coordination?

Mr Inglis—I guess it partly depends on what your service is defined as. If you define it as Indigenous family violence and you are forced to do just case work or if you are an ATSISS and your resources are so stretched that you cannot do that policy work and the tender says that the government does not want policy, education or prevention work to be done, then I think you are shooting yourself in the foot in terms of the whole range of options that you should embrace to try and change these things.

Ms O'Brien—We get no resources for national coordination. Of course, the National Aboriginal and Torres Strait Islander Legal Services Secretariat has been defunded.

Mr JOHN COBB—In the specialist services area—in other words, specifically Indigenous and legal help—do you think they are more or less relevant in country areas, be it Moree, Dubbo or wherever, than in city areas? In other words, do you think that they look more to go to a specialist if they are in Dubbo or Moree than they do if they are in Sydney?

Ms Hennessy—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.

Mr JOHN COBB—I am not really asking what they want; I am asking do you think they need to have them more in country or city areas?

Ms Hennessy—There is a bigger need in rural areas, I will admit that.

Ms PLIBERSEK—You are talking to a rural MP here, so he wants you to say yes.

Mr JOHN COBB—I actually do not. I just want to know.

CHAIRMAN—He is asking about it. That is legitimate.

Ms Hennessy—There is a geographic factor as well, so you take that into account. But there is a bigger need in the rural sectors of New South Wales, most certainly, for specific legal services for Indigenous persons. Is that what you were asking?

Mr JOHN COBB—More or less. Mostly, New South Wales has one-third of everything—it does not matter what it is—but I notice we have nowhere near one-third of all the legal services in Australia. I assume that is because there are so many small communities in the rest of Australia.

Ms Leahy—It depends. I work in Hawkesbury, which is a massive geographical area. If you live in Broken Hill, you would laugh at thinking Hawkesbury was rural, but there is a real lack of infrastructure, transport and services. We have one Aboriginal worker who covers this huge geographical area. We do not have recurrent funding for that worker. There is one other health worker, and that is it for the whole of Hawkesbury, which is a huge area. When you are looking at services and people's ability to access services, it depends on transport as well.

There are also lots of other issues about whether people even identify as Indigenous, and that is one of our issues. By having an Indigenous worker we are helping people to identify with and feel proud of their culture. They are more willing to access our service because we have this identified worker. When you talk about geographical and rural areas, there are also lots of other issues as well.

Ms Carney—There is an enormous need in all the rural areas that we have ever serviced. The lack of services is just terrible. The services are not out there. Since we went to Walgett, we have been asked—although we were not funded—to do Lightning Ridge court and now we get calls from women in Brewarrina and the surrounding areas asking: 'When are you going to come out and help us? What are you going to do for us?' Of course, we just do not have the bodies to do it, but in every centre there is an enormous need. I am really concerned at the moment because of the push that is coming with this law by telecommunications and law access. Our clients do not even have telephones, let alone the Internet.

Mr JOHN COBB—A lot of them do. Is that more because you are providing an Aboriginal women's service than an Aboriginal service?

Ms Carney—I would say both. Out in rural areas there are very few services, and ours is one. We are providing an Indigenous service for Aboriginal women and children.

Mr JOHN COBB—This is an important point. It has been brought up a few times that we should have two different services, one for men and one for women, and I can see why. While it would be nice to say that billions extra were going to be poured in, there will not be because there is a limit. If we accept that, we also have to absolutely say how much goes to men and how much goes to women or, on your own arguments, it will all go to the men's service anyway. In some sense, you are going to cut back on what the men are now getting to give to the women. I am not arguing with that; I am just asking whether you accept that that would be a fact.

Ms Leahy—But shouldn't it be about community need as well?

Mr JOHN COBB—Yes, it should.

Ms Leahy—One of the results of our report was that we should be looking at individual communities and their needs.

Mr JOHN COBB—I totally agree that we should be flexible and deal with the needs of a community rather than those of Australia as a whole, but the same argument would still apply.

Mr Inglis—On the men and women question, the thing that is really complicated about this is that, if you cut back on criminal matters, you will save some money, but in the vast majority of cases at the moment you are going to affect women as well. It is not easy to simply say men and women because, if you think you are going to cut ATSISSs and cut crime, a large number of women will not get representation. So the number of civil and family cases you can purchase with that, which are going to benefit women, is not as great.

I am not saying that it is not a good thing to do. It seems to me that the other way to look at it is that you want to try to have a range of services accessible to men and women. The way you are going to be able to do that properly in different states is going to depend on how dispersed the population is, what services are there and what the existing service providers can come up with. Maybe the existing service providers will end up fighting to the death with each other. It is equally possible that, if you do put money forward and say, 'Here are the general directions in which we think the money needs to go. You come up with a state plan that is thought through in terms of how you are going to do it', it will look different in different states. I think you are going to keep running into brick walls if you just go men/women, because men dominate the crime but the civil and the family areas are where people are saying that there have to be more resources.

Mr JOHN COBB—I think we are picking up on what you have been saying this morning, and you are the people who are bringing out the men/women thing. That is why I brought it up.

Senator HOGG—It seems to me that the fundamental, underlying problem is that no real assessment has been done of the situation. That is fair enough, isn't it? This committee will make recommendations in its report, but it would seem to me that until a proper assessment is made of the unmet needs, then people are flying pretty much blindly, to a certain extent. Is that a reasonable assessment?

Ms Leahy—I will pick up on that point. Maybe not a whole assessment but, in pockets of communities like this, this is a research project. I have sent this to MPs and I have sent it to local councillors. I have said, 'Please read it,' but people do not read it. We do this research and we ask the Indigenous community what they need. This tells us what they need but then nobody reads it, nobody picks it up. I cannot get recurrent funding for my very successful six-year project. Doors keep closing and submissions keep being refused, but we have done the work.

Senator HOGG—I think you have wound up pretty well, but where are the doors closing? What are the doors that are closing to you? That is what we need to know.

Ms Leahy—I have a very successful project with an Indigenous worker that has been running for nearly six years. It was funded for four years by the Western Sydney Area Assistance Scheme. After that I was told, ‘Sorry; this was a pilot project. Even though it has been successful and it has met its objectives—you’ve increased your Indigenous client base; you’ve done this work and you’ve done that work—there is no more money. You’ll have to change your project.’ That is not what the project is about. I have been to Legal Aid, I have been to the Department of Aboriginal Affairs, I have been to Commonwealth and state government legal aid—I have been everywhere, but nobody will fund this project.

Senator HOGG—Who cut the funding in the first instance?

Ms Leahy—Western Sydney Area Assistance Scheme.

Senator HOGG—Who would they have got their funding from?

Ms Leahy—The state government.

Senator HOGG—So it would have come out of the state government there.

Ms Leahy—Now our management committee have made the brave decision to bring this project into core funding. That has meant a cut in core services and a cut in everybody’s hours but, because they believe in this project and they believe in their Indigenous community, that is what they have done.

Senator HOGG—So you are saying that there is no need for a wide range assessment but that an assessment needs to be done on a selective basis.

Ms Leahy—I think that saying ‘a wide range’ is too broad. I think you need to come down, even to state by state or community by community. We were talking about rural communities. They are different from urban communities.

Senator HOGG—It seems to me also, as you people have said, that the one model does not fit all. That seems to be the biggest problem I am picking up in dealing with bureaucracies. For ease of convenience in running the bureaucracy, they want a one-model-fits-all, but they cannot allow for the variations that are taking place—the competing needs between male and female in particular areas, the young and old or whatever it might be.

Ms O’Brien—I agree with what everybody is saying about this but I just want to point you to the fact that ATSIC did a lot of work consulting communities about where family violence services were needed and what form those services should take. There have been a number of consultancies by ATSIC throughout Australia over the last few years, and I think it is important that any movement in this area has a look at those and builds on them. We need to look a bit more at building on what we have, which is exactly the point from Hawkesbury. This happens in Indigenous services all the time. Something will get going, it will be good, it will produce results, the community will have been consulted and they will have got this thing, and then they will hear, ‘No, that was just a pilot project.’ And then someone goes back to consult the community again.

Senator HOGG—So everyone is going back to square one, trying to reinvent the wheel.

Ms O'Brien—Yes, and there is infrastructure loss all the time.

Ms Leahy—Usually, with a new pilot project that somebody will have put some money into, it is a case of 'Never mind the projects that are successful; let's cut those.' That is what we are doing all the time.

Senator HOGG—Could this come about because, in that sense, there is no central coordination of the projects?

Ms Leahy—The coordination is by the state government with respect to the Western Sydney Area Assistance Scheme. Their policy is that you get so much funding for a project and that is it. You are expected to find pick-up funding. We have done that. I have spent most of my time during the last year trying to find funding for the project.

Senator HOGG—I have read the report that you have tabled this morning. You say it is possible for other communities to build on the basis of the report that you have put together. In other words, they would not have to go over the groundbreaking work that you have done.

Ms Leahy—There are lots of generic issues in that report which I am sure relate to lots of Indigenous communities, but it is not suitable for every community. For example, the Walgett community will be different. There are general points like needing Indigenous workers to work with Indigenous communities and needing to build networks and partnerships—general points like that. We need to let communities have input into solutions and services. We do that with our advisory group. A member of our advisory group is here today.

Ms Carney—Indigenous communities must be one of the most over-researched areas in our—

Senator HOGG—That was the other issue I was going to raise.

Ms Carney—Yes, there has been so much research.

Senator HOGG—You can look at some things so often and, whilst it might be a good academic exercise for someone, it really contributes nothing towards advancing the cause of the people involved.

Ms Carney—Indigenous communities will say to you, 'I'm not going to talk to any more government people over research because nothing comes out of it.' That is the view that has been expressed. There has been heaps and heaps of it on every level. They often contact us and I often say, 'Not another one.'

Senator HOGG—I can understand that.

Ms PLIBERSEK—Did you have any comments that you wanted to make, Polly, that you did not get a chance to make?

Ms Porteous—The combined group has not put in a submission to this inquiry because we believe that the community legal centres which are doing Indigenous programs are the best people to talk about what they are doing. For us to say, ‘Here is our overview of what the problems are’ would be to contradict what we are trying to say, which is that each community and each legal centre are trying to do things. Liz was saying that there are initiatives in community legal centres. I refer to generalist community legal centres which work for everyone. Increasingly, over the last five years, there has been an increase in the number of Indigenous people coming to community legal centres.

The New South Wales Law and Justice Foundation has produced a report on access to justice and legal needs. It contains statistics about Indigenous people using various services. For example, it compares the numbers of Indigenous clients of community legal centres with the numbers going to the generalist Legal Aid Commission. I will leave copies with you. It is not as comprehensive as it should be but it says the same things we have been saying. They say that about 4.6 per cent of clients in New South Wales community legal centres are Indigenous—about the same as the national average—compared to a figure of 1.9 per cent of Indigenous people in the New South Wales population. So we are seeing more Indigenous clients than you would expect given distribution. Reports like this keep saying that there need to be more services. You were saying the main issue was that there is a lack of research. I think the main issue is the lack of money. We know what the problems are. Services keep saying, ‘We can tell you that you need more funding for women’s services and ATSISSs.’ If more money is spent on research, that means there is less money for on-the-ground services. That is from a New South Wales perspective but it would be the case right around Australia.

Senator HOGG—What do you mean by more money? That is like asking: how long is a piece of string? That is part of the problem—and it does not matter what side of politics you are on—that you will always run into. It is a real problem which people in the political world, whether they are Labor or Liberal, will always run into. What does ‘more money’ mean?

Ms O’Brien—The national association did a three-year budget submission in the last budget round which estimated a fairly small amount in terms of Commonwealth government expenditure. I do not recall it; I would rather give you exact figures.

Senator HOGG—Give me a ballpark figure.

Ms O’Brien—Off the top of my head, it was more than \$25 million over three years to bring all community legal centres up to the point they had been three years before.

Senator HOGG—That is \$25 million roughly over three years—

Ms O’Brien—But I would like to look up the figures properly.

Senator HOGG—I accept that. Is that Australia wide?

Ms O’Brien—Yes. Then there is the work done by the Australian National Audit Office on how much extra money was needed by ATSISSs in relation to the level of legal aid services. So the figures are there. They have been done and we are happy to provide them.

CHAIRMAN—I am sure we could keep going for some time—I know I could—but we have to move on because others are scheduled to appear. I thank particularly the Womens Legal Services for your submission. I thank all of you for coming to talk to us today and answering our questions as honestly as is humanly possible. If we have further questions, would you mind if we asked you in writing rather than asked you to come back to talk to us again? Thank you very much for that. Is it the wish of the committee that the report entitled *Serious business* be accepted as an exhibit?

Senator HOGG—It is.

CHAIRMAN—It is so ordered. Thank you all for appearing.

[11.13 a.m.]

FRAIL-GIBBS, Ms Trish, Coordinator, Wirringa Baiya Aboriginal Womens Legal Centre

CHAIRMAN—Welcome. Do you have an opening statement?

Ms Frail-Gibbs—No, I do not. I apologise for not putting in a submission. My workload is extremely high at the moment, but I will write up something and present it to you later.

CHAIRMAN—We will try to ask you intelligent questions. Could you tell us what geographic area your service represents?

Ms Frail-Gibbs—We are in the state of New South Wales. We have 1½ solicitors for the state. We do civil law and specialise in victims of crime.

CHAIRMAN—And you cover the whole state.

Ms Frail-Gibbs—We cover the whole state with 1½ solicitors. We black women are good.

Ms PLIBERSEK—How do you manage that?

Ms Frail-Gibbs—We are black women; we are used to doing it. It is extremely hard. We are so frightened of developing more resources because, the more we advertise, the more we create a need for people to use the service, and we would not be able to meet the need.

Senator HOGG—So how do you keep your service quiet? I am not saying that in a nasty way. Obviously, you want your service to be well known, yet you do not want it to be well known—you have real, competing interests.

Ms Frail-Gibbs—That is exactly right.

Senator HOGG—How do you get around that?

Ms Frail-Gibbs—Basically, we do meet the needs of every woman, youth and child who rings our service. Sometimes it may take us just that little bit longer to return their call. We always try to do it within a 24-hour period. It might be just to find out what they want. If we cannot meet their needs straightaway, we will refer them to another service, but we will always ask their permission first. We do not like doing that, but that is how we have to cope.

Senator HOGG—Seeing that you are in the civil area, do you get referrals from other Aboriginal legal service groups as well?

Ms Frail-Gibbs—Yes, we do.

Senator HOGG—You would be one of the few groups operating in that area, wouldn't you?

Ms Frail-Gibbs—There are only two of us in Australia: there is our service and ATSIWLAS—Womens Legal and Advocacy Service—in Queensland. They operate out of Brisbane. They do not have the state, like we do.

CHAIRMAN—Don't the Womens Legal Services of New South Wales, who just came and talked us, do the same sorts of things that you do?

Ms Frail-Gibbs—They do the state too, yes. I was talking specifically: we are controlled and run by Aboriginal people. I am the Aboriginal coordinator, our board is fully Aboriginal people and our legal adviser to the board is an Aboriginal person.

CHAIRMAN—How did you get funded as a separate service in the first place? There is a huge range and diversity of services in New South Wales.

Ms Frail-Gibbs—That was a long, hard struggle. The idea came up in 1993 to start a service like ours. We got funding in 1995 to employ a project officer, to prove that there was a need for it, and in 1997 we got the full core funding. It took us a fair while to do it.

CHAIRMAN—Who are you funded by?

Ms Frail-Gibbs—We are funded by the New South Wales Attorney General's Department. We are the only community legal centre in Australia that is fully funded by a state government. There are a couple of other community legal centres within Australia that get partially funded by a state government, but we are fully funded by the state government.

Senator HOGG—Do you get no funding from the federal government whatsoever?

Ms Frail-Gibbs—None whatsoever. Can I just say that I really enjoy being funded by the state government. It means that we get to have a really close working relationship with our Attorney General. That is not to say that if the federal government came along and offered us a few bucks, we would not take it; we just have a good working relationship with the state Attorney General. He knows of our service, so we are not just some name on a piece of paper.

CHAIRMAN—With only 1½ solicitors, how many cases do you handle a year?

Ms Frail-Gibbs—We do telephone advice, so we do not actually do a lot of case management work. My principal solicitor would have been able to answer that straight off.

Ms PLIBERSEK—You can come back to us if there are any figures you cannot remember.

Ms Frail-Gibbs—I will get back to you on that one.

CHAIRMAN—You made a submission to the Senate committee who inquired into legal aid and access to justice. It was a broad-ranging inquiry, whereas we are quite focused, as I am sure you know.

Ms Frail-Gibbs—Yes.

CHAIRMAN—You made the statement then that Aboriginal legal services were established to keep Aboriginal people, predominantly male, out of the criminal justice system and that they have a policy of not representing one Aboriginal person against another, which makes the case difficult for funding a woman, let us say, to take up a legal issue with a husband who she claims has bashed her or whatever. What do you suggest we recommend to overcome this structural problem?

Ms Frail-Gibbs—Some ALSs within Australia are trying to overcome that problem themselves. Usually they will work on a ‘first in, first served’ basis. If the woman who is the victim of domestic violence gets to the solicitor first then she uses that service, and I think that is quite a good way to go. However, then there are also some women who really would not want to go and use that service if they know that their husband has used that service before or, specifically, they may really want to use a women’s service because women are more understanding.

CHAIRMAN—We read in the daily press and some serious press from time to time that there is a reluctance by many women, particularly in remote communities if not in major cities like Melbourne, Sydney or Brisbane, to take issue through the legal system with members of their family. Is that true?

Ms Frail-Gibbs—Yes, there is a reluctance. It also comes back to people not knowing about and understanding the legal system. Deaths in custody and domestic violence have had a huge impact on Aboriginal women. I am not too sure of the exact numbers, but I think there were 356 recommendations that came out of the royal commission into black deaths in custody—none of them related to Aboriginal women. It did not look into it deeper, either, to find out what the men who died in custody were in the jails for. Were they in jail because they committed a crime against a woman or a child?

Ms PLIBERSEK—Trish, one of the figures that was given to us earlier in this inquiry was that in the whole of the period that was examined by the deaths in custody report the number of men who died in custody was fewer than the number of women who died as a result of domestic violence in the state of Queensland in a year.

Ms Frail-Gibbs—That is exactly right.

Ms PLIBERSEK—Do you think Aboriginal women are being made to bear the guilt? They get the bashing and then on top of that they have to bear the guilt of dobbing their bloke in as well.

Ms Frail-Gibbs—That is exactly right.

Ms PLIBERSEK—How do we deal with that?

Ms Frail-Gibbs—It comes back to educating the women, firstly, that it is a crime and they do not have to put up with it, but also educating the perpetrator too—to say, ‘It’s not acceptable for you to treat women like that.’

Ms PLIBERSEK—And, ‘It’s your responsibility; if you do it, you will get in trouble.’

Ms Frail-Gibbs—Yes. Under our constitution we do not provide a service to males. Because I come from Brewarrina I was out there for a holiday once. There is a new jail out there for low-risk offenders, so I was talking to the governor there—I think it was the governor. He invited me out there, and I thought, ‘Oh, I can’t really do it under my constitution,’ but then I thought, ‘Hang on, I will go out there.’ So I went out there and I spoke to the inmates about what they had done to get into the jails, because the majority of them were there because of domestic violence—because of how they have treated women. I had to put it to them from a woman’s perspective—not from a victim’s perspective, such as that of their wife, but from a woman’s perspective. It was really confronting for a couple of them, and that is the type of stuff that you really do need.

Ms PLIBERSEK—Do you think that legal services have that responsibility for community education as well, or do think that legal services cannot cope and somebody else has that responsibility?

Ms Frail-Gibbs—I would say that, yes, we do have that responsibility; but I would also say that, no, we cannot cope. Our workload is so huge already that we cannot cope. However we would like to continuously have input into the education part of it.

Senator HOGG—Do you reckon that your charter is not wide enough then? You said that you are solely confined to women.

Ms Frail-Gibbs—No, we cover women, children and youth.

Senator HOGG—Do you think that you also need to be able to take the information you are getting out of your service and impart that to men as well? I am not trying to give you more work—you are overloaded as it is—but it seems to me that, when you confronted those people, you touched a raw nerve with some of them.

Ms Frail-Gibbs—Yes, we did.

Senator HOGG—It is not much use if it is all bottled up with you people. That is what I am trying to say.

Ms Frail-Gibbs—I think there would only be two jails able to cope with that type of confrontational stuff—those would be the jail at Brewarrina and the jail at Glen Innes. Again, those house low-risk offenders. I could not imagine going into a jail like Long Bay. I would not even ask my staff to go in and confront a perpetrator in Long Bay.

Senator HOGG—So you are talking about low-risk offenders?

Ms Frail-Gibbs—Yes, I am talking about low-risk offenders. The majority of the time—and this is my personal belief—if they are high-risk offenders and they are in those type of jails then it really would not matter how you confronted them; you would have the door shut in your face. As I said, that is my personal opinion.

Ms PLIBERSEK—I would like to ask another question. You have brought us to quite a difficult discussion topic—that is, there are some men who probably no matter what are going to

continue to be violent. I used to work in the area of domestic violence as well and I can remember cases where I actually thought, 'He's going to end up killing her if something doesn't happen.' You would see that in your own experience. Yet there is this strong desire, which you were talking about before, because of deaths in custody within the Aboriginal community, to keep men out of jail. But there are some men who, if they are kept out of jail, are going to end up killing someone. Do you think that is true?

Ms Frail-Gibbs—Yes, I really do.

Ms PLIBERSEK—How do you deal with that morally and emotionally? As an Aboriginal woman, you have this pressure from the Aboriginal community to keep men out of jail but, as someone who works with women, you know that that is incredibly dangerous for their potential victims. How do you reconcile that yourself?

Ms Frail-Gibbs—Quite easily.

Ms PLIBERSEK—You put them away again?

Ms Frail-Gibbs—I think we should put the responsibility back on the perpetrator. Why should you, as a woman and as a worker, carry his responsibility for his violence?

Ms PLIBERSEK—Do you get a hard time from other people in the Aboriginal community for having that position?

Ms Frail-Gibbs—It is quite funny, but I do not. I think that is because they know I would come straight back at them. The community I come from is a small country town—Brewarrina—as I said earlier. The incidence of domestic violence there is quite high. The males there all know the area I work in and they know that if we are all out partying and they go to hit their women or something then I will step in and I will say something. They have never once come back at me—neither at that time nor the next day. That just goes to show that basically they do respect me. But it takes a lot of hard work to get to that stage, and it takes a strong person to be able to carry that stage.

Mr JOHN COBB—I would like to get to the part we have not talked about. As you said, and we have just established, this is also about children and youth, but your own web site says that the main focus is Aboriginal women escaping domestic violence. I have no argument with that but, horrific as that is, child sexual abuse is almost worse to my mind—or just as bad, certainly.

Ms Frail-Gibbs—It is a lot worse, to me.

Mr JOHN COBB—I notice that you also say—and I agree—in the second last paragraph:

Child abuse and child sexual assault are at horrendous levels in the Aboriginal community. The extent and effect of child sexual assault is hidden, and in some communities it has become “normalised” due to the extent of its impact.

What do you do to try to deal with that?

Ms Frail-Gibbs—This is the hard problem that I have been talking about in the last, say, two months with our staff. We have been producing a lot of resources for the community—and we produce a hell of a lot of resources for youth—but I have noticed that, 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.

Mr JOHN COBB—It seems to me that the big issue, which I think you are agreeing with, is getting people to face and deal with it in the first place.

Ms Frail-Gibbs—Yes.

Mr JOHN COBB—That seems to me to be very much your role.

Ms Frail-Gibbs—Yes.

Mr JOHN COBB—You just said that you had never been abused for taking on women's issues. I know Brewarrina and Walgett and all those places quite well. Is the same true if you try to bring a child sexual—

Ms Frail-Gibbs—It is especially true for me with child sexual assault, because I am very confronting with that issue.

Mr JOHN COBB—So you are not pilloried or ostracised because of that?

Ms Frail-Gibbs—No, not at all.

Mr JOHN COBB—If the community—or, more importantly, the Aboriginal community—accepts that, why is it so hard to get it dealt with?

Ms Frail-Gibbs—As I said earlier, it also takes a strong person to be able to get to the stage where you are not being ostracised. There are quite a lot of us around but there are not enough.

Mr JOHN COBB—I am not saying for a second that it is not hard to get it dealt with in the rest of the community, but how do you bring it out? Do you mostly know that is happening and cannot deal with it, or do you not even know it is happening?

Ms Frail-Gibbs—It is not just that. A lot of us have dealt with this matter or have rung the Department of Community Services, and they are understaffed too. They have one worker who works in the Bourke office and has to cover all the outlying areas. They cannot do it.

Mr JOHN COBB—I accept that you are understaffed. That is not the issue that I am following.

Ms Frail-Gibbs—I am not saying that we are; I am saying that other services who are supposed to provide that service are understaffed. It comes back to the fact that we all need to work together.

Mr JOHN COBB—So you are saying that, even though you might be able to deal with it, getting the rest of the bureaucracy to deal with it, or the police, or whoever—

Ms Frail-Gibbs—Yes, and it also comes back to being frustrated with the other services because we know that they are understaffed. If you ring up and report a suspected child sexual assault case, six months later the child is still sitting there in the house with the perpetrators.

Mr JOHN COBB—If you have an idea about how we can help this process I would very much like to hear it, because to me this is the worst thing we face as a community.

Ms Frail-Gibbs—I totally agree. I was talking to a girlfriend on the weekend and she was telling me of a case of hers—she works as a youth worker—where a 14-year-old boy thought it was quite normal for everybody within the household to have sex with each other. He thought that that was completely normal.

Mr JOHN COBB—If you have some ideas, please write to us.

Ms Frail-Gibbs—Okay. You would not really want to hear my proper ideas.

Mr JOHN COBB—Yes, I would.

Ms Frail-Gibbs—I would cut them off.

Senator HOGG—Following on from that question, is the incidence increasing, stable or decreasing—for both the child sexual abuse and domestic violence?

Ms Frail-Gibbs—I think that domestic violence is starting to increase, and that shows in the fact that the youngest person in Australia to die of domestic violence was a 15-year-old girl who died on Boxing Day two years ago. 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 what a relationship is all about. I believe that domestic violence is increasing.

Senator HOGG—That is domestic violence—what about child sex?

Ms Frail-Gibbs—That would be a lot harder for me to answer because child sexual assault is so behind doors that we do not know what the exact figure was in the first place. It goes back 20 years, to a time when child sexual assault was very rampant in all the Australian communities and there was a lot of work done.

Ms PLIBERSEK—Before people could even speak about it.

Ms Frail-Gibbs—Yes. Nowadays, within the Aboriginal community, we are standing up and saying, ‘What about our community?’ There is still not a lot of work. A lot more money needs to be poured in to all the services to be able to address that issue.

CHAIRMAN—Is it worse in the communities in the country and the bush than it is in Sydney?

Senator HOGG—Good question. That was my question!

Ms Frail-Gibbs—I really would not know, because one of the good things in the country is that basically everybody knows everyone's business. Therefore, it might give a bit of an indication that it might be worse out there in the country because everyone knows what is going on behind the closed door whereas in the city you do not get that, but it might be just as bad here in the cities. I would not be able to answer that question. I do not specialise in that area. I think you would need to ask somebody who specialises in child sexual assault. I think it is something that is really good to bring out in this forum.

Ms PLIBERSEK—One of the things that has come up in our discussions with other witnesses is whether we should have more women-specific services or whether we should be expecting ATSI LS, the Aboriginal and Torres Strait Islander Legal Service, to put more of their emphasis on civil law and family law and not so much of their emphasis on defending men in criminal cases. What do you think the balance is there? Do you think we should be urging the broader Aboriginal services to reorder their priorities so that they are able to deal more with family and civil cases, or are women more likely to use and get good service from specific services for women?

Ms Frail-Gibbs—All of our research—although I hate to associate the word 'research' with Aboriginal people, as we are the most over-researched people in Australia—indicates to us that women do want to use a service for women. I am sure that all the other services for women would agree with that. We were set up because women wanted to use a service for women.

Ms PLIBERSEK—You look after kids and young people as well. What happens if juveniles do not get proper legal support?

Ms Frail-Gibbs—That would be criminal law and, as I said, we do civil law. However, if a youth does ring up our service with a question regarding criminal law, we do not turn them away. We would be able to provide advice about it but we do not do case management, because they are youths.

Ms PLIBERSEK—I notice one of the areas that you spend a lot of your time on is sexual assaults. Do you provide court support workers to go along with women who have been victims?

Ms Frail-Gibbs—Yes.

Ms PLIBERSEK—Can you tell us a little bit about what you do to support victims of sexual assault?

Ms Frail-Gibbs—Rachel, our principal solicitor, would be able to answer that best because she does do court support. She does the Newtown court support once a month, so she would be best able to answer that. I have just started supervision for our workers. One of the reasons why workers are forever leaving their jobs is that they are overworked, but they also carry a lot of stuff with them at the end of the day. My workers were always coming to me after they had had a particularly bad client, mainly in regard to sexual assault and especially when dealing with child sexual assault, but now they go and get debriefed about it. That is one of the best things we have brought in. However, it is also expensive and is being taken out of my core funding.

Ms PLIBERSEK—But you would have solicitors that go along to court and also offer advice on the phone?

Ms Frail-Gibbs—Yes.

Ms PLIBERSEK—With 1½ solicitors, you would not even touch the tip of the iceberg with regard to sexual assault cases.

Ms Frail-Gibbs—No, we do not.

Ms PLIBERSEK—Who else could an Aboriginal woman turn to if she has been the victim of sexual assault?

Ms Frail-Gibbs—You have the IWPs and the family violence programs within New South Wales, so there are services within New South Wales. There are also some really brilliant community legal services within New South Wales that have a good understanding of our culture. One of the things that people do not really understand is that when dealing with a sexual assault survivor they will tell you part A and then they will skip to part K and then go to part Z and then come back to part B. It takes a lot of skill for the worker to be able to bring that together. Being Aboriginal, we automatically do that, but it is a lot harder to bring that together. The victim may think that something is not important and will not mention it, so one of the reasons you need services such as ours, services that really specialise in these areas, is to draw out that information.

Ms PLIBERSEK—What about family law such as in custody cases? Do you offer advice on those?

Ms Frail-Gibbs—We do advise but we do not do case management. A five-minute case can turn into a two-year case and we just cannot afford to do case management on it.

Ms PLIBERSEK—Where would people go for that sort of help?

Ms Frail-Gibbs—We will usually try to find them a pro bono solicitor who would be able to do it.

Ms PLIBERSEK—So you are always asking for favours?

Ms Frail-Gibbs—We are always asking for favours, yes. We have quite a good arm of pro bono services out there.

Ms PLIBERSEK—That is good.

CHAIRMAN—I am fascinated by your half a solicitor. Is that the top half, the bottom half, the left half or the right half?

Ms Frail-Gibbs—It is the smart half.

CHAIRMAN—What does this individual do with the other half of her time?

Ms Frail-Gibbs—She is a mother. She works for us two days a week and then she is at home. One of the other things that I want to quickly bring up is industrial law. No-one has talked about industrial law and how that affects Aboriginal people. We have the New South Wales Working Womens Centre here, and only recently they have employed an Aboriginal admin officer who takes all the first calls. Word of mouth within the black community is unbelievable. We outdo Telstra every time. Now all of a sudden people are realising that there is a black worker at the Working Womens Centre and they are starting to get a good increase in the number of Aboriginal women using that service. People know a little bit about the unions, but they do not know much more than that. They really do not know anything about industrial law, and that is something that really needs to be taken into consideration too.

Senator HOGG—Have you been with the service since its inception?

Ms Frail-Gibbs—Yes.

Senator HOGG—Can you give us an idea how the nature of the work that you do has changed over that period, or has it been pretty much the same?

Ms Frail-Gibbs—Pretty much the same.

Senator HOGG—What about the funding? Has that changed?

Ms Frail-Gibbs—It is pretty much the same.

Senator HOGG—In other words, the nature of the work is the same, the workload is heavier, the funding has remained the same and your capacity to deal with the issues that are confronting you has really outstripped all your resources.

Ms Frail-Gibbs—Yes. Last year we put in a submission to the state Attorney-General for extra funds. It has been approved in cabinet but Treasury has not been able to find the money. So it is still sitting there in limbo. That is for an extra five positions. We actually asked for seven and we had five approved.

CHAIRMAN—Trish, thank you very much for coming. We appreciate your advice. If we have any further questions, would you mind if we put them in writing rather than asking you to come back?

Ms Frail-Gibbs—No worries.

CHAIRMAN—We do not want to take away your more valuable time out doing your job. Thank you.

[11.48 a.m.]

MATTHEWS, Miss Winsome, National Network of Indigenous Womens Legal Services Inc.

MILLER, Miss Leanne, Committee Member, National Network of Indigenous Womens Legal Services Inc.

CHAIRMAN—Welcome. Thank you for coming to talk to us today. Do you have a brief opening statement that you would like to make? I do ask it to be very brief.

Miss W. Matthews—In the context of this issue, it is brief. The impact of colonisation still reverberates into the neo-colonial forms, especially regarding the first nation's women, Australian Indigenous women. Our history is the scenario of discrimination that has been mutated to a disadvantaged landscape that Indigenous women strive to maintain and sustain their traditional practice as women in these modern times. Nothing has changed from our view. The society now still upholds the discrimination, bias and prejudice from Australian history.

The National Network of Indigenous Womens Legal Services reiterates the following points that have arisen in our submission. There has been an underresourcing of Indigenous women's legal services—in particular, the Indigenous Womens Program, the family violence prevention units and the National Network of Indigenous Womens Legal Services, to be known as the network in the context of this discussion. The network received philanthropic assistance and government seeding grants only in 2001, which has helped to strengthen the network, providing assistance to establish a governance framework and some infrastructure, including enhancement and expansion of the Indigenous Womens Program as well as legal service provision to our women.

The network has built unity amongst Indigenous women working in legal services and assisted our people to deal with and address the issues surrounding their legal disadvantage. The network provides a central point of contact not just for Indigenous women's legal services but also for Indigenous women working in the community legal centres. It is also a valuable resource to non-Aboriginal practitioners, policy makers and the Australian legal fraternity.

Issues for Indigenous workers in rural and remote areas revolve around access to quality legal firms and solicitors, the quantity and quality of time to be consulted and advised appropriately by legal aid solicitors who speak only in English, and customary law practices intersecting with the Australian legal system. In this setting, language and gender become a prime and major concern.

In some remote towns there is still no legal service. Service providers such as legal aid and Aboriginal Legal Services fly in half an hour prior to court commencing and barely have the time to advise or consult with their clients about their charges or the options that are open to them. Often they are advised to plead guilty. I am referring not just to adults but to teenagers as well, who do not understand the legal system. Often the plea is an easier option for solicitors

given that they do not have the time or resources to do any more. The issues have been consistently raised with no action having been taken.

Our submission requests a coordinated and intensified effort by Commonwealth Attorney-General's and the state legal aid commissions to address the identified legal needs of Aboriginal and Torres Strait Islander women. Commonwealth Attorney-General's and the Aboriginal and Torres Strait Islander Legal Services need to demonstrate leadership to Indigenous women by negotiating with the network to commence discussions on developing policy change so that the Australian legal system is fair and just for all its citizens.

CHAIRMAN—I want to ask you a question so that the committee can understand your relationship with other organisations. It seems to me that New South Wales has all sorts of different services that cover some of these areas that we are concerned about. We spoke earlier this morning with the Womens Legal Services of New South Wales. How are you different from them? To what extent do you overlap? Where does your funding come from? How many of you are there?

Miss W. Matthews—We all belong to the National Association of Community Legal Centres, which is a large national body. We all attend conferences on a national basis as well as an AGM to go through the workings of the articles of the constitution. The Indigenous women's program in New South Wales is placed in the New South Wales Womens Legal Resource Centre, and there are similar models across the country. The resource base that the women's legal resource program has given to the Indigenous women's program has added to their sustainability and longevity as the initial funding for those agencies would not have enabled those agencies still to be in existence almost nine years later.

CHAIRMAN—Where does your funding come from?

Miss W. Matthews—Commonwealth Attorney-General's, under the family law and legal aid provision. The first funding for the Indigenous women's program came through in 1996. No real assessment was done to quantify what degree of funding was required to address the need. In the beginning the program funding was skeletal. Good back-room resourcing by the larger organisations has assisted in maintaining these programs.

Senator HOGG—What was the basis of the funding in 1996?

Miss Miller—It was as a result of a parliamentary inquiry to do with community legal centres.

Senator HOGG—How was the quantum determined?

Miss W. Matthews—It was done as a result of a report titled *Equity before the law*.

CHAIRMAN—You are funded by the Commonwealth?

Miss W. Matthews—That is correct.

CHAIRMAN—How large is your organisation? Is it just the two of you?

Miss Miller—No, the National Network of Indigenous Womens Legal Services is a peak body that represents 13 family violence units.

CHAIRMAN—How many people are employed in the national—

Miss W. Matthews—One person for the national network.

CHAIRMAN—Which one of you?

Miss W. Matthews—Neither, because they are busy doing other things, but the founding members have been nominated by the collective to come and do this.

Mr JOHN COBB—You are the elected representatives, are you?

Miss W. Matthews—That is correct.

Mr JOHN COBB—You have a full-time staffer.

Miss Miller—We have one staff person to cover the national issues of Indigenous women working in IWPs, family violence legal prevention units as well as within the justice systems of state, Commonwealth and territory departments.

Miss W. Matthews—It is a national coordination position.

CHAIRMAN—Do you do policy development or disbursement work together with education work? I understand the coordination role, I think, although that must be quite difficult.

Miss W. Matthews—Very.

CHAIRMAN—Do you have all those roles?

Miss Miller—Yes, we have everything in one person who is located in Perth who coordinates our policy submissions, our funding applications, our outreach assistance to our workers who experience industrial relations matters in relation to the location of CLCs. We also coordinate a national women's leadership program called Our Strong Women. We are in the second year of that. It is funded by the Office of the Status of Women.

CHAIRMAN—One of things that we have been trying to address—and this is our second public hearing, so hopefully it will continue—is this dichotomy between the legal necessity to defend people who are involved in criminal cases and the well-accepted and well-known need to address family violence, family sexual assault, and youth and children sexual assault issues. Do you have any idea how we could do that better, besides saying, 'We need a larger bucket of money'? We all know that, but leaving that aside is there a better way to go about it? Is there a better model?

Miss W. Matthews—Yes, do you want me to tell you about it?

CHAIRMAN—Remember you have to confine this theoretical exercise to the same size bucket of money.

Miss W. Matthews—This is operating and functioning right now. The New South Wales Attorney-General's Department are currently using a circle sentencing pilot in Nowra, which has been through its evaluation and is a proven success. Now another five pilots are being instituted in New South Wales—being Walgett, Brewarrina, Dubbo and the other two are yet to be launched. The majority of Aboriginal offenders are men and the majority of people going through there are for violent offences. The outcome has been that 98 per cent of all people through there for violent crime have an undercurrent of drug and alcohol abuse and that leads to property damage and a plethora of other matters, as you can imagine. Of late, post evaluation, there has been a 60 per cent decrease in that type of crime in the Nowra district and that does add to the success of circle sentencing.

Circle sentencing is embarked upon by the establishment of community justice groups in a given location. From that they are resourced, supported, trained and orientated in that function by the Attorney-General's Department to be the community voice that aids the magistrate in determining a sentencing on Aboriginal offenders. That is in view of research done that showed that traditionally when Aboriginal men went to court the majority of time they spent before a magistrate rated between two to seven minutes and often they were found guilty and sentenced to no less than three to six months. Circle sentencing has turned that around in that the offenders now have to confront their wrongdoings in front of their peers and respected and well-regarded elders of their community. For the first time we are looking at substantial case time of two to three hours, but we are also witnessing a remarkable reduction in the types of crimes being committed by Aboriginal men, particularly in that area. That was piloted in Nowra and has now concluded its two-year evaluation, which would be available on the AJAC web site at www.lawlink.nsw.gov.au.

CHAIRMAN—What would be the outcome were the perpetrator to be one of the elders?

Miss W. Matthews—It would go through the case. That has never been—

CHAIRMAN—That must happen.

Miss W. Matthews—It has not been done at this stage. You need to understand that statistically the large majority of Aboriginal people who offend are between the ages of 21 and 30 and predominately are men—and it diminishes. The age range of offending diminishes.

I suppose the circle is seen as a way of culturally and spiritually bringing people back to the fore. One thing that needs to be mentioned here is that, in the beginning, the very first Aboriginal Legal Service office was in Nowra. The first calendar they put out for that year was a picture of a non-Aboriginal man in the dock surrounded by his peers, who were all Aboriginal people. The judge was Aboriginal as well. The comment on the bottom said, 'Let him be judged by his peers.' We know that that has been a falsehood in this country, but now, for the Nowra Aboriginal community, that can be a realism because they have a community engaged with a magistrate, assisting him to come up with the best sentencing options that not only disempower the individual but re-empower him as a man in his community amongst his children and all his people.

Ms PLIBERSEK—I will ask a follow-on question about circle sentencing. I presume, though, that you would not advocate that in cases of sexual assault, domestic violence or child sexual assault?

Miss W. Matthews—At this point in time they would not be considered as being under it, because it has just come out of its first evaluation. There is now a rising strength amongst our people to deal with that issue, but we are looking for two options: yes, we know that the legal system is a reality and that some matters will need to go there, but women are also talking about another stream, and that is the healing stream and what infrastructure or resources we have to look at the healing of perpetrators who have breached the human rights of so many people—in some circumstances, intergenerationally.

If the healing aspect were to come to a point where people felt there needed to be a legal remedy, then that is their right, but it is about how we orchestrate two paths for the Aboriginal community to be self-determining in dealing with that matter. There have been suggestions by women that we look at outing campaigns. That is fine too, as long as people are aware of the consequences of doing so and the fact that it is such a silent issue. But we also need to be reminded that children have died—they have been killed—because people wanted to have big mouths and expose. There has to be a very sensitive approach. Elder women talk and think about this all the time. When do we orchestrate them to be in the right position to take the leadership and authority to deal with this business?

Ms PLIBERSEK—The reason I raise sexual assault, domestic violence and child sexual assault in this context is that it seems to me that, once again, you make the victim responsible for deciding what happens to the perpetrator. I think that, historically, there is a lot of evidence that victims do not want to see harsh consequences for the perpetrators, but that is not necessarily the best thing for everyone.

Miss W. Matthews—No, I am aware of that. I have never been a victim of any type of abuse; therefore, I can only take the lead from what victims have told me. I am talking about women who have been victims for almost 30 years of their lives. They do not want to see their offender thrown in jail. They see that he is a sick individual and wants to be healed. Isn't that the right of a victim?

Mr JOHN COBB—No, not if it is not in the best interests of the whole community.

Ms PLIBERSEK—Not if he continues to abuse her or anyone else.

Miss W. Matthews—That is a consideration that would be part of the dialogue. I am sitting here in an inquiry answering questions being put to me. I am not looking at the broader context. I have not had that time. Our people are engaged and empowered to make the change. It is about how well they are supported by government to do that, but it also comes to leadership. What leadership is government demonstrating for people to move forward?

Ms PLIBERSEK—Some years ago in New South Wales it used to be that, if police were called to a domestic violence incident, the victim would have to ask for an AVO, press for an AVO and sometimes press charges herself if she wanted legal action, but taking that

responsibility away from the victims has, I think, been a very positive thing, because you do not know what continued threats are happening in that house.

Miss W. Matthews—Yes, we are very aware of that.

Ms PLIBERSEK—This is why I am asking about circle sentencing. Don't you think that you face the same pressures? If you put the responsibility on to the victim and she becomes—I am saying 'she' because generally it is 'she'—

Miss W. Matthews—As I said, sexual assault and domestic violence are not handled within those matters. The reality is: when has the time been given to the elders, who are quite profound in their role, to explore how they would deal with the issue of sexual assault? If they were to deal with an issue of violence that was so horrendous, how would they go about it? Give them the opportunity. Let's not just say, 'No, they can't deal with it because it's not going to address all these well researched feminist ideals around how violence should be treated.'

Remember that, as Aboriginal women, we have not had our fulfilled right to be out talking about Aboriginal women's business and how we want it to be operative in this country. We did not have that advantage, like the feminist movement did, in this country. That needs to be remembered. Do not put your feminist ideology on us in terms of what we are doing here. We are trying our best with very little. The feminist ideology does not work in my town and it does not work amongst my women.

Mr JOHN COBB—I do not think Tanya was talking feminist ideology. I think she was talking straight-out commonsense.

Ms PLIBERSEK—A lot of Aboriginal women whom I have spoken to would not be happy with the notion that it becomes their responsibility, once again, to make decisions about what happens to perpetrators, that they have to push for them to be jailed.

Miss W. Matthews—What about the victims that have very clearly made the statement: 'I want two options. If he can't be healed, then I do want him to go to jail'? What about those women?

Ms PLIBERSEK—Are you advocating circle sentencing for these cases?

Miss W. Matthews—No.

Ms PLIBERSEK—All right. I think we can move on to the next topic.

Miss W. Matthews—The elders have not been given the opportunity to determine for themselves whether that is an appropriate setting to do it in and whether they have the capacity in a real way or within what the law determines to deal with it effectively.

CHAIRMAN—When you talk about 'elders', are you talking about the situation in a remote or rural community?

Miss W. Matthews—No, I am talking about the situation in every Aboriginal community in the state of New South Wales—

CHAIRMAN—Including Sydney?

Miss W. Matthews—Including Sydney.

CHAIRMAN—How does that work appropriately in Sydney where you have such a large population coming in almost as—please excuse the use of the term; I do not know what other word to use—migrants from remote or rural areas?

Miss W. Matthews—There is a regard for the traditional owners of this place. Again, that challenge was only put to them during the Bicentenary. People were here as late as the thirties and forties. They have been here for such a long time and maintained this place. They have created a monoculture of themselves in this place. Redfern would be representative of a vast number of Indigenous people, not just from New South Wales but also from across Australia. So they would define that against their own ways of being a community. I want to recall what Mr John Cobb said about a feminist ideology. Tanya, would you say that your understanding of these issues comes from a feminist background?

Ms PLIBERSEK—Absolutely, I would. I am not ashamed of that. I would also say that I know a lot of Aboriginal women who would call themselves feminists too and who, like me, would feel very uncomfortable with the idea of putting perpetrators face to face with victims of a very serious crime like sexual assault or child sexual assault. You again make the victim responsible for what has happened to her and for deciding what happens in the future.

Miss W. Matthews—I have not done that.

Ms PLIBERSEK—I am not saying you have. I have heard of the use of restorative justice programs—not in Indigenous communities—where sexual assault victims have been put face to face with sexual assault perpetrators. I think that is a real problem, and I do not want to see a trend towards that anywhere.

Miss W. Matthews—What needs to be noted, too, is that the facing of victims and perpetrators does not occur in a circle; it happens in a courtroom. We have to be very clear about that. The circle does not happen in a courtroom; it happens in a community or in a nominated area that they choose. People should not make a judgment about circle sentencing in relation to this matter, because it has not been explained clearly enough and it has been approached in a way that assumes it is going to do this and it is going to do that. Those parameters have not been set. The question was asked: is there a mechanism?

Ms PLIBERSEK—I think it is great for property offences and drug offences. There are a whole lot of areas where it is very positive. It is really important not to put people in jail for minor offences—which happens too much. I agree with all of that. I thought you were leading towards sexual assault, child sexual assault and domestic violence, and I wanted to clarify that. You mentioned the intersection between customary law and—

Miss W. Matthews—Visiting solicitors.

Ms PLIBERSEK—Could you tell us more about that?

Miss W. Matthews—In terms of customary law, this is what is reported from workers that are dealing with these communities. It also must be said that from time to time they put themselves in a life-threatening situation. Gender based affairs still exist in the traditional communities and often we have male solicitors going out to these communities to speak to women about their affairs and that is not proper. The other point is that, when the National Indigenous Womens Network are doing their community visits, the fact that they are women can also be inhibiting for the traditional men of those communities. One of the most positive examples of that has been Libby Carney who was up in Port Keats off Darwin. She and her family actually moved into the community and became part of that landscape. Therefore, she was able to be effective by the fact that there was more of a kin relationship in how she was running her affairs and it was not necessarily a service alienated from the people and place. There have been some really good examples of how women have turned that around but it does come back to practices of culture around relationship and kinship that are able to suffice.

Ms PLIBERSEK—Do you think that there should be separate services directed for men and women?

Miss W. Matthews—Yes, it is necessary.

Ms PLIBERSEK—Is that across the board?

Miss W. Matthews—In terms of Aboriginal Australia, yes.

Ms PLIBERSEK—One of the areas that we have examined again and again is that, because of resourcing issues, ATSILSs concentrate on criminal law. Would you just allocate a bucket of money to men and allocate a separate bucket of money to women?

Miss W. Matthews—Now that we have quite a significant degree of Aboriginal stakeholders in the Australian legal landscape the question is: when are we going to come together and actually work out how effective we can become collectively in dealing with all the horrendous problems that our community are confronted with? The reality is that policy is becoming more flexible and accepting of holistic approaches and this is the reality of how we need to be dealing with Aboriginal Australia today, especially against the backdrop of the compounded issues that so many of our people carry. As it has been stated earlier, to talk about sexual assault you need to go through seven other matters before you even feel brave enough to get to that point. There is also whether or not you feel it is a priority to speak about that because to have a roof over your head may feel a whole lot better than to have your basic safety. That is a truism amongst our people.

CHAIRMAN—Isn't it probably also true that that is true in many non-Indigenous communities too?

Miss W. Matthews—I do not know. I am Aboriginal.

CHAIRMAN—You have said that you support separate funding bases for women and men. Do I assume that is separate funding bases for criminal matters versus women-specific issues like domestic violence?

Miss W. Matthews—I do not think we could be so quick to assume that. There needs to be an opportunity for the collective of those people to come together and determine how best to practise in a holistic approach to address a lot of the undercurrents that are now being well documented as to the criminal offending of Aboriginal people.

CHAIRMAN—Do you then see any merit in different funding systems between the country and the city, considering that in many of the remote areas there are fewer generalist services whereas obviously in a city the size of Sydney there are many services available? Whether or not the people can find them is another question but they are there.

Miss W. Matthews—What needs to be stated at this point is that there is a great growing self-sufficiency amongst the rural and remote communities because this is where the community justice concept was born which we have adopted here in New South Wales. The community of Yuendumu have got to the point where they now have a community high court. They are dealing with a lot of the business on themselves and it is well regarded by the legal system in the Territory. I think there needs to be an exploration of the self-sufficient elements which communities have defined for themselves that are now accepted by the legal system. Community justice groups are not going to go away. They are on the increase in New South Wales. They are really taking over in the top end of Queensland and the Northern Territory. The big picture for community justice groups is that you have the community of Yuendumu looking now at different levels within that community justice. They call it their community high court. They are dealing with all the issues of safety, violence, law and lore too in that framework. I think it would be ideal if this committee could showcase some of those endeavours, because they are brilliant. They are cutting edge. They are making the change and making people feel safer. They are very legal.

CHAIRMAN—I assume that these groups that you are talking about are not in any sense formal, incorporated groups.

Miss W. Matthews—They are getting to that. Addressing family violence in the Indigenous community was the spark of this. At a lot of the meetings that we were having at that national level, people were coming and showcasing all the brilliant new things they were doing—and with minute amounts of money. I suppose what I am saying is that Aboriginal innovation still has not been tested to its full extent in dealing with this issue. It is about the opportunity and willingness for government to support and then provide for that—like Yuendumu having a community high court to deal with legal issues that are pertinent to them in that place and to their future. I suggest that you have a look at it. You would be very surprised and most impressed.

CHAIRMAN—Within that system in that community, to what extent are the issues of child sexual assault or abuse still hidden? Or are they opened up?

Miss W. Matthews—Getting family violence recognised at a national level has had a ripple effect through a lot of the community. I suppose that the biggest thing that I have seen is that

women who were at the forefront of this issue for the last 30 to 40 years are now being joined by men. Aboriginal men are starting now to speak out. The most profound thing I have ever heard was from a traditional man from Eylandt Groote, who said that men need to remember where they come from.

CHAIRMAN—We heard this morning from another group that it is still the case that there are families—real families—where young children think it is normal for everybody in the family to have sex with each other.

Miss W. Matthews—If there are people in positions of power and authority who know about that, what are they doing in not reporting it and getting it changed?

CHAIRMAN—You would get no argument out of me, but we should be asking that question.

Miss W. Matthews—That is the question that needs to be asked. There have been a number of inquiries. The peril of Aboriginal children and women is often stated in such a casual way. I remember sitting around and hearing a group of Aboriginal women talking about the horrendous rape of a child. I said, ‘What did you do about it?’ They said, ‘Nothing.’ Yet they have the audacity to use that person’s life as an example in inquiries like this, when they have done nothing themselves. I question it.

CHAIRMAN—I thought you said we were making progress.

Miss W. Matthews—We are making progress, but it is about how perils are used as fodder in conversations, and I do not think it is right. It is because of these conversations happening that there is this major problem. I think a degree of responsibility needs to be taken back by Aboriginal people so that we are not openly talking about such disgusting things when we are a people of culture who should know shame a whole lot better.

Mr JOHN COBB—I will get to where Tanya was a while ago. I guess that is one reason it does not seem to me that you could ever—certainly in the foreseeable future—deal with it in that circle sentencing.

Miss W. Matthews—Because there is no perceived view to look at it in the scope of circle sentencing.

Ms PLIBERSEK—The final comments you made raise the question that our inquiry is mainly focusing on legal resources for representing people, I guess, in criminal matters, family law matters and civil matters, the lack of resources and the distribution of those resources. But it seems to me from one of the things that you have just said and that others have said—and we have only had a day and a half of evidence so far—there is a very strong case being made that, by the time we are talking about legal representation, we are at the wrong end of the stick, so to speak. Would you argue that there needs to be a lot more resources at the beginning of the process—not just legal rights and responsibilities—because, by the time you are talking about child sexual abuse and stuff, we have almost lost some generations, haven’t we?

Miss W. Matthews—That is right.

Ms PLIBERSEK—Do you want to talk a little about that?

Miss W. Matthews—I suppose it comes back to community justice groups and how it has been proven now in the Northern Territory, because they have been going for over 10 years, and they are actually being utilised as a point of disclosure around a whole raft of issues. The other thing is—and I am a firm believer in this, which is why I am a big supporter of community justice groups—that it is about the localisation of authority. Sometimes some communities have to travel a hell of a long way just to alert someone that a crime has been committed. Let us not assume for a minute that there are telephones in these communities. Another thing is that it is about people's self-esteem in engaging with a non-Aboriginal system to talk about something that is really embarrassing to them and how there is still a large degree of cultural incompetence in the Australian service system, especially in regard to Aboriginal people. I reckon everyone in this room has been through some type of cultural awareness training at some point in time, but where has it led us to in terms of a quality service delivery, regardless of whether it is in a specialised Aboriginal service or it is from a mainstream agency? That is why I believe in the localisation of authority.

Right here, right now, across the country, there are elder women providing this support and resource, and the majority of them doing it off their own Centrelink pensions. That is true. They are not only raising kids in their community, but they also have their own kids or even their own grandchildren. Some now even have their own great-grandchildren. These women have held up the front for victims where everyone else has failed, even their own families, yet these women are still doing it off their pensions. I have said it numerous times, and I will say it again: if you are real about addressing sexual assault in the communities, you need to engage the elder women who have held up that front line with next to nothing for close to 25 or 30 years.

Ms PLIBERSEK—How can we do that?

Miss W. Matthews—The New South Wales Womens Legal Resource Centre, which came here, has engaged a large collective of these women, and it brings them in as its Aboriginal women's consultation group to assist it in keeping a finger on the pulse on how it, as a mainstream service, needs to be flexible and keep up with the needs and expectations of Aboriginal women against what they put up with on a day-to-day basis. So there are ways. Practical reconciliation is something in this country at the moment. I have never been a great believer in that as a policy. Practical reconciliation has been bred into me, as an Aboriginal woman, in that you still have the opportunity to look at social coalitions with larger organisations. Larger organisations, with their resources, now quite often seek advice from Aborigines and look at what role these women can play in helping their organisation to move forward while, in turn, the women receive resources or support, even if it means putting a phone into an elder woman's house so she can ring a 1800 free-call number to alert someone that a child has just arrived at her house. I will not go into the details, because it will shame that person, and I am not into that. But we are talking about stuff that should not be seen in this country in this day and age.

Ms PLIBERSEK—It is not part of our inquiry, but when we are talking about child sexual abuse inevitably the issue of family separation comes up. Do you want to make any comments about that?

Miss W. Matthews—Detribalisation is a reality. It is happening in Aboriginal Australia. If our people want to be saved from drugs and alcohol, they have to leave their family and community. Sometimes they are very paranoid about coming back, because they do not want to fall back into the drugs and alcohol. For too long, the victims have been shunted out of their family and community. Our communities only exist because we have children. The only reason we have children is because we have women. When we lose the women we have lost our communities. Banishment and ostracism are realities of our traditional culture. If we can have something like circle sentencing, why can we not look at a modern-day practice of banishment and ostracism for offenders to get them out of that place? You could do it for people who deal drugs in small communities—get them out, ostracise them, send them back to their people and let their people deal with them.

I suppose that is the other thing: the power we have in kinship and relationship. Properly examined, resourced and provided with the right infrastructure, we can make immense change. I am currently the project manager of an Aboriginal youth service in development out at Mount Druitt. We have horrendous rates out there, because we have the highest population of Aborigines in all of Australia out at Mount Druitt. My potential client load is 1,400 young people between the ages of 15 and 18. I already know that 82 per cent of them have been juvenile offenders at some time. Do you know the only thing that is grounding them into their own reality? Re-empowering them through their cultural and spiritual identity is grounding them. Sure, it is just a kinship language project but, by jingo, 12 months ago they were all drinking, using and having very unsafe sexual relationships with a lot of people. They are all working now. We have six of them boned up for uni, we have three working in the local TAFE and two working in two of the local legal centres. Re-empowerment of our people through their kinship and spiritual and cultural identity does make a difference. I envisage, if we were to properly structure it against our culture, that there would be a kinship language centre in every Aboriginal community. Do you know the first thing our young people identified? That their perpetrators were not related to them.

Ms PLIBERSEK—But would that always be the case?

Miss W. Matthews—No, but they had a resource, to know, to identify, because someone has always told them to call him ‘uncle’.

Ms PLIBERSEK—I see what you mean.

CHAIRMAN—Isn’t education of the young people part of the solution as well?

Miss W. Matthews—Yes, of course.

CHAIRMAN—When I mentioned that other matter, I should have said that they never mentioned the name of the family or anything like that—don’t get me wrong. They just mentioned the fact that there are some dysfunctional families where a young child will say, ‘I thought that was normal.’ How do you educate the youth as well that that is wrong?

Miss W. Matthews—As I said—and this has gone right away from the national network’s legal business now—

CHAIRMAN—That is okay.

Ms PLIBERSEK—And our inquiry, by the way.

CHAIRMAN—How do we come to grips with these issues if we do not talk about them? We are mostly talking about women and children, aren't we, and that is a fact.

Miss W. Matthews—Yes, and I suppose it needs to be stated too that the kinship language project is an education program of what we are doing out there. But the other thing is that the current system has had two failing Aboriginal education policies in this state. The resource of community was never utilised to really roll it out effectively. That is okay: we are doing it. We have young people who are redefining themselves through their cultural and spiritual identify. We have 15-year-olds in university courses. That is unheard of.

CHAIRMAN—That is good.

Miss W. Matthews—They are succeeding, with high distinctions in their first semester. What does that say about our society? That no-one has given them a go before. Let us look at what happened down in Redfern in relation to that incident. If we believe that actions speak louder than words then what were the young people telling us then? Also remember that two years prior to that incident there was another incident.

CHAIRMAN—I thought we were in Redfern now.

Miss W. Matthews—Yes, we are in Redfern. What did I say?

CHAIRMAN—You said 'down in Redfern'. You confused me.

Miss W. Matthews—Two years prior to that incident there was a similar incident in the community of Waterloo where it was alleged that police chased a young guy who jumped a fence and was impaled, and there was a riot. But what happened out of that? They set up a community solutions project and came up with all these 'No-one's listening to the people' statements. Everyone has the problems. We have the solutions. Come and talk to us. It is not about these forums or these settings; it is about stating the problem. We have all these Australian Indigenous legal things. How can we get them working together better? Throw us all in one room and let us have a go to sort out the problem because eventually, if the problem is not fixed, it is our problem anyway. Grant us that opportunity. Grant us the opportunity to be self-determining. It is a policy still in existence in this Australian government. When do we get the opportunity? We have the solutions. Women, out of their blood, sweat and tears and with not a lot of money, got a national Indigenous women's service network up and running—one sister at the helm supported by 200 others. If we can do that, what could we do with a resourced legal provision as set aside for Indigenous Australia?

CHAIRMAN—So you are asking for more resourcing?

Miss W. Matthews—No, I am asking for the opportunity for us, as Aborigines who have a commitment to the legal provision to our people, to sit with government so that we can work out the problem you have. It is an Australian government problem. We have the solution.

CHAIRMAN—In a sense, aren't we trying to deal with this?

Miss W. Matthews—Yes, that is right, and I am saying, 'Give us the opportunity to come to the table.'

CHAIRMAN—We have. You are here.

Miss W. Matthews—No, I am talking about the collective. You do not have the collective here. You have met with us one by one. I am talking about all of the collective: Aboriginal legal services, the national network of the Indigenous women's programs, the independently funded women's legal centres, violence prevention units—

CHAIRMAN—You want us to haul all of you to Canberra for one day?

Miss W. Matthews—No. I would like us to have time set aside by which a proper workshop could be engaged in to answer the question of how we successfully and succinctly—this could be the question—coordinate the provision of Indigenous legal services to the Australian Indigenous population. There is a question. Put us all in a room and we could answer it.

CHAIRMAN—You said we should set aside the time. Who sets aside the time?

Miss W. Matthews—Well, anyone who is interested in seeing an equitable legal provision to Aboriginal Australia who has the power to do it.

CHAIRMAN—Who is stopping you now?

Miss Miller—Funding.

CHAIRMAN—That was an honest question.

Miss W. Matthews—No, you have got the wrong end of the stick.

Mr JOHN COBB—That was a very good question. What is stopping you doing it now, simply coming to government and saying, 'Here's the answer'?

CHAIRMAN—I am not being facetious. I am serious. You said, 'We have to empower ourselves.' You said, 'Until we take a hold of this issue within our own communities, we're not going to get there.' I am certain you said that.

Miss W. Matthews—That is correct.

CHAIRMAN—Well, in terms of this workshop or whatever else you want to call it, why can't you do it today?

Miss W. Matthews—Okay. As chairperson of this inquiry as a result of this discussion would you be offering to offer your support in us attaining funds from the Commonwealth government to do this?

CHAIRMAN—We will consider that along with all the rest of the applications—

Miss W. Matthews—There you go. There is the question.

CHAIRMAN—with any other recommendations that we make when we conclude this inquiry.

Miss W. Matthews—Thank you very much.

CHAIRMAN—Is that fair?

Miss W. Matthews—That is very fair. Thank you.

CHAIRMAN—Good. We've got you on tape.

Miss W. Matthews—That's okay.

Ms PLIBERSEK—Better still, Bob, they have got you on tape.

CHAIRMAN—I know that. No worries. I did not say we were going to do it; I said the committee will consider it. There you go. That is all I am empowered to do. I cannot speak for the committee.

Mr JOHN COBB—I understand that Miss Miller is the chairman, and what is your position within this body, Miss Matthews?

Miss W. Matthews—I am the founding member. I am also an executive member of the committee. Did you want to say anything, Leanne?

Miss Miller—No. I think New South Wales was well addressed, thank you very much.

Ms PLIBERSEK—So, Leanne, you represent New South Wales and the other people are from different states?

Miss Miller—Yes.

CHAIRMAN—Thank you very much for your outspoken views. I have to say to you that because I have never missed these hearings I rarely sit down and re-read the evidence, and I think I will be re-reading this 45 minute session.

Miss W. Matthews—Fantastic. Thank you.

CHAIRMAN—Thank you for coming. If we have any further questions, you will not mind if we put them in writing?

Miss W. Matthews—Not at all.

CHAIRMAN—Thank you very much. Would someone move that *Access to justice and legal needs: a project to identify legal needs, pathways and barriers for disadvantaged people in NSW* be received as an exhibit?

Senator HOGG—I move that.

CHAIRMAN—Thank you.

Proceedings suspended from 12.33 p.m. to 1.31 p.m.

CHAIRMAN—I understand that Senator Hogg wishes to move that the submissions, Nos 25 through to 29, be received as evidence and be published.

Senator HOGG—That is correct.

CHAIRMAN—There being no objection, it is so ordered.

[1.32 p.m.]

McKENZIE, Mr John Francis, Principal Solicitor, Many Rivers Aboriginal Legal Service

CHAIRMAN—I now welcome the representative from the Many Rivers Aboriginal Legal Service to today's hearing.

Mr McKenzie—Many Rivers Aboriginal Legal Service is an ATSILS covering the North Coast region of New South Wales from the Hawkesbury River to the Tweed River and it is bounded to the west by the mountains. There are approximately 40,000 Aboriginal people in our region and we have the highest growth rate of Aboriginal population in the whole of the country. In my opening remarks I would like to refer briefly to three issues that, it appears to me, might be of interest to this inquiry.

Firstly, I would like to talk about the distribution of Aboriginal legal services between Aboriginal men and women. Many Rivers ALS, through necessity in terms of resources and choice of priorities, provides only criminal law representation. We provide assistance and placements for Aboriginal people who have civil and family work, and in my written submission I have detailed some of those. The Aboriginal legal services, by their very history, grew up to deal with the particular point in the legal system where Aboriginal persons charged with criminal offences were coming before courts unrepresented or poorly represented. Our organisation's view is that it is a necessity that we continue to target that aspect. But it is also our view that the provision of resources for a more comprehensive legal service delivery for Aboriginal people needs to be very seriously addressed.

The second issue relates to a proposed, privately tendered, non-Aboriginal controlled ATSILS model versus the existing—in New South Wales anyway—Aboriginal controlled model. I have been involved in Aboriginal legal services and related organisations for nearly 25 years. I can speak from experience, but also I think the figures show that what in fact happens in a court of law is that more often than not there is an Aboriginal person who is very fearful of the fact that he or she is coming before a very alien process with alien people in it. A very large part of the work of an ATSILS in criminal law practice is to, firstly, win the trust and confidence of that person so that they can give proper instructions and have that case properly presented. There is a very fine balance involved in the Aboriginal Legal Service model as it now is, where a solicitor or lawyer works hand in hand with an Aboriginal field officer. That is the key. That is the model which I have seen work well, provided both of the individuals involved know what they are doing and adhere to it.

The third issue I would like to briefly touch on is the issue between a centralised state model of Aboriginal Legal Service delivery and a regionalised set-up, as is presently the case in New South Wales where there are six regional ALSs. The regionalised model allows for direct communication between the decision makers in the ATSILSs and community members, especially those members from small and isolated settlements. Even in our region, as densely populated as it is, there are a large number of small, quite remote settlements. The community members and in particular the community representatives of the small settlements get very much

lost in the wash when we have a large centralised bureaucracy dealing with them. Those are the matters I wanted to start off with.

CHAIRMAN—The Hawkesbury to the Tweed is a large area. How many Aboriginal legal services are there in New South Wales?

Mr McKenzie—Six.

CHAIRMAN—Six discrete legal services.

Mr McKenzie—Yes.

CHAIRMAN—Then we also have the Womens Legal Services, which is another organisation, the National Association of Community Legal Centres—

Ms PLIBERSEK—They do not provide services. They are a peak body.

CHAIRMAN—and the Combined Community Legal Centres. Does that cover all of—

Mr McKenzie—No, there are only two of those. For instance, there are only two such CLCs in our whole region and they do not provide casework for Aboriginal people.

CHAIRMAN—How different is this model to what exists in Victoria, Queensland or Western Australia?

Mr McKenzie—Western Australia, as I understand it, has one ATSILS covering the whole of the state. I have not worked there but that is my understanding of it. They have a branch and offices. The set-up here in New South Wales is that up until 1994 it was a similar situation. There was the New South Wales Aboriginal Legal Service that covered pretty well the whole east of the state, and then there was the Western Aboriginal Legal Service in Dubbo that covered the western third or a bit more of the state. That was stopped for a number of reasons, but particularly because a lot of smaller communities were saying, 'We're not being heard. We're not getting the services that we want. We're not getting the tailoring of the services that we need for our particular situation.' So I understand the federal government moved towards doing this in 1995, and in 1996 it was implemented that we would be on a regionalised basis in New South Wales. There are six regionalised ALSs with their own territory, but we come together in our own peak group, called the Coalition of Aboriginal Legal Services, to deal with state-wide issues and more national issues.

CHAIRMAN—Your understanding of the tender process is that it is intended to dissolve that model?

Mr McKenzie—Certainly, in the way the tender exposure draft was worded, the preferred way of operation was definitely stated—that it be one service contract per state.

CHAIRMAN—You say 'was'.

Mr McKenzie—I do not know if the exposure draft is still current.

Senator HOGG—What is the status of the exposure draft in your view?

Mr McKenzie—No other document has been put out to supersede it, but, from statements from ministers, there is at least some degree of looking at aspects of it. We still do not know anything about timing. We have been put in a six-month funding situation for this current period. Our funding ends at the end of December. That is on the basis, we understood, that there would be tenders let by that time.

CHAIRMAN—In addition to the six of you who operate more or less independently, we have Womens Legal Services and support groups. Does all of this tribalisation of funding, models and organisations really make sense or is it, in a sense, frightfully expensive and inefficient?

Mr McKenzie—Dealing simply with the regionalisation of the six ATSILSs, I do not believe there is any inefficiency there. But I think your point brings in other agencies. Some of them are umbrella agencies and some of them do not provide any of the sorts of services that we provide—specifically, I am talking about criminal court representation. I do not think it is an ideal situation, but I think it is a product of the fact that the whole issue of delivery of legal services to Aboriginal people is still evolving and growing. It started in the early seventies, with the first Aboriginal legal services, as a criminal only type situation. They spread to some other issues from that. But, as you would see from our population increase and the static amount of our funding, quite obviously the workload shot up, the resources remained the same and decisions have had to be made. So we have a situation where there is more and more specialisation going on because of the dwindling ratio of resources to the problem at hand.

CHAIRMAN—But you are talking only about legal representation and nothing beyond that in terms of the whole portfolio of interest in law and justice. An earlier witness I think said that community models, where they are being tried—where women in particular take some responsibility for family members and these issues, and where justice may be dispensed before it ever winds up getting into the formal legal system—are showing dramatic results in terms of improvement in the degree of incarceration, the number of charges and the degree of abuse or even legal problems in the system. Do you have a view on those issues?

Mr McKenzie—I entirely agree that that is a great avenue to be going down. I am not sure if you are referring only to circle sentencing or to a broader preventative. In circle sentencing, of course, the matter has already come to court. The person has been charged and has gone through the court process, and there has been an election into the circle sentencing for that particular matter. It is used in a very small proportion of the matters and only for minor and less serious criminal charges. I think that a lot of work needs to be done within the communities, particularly with the power of the elder people and, as I heard earlier, particularly in relation to the reality that, in most Aboriginal communities, it is the older women who really are the glue and the skeleton holding everything together, such as it is being held together. What I am saying is that that needs to be addressed and helped. Even in circle sentencing, you still need a representative body such as ours because the accused still needs to have his or her legal counsel with them as they go through that two- to three-hour process.

The Nowra model has been spoken about, and I know that the solicitors there are very supportive of it. But it is hugely resource intensive because suddenly, as mentioned quite rightly before lunch, instead of an appearance before a magistrate being fairly short and sharp, one

charge of malicious damage resulting in a broken window may take up to three, four or five hours. Down the track that may get a much better result; I do not doubt that. I simply make the point that it is a good thing but it is necessary to remember it is very resource intensive.

CHAIRMAN—In our day and a half worth of hearings so far, we have heard that a very high percentage of funding for assistance specifically for Aboriginal and Torres Strait Islanders is devoted to legal issues. Anecdotal evidence and speculation raised in the press is that some of this funding—I would not even try to quantify it—is spent on those who re-offend and, to some extent, on some pretty high-profile offenders and re-offenders: ‘high-profile’ in a community sense and even in a national sense. What is your view on that?

Mr McKenzie—I will take the first point about re-offending—and certainly this aspect was placed into the exposure draft for the tender document. Perhaps the best way of approaching this is for us to work back with the Aboriginal imprisonment figures, as we need to understand that it is very rare for a person to be sent to jail the first time they break the law unless the offence was very serious. So we have the situation where the majority of people—indeed, the majority of Aboriginal people—who end up in jail end up there because of a cumulative rising of their criminal record; the matters may be comparatively minor but have been on a recurring basis.

CHAIRMAN—I thought it was against the law to take that into account.

Mr McKenzie—Indeed it is not. It is only unlawful to take that into account if the person pleads not guilty and there is a dispute as to whether they committed the crime. By law, the minute they either are found guilty or plead guilty, the court must take into account their whole record. I will take the very good example of a young 17-year-old Aboriginal lad who has just got his P plates and is charged with what might be a fairly minor traffic offence. If you can do a good job at that point, he might be put into a diversionary scheme within the courts system, getting proper driving skills and experience and knowledge about how important it is to be properly licensed. That type of experience can be very important in trying to turn around what might otherwise lead to a very slippery downhill slope into continued offending. I honestly think that to say we should not represent those who keep re-offending is tantamount to saying, ‘We’re expecting a certain sharp rise in our Indigenous custodial levels.’

CHAIRMAN—If these, no doubt, well meaning and, I hope, successful programs are working, why do the numbers of people from this community needing legal services keep increasing?

Mr McKenzie—The services I have just talked about are those that come into play once a person is already in the criminal justice system.

CHAIRMAN—But, if we have programs that help to keep them from being incarcerated—

Mr McKenzie—A number of other factors then come in. A person in the metropolitan area of Sydney has far greater access to these programs than someone outside the metropolitan area of Sydney. That is simply by way of the distribution of the resources and the diversionary schemes and the help such as alcohol and drug worker and counselling groups. All of those types of services—indeed, a whole lot of actual diversionary sentences—are simply not available in the courts in the more remote regional parts of the states as they are in the major metropolitan areas.

So we have a situation that, indeed, is very much weighted against Aboriginal people. Although there is a very large population in Sydney, if you look at their overall spread throughout the state, just looking at New South Wales, a far greater proportion of them live outside the metropolitan area than non-Aboriginal people. So, even on that particular aspect, the resourcing is skewed against them.

CHAIRMAN—You are talking about the resourcing issue in rural and remote areas, but isn't that an issue for any kind of service for every Australian?

Mr McKenzie—Yes. I was just trying to answer your question as to why it has not stopped the increase in the number of people going before the court and presumably committing offences or at least being charged with committing offences. I fully agree, as I said at the beginning of my opening remarks, that there are some very serious issues within Aboriginal communities and between the Aboriginal community and the non-Aboriginal community in a lot of rural and regional areas. They need to be addressed. A legal court representation service can only do that. We are not able to do the other. We can lobby for it and we can help provide statistics for why it is needed, but that is indeed a different sort of service that is needed.

Ms PLIBERSEK—You are speaking about the different sorts of services that are needed. We have had some discussion with earlier witnesses which you may have heard. ATSILSs do not have the resources to deal with family law and civil law matters. We have this problem which arises fairly often, it seems, with conflict of interest where ATSILSs have previously represented men on other issues and then, say, a family law matter comes up. Do you think that it is better to have separate services—for example, separate women's services?

Mr McKenzie—I think there is a place for it. I want to highlight the point that there is, tragically, a huge increase in the female Aboriginal prison population so we have a huge increase in the number of female clients in our criminal practice. But I would agree. I think that, in certain instances, it really does call for some separate services. I think that has its origins just in the way that the Aboriginal community has been, still is and still evolves. I think it would more accurately reflect the realities within Aboriginal communities to adopt that course. I would not necessarily adopt a process of saying, 'This is men's and that is women's.' I think that it might be more helpful to say, 'This is criminal law representation and that is a civil and family representation.'

Ms PLIBERSEK—My next question was how you would make that division. The problem then arises, of course, that, if you have a service that is providing family law advice in a smaller community, you might end up with the same service being the only service for a couple or a former couple. How do you deal with that?

Mr McKenzie—I think there are huge problems in that. I do not think that it is possible to use the Chinese walls analogy that is used in the tender document. I think that 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. With regard to your problem situation, I think it becomes absolutely necessary in that situation to have somebody in the nearest town who can be called upon. It may well have to be a non-Aboriginal service. It may have to be a private firm or even a local legal aid or community legal centre with which there is a memorandum of understanding of some sort so that, in a conflict situation like that, whichever

of the disputing parties is not dealt with by ATSILSs does get proper, confidential and real legal service. No other group in Australia is expected to put up with anything less than that.

Ms PLIBERSEK—One of the things that a number of our witnesses have said is that Aboriginal people feel less comfortable using non-Aboriginal services. How do you then make the decision about which people who were formerly in a relationship, for example, get the Aboriginal-specific service and which get mainstreamed?

Mr McKenzie—It is a difficult decision, but I think it would have to be made. It may well be made on a regionalised and localised basis. There may be a criterion adopted, if it is a family law matter, that the children remain with whomever they are with at the time and it may be Aboriginal-specific. I can see how that could be done. You could draw up the criteria for assisting and the decision would still have to be made on a case by case basis, but it would need to involve the Aboriginal community. I think it is really important that the ATSILSs be connected as an Aboriginal controlled organisation so that you get that meaningful flowthrough. What do the local people think is the best solution in this situation? Should it be him or her who is represented by the ATSILSs?

Ms PLIBERSEK—One of the things that one of our witnesses in our last hearing said to us—and I think, from your comments, that you will probably agree with this—was that criminal law is prioritised because it is important to keep people out of jail. Don't you think it is also important to keep people safe, though? When you are not helping people with family law matters—and we know how often these matters are either caused by violence or result in violence—isn't that a bit of a philosophical problem?

Mr McKenzie—I am sure it is a philosophical problem, yes. But is the answer to that problem that the ATSILSs stop doing some portion of the criminal law work in order to be able to do the family law work? If so, which parts of the criminal law do you stop doing in order to do the family law? That is the sort of practical problem that you are then faced with after considering the philosophical problem. The other thing to say is that there is no body other than the ATSILSs that is 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 behind them in order to assist them, and I agree that is not happening nearly enough.

Ms PLIBERSEK—Would you agree that a lot of Aboriginal women would not feel comfortable with that service and that, indeed, the services are overstretched?

Mr McKenzie—Yes.

Ms PLIBERSEK—We have heard from a couple of legal services that you have to have Indigenous-specific services because that is what the clients respond best to. But it seems that the argument falls apart when you talk about women who are victims or survivors of crime. They are referred to non-Aboriginal services.

Mr McKenzie—I agree. I think it certainly raises the need for specific Aboriginal units, whether they be sexual assault assistance units or that type of thing. There need to be Aboriginal people in whom the victims can have confidence. I think there also needs to be a meaningful

Aboriginal component feeding through into the prosecutorial policies of both the police and the DPPs as to whom and to what extent they prosecute.

Ms PLIBERSEK—Why couldn't you have legal aid commissions representing more Aboriginal perpetrators of crimes and have Aboriginal legal services representing more Aboriginal victims of crime? Why couldn't you divide it that way?

Mr McKenzie—I am sure that you could. There would certainly need to be some serious addressing within legal aid commissions of the issue of having Aboriginal field officers. There would need to be some real Aboriginal control over what happens—in other words, more than token places on the board of the commissions. I could certainly foresee that it would be possible in a theoretical sense to set up a whole Aboriginal division of the Legal Aid Commission.

CHAIRMAN—Really?

Mr McKenzie—I could see that, yes.

Ms PLIBERSEK—Do you think that is a good way to go?

Mr McKenzie—No, I do not; but I know a number of people around who are proposing it. I do not think it is a good way to go.

Ms PLIBERSEK—Why are they proposing that?

Mr McKenzie—It is along the lines of trying to deal with the philosophical dilemma that you have outlined and to try and find a way, without using any more of the federal government's resources—if you take that as a given—of doing this. Really, whether it would be proper or not—I suppose I need to be careful here—it obviously would involve cost shifting from the Commonwealth to the states.

Ms PLIBERSEK—You could do it either way, couldn't you? What you are basically saying is that some people might propose that the legal aid commissions take greater responsibility either for victims in criminal matters or for victims in family law?

Mr McKenzie—I can see that happening, but we are talking about a huge realignment of resources. Our problem then becomes the big bureaucracy, and that would be the major drawback in using the Legal Aid Commission in that way. Don't get me wrong: I think people at the Legal Aid Commission are fabulous. I worked for them for seven years in the course of my 25 years in law. I know how they work and what pressures they are under. I also know that some wonderful efforts were made recently in New South Wales to work far more cooperatively, and we do. But, as you were saying, when many are our Aboriginal clients realise they are not being served by an Aboriginal-specific organisation they become very nervous, feel alienated and start thinking the worst.

Ms PLIBERSEK—Probably everyone on the committee accepts that, but that is just as true of someone who wants to leave a violent relationship as it is for someone who has been pinched for stealing a car. How do we help people escaping violent relationships?

Mr McKenzie—I take it that we are talking here on the basis of a zero sum on resources.

Ms PLIBERSEK—Some of my colleagues might ask you to answer that—

CHAIRMAN—If you are going to answer philosophically, you have to do that.

Mr McKenzie—I want to be clear. I am just asking how I should answer it.

Ms PLIBERSEK—I would like you to answer both ways. I would like you to tell us what extra resources you think are needed and then tell us—if you are going to continue with Bob in charge—how you would address the problem in a more lateral way.

Mr McKenzie—I think we already have the beginnings of a really viable service for the victims of sexual assault and domestic violence in our family violence prevention units. I am not sure whether that name has been changed officially or not. More and more they are becoming Aboriginal women's legal centres. Certainly, in the bush that is how they are starting to become known, because they are helping the women. We have one. In fact, our auspicing body is the 'auspicer' of one at Kempsey. They have a great potential to flourish into a parallel system of Aboriginal legal centres, dealing specifically with issues coming from domestic violence and sexual assault. That very quickly starts to take in family law situations. As you are quite rightly saying, there very much needs to be some family law orders or something definitive ordered to break the nexus between the perpetrator and the victim. Indeed, that is what a number of them are starting to do. But, at the moment, they are very sparsely dotted around the country. The only one in our region is at Kempsey but it is resourced just to deal with Kempsey.

Ms PLIBERSEK—It cannot afford outreach.

Mr McKenzie—No. A further boosting of that as a parallel system has a lot of merit to it. I think the important thing there would be not only for it to be Aboriginal controlled again but for the staffing to be predominantly female. That is a very important thing for Aboriginal women. They do not like talking about that stuff to men, whether they be Aboriginal or non-Aboriginal men. I think that would be a legitimate and important thing in order to help the victims as best you possibly could. That is where I would say the new resources should be put.

If we are dealing with a zero resource sum from the Commonwealth—there are all sorts of layers in our federalism—the existing Legal Aid Commission has great expertise in family law and civil law. To me it would make much greater sense for Aboriginal women and children who are victims to go there rather than for the criminal law to go there. Quite frankly, the Aboriginal Legal Service has been and remains at the cutting edge of criminal law. That is where there is this huge wealth of experience and so on. I think you would be using your resources best that way.

Ms PLIBERSEK—The Legal Aid Commission does virtually no family law now, do they?

Mr McKenzie—I would not go that far. It is on a decreasing curve. In the bush it is on a very decreasing curve because private solicitors are increasingly not interested in doing it. That is the reality. Whereas in the metropolitan areas you can get family law matters done by in-house

Legal Aid Commission officers; it is when you get into the rural and remote areas that what you said is a reality.

Mr JOHN COBB—You have just touched on my question. Within the legal aid service itself—and by that I mean the whole one, not just the Indigenous one—do they tend to push an Aboriginal male toward you rather than deal with them themselves?

Mr McKenzie—That happens sometimes, but that is really on an individual practitioner basis.

Mr JOHN COBB—So, just to relieve their own case load, they do not automatically push them at you?

Mr McKenzie—Some do.

Mr JOHN COBB—Do you resist that? There is no point in you taking somebody who is quite happy to be in mainstream legal aid, is there?

Mr McKenzie—No, if they are quite happy to be there. But, more often than not, if they have got to the stage where the Legal Aid Commission is suggesting that they go elsewhere, the Aboriginal person will take that as a very real sign that they are not really wanted there, and they will get out of there quick smart anyway. What I am saying is that the mere suggestion—

Mr JOHN COBB—So there is no buck-passing by mainstream legal aid just to relieve their own case load and push it on to you?

Mr McKenzie—What I am saying is that there are some individual lawyers who I think might do that from time to time. Certainly on a policy overall basis it does not happen. In my experience over 20-odd years, I have come across a few individuals who unfortunately do that. In the end, if that is their attitude then the attitude we take is that it is better for us to try and look after that person than to leave them with someone who does not want to represent them. They are going to get a much better job from us and they are going to feel as if they may have actually got some justice and be able to understand the justice that they got. It is one thing to get justice and it is another thing to have had it properly explained to you as to what the possibilities are, what the factors are and what the real outcome is. That does not happen, quite often.

CHAIRMAN—You said there was a huge increase in the number of female criminal offenders. Why?

Mr McKenzie—Why are they offending more?

CHAIRMAN—Yes.

Mr McKenzie—I think that it is a combination of factors. I think 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. That is what I think is going on. A lot of these women have already turned to drugs and alcohol in a big way in their teenage years when they have been very much left abandoned for all sorts of reasons. By the time they are hitting young adulthood they are, most tragically, on a bit of a merry-go-round, I

would call it—they will offend, they might straighten up for a while, they go into some temporary housing and then very soon they find themselves back in the same helpless and unassisted situation. They will start re-abusing the drug or alcohol that is to their taste, unfortunately, and off it goes. I think that what we are seeing is the flow-through now of the generation in which this abuse has really started to happen.

CHAIRMAN—Is it uniform between the city, remote and rural areas?

Mr McKenzie—I have not worked in the city for 15 years, so it is a bit hard to say from personal experience. But I think it is fairly well uniform. I think it may actually be happening a bit more in the city than in the country. But, in certain large areas in our country region, it is certainly happening in a big way, tragically.

CHAIRMAN—Is there an increase in the male offender population or a decrease?

Mr McKenzie—It is on an increase, but it is in line with the male population increase.

CHAIRMAN—In answer to Ms Plibersek's questions, you were talking about Aboriginal-specific organisations and addressing a range of issues including domestic violence and sexual assault. Do we also need a separate organisation for Lebanese people, Turkish people and perhaps Muslim women?

Mr McKenzie—Are you asking me whether I think we need those?

CHAIRMAN—What about Afghans?

Mr McKenzie—I have not dealt with—

Ms PLIBERSEK—Actually, that is not a bad idea for a service.

CHAIRMAN—What about Iraqis and Yanks—do we need one for them?

Mr McKenzie—There may be a need. I am not familiar with the situation in each one of those areas.

CHAIRMAN—Are you really proposing that we go back to apartheid?

Mr McKenzie—No, not at all.

CHAIRMAN—Or the American equivalent called segregation?

Mr McKenzie—Segregation? Do you mean the bussing and all of that? No, I am not suggesting that we go down that path at all. We are still talking about the one law being applicable to everyone. We are talking about a group of people who, from my point of view, have a particular call upon the resources of the overall society in that they are the original inhabitants of this land. They are neither people who have come here by choice nor have they been brought by other people; they were here from the beginning. I believe that there is a real obligation upon our overall society to give them whatever assistance we can so that they can

become meaningful and proper, effective players in our society—and a big part of our society is the justice system.

There are other very important parts—the economic, employment, education—as well, but just looking at it from a legal point of view, I do not for a minute suggest that there should be different laws for different groups of people. What I am on about is being able to properly resource what I think is a unique group of people within Australia. There are no other original inhabitants other than the Aboriginal people, by definition. We need to help to resource them so that it can be intelligible to them what the hell is going on in the process that they find themselves in and so that they can have confidence in the person whose professional job it is to be their advocate within that system. There is a linkage, whether it be with the help of an Aboriginal field officer or whether it be through the building-up of personal relationships with the one lawyer going to that one town on a recurring basis.

So, no, I do not see it as being a fragmented society; I actually see what I am proposing as being more beneficial in bringing society together. The bottom line of everything I am saying is that there is one law for everyone. There is no difference to that at all. But we do need to help people who come from different backgrounds with different levels and cultural expectations to understand what is going on.

CHAIRMAN—Are you talking about a top-down or bottom-up model?

Mr McKenzie—Bottom-up. That is why I think the regionalised basis with field officers who are linked into those particular communities is the way to go.

CHAIRMAN—But if you are going to establish a model, how about the communities themselves establishing their model? If they need a bit of financial help, then we give them the financial help. What is wrong with that?

Mr McKenzie—Establish their model of what? Legal service?

CHAIRMAN—Yes, why not?

Mr McKenzie—That is indeed what happened in the 1970s and that is where we have come from. Since then it has been dependent upon government funding.

CHAIRMAN—Let us move it away from the criminal justice issue and into the issues we are specifically addressing through this inquiry—that is, violence, particularly to women, and sexual abuse of women and children. Do we allow a model, developed community by community, to grow and flourish and we support it or do we top-down say, ‘We recognise a need, so we will have a bureaucracy and it will do X, Y and Z’?

Mr McKenzie—I understand your question now. Definitely the first of those two alternatives, because otherwise the experience is that it simply will not work. Even if it is a bureaucracy peopled by Aboriginal people, it is not going to work. I think the 220-odd years of our history shows us that. Those in power, whether it be governments or even at times Aboriginal people within bureaucracy, who think they know the answers all around have been proved wrong again

and again. Because there is so much differentiation and local factors and history that come into play in the different Aboriginal organisations.

CHAIRMAN—But if—and I will just throw another ‘if’ in; we are dealing in hypotheticals here—in X, Y, Z community there is a powerful group of elders or whatever that have over a substantial period of time controlled grant funding and funding dispersal within a community or in a community of communities, if you call that grassroots and bottom up—

Mr McKenzie—No, I do not.

CHAIRMAN—how would you have confidence that they would come up with the right model, when the model that they had been driving had not worked anyway?

Mr McKenzie—As far as I am concerned, the minute you talk about those who have had the monopoly on grants and government funding, you move into talking about the government imposed system. We are not talking about real elders; we are talking about people who present themselves as elders but perhaps purely for the purpose of a white government bureaucracy in that there are forms to fill in and they want to talk to one person or a small group of people. That is not what I am talking about as the real glue and skeleton of Aboriginal communities.

More often than not, it is those who do not put themselves forward in that way to control organisations who are the real grassroots of the situation. That is why I think, sure, there needs to be a model that is applicable, probably nationwide—because, if we are dealing with federal resources, that is appropriate—but it needs to be completely targeted and based upon a flexibility so that localised groups can make their own way within it without having anything imposed upon them by a bureaucratic mechanism, because that is the death knell.

CHAIRMAN—You represent an Aboriginal legal service and you have told us how important you believe that role is. Would you disagree that today, if anything, there is a more compelling case to address issues of family violence and sexual abuse than the issue of criminal justice per se?

Mr McKenzie—Do you mean in order to make a direct comparison between the two?

CHAIRMAN—Which needs more work?

Mr McKenzie—As we stand at the moment?

CHAIRMAN—Yes.

Mr McKenzie—The sexual assault and domestic violence victims, because they are not being addressed at the moment.

CHAIRMAN—Not being addressed enough.

Mr McKenzie—Hardly at all.

CHAIRMAN—We have had evidence that to some degree they are but not enough—and I do not think anybody disagrees with that. Thank you very much. As I ask of all witnesses, if we have more questions would you mind us putting them to you in writing?

Mr McKenzie—No.

[2.18 p.m.]

BUGDEN, Mr Peter, Principal Solicitor, Sydney Regional Aboriginal Corporation Legal Service

CHRISTIAN, Mr Trevor Charles, Manager, Sydney Regional Aboriginal Corporation Legal Service

SCOTT, Mr Ralph William, Finance Manager, Sydney Regional Aboriginal Corporation Legal Service

CHAIRMAN—Welcome. Does anyone have a brief opening statement to make, or shall we proceed to questions?

Mr Scott—Proceed.

CHAIRMAN—Over the period of the day I have got myself very confused about all these names and where various organisations fit within the overall puzzle. You are called Sydney Regional Aboriginal Corporation Legal Service. How do you differ from Many Rivers Aboriginal Legal Service?

Mr Scott—When it was headed up there were six ATSIC regions in New South Wales. Each one of those represents that region, whatever name they are.

CHAIRMAN—How come you got called ‘corporation’?

Mr Christian—We chose to have that in our name. We represent the Sydney region.

CHAIRMAN—And Newcastle.

Mr Scott—No.

Mr Christian—Wollongong but not Newcastle.

Mr Scott—We cover a different boundary.

CHAIRMAN—So it was just a choice of name. In terms of the six regional services, it is meaningless. You did say in your submission that at least 95 per cent of your interests are in criminal justice matters. What is the other five per cent?

Mr Scott—Family law, and services in care and protection matters.

CHAIRMAN—What causes you to pick that small number of cases to deal with rather than a broader number of cases?

Mr Scott—Do you mean why do we do work in family and care?

CHAIRMAN—If five per cent of your caseload is in the family law, domestic violence or—

Mr Scott—Care and protection services.

CHAIRMAN—Yes. What caused you to pick those few cases versus the broader number of cases that are available to choose from in the whole community?

Ms PLIBERSEK—How do you choose which family law cases you deal with? Presumably you are approached quite regularly.

CHAIRMAN—There are a hell of a lot more family violence cases amongst the Aboriginal population than are represented by your five per cent of services. Why did you pick the few that you did?

Mr Christian—Family law and family violence are two different things. Because of the resources that we have been given to distribute through the organisation, that is how it is set out—criminal justice system, family law and protection of children.

Mr Scott—In relation to the care and protection, for two years we lobbied ATSIC, when it existed, to run a pilot in providing care services in the Sydney region. We were successful in winning some funds to put on two solicitors. That is how that practice came about. We chose to go to ATSIC about that because our community was screaming at us that there was a huge need for services in that area. So we have been running a pilot for the past 20 months and building up a practice. Obviously, as you say, we could accept a lot more matters in care and protection, we could accept a lot more matters in family and we could accept a lot more matters in crime.

CHAIRMAN—How many solicitors do you have?

Mr Bugden—Twenty-seven. Two of those work part time.

CHAIRMAN—So 26. You are the largest, by far, of any of the Aboriginal legal services in New South Wales.

Mr Christian—That is correct.

CHAIRMAN—Is that because of the Sydney-Wollongong population?

Mr Christian—We have got more population in this area than any other region in the country.

CHAIRMAN—Didn't we just hear that from the previous witnesses?

Ms PLIBERSEK—No, the northern rivers has the fastest-growing population compared with the biggest number.

Mr Scott—Every capital city has a concentration of the higher courts, so a number of matters are necessarily brought from throughout the state to Sydney. We have probably got extra staff in light of that as well.

Mr JOHN COBB—So you handle referrals that come from country areas if they are matters that have to be actually done in Sydney?

Mr Christian—We do all Supreme Court bails, we do all the parole and we do all the breaches of periodic detention.

Mr JOHN COBB—You do all of the paroles in New South Wales?

Mr Christian—Yes, because there is only one court down here. The parole court is in Sydney.

CHAIRMAN—When we were talking to some other organisations this morning about the differences between the needs of people in rural and remote communities versus the broader metropolitan area of Sydney, we were unable to come to any conclusion about whether the proportion of domestic violence issues, for instance, was higher in the metropolitan areas than in the country or whether the proportion of women's criminal issues was higher in the city than in the country. Do you have a view on that?

Mr Christian—It can be better addressed in the city than in remote or rural areas because they have not got the facilities that we have in Sydney.

CHAIRMAN—No, I mean is there a greater incidence of family violence in the bush than in the city?

Ms PLIBERSEK—Is it happening more often or do we hear about it more often in the city?

Mr Christian—I do not know whether there have been any stats gathered on whether there is more violence in the bush or the city. I know there is a fair amount in Sydney. They come to our place; we refer them. Maybe other people have got better stats than we have on family violence. We do not do family violence in our particular legal service. We deal with those three areas that we are talking about, but there are other people who deal with family violence.

Mr Scott—We have done a rough headcount from our diaries and it seems in our criminal practice about 30 per cent of those matters involve females.

CHAIRMAN—John McKenzie, who appeared just before you came in—I am sure you know each other—said that there is a huge increase in the number of female offenders in the criminal justice system. Is that your experience in Sydney too?

Mr Christian—We know that from the statistics within the prison system.

CHAIRMAN—Do you have a view as to why that is happening?

Mr Christian—There are probably a lot of things that address that, including the socioeconomic situation within communities where people are still suffering. Ninety to 95 per

cent of people that we represent or who come through our system are on social security. They do not work—not many of them work.

CHAIRMAN—Why is there so much more violence today than there was five years ago?

Mr Christian—The cities are becoming more populated because out in rural areas there are resettlements—Aboriginal people are getting resettled. In the city at the moment—not only in this city, but in other cities around the country—each year we have a floating population of about 8,000 people who come and go every year. We know that through the court system and different things that we do. They come down here and we pick a lot of them up and they go back home. There are different factions as well. You will probably have heard about the Block, which is just across the road from here. The people who come from there do not cause the problem; it is the different factions in the areas that come there. That is what happens.

Ms PLIBERSEK—One of the things the chairman is trying to find out is why the number of women in the criminal justice system is increasing. One of the reasons I wondered about earlier was increased risk taking. You see it with the take-up of smoking, for example. It used to be that young men smoked more than young women, but today young women smoke more than young men. You see it with drug use as well. Drug use used to be more concentrated in males than in females, but you see an equalisation of the genders in the drug abuse statistics now.

I wonder whether the same factors are at work in the criminal justice area and whether there is an increase in risk taking behaviour, not just of Aboriginal women but of women across the board. There is a sense that 30 years ago there was much more an attitude of ‘boys will be boys’ and young women held back a bit from that sort of risk taking behaviour, but across the community now you see young girls more involved in car accidents than they used to be, as well as smoking and drug taking, as I said. Do you see more risk taking amongst young women in the Aboriginal community? Do you think that is what is leading to the increase in involvement with the criminal justice system?

Mr Christian—You probably have some views and I have my views on what happens. There is a cycle there where people are just going around in a circle. The cycle is not being broken. The people who go into the prison system go in when they have been on heroin. They are put on methadone and they stay on methadone while they are in the system. They come out and they are back on heroin again. It is a circle; it is going around and around. There is no rehabilitation in Corrective Services or in any of the jail systems to counteract what is happening on the outside.

Mr Bugden—Another factor in that regard is the more readily available heroin. Certainly in the last 15 years the quality of heroin available on the street has risen—it is up to 80 per cent now. The cost has gone down from about \$50 for a hit 12 years ago to as low as \$20 a hit not far from here. As you said, young males are using it but, as it is only \$20 for a hit, the younger females are using it as well. That is just market forces.

Ms PLIBERSEK—Evidence in one of the other submissions referred to the representation of the female population in jail. I think the figure they had was that 70 per cent of Aboriginal women in jail who were interviewed said that they were victims of child sexual assault in the past. I cannot remember the figures off the top of my head, but I think 48 per cent or higher said they were also adult victims of violence. Presumably a large proportion of those people would

have heroin habits or some other drug habit. Is that your experience from the clients that you are dealing with?

Mr Christian—Eighty-five per cent of our clients either have a drug addiction or a mental disorder.

Ms PLIBERSEK—And sometimes both, I guess, which is even harder to deal with, isn't it?

Mr Christian—Yes. It is a big problem in the prison system. I am on a committee addressing that in the prison system with correctional health.

Ms PLIBERSEK—Our inquiry is about the distribution of funding between family law, civil law and criminal law. I came to this inquiry with a concern that there was a big gap in the area of family law and civil law and that women who had potentially been the victims of violence were missing out on specific Indigenous services because the services were geared towards stopping the men going to jail. Do you think that is true?

Mr Christian—Maybe in some areas it is; maybe it is not in others, because of the funding. In terms of the resources that we receive at the moment, if you are talking about Legal Aid funding, that is five to one that the Aboriginal legal services get. I did hear Amanda Vanstone say on television that she wanted to get more value for the dollar. I do not know how much further we can squeeze the sponge to get more value. We get \$60 or \$70 a head to do a criminal case, a family law case or a care and protection case and the Legal Aid Commission gets \$300, so it is a bit hard to keep spreading it, isn't it?

Ms PLIBERSEK—I think the National Audit Office said that, to provide you with the same funding per case as the legal aid commissions get, you would have to spend another \$23 million or something.

Mr Scott—Yes. To set up a civil practice you have to inject maybe \$250,000 or \$300,000 into paying costs out, and you start to get the money back about 18 months later. With our government funding cycle we are just not allowed to do that. We cannot dig that hole in our current budget. So, with the way we are funded at the moment, providing a civil law service is a very tough exercise. In Sydney, the way we do that is by having Legal Aid and private practitioners provide the service from our office; it is not us providing the service. We have made attempts to take civil law out to our general client population. On Monday Peter and Trevor met with the New South Wales Legal Aid Commission, because we have been in a strong partnership with them for about 18 months. They said, 'We've got some money to spend on civil law for Indigenous women held in prison,' but they come to us to get ideas on what programs might work.

Ms PLIBERSEK—What kinds of things did you suggest to them?

Mr Christian—They are civil matters within the prison system. We were just talking about sexual assault and things like that that happen in the prison system. A lot of that is covered up as well.

Ms PLIBERSEK—Do you mean warders abusing prisoners, or prisoners assaulting other—

Mr Christian—Prisoners assaulting other prisoners and things like that. There are civil proceedings against Corrective Services on mistreatment of prisoners and things like that.

Mr Bugden—A number of civil matters keep reoccurring that we know about: loans are made to people who clearly cannot maintain them, there are issues relating to employment and dismissal and there are a number of other matters. The New South Wales Legal Aid Commission has recently done a survey on that. I guess you are aware of the statistics that they have come up with, but they have—

Ms PLIBERSEK—They are appearing before us next, so we will ask them.

Mr Bugden—We have a close and a growing relationship with the Legal Aid Commission in that regard. At the present time, we have solicitors come to our office and provide civil advice to people from the Aboriginal community. They always feel more comfortable in the Aboriginal Legal Service. They go to three different offices.

Ms PLIBERSEK—Where are they?

Mr Bugden—Blacktown, Redfern and Wollongong. Trevor has organised that. It is perhaps not the most ideal situation but it is a civil service that people perceive as being provided from our office, where they are happy to come. We have found in the past, not only with civil matters but with other matters, that people from the country, for example, will come to the Legal Service. It is a centre from which they can get things done—even phone calls to say, ‘I can’t be in Darwin court today,’ ‘I can’t do this,’ or ‘Can you ring Aunty Maud?’ That is why the civil service from our office is not perfect, but it is better than not having one.

Ms PLIBERSEK—Trevor, one of the things that has come up a number of times in the evidence that we have already had is that Aboriginal legal services are less able to pay decent wages. One of the bits of evidence was that, for an equivalent position in the Legal Aid Commission, some solicitors could expect to be paid up to 50 per cent more than they were being paid in an Aboriginal legal service because the money was not there. Do you find it difficult to retain staff because of your pay and conditions?

Mr Christian—Ever since I have been working at the Aboriginal Legal Service, which is 15 years, we have always had trouble maintaining solicitors. My experience with it is that we have not got the resources to be able to set a career path for a junior solicitor to become the principal solicitor. So the minute they go up a couple of rungs either we have the private practitioners come along and poach them or they go to the Legal Aid Commission. We do not have the resources to maintain those solicitors. So really what has happened with the legal services over the last 15 years that I have been involved with them is that we have become a training ground for either the Legal Aid Commission or private firms.

Mr JOHN COBB—Or the DPP.

Mr Christian—Or the DPP.

Mr JOHN COBB—Do you have a higher turnover of staff than the New South Wales Legal Aid Commission?

Mr Scott—What is their turnover?

Mr JOHN COBB—I do not know.

Mr Christian—We would not have a higher turnover, because of the amount. They have got legal aid all around New South Wales and we are only in one region. I do not know what the statistics are. We have not got as many solicitors in the Aboriginal Legal Service.

Mr JOHN COBB—I realise that. In percentage terms would you have a bigger loss or turnover of staff than they do, to private practice or whatever?

Mr Christian—I do not know. But we lose plenty of solicitors each year.

Mr Scott—We have looked at the gap in Sydney, as to people doing comparable court work. We have looked at it two or three times over the last five years. The best it has ever been was about a 15 per cent difference, and I think now it is getting back up to 25 to 30 per cent.

Ms PLIBERSEK—Standard.

Mr Scott—Yes.

Mr Bugden—My observations are that after about two or 2½ years our lawyers are at such a standard that they get poached or they realise that the bigger dollars are available elsewhere to such a great extent. They already know that. They have worked so hard for 2½ years that they—

Mr JOHN COBB—You mean they become very employable elsewhere.

Mr Bugden—That is exactly right.

CHAIRMAN—We have a very high turnover rate, too, but for different reasons.

Mr JOHN COBB—Mr Christian, I think I understood you to imply that the bulk of your clients in this region were the transients, those who come in and leave.

Mr Christian—No, that is not so. I just said that there is a floating population. Between 8,000 and 10,000 people come in and go each year into the city.

Mr JOHN COBB—You seemed to imply something in that. Was that a cause of a lot of the trouble?

Mr Christian—That is what happens in a lot of the regions, yes.

Mr JOHN COBB—But they are not a lot of your clients?

Mr Christian—Yes, they are. A lot of the people that get FTAs, who fail to appear, are in the floating population. A lot of them come to our office or go to some of the other offices, and they ring the courts because they cannot get back—they have not got the finance to be able to get

back. So they have got a fail to appear on them next time they go to court, so there is a warrant put out for their arrest because they have not gone back to court. They are down here either for a sporting fixture, for a funeral, due to a sickness in their family or whatever.

Mr JOHN COBB—I bring it up because on a smaller scale Dubbo is exactly the same. Everywhere over the Blue Mountains is, I guess. Probably the floating population is about half the size you are talking about, but it is there. Without doubt, that is where a very high proportion, I would think, of the client base—if you want to put it that way—comes from. Do you have any suggestions about what we do about that?

Mr Christian—That has been happening long before me. I am 61 years of age, and it has been happening long before that. I heard Professor Mick Dodson talking about it when I brought it up at a conference in Melbourne. We call it a floating population down here. Up in the Kimberley and up in Darwin they call them the long grass people. They are the same sorts of people that we talk about here as the floating population. It happens in every city all across Australia.

Mr Bugden—There is one particular side effect of that for us in Sydney. That is, often when relationships break down one of the parties will come to Sydney and want family law assistance from our family lawyer in Sydney. Wherever people are, in the state or even in the country, they sometimes come down here and see our family lawyer for assistance, even for interstate matters. I do not know many people would go to Dubbo from other areas in those sorts of circumstances.

Ms PLIBERSEK—You have raised your family lawyer. It sounded like you were saying that you have one family law practitioner. Is that right?

Mr Christian—We have two.

Ms PLIBERSEK—Is that under a separate stream of funding?

Mr Scott—No. We have done that within our general legal budget.

Ms PLIBERSEK—But you have made a decision to do that. Would that be uncommon amongst the other services?

Mr Scott—Yes.

Ms PLIBERSEK—To your knowledge, are you the only service that does that?

Mr Christian—Dubbo does some.

Ms PLIBERSEK—Is that because you have a greater capacity or greater numbers or just because you have prioritised it?

Mr Bugden—It is because of greater need.

Mr Christian—We have been lucky. We have come to an arrangement with the Legal Aid Commission where we can get grants for legal aid to fund some of our Aboriginal clients within

the service. We used to do it until 1988. From 1988 right up to 2004 we were unable to do it, but a private practitioner out in the community could submit for and get a grant of legal aid. However, we are now able to do it within the Aboriginal legal service, so that is a little more assistance for us. We put the money that we get out of that back into the family law to enhance that program, so now we are able to have 1½ lawyers there doing family law in that particular jurisdiction.

Ms PLIBERSEK—Do you have conflicts of interest arise where you have previously represented one person in a couple for a criminal matter and then the other person comes to you for family law assistance? What do you do in that situation? Do you help both of them?

Mr Christian—It depends on the circumstances.

Mr JOHN COBB—Can one of us give an example for them to respond to?

Mr Christian—If you give me an example of what you are talking about, I will—

Ms PLIBERSEK—Say there is a couple—a man and a woman, because you cannot make any assumptions—and the man was pinched for stealing a car and you helped him through his court case. If the relationship then breaks down, there is violence in the relationship and the woman comes to you for help with a family law matter, do you say: ‘I’m sorry, we’ve previously helped your husband. We cannot help you now because there is a conflict of interest’?

Mr Bugden—In the last few weeks, the Law Society has imposed new rules on us in regard to conflicts, and we are coming to terms with those new rules. What we have done in the past if we have had a conflict is brief matters out—not only in family law but in criminal matters. The screws have been tightened that much more on us in, I think, only the last month in regard to conflicts. In each case we look at, if there is a conflict, we have to brief it out.

Mr JOHN COBB—Do you still pay for it?

Mr Bugden—We are lucky enough in Sydney to have a whole pro bono scheme, which was introduced about two years ago, and quite a number of barristers—I think there are about 70 now—indicated that they would be prepared to do pro bono work for us. They do, and it is very good. But we do brief some matters out because we simply do not have the resources to go to court. We just do not have the bodies.

Ms PLIBERSEK—I am asking because one of the Aboriginal legal services gave evidence that what they thought of as conflicts of interest often arose and that their response to that was that women had police prosecutors and other services to help them, so they concentrated on helping the bloke. You obviously do not take that view.

Mr Christian—It is a different question to the one Peter answered. You are saying that there is a domestic violence situation, the police prosecutor is the victim’s solicitor and they come to the Aboriginal Legal Service and that is a black-on-black matter. Is that what you are talking about?

Ms PLIBERSEK—Yes.

Mr Christian—I do not know what other people do, but we brief that out so there is no conflict and nobody is getting undermined in the community.

Ms PLIBERSEK—So when you say you ‘brief it out’, you mean in that example you brief out the victim’s case?

Mr Christian—Whichever one comes to us. If the female has been the perpetrator—

Ms PLIBERSEK—You help the perpetrator—is that what you are saying? Will you help the first person to come to you?

Mr Christian—No. If it is a domestic violence matter, the man beats up the woman, she goes to the police and the man comes to us and it is a black-on-black matter, we brief it out.

Mr Scott—We do not represent either.

Ms PLIBERSEK—Sorry, I did not quite understand that you do not represent either party. Thank you.

Mr JOHN COBB—Let us suppose that the bloke belts up his wife and she then wants to take him to the Family Court to take the children.

Mr Christian—It is a different thing.

Mr JOHN COBB—Yes, but they are both legal services, though.

Mr Christian—It is different altogether. One is a criminal matter and one is a family law matter.

Mr JOHN COBB—But you deal with both. Which one do you deal with and which one do you send out?

Mr Christian—If you are talking about family law, first of all we have got to say, ‘This one’s a criminal matter.’ Then you are talking about family law after that. It all depends on the situation: whether she is white or he—

Mr JOHN COBB—No, they are both black.

Mr Christian—They are both black?

Mr JOHN COBB—Absolutely.

Mr Christian—Well, if there is a conflict there, we brief that out as well.

Mr JOHN COBB—Which one do you brief out?

Ms PLIBERSEK—Both.

Mr Christian—We do not do settlements or anything like that. We do not do divorces.

Mr JOHN COBB—So what family law do you do?

Mr Scott—Issues that are related to the children.

Ms PLIBERSEK—Access and custody.

Mr JOHN COBB—Okay, let us assume that that is what it is. We are trying to determine where you put your preferences. Do you give your preference to the perpetrator of a criminal matter or do you give the preference—who you look after—to the person who is trying to obtain custody? They are both black people.

Mr Christian—We try and help both.

Mr JOHN COBB—But there is an obvious conflict there.

Mr Christian—If there is a conflict we brief it out.

Mr JOHN COBB—Which one?

Mr Christian—It all depends which one is getting help.

Mr JOHN COBB—No, they have both come to you for legal aid.

Mr Christian—If it needs the two of them to be briefed out then we can brief the two of them out. But if they are Aboriginal—

Mr JOHN COBB—They are both Aboriginal and they have both come to you for legal help.

Mr Christian—We can brief both out.

Mr JOHN COBB—Would you automatically, if there is conflict?

Mr Bugden—You understand that this does not actually happen that much.

Mr Christian—That is right.

Mr JOHN COBB—But it comes to the core of everything we have been talking about today—trying to determine where the preferences are given.

Mr Christian—In the past we have briefed out both sides where it has happened.

Mr JOHN COBB—And now? Do you still do that?

Mr Christian—We still do that, yes.

Ms PLIBERSEK—Can I ask you about the 24-hour telephone service that you have set up. You said, I think, that you are getting 75 calls a week. Is that the first point of contact for a lot of people who are picked up by police?

Mr Bugden—I am doing that this week. The answer to that is yes, it is.

Ms PLIBERSEK—How are you advertising that?

Mr Bugden—When we set it up we sent a flyer to police stations to be distributed to every police station, and they have certainly got it now. As soon as an Aboriginal person comes into custody—and sometimes even when they are just invited to the police station—they are given the opportunity to speak to a solicitor. In Sydney we have a permanent roster where all of the solicitors do a week about every quarter. Some of the other services in the country are not able to provide it as efficiently as we can, so we get a lot of country calls coming in too. The 75 calls per week—sometimes it is over 100—would be a low week.

Ms PLIBERSEK—Are you finding the police are being helpful in distributing the number?

Mr Bugden—Every police station in the state has it, and the police overuse it. Last night, for example, there was an Indonesian lady in custody at Kings Cross and they rang me and asked me if I would give this Indonesian lady advice. They were waiting for an interpreter and that is what happens. The police also give it out to other people and it is a very well-known number. This week the Legal Aid Commission hotline, their equivalent, broke down. Our line does not ever seem to break down and it is overused in that regard. It is the first point of contact. We do a note to wherever it is, for example to Dubbo, and we fax a letter the very next day because the solicitor in Dubbo needs to know the information—that that person is appearing and is in custody. If they get bail, it is not that urgent and we send it by normal post.

Ms PLIBERSEK—You mentioned earlier that you have the family law-specific positions. Are they enough for the family law cases that come to you?

Mr Christian—No.

Ms PLIBERSEK—If your solicitors cannot cope with the family law matters, where do you refer them on?

Mr Christian—We talk to the Legal Aid Commission. We hold a MOU with the Legal Aid Commission and they have been very helpful with their resources.

Mr JOHN COBB—So most of your referrals are back to legal aid, not to private or pro bono?

Mr Christian—It all depends. Some people care to go to private practitioners so the Legal Aid Commission grants them a grant of legal aid to run that particular matter.

Ms PLIBERSEK—So if you cannot deal with them you refer them on. An issue that has been raised again and again is that many Aboriginal people prefer Aboriginal-specific services. When you refer on to the Legal Aid Commission or to private solicitors, do you have Aboriginal clients

who are unhappy with being referred on because it is not an Aboriginal-specific service, or is there a general acceptance that you cannot cope with the whole workload?

Mr Christian—Some people have more things in their matters than other people. Some people are just going for custody. Other people want to sell the house and split things down the middle—things like that—so they are referred on somewhere else.

Ms PLIBERSEK—Do you have people saying to you that they would prefer to stay with your service because it is Aboriginal-specific?

Mr Christian—Yes, they would, but unfortunately the policies we have—

Mr Scott—We have people scream that at you in our office.

Ms PLIBERSEK—So do you think that with increased resources you could spend a lot more time and energy on family law matters yourselves?

Mr Scott—In each jurisdiction we work in—criminal, family and care—we could take on—

Ms PLIBERSEK—Could you give any indication of how much unmet demand there is for your service in the geographical area that you represent?

Mr Christian—I do not have any stats on that, but there are a lot of people. Even though we have the Aboriginal legal service, the Aboriginal people are still in the count for legal aid if they want to access legal aid. If we had more resources, things could be a lot better. You were talking about brief-outs there. Some brief-outs can become very expensive. We did have some sort of access to special funding with ATSIC before that, but then they cut that out. Another big area that lets us down in our brief-out budget is medical reports—psychological and psychiatric reports. We get a certain amount of brief-out money but we do not get any medical money, so those medical reports are paid for by that brief-out money that we get in our budget.

Ms PLIBERSEK—How much do the medical reports costs?

Mr Christian—I think we spent \$75,000 last year.

Mr Scott—Yes. Can I just add to what Trevor is saying. Rather than measuring the amount of work that we have turned away, you could look at all of the additional things we have brought into our service that have been fully consumed, like the 70 barristers on the pro bono scheme. I think that has given us another 200 or 300 trial days a year for free. But that is an extra service. The care service, since it has come on, is just getting busier and busier. Our work with the Legal Aid Commission has meant that we do more family law work. We are always trying to find ways to increase the amount of services we provide without increased government funding. I think we could go back and measure how much we have grown in non-government funding and show that those services are fully utilised, whatever extra help we get.

Mr Christian—We have had to go to the extreme of getting corporate help from different organisations.

Ms PLIBERSEK—Brought to you by McDonalds?

Mr Christian—Whatever, but—

Mr Scott—We would take it.

Mr Christian—different firms assist us by supplying solicitors to us that the government did not give us the money to supply.

Mr Scott—Over the last three years we have brought about \$200,000 to \$300,000 worth of services into our service per annum.

CHAIRMAN—Good on you, but can you imagine how this country would ever run in the first place if we did not have volunteers, community people and homemakers to take care of children, clean the house and iron the shirts?

Mr Scott—If we are going to talk about that, it would be nice to be funded on the same basis as legal aid to start with.

Mr JOHN COBB—We have been talking a lot today about female-specific and child legal services. Do you think it would be a good thing to financially separate the money put into defending criminal matters as against female, child or family law?

Mr Christian—The big problem is first of all that, in this country, we have Aboriginal people dying in custody. There are not many people dying in care proceedings because DOCS and the government departments mend that really, and they mend family law all right. People outside, not in custody, are not dying. Still our biggest thing is people in custody and people dying in custody.

Mr JOHN COBB—It was said earlier today in this room that a lot of the people who died in custody were probably guilty of violence at home that resulted in many deaths at home. So that does tend to temper what you said a bit.

Mr Christian—I do not know about that.

Ms PLIBERSEK—I think that one of the figures we heard earlier in the hearings—and I cannot remember the precise way that the statistics go—was something like this: in the total period covered by the Aboriginal deaths in custody inquiry, the number of people who died in that period was smaller than the number of Aboriginal women who died as a result of domestic violence in Queensland in one year. I think the point being made in that submission was that, whilst of course people understand the seriousness of Aboriginal deaths in custody, the end result of severe domestic violence is also often death. If you are not dealing with family law and domestic matters the outcome in the worst cases can be death. The figures for those domestic homicides are really alarming.

CHAIRMAN—My memory is that your memory is correct.

Mr Christian—There is nothing more alarming than this: we are two per cent of the population and we are 20 per cent of the jail population, or it may be 24 per cent or 25 per cent of the jail population. That is the most alarming thing for me. We have 22 per cent, 24 per cent or 25 per cent of our Aboriginal people—

Mr JOHN COBB—I would agree with that; it is a terrible statistic. But don't you think that one of the ways to deal with that is for all Aboriginal males to realise that they will be prosecuted fully every time they assault their partners? I think making sure that happens and that the women are protected is as important and going to have as big an effect on those figures as defending those who are charged. I am not suggesting that they should not be defended; that is everyone's right. I am trying to get back to where I started. In some ways family law is every bit as important as defending criminal law.

Mr Christian—I agree with you.

Mr JOHN COBB—But you still think they should definitely not be separated financially.

Mr Christian—The women's legal service is there to address family violence. Family law is a different thing altogether, and criminal law is a different thing altogether again.

Mr JOHN COBB—I am not talking so much about family law—

Mr Christian—You are talking about family violence.

Mr JOHN COBB—I am, and child violence and all that.

Mr Christian—I agree with you.

Mr JOHN COBB—You don't think we should separate those?

Mr Christian—Yes, other money should be put aside for that.

Mr JOHN COBB—I described myself badly; I beg your pardon.

Ms PLIBERSEK—Do you think money should be put into separate services?

Mr Christian—Yes, I do. There should be separate services for women and things like that. If you put services together, you will have a conflict, as you were saying.

Ms PLIBERSEK—Do you think the family violence legal services that have been set up are starting to do that?

Mr Christian—I think they are very good.

Ms PLIBERSEK—Are you in contact with them, and do you see them as a good model?

Mr Christian—Yes.

CHAIRMAN—Thank you very much. We appreciate your interest and your honest, straightforward answers. If we have any further questions, would you mind if we put them in writing?

Mr Christian—Not at all.

[3.08 p.m.]

BLAZEJOWSKA, Ms Louise, Executive Officer, Legal Aid Commission of New South Wales

GRANT, Mr William, Chief Executive Officer, Legal Aid Commission of New South Wales

CHAIRMAN—Welcome. Do you have a brief opening statement you wish to make or shall we proceed with our penetrating questions?

Mr Grant—We are happy to go with the questions.

CHAIRMAN—There seems to be a plethora of organisations across New South Wales that deal with the kinds of issues that we are looking at—that is, the criminal justice system, but not in great detail, and the issues surrounding women and children and violence and sexual matters within the home and the family. I understand from your submission that the funding of Indigenous-specific legal services is a Commonwealth responsibility; however, as a result of inadequate funding since the mid-1990s, LAC has undertaken a range of initiatives aimed at improving and expanding the provision of legal services to Aboriginal people in New South Wales. Would you not agree that there has been an age-old continuing debate between the states and the Commonwealth about who is responsible for what spending on legal aid, which is probably not going to be resolved at any time in the foreseeable future?

Mr Grant—Agreed, but subject to what we said in our submission that we see it in a different way. I agree with you that there has been a political stoush about this for years and probably will be for years to come.

CHAIRMAN—I would have thought that it has been a battleground for at least 30 of the 35 years that I have been in Australia. One of the things that we are really trying to come to grips with is that the incarceration rate of Aboriginal women has evidently, according to witnesses, gone through the roof, to use that phrase. It has increased very rapidly. I suppose we are trying to come to grips with why. Then, and perhaps even more importantly, we come to: how do we really deal with the issue of family violence and how do we deal with the issues of sexual impropriety within families and communities? I would be interested in hearing your views on those issues.

Mr Grant—Those are very large issues. We are here in a sense to provide services that are often after the event. We are not usually involved very much in providing services that are aimed at prevention. We do get involved in state and Commonwealth government initiatives whereby we try to put initiatives in place that help to resolve these issues. More often than not we are involved in trying to assist people to protect their rights or to simply seek protection. I think the difficulty is larger in the Aboriginal community than in the general community, although goodness knows it is so large in the general community that it is hard to draw that comparison sometimes. I feel that it is harder for us to deal with things in the Aboriginal community because we have this Commonwealth-state divide whereby since 1997 the Commonwealth have insisted that Commonwealth money be spent on what they call Commonwealth matters. The difficulty

for us is it is hard to be a little bit proactive to introduce new initiatives when we are dealing with state buckets of money and Commonwealth buckets of money. It is not impossible; it just makes it more administratively difficult to do that. When you go out and provide outreach services in a community, the problems are so mixed that it is very difficult to be able to quarantine that part of the advice, information or whatever it is as being Commonwealth and the other part of it as being state. That is an extra level of complexity for us. That is an extra challenge that we have got to find a way to deal with in providing outreach services and other services to people that need them.

Ms PLIBERSEK—Can you explain that mixing up of Commonwealth and state matters? Can you give us an example of that and how it causes you problems?

Mr Grant—I will pick the chair's example. You particularly have a female presenting for advice. The advice will range from Commonwealth family law to state domestic violence law and to perhaps state crime. There might be social security involved. There may be just a mix of Commonwealth and state jurisdiction. People do not see Commonwealth jurisdiction and state jurisdiction; they see problems.

Ms PLIBERSEK—How do you deal practically with that?

Mr Grant—We deal with it in the best way we can. Our lawyers try to record what part of the advice—say, 50 per cent—was Commonwealth or state. We try to allocate that. There are ways in which to do it but it is a bit nonsensical.

CHAIRMAN—But realistically the legal aid centres are generically financed by the state government and Commonwealth government and they get on with it and handle the caseload as best they can.

Mr Grant—Basically, yes. We and a lot of commissions have a third level of funding. In this state it is called a public purpose fund. That has the interest on solicitors' trust accounts.

CHAIRMAN—Okay. I am unaware of those kinds of circumstances in my state of Victoria.

Mr Grant—You do have that applying in Victoria. It has statutory interest.

CHAIRMAN—I have been involved in the debate on this issue at local and national levels.

Mr Grant—Can I put that into context for you? Before 1997-98, when there was not this Commonwealth-state divide, the Commonwealth provided 55 per cent of funds for legal aid commissions and the state provided 45 per cent. The public purpose fund contribution was included in that 45 per cent. I think the switch now in New South Wales is about 70 to 30: 70 per cent state and public purpose fund and 30 per cent Commonwealth.

CHAIRMAN—The ATSILSs we have spoken to today and the overarching groups that represent them, particularly those looking at women's issues, tell us that somewhere between 90 and 95 per cent of legal aid funding is spent on criminal matters.

Mr Grant—Their money, yes; ATSIILS money, as I understand it, would be somewhere around that percentage.

CHAIRMAN—But not yours?

Mr Grant—Not the Legal Aid Commission of New South Wales.

CHAIRMAN—I know you have lots of pro bono solicitors and barristers, but how many solicitors and barristers do your community legal services employ altogether?

Mr Grant—We have staff of about 680 or so, not all full-time, in the Legal Aid Commission. There is somewhere between 300 and 320 legal officers, but not all full-time. That is why it is hard to count; I am just trying to give you the aggregates.

CHAIRMAN—Sure, that gives us an idea.

Mr Grant—They are mixed between three practices in New South Wales. Crime is our biggest practice. It is Commonwealth crime and state crime. Commonwealth crime tends to be large drug matters, social security fraud and that sort of thing. We have family law. A vast majority of the family law is Commonwealth family law under the Family Law Act. State family law is care and protection, and you were talking about those matters earlier. That is when DOCS is involved and you try to get care orders out of our Children's Court. Unlike some of the other commissions in the country, we are fortunate to have a civil law program as well. That specialises in things like consumer law, tenancy law, human rights with the immigration work, social security work, veterans work and that sort of thing.

Ms Blazejowska—And housing.

CHAIRMAN—Do you do any family violence prevention work at all?

Mr Grant—Not as such, no. I suppose the closest you would get is our family law conferencing program. To try and get matters away from the Family Court and the Federal Magistrates Service, and to have them resolved between the parties, we run conferences. This year we will run about 1,700. They have got a success rate of somewhere around 80 per cent, so it is quite a useful tool. Most of those would not involve substantial violence issues because it is not appropriate sometimes to conference those matters.

CHAIRMAN—But you are talking about family law issues. Nicholson would not have liked those figures.

Mr Grant—We were taking matters out of his court, so he would have been happy in some respects.

Ms Blazejowska—We are also responsible for administering a women's domestic violence court assistance program, which consists of a network of court assistance schemes around the state that provide legal and referral and non-legal assistance to women who are applying for apprehended violence orders in the local courts. At last count we had 27 or more of those schemes, and in the last financial year they assisted in excess of 30,000 women around the state.

I do not know the percentage of those who are Aboriginal women, but it would be possible to find that out if you wanted that information.

CHAIRMAN—One of the things we are specifically interested in is this issue of violence against women and where women stand within their own community and other acts that degrade them and make it impossible for them to help drive a positive community and a positive family life. Without doubt drugs and alcohol are hooked up in all of that, naturally.

Ms Blazejowska—The New South Wales Aboriginal Justice Advisory Council has been doing an enormous amount of work in this area. It is not an area of expertise for the commission, but they have been looking at various ways of tackling the problem and have provided several papers in the last year that look at strategies and ways for dealing with the problem from a holistic perspective. I have got copies of some of those papers, but they are also available on the web site. They might be a useful starting point and they certainly have credibility amongst the community in terms of the views that they have come to.

CHAIRMAN—If you could let our staff know more about that after our hearing, we would be most appreciative.

Ms PLIBERSEK—I noticed that in your submission you said:

Many indigenous women in custody are not eligible for criminal law Aboriginal Legal Services due to conflicts of interest, which arise when a male co-accused, or perpetrator is currently or has previously been represented by a legal service.

The issue of a co-accused having previously been represented is not one that we have come across before in evidence. You have heard of that happening a number of times, I presume, for you to include it in your submission—that, if you have two co-accused, the one who got to the legal service first is the one who is represented. Is that your understanding of how it works?

Mr Grant—It can be that way. One of the biggest problems facing legal aid commissions, community legal centres and Aboriginal legal services throughout this country is conflict of interest, because frequently we are the solicitors of last resort and they have nowhere else to go. In certain parts of the state, for example, we find it difficult to line people up with private practitioners who can do a legal aid matter on assignment. So much work is being done on this right across the country now because it is a substantial problem. I heard you talking about this before when we were listening to the previous evidence.

We have lots of cases in criminal matters where people come—usually the male—and they will get legal aid. We will get confidential, private information on that person to properly defend him. A marriage breakdown or partnership breakdown occurs and, the next thing you know, we are faced with the woman trying to get legal advice from us. We try to be a little robust in the circumstances, if we can, and completely isolate the male's information, but sometimes that is very difficult to do and so we sometimes end up not being able to act for people in those situations. We try to find a private lawyer who will act on Legal Aid's assignment for that particular person.

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 damned confused on conflict of interest.

Mr JOHN COBB—So at the moment you can almost not do that, legally.

Mr Grant—We cannot do that. Our practitioners would be at enormous risk of breaching their ethical obligations if they were knowingly acting for someone and the Legal Aid Commission was knowingly acting for the other party.

Mr JOHN COBB—Even if you could prove that you were not making one officer's information accessible to the other?

Mr Grant—Yes. The state of the law is so confused at the moment and so difficult; I think ultimately we will need some sort of parliamentary sanction for us as solicitors—and I include ALSs and CLCs, which are really solicitors of last resort—to be able to provide that sort of service.

Ms PLIBERSEK—I can see how the Legal Aid Commission, with 320 legal officers, could conceivably separate that sort of thing. But if you have a small Aboriginal legal service, it is pretty hard to see how you could have an effective quarantining of people's information, isn't it? Can you see that happening in small services?

Mr Grant—It depends. The services I know have different offices. It may be possible, but it would require a bit of technological support to be able to do that—a reasonably sophisticated system so that your criminal lawyers, for example, cannot tap into your family lawyers' information and, to pursue the example we were talking about, that the family lawyers could not tap into another family law file that they should not have access to. It cannot just be an honour system; you would have to put proper Chinese walls in place to do it.

Ms Blazejowska—I think that, ultimately, on the part of the commission there is an acceptance that we would have to pick up those people that the Aboriginal legal services could not assist. That has to be done between services; it is not something that can be totally resolved within a service, particularly when it comes to Aboriginal clients. We have to complement them and pick up on what they are not able to do.

Mr JOHN COBB—Rather than going to private practice?

Mr Grant—We have limited access to private practitioners in family law. It is not so much in crime, but there are large pockets throughout the state where we cannot attract private practitioners to family law work at legal aid rates.

Mr JOHN COBB—They simply will not do it?

Mr Grant—They will not do it. I will give you one example. We had to put two family lawyers into our Lismore office so that they could do the circuit from Lismore up to the Tweed, because we had one practitioner who was prepared to take grants of aid in that whole district. And I believe she was under pressure from her partners to withdraw. So it is very difficult. There was enough private work. In Commonwealth family law, we pay \$130 an hour. That is way below market rate.

Mr JOHN COBB—And it is even less attractive to country lawyers than city lawyers. I got that impression earlier.

Mr Grant—I would think it is. We do have city lawyers available. Maybe it is; I think it is not. I think there is probably enough private work in a lot of country locations. Part of the problem in country locations, it seems to me, is that there is a shrinkage problem going on. We have got the spur, if you like, from Lismore, Armidale, Tamworth and Wagga. We seem to be growing. Legal services have grown in the last two or three years quite remarkably, and a lot of smaller towns around those places are dying off. It is my age group—the baby boomers—that are pulling out of law and planning to retire. We do not seem to be able to attract the young lawyers to those places to keep those practices going. I think in the next five, eight or 10 years it is going to be a significant social problem. We are facing reduced numbers of family lawyers that are willing to do work right across the state at legal aid rates. That is why we opened an office in Nowra on the South Coast. Our South Coast office only does family law; it does not do crime, because we have private practitioners on the South Coast prepared to do it. But we have too few of them. We opened a family law office that does the coast down to Bega. We were simply having to respond to the community need.

Ms PLIBERSEK—You mentioned earlier that the Legal Aid Commission was the last port of call for a number of people who cannot get representation either from ATSILSs or another Indigenous-specific legal service. Can you tell us about the measures you have taken at the Legal Aid Commission to ensure that the services that you provide are appropriate for Indigenous people in that case?

Mr Grant—We have done work to try to assist ATSILSs to deal with more of their own clients. We have heard your recent discussion about how difficult that is for conflict reasons. We do run cultural awareness courses, for example, for our lawyers. Louise has got some statistics.

Ms Blazejowska—In the last year, we have trained about a sixth of our staff in Aboriginal and cultural awareness, which also includes client communication. It has been very successful, so we are trying, through educational means, to help make our legal officers more responsive and more sensitive to the needs of Aboriginal people. We have a range of other initiatives that we are trying at the moment, such as looking to establish a specific service for Aboriginal women in custody—if that is possible within our own resources—specifically aimed at family and civil law advice. We have our Cooperative Legal Service Delivery Model, which I think I have outlined in the submission, which is designed, amongst other things, to bring all the legal resources within a region together to try to deal with some of the gaps in legal service delivery. That is being trialled in the central far west and the far north coast. Feedback is very positive at the moment, but it is only in the first few months—

Mr Grant—And it links pro bono. Big city firms are providing pro bono in those regions.

Ms Blazejowska—That is very important, because that is the key to try to fill in some of those gaps in service provision. One of the big focuses of that is trying to get more Aboriginal people to access legal services. The law access telephone line is looking at ways to increase Aboriginal access to the use of that service. We are trying to use that as a first port of call for advice. We are reviewing our Aboriginal and Torres Strait Islander family mediation program, which has been quite successful but is very small. We need to look at some of the administrative costs associated with that. We have our MOUs.

Ms PLIBERSEK—Can you tell us a bit about MOUs, please?

Ms Blazejowska—We have a memorandum of understanding with the Sydney Regional Aboriginal Legal Service, Kamilaroi Aboriginal Legal Service and the Western Aboriginal Legal Service, which is designed to increase the ability of those legal services to provide family law advice. Basically we pay those legal services to do family law work. We do not pay private practitioners to provide advice only, but we provide those three ALSs to provide advice. Those ALSs can also access grants of legal aid, just like private practitioners, which they previously were not able to do. It has been very successful, as was mentioned earlier, with the Sydney Regional ALS and not so successful with the Kamilaroi Aboriginal Legal Service and Western Aboriginal Legal Service.

Ms PLIBERSEK—They haven't take it up as much?

Ms Blazejowska—They have not taken it up as much, but we are working on it. There were a few barriers to that, which we seem to have broken through, and hopefully we can increase the uptake there. But the whole aim of that is to allow them to provide increased services. We have a general memorandum of understanding which covers all sorts of other possibilities so, for example, ALS solicitors can attend our conferences and seminars for free and use our library services for free.

Mr Grant—Video.

Ms Blazejowska—We provide video or audiovisual link services for free. We provide civil law outreach services through Aboriginal legal services. There are several of those around the state, and we are looking at how those can be better targeted to try and increase the uptake.

Ms PLIBERSEK—Can you tell us a little bit about those outreach services?

Ms Blazejowska—Basically, legal aid solicitors will either go to an Aboriginal legal service office or a community and provide civil law advice. One of the problems with that has been that the uptake is not always great, so we are looking at how to improve that uptake. One of the big issues that we are trying to deal with at the moment is why Aboriginal people generally are not accessing legal services. We are only just starting to get an understanding of that. We know there is an absolutely enormous need out there in terms of family and civil law, but we do not know why people generally are not going to see someone to get some sort of assistance. As opposed to the non-Aboriginal population, they are generally less likely to approach a service to get assistance for that. Whether that is because there is an understanding that ALSs are focused on criminal law services—that is what they are able to do and there is nowhere else to go—or whether it is because people do not have an understanding that they have a problem that could be

solved through some sort of legal means, which is also a strong possibility, we do not know. There is a lot we do not know about why people are not using it. It could be that we need more community legal education or a whole range of strategies.

CHAIRMAN—Could I ask you a challenging question in the midst of all that? If we need Aboriginal-specific legal services—assistance with women’s violence issues, family sexual assault and all of that sort of stuff—why don’t we also need separate ones for Lebanese women, Muslim women, Afghani women and Iraqi women?

Ms Blazejowska—I think our objective as the Legal Aid Commission of New South Wales is to provide services to socially and economically disadvantaged people. We know that in New South Wales Aboriginal people are the most socially and economically disadvantaged of any group within the community, and that should be a strong focus. Certainly other groups within the community are also disadvantaged, but if you want to make comparisons or whatever, you would have to assist those who are in most need, and Aboriginal people are in the most need.

CHAIRMAN—The ATSILSs are not means tested, are they?

Mr Grant—No.

Ms Blazejowska—No, not as far as I am aware.

Mr Grant—Not until the competitive tendering process.

Ms Blazejowska—There is a proposal that they be means tested.

CHAIRMAN—But then how do you specifically justify the—

Ms PLIBERSEK—I think the chairman is asking: ‘Aren’t you worried about all those Aboriginal millionaires accessing them?’

Mr Grant—We do means test Aboriginal clients. ATSILS does, and I agree with that. I think it would be silly and ridiculous to introduce a means test system that would cost you a lot to administer for very little effect. But we means test all our clients, whether they are Lebanese, Aboriginal or Anglo-Saxon.

Ms Blazejowska—Even with means testing, I think the estimate is that 95-plus per cent of Aboriginal people would come within the means test that is proposed under the tendering agreement.

CHAIRMAN—I do not doubt that.

Ms Blazejowska—I do not think it is going to be a big issue.

CHAIRMAN—I just thought I would throw it in the melting pot.

Ms PLIBERSEK—On the tendering issue, you say in your submission in regard to the 1997 ministerial summit on Aboriginal and Torres Strait Islander affairs and COAG:

At the Summit it was agreed that States and Territories would develop strategic plans for the coordination, funding and delivery of Indigenous programs and services, and that these plans would include “working towards the development of multi-lateral agreements between Commonwealth, State and Territory Governments and Indigenous peoples and organisations to further develop and deliver programs”.

But then you mention that the federal government in the lead-up to the exposure draft has not consulted either the New South Wales government or mainstream legal aid providers on this process. Do you think the document therefore is fundamentally flawed—that, without this consultation, it is just a bunch of silly ideas?

Mr Grant—I think it is fundamentally flawed for a lot of reasons, and that is one of them. When the states became aware, I know the New South Wales Attorney, Bob Debus, did put a matter to his colleague the federal Attorney-General, but from my understanding the state was not specifically consulted about this idea, either before or during the tendering process. The Legal Aid Commission was not specifically invited to comment on it, although we did through National Legal Aid. But there are many more reasons, I think, why the tendering document is flawed, and one would hope that the considerable comment that has been made throughout the country on those flaws will be taken into account if they decide to proceed, which it looks like they are going to do.

Ms PLIBERSEK—Just to recap, what would you say are the main flaws?

Mr Grant—I think any idea that legal aid could be provided in a better way to Aboriginal communities by non-Aboriginal organisations is flawed before it starts. Legal Aid New South Wales cannot provide the same service that ATSILSs can provide to Aboriginal clients. I say that with no sense of pride; we are just not able to do it. We are not equipped to do it, we do not have the experience, we do not have the field workers and we do not have the locations. If we had to do that, it would cost us a lot more money than it does at the moment to provide those services. So we will not be tendering for those services.

Ms PLIBERSEK—I think the Australian National Audit Office estimated that it would cost another \$23 million if Aboriginal legal services were funded at the same rate for work that you would do—and I am not saying that you are overfunded at all.

Mr Grant—I have not seen that work, so I cannot comment on it. I think it goes without saying that, if a private firm are getting involved in a tendering situation, the first thing they would do is take their costs off the top—that is their profit margin. Then you have to look at what is left and how you are going to provide that and how you are going to provide it in locations that are required. So I think the process is fundamentally flawed. I think I understand what is driving the Commonwealth to go to that process, and I just think there are other ways of doing it to get the same result.

Ms PLIBERSEK—What do you think is driving it?

Mr Grant—I think they want accountability; I think they want to see that they are getting value for money; I think they may want to change the focus of some of the Aboriginal legal services throughout the country; I think they may want to reduce some numbers in some

locations. But New South Wales ALSs are working very well and to drag them into this process where they are trying to change things elsewhere is fundamentally wrong.

Ms PLIBERSEK—Would you say that Aboriginal legal services in New South Wales have a high level of accountability and transparency?

Mr Grant—All I can say is that, from our perspective, it seems that way. Whether it is sufficient, I do not know, but that is what Commonwealth agencies are there to do: to work with ALSs to make sure, and there is usually a fair degree of cooperation, from what I am aware. All I know is that we work very well with ALSs. You heard about the pro bono material—the services they get. Private practitioners are not going to get that. There is also the work that goes on with the New South Wales Public Defenders Office. It was a long, hard fight to try and get money for New South Wales public defenders to appear for Aboriginal clients. That finally came about.

Ms PLIBERSEK—Why was that? Was there an assumption that Aboriginal services were dealing with Aboriginal clients and the public defenders did not need to? What was the basis for that?

Mr Grant—Going back about four or five New South Wales Attorneys, there was an attempt to get the Commonwealth to set aside some special money that could go to public defenders to put on an extra public defender or two to appear for Aboriginal clients, instructed by Aboriginal legal services. In fact, the Public Defenders Act 1995 was amended specifically to allow defenders to take matters from community legal centres like ATSILSs. The whole idea was to allow Aboriginal legal services, who were struggling with funds for higher court work, to be able to tap into the state's most effective and efficient senior criminal law resource, which is public defenders. I think that has worked. I do not know what you have heard from ALSs about that, but from a Legal Aid Commission point of view and from the defenders' point of view it worked remarkably well.

Ms PLIBERSEK—Do you have any way of judging unmet demand?

Mr Grant—That is a huge question. I heard you talking about that before and I shivered up the back. No; we were listening to that and sort of laughing away at it, because it is the single biggest challenge facing all legal aid commissions and the legal aid delivery system in this country at the moment. We do not have a good tool for that.

CHAIRMAN—If the pot were bigger would the unmet demand go away? Or would that in fact still increase the unmet demand?

Mr Grant—You would have to redefine your unmet demand, probably.

CHAIRMAN—You know what I am saying.

Mr Grant—I do, indeed. But it is also a fact that there is a lot of unmet need out there at the moment. People sometimes go to legal aid commissions and say, 'How many people do you refuse?' To me, that is not a proper indication of unmet demand; it is an indication of people who did not meet our tests. There are whole levels of different people out there who simply do not

bother applying for legal aid, because they are told by someone they will not get it for whatever reason. They are aware that our policies will not cover them.

Ms PLIBERSEK—Or they are intimidated by the process.

Mr Grant—That too.

Ms Blazejowska—The Law and Justice Foundation of New South Wales is trying to work out a model for estimating unmet legal need. But all we know is that, out of a population of somewhere around 135,000 Aboriginal people in New South Wales, the number of people accessing family and civil law services via either the commission, Aboriginal legal services or community legal centres runs in the hundreds. So there have to be more people out there who are not getting that.

CHAIRMAN—We heard from one organisation today that they had 23,000 clients last year.

Ms PLIBERSEK—That was a women's legal service.

Ms Blazejowska—The Wirringa Baiya Aboriginal Womens Legal Centre?

Ms PLIBERSEK—No, the mainstream service.

Ms Blazejowska—The Womens Legal Resources Centre?

Ms PLIBERSEK—Yes. But that includes all their phone contacts for advice. That would not just be court appearances.

CHAIRMAN—I am just saying that they reckon they dealt with 23,000 clients. That is more than a few hundred.

Ms PLIBERSEK—And they said that for every call that got through they had 24 calls that did not get through—which is not, as you pointed out, necessarily 24 people.

Ms Blazejowska—That is probably a better indication of the need.

CHAIRMAN—The calls that did not go through? Not if the same person rang 25 times and got disgusted after 10 seconds each time.

Mr Grant—It is hard to argue with those figures. Law access has similar figures. Law access figures are growing as people become more aware of them.

CHAIRMAN—I am sorry, but we are going to have to close this down as I have to fly.

Ms PLIBERSEK—Thank you very much for coming.

CHAIRMAN—I thank our witnesses, the other witnesses before them and the observers. I thank our secretariat staff, my colleagues on the committee and Hansard. I declare this public hearing closed.

Resolved (on motion by **Ms Plibersek**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 3.42 p.m.