



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES  
COMMITTEE

**Reference: Access to justice**

MONDAY, 13 JULY 2009

PERTH

BY AUTHORITY OF THE SENATE



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## SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

### REFERENCES COMMITTEE

Monday, 13 July 2009

**Members:** Senator Barnett (*Chair*), Senator Crossin (*Deputy Chair*), Senators Feeney, Fisher, Ludlam and Trood

**Participating members:** Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Barnett, Crossin, Feeney, Fisher and Ludlam

#### **Terms of reference for the inquiry:**

To inquire into and report on:

Access to justice, with particular reference to:

- (a) the ability of people to access legal representation;
- (b) the adequacy of legal aid;
- (c) the cost of delivering justice;
- (d) measures to reduce the length and complexity of litigation and improve efficiency;
- (e) alternative means of delivering justice;
- (f) the adequacy of funding and resource arrangements for community legal centres; and
- (g) the ability of Indigenous people to access justice.

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**Committee met at 9.15 am**

**CHAIR (Senator Barnett)**—Good morning. This is the first hearing of the inquiry by the Senate Legal and Constitutional Affairs References Committee into access to justice. The inquiry was referred to the committee by the Senate on 16 March. In conducting the inquiry the committee is required to have particular reference to:

- a. the ability of people to access legal representation;
- b. the adequacy of legal aid;
- c. the cost of delivering justice;
- d. measures to reduce the length and complexity of litigation and improve efficiency;
- e. alternative means of delivering justice;
- f. the adequacy of funding and resource arrangements for community legal centres; and
- g. the ability of Indigenous people to access justice.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time.

I ask that people in the hearing room ensure that their mobile phones are either turned off or switched to silent. I would also ask witnesses to remain behind for a few minutes at the conclusion of their evidence in case the Hansard staff need to clarify any terms of reference.

Before I welcome representatives of the Employment Law Centre of Western Australia, may I, on behalf of the committee, apologise for the delays due to the technical problems in the establishment and set-up of the Hansard services this morning in Perth.

[9.17 am]

**EMMANUEL, Ms Toni, Principal Solicitor, Employment Law Centre of WA (Inc.)**

**KANE, Ms Sara, Manager, Employment Law Centre of WA (Inc.)**

**CHAIR**—Thank you very much for being here, together with your support team and volunteers from the centre. The Employment Law Centre of WA has lodged submission No. 26 with the committee. Do you wish to make any amendments or alterations to that submission?

**Ms Kane**—No.

**CHAIR**—I invite you to make an opening statement, at the conclusion of which I will invite members of the committee to ask questions.

**Ms Kane**—Thank you. As you are aware, the Employment Law Centre of Western Australia, which I will refer to as ELC, is a free and confidential employment law advice service that we provide to thousands of vulnerable, non-unionised Western Australian workers. We provide services to approximately 4,000 people per year through our phone advice service, our evening legal service, our self-help information service, community legal education workshops in both metro and regional areas and client representation. We prioritise vulnerable, non-unionised employees who may be low-income earners; who may have a disability; who may face literacy issues or come from a background other than one that is English-speaking; who may live in a regional, remote or rural area; or who are Indigenous Australians. We also provide comprehensive fact sheets and information kits on our website with a view to giving as much assistance as possible to employees throughout the state.

As we are the only free employment law advice service in WA, the demand for our service is extremely high. Given the current global economic crisis and the resulting terminations and redundancies, we are finding that demand for our service continues to escalate. Currently, we are unable to answer approximately 540 calls per month, and this has doubled since the same time last year. It is our experience that not only access to our free service but the cost of accessing private legal advice is beyond vulnerable employees and impedes their access to justice.

We currently employ one full-time principal solicitor; one full-time manager; 1.76 full-time-equivalent paralegals, who service our advice line; and part-time admin and community legal education support staff. All of our staff and volunteers have to have a high level of expertise in employment law. As you may be aware, there have been significant legislative reforms and changes to enforcement procedures at a federal level with the introduction of the Fair Work Act and we are anticipating the same in Western Australia with our state legislation. This means that all of our staff and volunteers need to be across each one of these legislative changes at any point in time to ensure that we can provide accurate and comprehensive advice to clients instantly. For example, in the first week of July we responded to over 50 calls that directly related to the Fair Work Act. So, to ensure that our staff and volunteers are up to scratch and across the changes, we need significant in-house training and resource development, all of which is done by our one principal solicitor, Toni.



We also rely heavily on the generous support of our pro bono solicitors and many of our volunteers, who also require the knowledge of and expertise in employment law and often require significant training. From our volunteers and pro bono solicitors, we received about 3,000 hours of services. That equates to about \$600,000 a year. We have worked out that, if the government were to provide the same services as the Employment Law Centre, it would cost government approximately \$1.2 million annually to provide that service. So we feel that the Employment Law Centre is an example of how a community legal centre can provide quality legal services at a fraction of the cost at which government could provide them. However, having said that, we do heavily rely on government funding. To date we have only secured 10 per cent of our service funding beyond the end of this financial year and the remaining 90 per cent finishes as of 30 June this year.

**CHAIR**—Sorry, which year?

**Ms Kane**—The financial year to 30 June 2010, when the remaining 90 per cent of our funding finishes. I have spent a significant proportion of this year trying to secure even those 12 months, with the support of different people from government. So you can see that that has a significant impact on our service. Insecure funding means that we are unable to offer staff more than a 12-month contract. So again next April I will have to start looking at redundancies and planning for those, because this year we only received notification of another 12 months' funding in April.

Also, our staff, particularly the manager and principal solicitor, are paid \$53,000 a year and this is significantly lower than the pay for equivalent roles in government or other community sectors. We are also unable to attract specific project funding because of our lack of secure and ongoing funding. So, for example, we desperately need an IT upgrade; our database, our main form of client services, collapsed last week. We have managed to get some pro bono support and someone to help us in the meantime, but we simply cannot attract any further funding to support us with that upgrade.

Similarly, our rent has been increased beyond what we can afford. We cannot afford to stay in our accommodation, and we cannot afford to move because we do not have funding to move. So these are the continual funding issues that we face.

In summary, vulnerable employees find it difficult to access our free legal service, and the cost of accessing private legal advice is just beyond them. So, on behalf of the 4,000 clients who we are able to support each year, and the thousands and thousands of vulnerable employees who just cannot access our services: we need adequate funding security and we need adequate funding amounts to allow meaningful access to justice.

**CHAIR**—Thank you. We will now go to questions. I will kick it off. Could you advise us of the amount of funding that you received from federal and state governments.

**Ms Kane**—Sure. This year, for the next 12 months, ending 30 June 2010, we are receiving a combined \$372,000 from the Fair Work Ombudsman and the Western Australian Department of Commerce. We will also receive \$100,000 this year from the Public Purposes Trust, which is administered by the Law of Society of Western Australia.

**CHAIR**—Can you break down the \$372,000 for us?

**Ms Kane**—The federal government amount is \$150,000 inclusive of GST, so it works out to be about \$136,000. The state government amount will be the remaining \$230,000-odd.

**CHAIR**—Is that consistent with past years?

**Ms Kane**—No. The figure has gone up but what we actually proposed initially was about half a million dollars to run our service—about \$500,000. We were told to go back and redo our figures because they would not be able to afford that.

**Ms Emmanuel**—Previously, the federal government had not funded us since November 2006.

**CHAIR**—The federal government?

**Ms Emmanuel**—It had not funded the ELC since November 2006. In the gap from November 2006 to 1 July 2009 we have been funded primarily by the state government and a little bit by the Law Society.

**CHAIR**—That is what I want to get clarity on. So now you have a \$150,000 special grant or whatever?

**Ms Kane**—That is just a one-off.

**CHAIR**—It is a one-off from the federal government from 1 July 2009 to 30 June 2010?

**Ms Emmanuel**—Correct.

**Senator FEENEY**—Is that from the Commonwealth government or the WA Law Society?

**Ms Kane**—That is from the Commonwealth government, from the Fair Work Ombudsman.

**CHAIR**—What have they advised the federal and the state governments in respect of your requests for future funding?

**Ms Kane**—We believe that the state government Department of Commerce is liaising with the federal Department of Education, Employment and Workplace Relations about a fifty-fifty cost-sharing arrangement beyond June 2010. But we are aware that the federal department is currently doing a review of employment law services, and they are not going to commit to any funding until that review has been completed.

**CHAIR**—Which is when?

**Ms Kane**—They have not told us.

**Ms Emmanuel**—We do understand that it will be at least a six-month period from the start but we are not aware of when the start date is.

**CHAIR**—So \$150,000-odd is coming through DEEWR—

**Ms Kane**—No, it comes through the Fair Work Ombudsman.

**CHAIR**—Oh, the Fair Work Ombudsman.

**Ms Kane**—Just to add to that, the Employment Law Centre cannot at this stage access any community legal services program funding, which is the federally earmarked funding for community legal centres. We do not have any access to that yet.

**CHAIR**—Because?

**Ms Kane**—We do not form part of the original services that were able to access that funding.

**CHAIR**—Are there any other state bodies similar to your own in other states or territories?

**Ms Emmanuel**—Yes.

**CHAIR**—Could you tell us where they are?

**Ms Emmanuel**—There is Job Watch in Victoria and there is a community legal centre which I think is attached the University of New South Wales called Kingsford Legal Centre. They have a practitioner who specialises in employment law. They work a bit differently to us in that they are a clinic attached to the university, but they also advise on employment law. There are a variety of working women's centres. I understand there is one in South Australia. I think there is one in the Northern Territory. There may be others.

**Ms Kane**—I think Queensland has them.

**CHAIR**—To your knowledge, does Legal Aid in Western Australia cover employment law?

**Ms Kane**—Not at all. They refer all their clients to us.

**Ms Emmanuel**—They have been supportive of our funding applications on that basis.

**Senator CROSSIN**—Do you have a rough idea of where the cases you get through the door are split in terms of jurisdiction?

**Ms Emmanuel**—My understanding—and, again, it is a bit difficult for us to give statistics as our database is frozen and we cannot get any information from it at the moment—is that it is about fifty-fifty.

**Ms Kane**—Yes. The last count for the first six months, July 2008 to December 2008, was 58 per cent federal and 42 per cent state within that six months. We are still trying to collate the next few months. It balances out to about fifty-fifty.

**Senator CROSSIN**—What about the number of women versus the number of men accessing your service? Do you break that down as well?

**Ms Emmanuel**—Yes, we do. Again, I think that would be close to fifty-fifty.

**Senator CROSSIN**—What kinds of matters are predominant? Would unfair dismissals be the most predominant ones?

**Ms Emmanuel**—I would say that terminations would be. That has been a bit of a change in the past few years. In the last six months—I suppose, from September last year—we have noticed a huge increase in issues around redundancy, unfair dismissal and unlawful termination. The other issues that come up frequently involve underpayment of entitlements, which is through various instruments, and discrimination.

**Senator CROSSIN**—Who here in Western Australia plays a major role in getting into workplaces or organisations and advising people about their rights? If it is not, say, government departments, are there any others? I am assuming that the chamber of commerce gets in there and advises employers about the act, and then you have got trade unions. But, for those who are not trade union members, are you the only body that fills the gap?

**Ms Emmanuel**—We are the only body that provides legal advice for free on employment law. So it is not that we go into workplaces and advise people. It is that they come to us with their issues and we can assist them.

**CHAIR**—Just on that, does the state government provide any service?

**Ms Kane**—They provide an information service through their Wageline, which is another phone line service. But if the person needs legal advice, they refer them to us.

**CHAIR**—So it is an information service rather than a—

**Ms Emmanuel**—It is for employers and employees and is through the Department of Commerce, whereas we only assist employees.

**Senator CROSSIN**—You are mainly reactionary, aren't you? When people need assistance, they ring you, as opposed to you having a broader community education role?

**Ms Emmanuel**—We actually do. We focus on providing community legal education directly to our clients but also to community organisations. This is predominantly to other community legal centres but also to other community organisations if they request it. Our capacity to do that is limited by our funding, but we do focus heavily on CLE, as we call it, because that can be very effective in terms of preventing problems before they arise and that is certainly preferable.

**Ms Kane**—We also have a website which has a large number of fact sheets and information kits. Anyone, both employees and employers, can access that.

**Senator CROSSIN**—Do you service employees outside of this area, say, in Ogilvie, Kalgoorlie, Broome or Kununurra, or is that limited by your funding?

**Ms Emmanuel**—We do run a statewide service, so we provide, as a first port of call, a telephone advice line. Anybody, anywhere in the state, can access that—as long as they can access a telephone.

**Senator CROSSIN**—Good point.

**Ms Emmanuel**—We prioritise clients, say, for example, in rural and regional areas in terms of further assistance because we understand that it is a lot harder for them to access justice. But we do not offer a walk-in service for exactly that reason. It is easy to walk in the door when you live in the same suburb as us, but obviously people who do not cannot. In any event, we do not have the resources to offer that. But we are a statewide service and we service everybody around WA.

**Senator CROSSIN**—Do you have enough resources, though, to even get to Broome or those sorts of places once a year? Do you have a travel budget?

**Ms Emmanuel**—Yes. It is a very small travel budget and we make it go as far as it can. Last year I went to Kununurra to do community legal education with the community legal centre, Legal Aid and other community organisations up there. We have offered to go to Albany. That trip did not eventuate for reasons at their end. We went to Geraldton and, I think, Kalgoorlie in that year. Previously we have offered a range of other services around the state. It is a matter of them having the capacity to actually receive us in terms of having legal staff, which quite often they do not at any particular time. But every year we go out to at least three triple-R areas.

**Ms Kane**—And we are planning to do about five regional trips in this financial year.

**Ms Emmanuel**—Yes.

**Senator CROSSIN**—So if you had more funding, you would be able to access more places than you can access at the moment?

**Ms Kane**—Yes, we would be able to employ staff to cover that. It is definitely an area of need that we recognise.

**Senator CROSSIN**—I have had a fair bit to do with the community legal centre in the Northern Territory. That is why I am asking these questions. They face a similar situation as yours. With the funding, you are on a one-year cycle from both the state and federal governments?

**Ms Kane**—Yes, that is what we have managed to secure this year through a lot of work. But we are not sure—we are hoping—

**Senator CROSSIN**—Has that been the historical case, that you get to the ninth month and you spend the next three months writing applications for the next year?

**Ms Kane**—Yes. Prior to this year we had two years of state government funding, from 2007 to 2009. That was responding to when we lost the federal funding in 2006. So it has been a real mixed history over the eight years of whether it would be for two years, 12 months or whatever. We would ideally love three years from one government agency because the other pressure now

is that, although it is fantastic that the state and federal governments are looking at perhaps cost sharing beyond the next financial year, it means reporting. So at the moment we have about three or four people to acquit to and report to rather than one.

**Ms Emmanuel**—It is very difficult planning for staff, and recruiting and retaining staff, when you cannot offer them any security. I understand a lot of agencies work on yearly contracts, but you generally would know whether you are going to get funding prior to the last day. In 2006 we found out the day before the funding finished that we had funding on an ongoing basis. I was employed then by the centre. As an employee, not to know whether you will have a job the next day is an undesirable position to be in. It is something our clients face, but as a centre it makes it very difficult to plan and retain staff.

**Senator CROSSIN**—Yes, we hear that a lot, particularly in the social policy area under FaHCSIA. With one-year funding it is very frustrating. Do you also make representations with people in the courts?

**Ms Emmanuel**—Yes.

**Senator CROSSIN**—So you not only follow legal advice but you provide legal representation.

**Ms Emmanuel**—To the extent that we can, yes. At any given time we might have, say, 10 client matters where we are on record and they may or may not end up in court depending on the settlement process and whether it is something that can be resolved prior to that.

**Senator CROSSIN**—Regarding training and professional development, you obviously gain information from DEEWR about Fair Work Australia, for example. Have they run education workshops?

**Ms Kane**—No.

**Ms Emmanuel**—We have not participated in them.

**Senator CROSSIN**—Or is that only for employers in the education budget?

**Ms Emmanuel**—I am not sure who the matters are available to. We have not been invited to any. We develop training in-house. I do a two-day intensive training course for other practitioners and for volunteers, and a variety of other generous pro bono supporters in the large commercial law firms have invited us to participate in that expertise development, which is great because it is not something that we can afford to do privately.

**Senator CROSSIN**—Do they charge you for that?

**Ms Emmanuel**—No, the law firms do not because they support us pro bono.

**Senator CROSSIN**—And what about the trade union movement here in Western Australia? Can you book in to some of their expertise?

**Ms Emmanuel**—It might be possible that we could. It is not something that we have done this time, but because we have offered so much in-house, it has meant that in any event that is a service we are providing.

**Senator LUDLAM**—Thank you very much for coming in and for your evidence. I have a feeling that in this inquiry we are going to hear quite a bit of this—people being starved of funds for no reason. I have a couple of quick questions. You mentioned before that your original funding application last year was for about \$500,000. Would that be what you would call sustainable? Does that allow you to catch the 540 calls a month that you are missing?

**Ms Kane**—No, we would need to double that. That is just to sustain our current service.

**Senator LUDLAM**—What figure would you put on sustainable funding? What would allow you to operate as you want to and catch all the callers and so on.

**Ms Kane**—A few more advice lines open. As it is, we have our advice line open only four days a week from 9.30 am to 3.30 pm plus one evening.

**Ms Emmanuel**—Would we double it?

**Ms Kane**—Yes, we would probably double it. Ideally, it would be great to be open five days a week plus after hours, to have four phone lines at least, to have enough solicitor support with the community legal education and supervision of those extra phone lines, and to increase our part-time community legal educator to full-time so that they can provide meaningful workshops out in the community—and more of them.

**Ms Emmanuel**—And we need different accommodation.

**Ms Kane**—Yes, reasonably priced and serviced accommodation that would be able to support what we need.

**Senator LUDLAM**—From the numbers you gave us right at the beginning, do you think that would still come in at less than \$1 million a year?

**Ms Kane**—Yes.

**Ms Emmanuel**—I think there is no question we would be able to provide it at a fraction of the cost government could. In part that is because of the pro bono services we can access and also because, frankly, community groups pay their staff significantly less than government does.

**Senator LUDLAM**—Sure, which is not necessarily ideal. We will stay on that for the moment. What happens to the people you have to turn away—or is that just a silly question? Do we have any idea who goes on to self-represent and who ends up just getting done over? No idea?

**Ms Emmanuel**—Not really. To the extent that we can provide pro bono assistance externally, we do that. I would say at the moment when we are having to turn people away we have

exhausted those opportunities. We have very strong ties with pro bono service providers. I think they fall through the cracks.

**Senator LUDLAM**—When you say you turn some away, do you mean you have had the phone call, they have explained the situation and you have gone, ‘I’m sorry, we can’t help you’?

**Ms Emmanuel**—We have given them as much assistance as we can and we have armed them with all the information for them to act for themselves. But, if they are not in a position realistically to self-advocate and if we do not have any resources in-house or externally that we can call on to have someone act for them, I am not sure whether people have friends or support to enable them to represent if they go off and actually do represent.

**Senator LUDLAM**—I am just wondering whether there is any way of calculating the cost of not providing these services to people. We are probably going to get a bit bogged down in the cost of providing the service but surely there is a cost in stranding people as well.

**Ms Emmanuel**—It would be very difficult for us to put a figure on it, but the Western Australian Industrial Relations Commission say clients who have been to see us for advice first and then have had, say, one-on-one sessions helping them to self-advocate take up a lot less of the commission’s time because they are so much better informed. Their matters end up generally being resolved in a better fashion. But equally they are much better prepared and it is a streamlined, efficient process. I think not having that service puts a lot of burden on the courts and commissions.

**Senator LUDLAM**—That probably is something you could put a dollar figure to as well. What is your process for deciding, and who are you having to turn away?

**Ms Kane**—We provide phone advice as the first point of call for anyone up to about \$80,000, but anyone that requires further assistance—that is, a self-help session or evening legal service—has to have a literacy issue, have a disability, live in a regional area, speak English as a second language, be Aboriginal or Torres Strait Islander—

**Ms Emmanuel**—Any sort of characteristic that would make them more vulnerable—

**Ms Kane**—or be a low-income earner.

**Ms Emmanuel**—Yes, that is a given. It is a matter at any given time of whether we have capacity. For example, last week a paralegal raised with me a client who fits our criteria, has a matter with merit and needs his contract renewed. Ordinarily we would book him in for an evening legal service. He was a gentleman in his early seventies and perhaps had some literacy issues. He would fit our criteria: he earned in the region of \$30,000 a year. But our evening legal service is booked up for the next three weeks. There are no available appointments for him. I am the only solicitor in-house and we have less capacity this particular month than we have ever had before.

**Senator LUDLAM**—Is the evening legal service like phone-counselling sessions?



**Ms Emmanuel**—No, it is one on one and in-house, provided by external volunteer employment law specialists for free. It is about 45 minutes of assistance face to face or on the phone—

**Ms Kane**—If they are in a regional area.

**Senator LUDLAM**—How many of those do you try and do in the average week?

**Ms Emmanuel**—We have at least three and then the overflow sometimes is dealt with in-house by me, to the extent that I can. To the extent we can involve volunteers who are not unrestricted practitioners who are heavily supervised and everything is signed off by me, then we do that as well. We also do up to about five self-help sessions a week. We offer about six different types of self-help sessions. It is effectively spending the first hour filling in the court forms and the next hour detailing how to represent yourself and how to prepare for conciliation.

**Senator LUDLAM**—Is there any contribution from state or Commonwealth attorney-general's departments, or is it all going through Commerce?

**Ms Kane**—All Commerce.

**Senator LUDLAM**—Do you have any idea why that would be?

**Ms Kane**—The federal program is the Community Legal Services Program. That is run through the Attorney-General's office. We do not fit the identified areas of law that are given priority for that funding.

**Ms Emmanuel**—My understanding is that at the time at which the last review was done, employment law did not come up as an area of need. That is because we were already providing the service and not funded in that stream. So it is not an identifiable area of need because the need to some extent has been met by us and, presumably, there is little money to go around for the existing centres. So I think that makes it difficult for us to fit in in that particular funding stream.

**Senator LUDLAM**—Have you participated in these sorts of reviews and committee inquiries before? How many times have you been through this?

**Ms Emmanuel**—We often make written submissions on particularly pertinent issues. We were involved in the Senate inquiry for the Fair Work Bill in January.

**Senator LUDLAM**—But in terms of access to justice and being starved of funding and that kind of stuff, have you been around the cycle a few times before?

**Ms Emmanuel**—I personally have not been involved in it before.

**Ms Kane**—Not in a Senate inquiry sense but certainly through parliamentary question times and other opportunities where we can.

**Senator LUDLAM**—Thank you very much for your time this morning. I am so sorry that we were late getting started.

**CHAIR**—Thanks again for that. I do welcome Senator Fisher to our hearing today and I pass to Senator Feeney for questions.

**Senator FEENEY**—Can you tell me a little bit about the structure, the ownership, the governance of the organisation.

**Ms Kane**—Sure. We are managed by a board of management. The board is made up of community members: union members and individuals, people representing themselves. We meet once a month and I report to them. The principal solicitor and I provide a report—

**Senator FEENEY**—And the board is elected by whom?

**Ms Kane**—By nomination from members—

**Ms Emmanuel**—We should point out that they are all volunteers. Membership is not paid for.

**Senator FEENEY**—Obviously volunteers are a critical part of your work. How do you find them?

**Ms Emmanuel**—We get a lot of offers for volunteerism. I probably receive about 200 applications a year, generally from law students, or from people in the profession who specialise in employment law and are keen to assist.

**Senator FEENEY**—You talk about servicing 4,000 people a year and you have given us a little bit of statistical information about those from your database of 2008—am I right? Also in your submission you identified that 64 of those 4,000 persons were Indigenous. Can you tell us how many were from non-English-speaking backgrounds and how many might have lived outside Perth?

**Ms Emmanuel**—No, but we have got our stats ready to go if you want me to email them to you. I just did not bring them with me today.

**Senator FEENEY**—If you could provide those to the committee secretariat, that would be marvellous. How do you advertise your existence?

**Ms Emmanuel**—Through our website.

**Ms Kane**—We get a lot of referrals as well from state and federal bodies.

**Senator FEENEY**—Do you keep a record of who your major referrers are?

**Ms Emmanuel**—Yes, we do.

**Senator FEENEY**—Can you give us a quick thumbnail sketch of who your major referrers are?

**Ms Kane**—The Department of Commerce, the state department; the federal equivalent, the federal Industrial Relations Commission, now Fair Work Australia; and the state equivalent, the Equal Opportunity Commission; and Legal Aid. They would be the main ones. We do not actively seek to advertise, in the sense that we already have a huge demand that we cannot meet and we receive many, many referrals. We have a website as well, and I understand that quite a few clients find us that way.

**Senator FEENEY**—With the 4,000 clients that you have every year, can you give us any insight into what actions occur? How many of those 4,000 are self-help interviews? How many will give rise to you doing representative work in a commission or wherever? Can you tell us a little bit about what those 4,000 actions actually mean?

**Ms Emmanuel**—All of those callers have been assisted on the phone line. Beyond that, I would say that in a particular year we might have capacity for maybe up to 15 representation matters. It depends on the nature of the matter and the year.

**Senator FEENEY**—So you will do some unfair dismissal—

**Ms Emmanuel**—Yes. In terms of our evening legal service we might have somewhere between 100 and 170 clients assisted by that means in a particular year. Again, those are stats that we can get you that we do not have today.

**Senator FEENEY**—Okay.

**Ms Emmanuel**—As for further assistance in the way of self-help information, the figures vary from week to week but we would have between one and five—so several hundred over the year. I suppose we might have between 10 and 15 instances a year of external pro bono assistance matters that we can refer out to the larger commercial firms who will take them on for free.

**Senator FEENEY**—As part of their own pro bono program?

**Ms Emmanuel**—Yes.

**Senator FEENEY**—Senator Ludlam asked you a couple of questions about unmet demand. Can you give us any kind of insight into the scope and scale of that? You said, for instance, that you would happily double the size of your operation and, as you can appreciate, most people who appear before us would merrily double the size of their operations. This is in no way to say that you do not have a fair and reasonable case, but can you tell us a little bit about how you can measure that unmet demand? How real is it? Are there X numbers of contacts that you simply do not have the resources to follow up but you log them, for instance?

**Ms Kane**—At the moment the way that we are able to obtain the information is just through our phone bills. We have got a log of missed calls and unanswered calls to our helpline number.

**Ms Emmanuel**—It is in the region of 6,000 such calls a year.

**Senator FEENEY**—Those calls that come in at a time when the service is not open?

**Ms Kane**—No, it could be when the service is open but there are only two available call lines.

**Ms Kane**—There are only two lines.

**Senator FEENEY**—And they get sick of waiting. Of the 4,000 contacts you have, you say that all of those contacts would start with a phone call?

**Ms Kane**—Correct.

**Senator FEENEY**—So there are 4,000 clients who make it and then you are saying that there are 6,000 contacts that fail to be made?

**Ms Kane**—Correct, yes.

**Senator CROSSIN**—You mentioned that the federal government is reviewing the employment law services. Have you actually put in a submission or made a comment to that?

**Ms Kane**—I believe that the terms of reference are still being established.

**Senator CROSSIN**—So it has not actually started—

**Ms Kane**—Not to our knowledge.

**Ms Emmanuel**—It is just that in our approaching the federal government for funding the response has been that funding will not be able to be provided until that review has been undertaken, and it is about to commence. But that is all the information we have.

**CHAIR**—Thank you again for your evidence today.

[9.52 am]

**DAVIS, Ms Kate, Managing Solicitor, Women's Legal Services Australia, and Women's Law Centre, Western Australia**

**HOVANE, Mrs Victoria Elizabeth, Board Member, Women's Law Centre, Western Australia, and Women's Legal Services Australia**

**CHAIR**—I now welcome representatives of Women's Legal Services Australia. Good morning. Women's Legal Services Australia has lodged a submission, No. 56, with the committee. Do you wish to make any amendments or alterations to the submission?

**Mrs Hovane**—No, thank you.

**CHAIR**—I now invite you to make a short opening statement, after which I will ask senators to ask questions.

**Mrs Hovane**—Thank you. Women's Legal Services Australia is a national network of women's legal services and law centres across Australia. It provides collegiate support and law reform collaboration nationally, and opportunities for professional development and for assessing key priority national areas of new development in unmet need. The network has joined together to make this submission today, but most of the specific information that I will be able to provide to the committee this morning will be about the issues in Western Australia as that is our area of expertise in particular. I hope that some of our sister services may be able to appear before the committee in other states.

The Women's Law Centre of WA is a relatively small community legal centre. We have about nine staff members including six solicitors. Two of those work one or two days a week and the remaining four about full time. At the Employment Law Centre we also use volunteer solicitors and other volunteer workers as well.

We provide a state-wide service and we target women who face disadvantage. Obviously a state the size of Western Australia is a very large catchment for potential clients, and so our work is often balancing the priorities of information and referral, legal advice, community legal education and law reform and policy work. We attempt to strike a balance between providing direct legal services to our clients and working for systemic change to improve access to justice for our clients.

I would like to tell you a bit about some of the programs that we operate so that you have a greater understanding of our services. We provide a prison outreach program, where a solicitor visits each of the two women's prisons in the Perth metropolitan area for a day each fortnight. The women there are primarily provided with family law and child protection law assistance, but we also provide the women with a wide range of assistance in other areas, including credit and debt—that would be a key area—drivers licences and referrals to other services where those issues arise.

The Legal Aid Commission in Western Australia does not provide any minor assistance to prisoners because it considers that they do not fit the criteria of being able to further their own case themselves. And a lot of women in prison do not meet the merit test for any assistance from Legal Aid for family law matters because they currently cannot care for their children, even though they may be trying to establish appropriate care arrangements for their release or ensure their children are cared for properly while they are in prison. Our service is one of the only services that women in prison can access, and more than half of the women in prison in Western Australia were primary carers for their children before they were in prison, so there is a very high need for those women there to receive that sort of service. Unfortunately in Western Australia our prisons have between 40 and 50 per cent Aboriginal women in them as well. That is not a statistic we are proud of in Western Australia.

**CHAIR**—Sorry; is that 40 to 50 per cent of all women are Aboriginal women?

**Ms Davis**—Forty to 50 per cent of the women in prison in WA are Aboriginal women.

One of the other programs that we operate is an outreach to Fitzroy Crossing, which is in the middle of the Kimberley. It is a remote town which is surrounded by about 40 Aboriginal communities within the Fitzroy Valley. We provide a service in partnership with the Marninwarntikura Fitzroy Women's Resource Centre, by agreement. They have funding for a family violence prevention legal service and we provide the legal services there. We provide a lawyer in Fitzroy Crossing every second week. Two lawyers rotate for those trips. It is a two-hour plane trip and a four-hour drive across, but that has been able to provide one of the most sustainable legal services in Fitzroy. Prior to our partnership, there had been no lawyer in that service since 2004. We started in January 2008, so it was a very long period when women simply did not have access to legal services there. The Aboriginal Legal Service and Legal Aid both travel in to the Fitzroy area but usually only on circuit with the magistrate and generally to provide criminal law assistance. Our service provides a whole range of other services there.

In addition to those sorts of special programs, we provide advice appointments by telephone and face to face with follow-up casework as our capacity permits. That is predominantly family law work—I think about 60 per cent—but also other matters as well. The follow-up work would include negotiating letters, court documents, compensation applications and representation in courts. We represent our clients in the Family Court, the Magistrates Court for restraining orders and the Children's Court on protection and care matters. As well as family law, we are also providing assistance in child protection, matters relating to sexual assault and sexual harassment, family violence matters and criminal injuries compensation.

We also auspice the Domestic Violence Legal Workers Network, which provides professional development and support, law reform and community legal education for lawyers and other legal workers who specifically provide services to women escaping family and domestic violence. It is a very specialised area of work, and the network has ensured that solicitors receive the professional development and support necessary to be able to provide a high-quality service. It also provides the collegiate basis for sound law reform work.

We also try to prioritise community legal education. We see it as a key aspect of our service and one of the key things that community legal centres can do to improve access to justice. An example of the training that we provide is partnering with the Women's Council for Domestic

and Family Violence Services in training Department of Housing and Works workers about the legal aspects of domestic violence. This initiative followed a women's unfortunate death after she was told to return home to an abusive relationship by Homeswest worker. Our training in there is in response to some of these systemic issues which put people at risk. We try to pose solutions to some of the systemic problems that we are seeing.

We also provide a regular morning tea style community legal education session with the young mums group at the St John of God Hospital which is basic family law and child support information with the idea of empowering women to make informed choices and giving women the information and knowledge beforehand to avoid falling into some of the more protracted family law disputes that can occur.

We also provide law reform and legal policy work such as this sort of work. We are represented on the Women's Advisory Network advising the Minister for Women's Interests in Western Australia and the Chief Judge of the Family Court children's issues committee and in those positions we try to represent the voices and concerns of women who face disadvantage.

Since making our submission and having the opportunity to present before the committee we have prioritised a few areas that we would like the opportunity to be able to talk about. One of those is Aboriginal women's legal services and Aboriginal women's access to justice. Victoria will start to address those. I also have further materials relating to the role that community legal centres play in community legal education, the need for further funding for community legal centres, particularly relating to staff wages for community legal centres and, if there is time, I would like an opportunity to give you a demonstration of what unmet need means in this area relating to child protection in regional Western Australia and the difficulties that people have accessing services there.

**Mrs Hovane**—I want to start talking about the Family Violence Prevention Legal Services. As I understand it, the program was developed in recognition of the fact that a lot of Aboriginal women are not able to access legal advice and support through Legal Aid, the ALS in Western Australia, because of conflict issues. We have ended up with this program. Services have been located in regional areas. There is a need for similar services—at least Aboriginal women's legal services—in the Perth metropolitan area as well.

As I said it was a response to this gap in Aboriginal women's legal services and access to support. What has recently happened for various reasons is that in Western Australia all bar two services are now being auspiced by the Aboriginal Legal Service. This has raised very deep concerns amongst Aboriginal women. I am not here to get into conflict with the Aboriginal Legal Service. They provide a valuable service for men and so on. What is disappointing is the process through which this has happened. Aboriginal women have not been involved in that dialogue and discussion and, if I could say it in the strongest possible way, our voice has just been excluded from this process, so yet again we are being marginalised.

So the other thing I would say is that I would actually like the whole family violence prevention legal service model to be reviewed. I see that there is a need for a broader Aboriginal women's legal service model, if you like, that not only focuses on family violence, child sexual abuse and sexual assault but also includes the capacity to do law reform, to deal with civil matters and so on. For example, in 2004 in Western Australia there was a review of the

restraining orders legislation and all those amendments went through, but Aboriginal women were not included in that process. It was not until the reviews some 12 months later that Aboriginal women got to have some say in that. I guess what we are supporting is the need for us to look at and develop and provide resources for Aboriginal women—dedicated services that involve us in developing up the core structure and focus of the service and so on.

**Ms Davis**—The situation in Western Australia is direr than in some of the other states. There are Aboriginal women's legal services in some states; there is no such service in Western Australia at all. There was funding for a previous program which finished in about 2000 which was an Indigenous women's program with a previous community legal centre which no longer operates. That funding was handed back in about 2000. I understand that it did not develop to the point where it was providing an effective service, and since then there has been no specific funding for Aboriginal women's legal services in the Perth metropolitan area. That is almost a decade with no funding for that, and it is a very chronic need here.

**CHAIR**—All right. Have you concluded? Because we have quite a few questions to ask you.

**Ms Davis**—Yes.

**CHAIR**—I will perhaps start with you, Mrs Hovane, about your concerns regarding the Aboriginal Legal Service and the provision of those services not extending adequately, in your view, to Aboriginal women. Are there guidelines in place as far as you are aware, and is the legal service meeting the guidelines? Are they incorrectly framed or worded or are they simply being neglected? Why is it that the Aboriginal Legal Service is not adequately meeting the needs of Aboriginal women?

**Mrs Hovane**—I am not familiar with whatever funding guidelines they operate under. I suspect it goes back to when the service was initially started in the mid-1970s in that it was trying to respond to where the main area of need was, which was in relation to providing support to people who were appearing before the criminal courts, and it has evolved in that way.

**CHAIR**—Right.

**Mrs Hovane**—So, to answer your question, I am not aware of the program funding guidelines.

**CHAIR**—What is the extent of the concern that you have with regard to Aboriginal women? I think you indicated that 60 per cent of your clientele are Aboriginal women. If that is the case, it would be good to get clarity around that, and can you be more specific about your concerns regarding Aboriginal women missing out on legal services.

**Mrs Hovane**—As I said, in terms of Aboriginal women often missing out on legal services, you have got the two main providers of legal services being Legal Aid and the Aboriginal Legal Service of Western Australia. Unfortunately for women, in particular areas there is, if you like, a pro-criminal focus. If women are involved in a dispute or are the victims of an offence, it is more than likely that the offender, usually male, will have accessed those services. So, if women, say, on another matter, want to access some support, get some legal advice and so on, because of the conflict of interest issue they cannot go to Legal Aid or to the ALS. It may be that the woman



wants some support around criminal injuries compensation. There are not too many services, as I understand it, that actually provide legal advice to women as support in compensation, which are quite involved application forms. If the offender or perpetrator has already been to Legal Aid or ALS, the women cannot get that support. So women are having to struggle along to try and find someone who can help them or go to great expense, their own personal and family expense, to try and engage a private lawyer to help them with that.

**CHAIR**—It is a conflict issue.

**Mrs Hovane**—Yes.

**Senator FISHER**—To further explore that answer, Mrs Hovane, no doubt the lawyers would be able to satisfactorily resolve a conflict of interest and reassure clients in an otherwise world that the conflict can be dealt with and that there is not one. But, in this environment, even if that were so, there would still be a perceived conflict from the people whom you are concerned about.

**Mrs Hovane**—Yes. There is a perception: Legal Aid and ALS and therefore men.

**CHAIR**—I think you indicated 60 per cent of your clientele relate to family law matters. Can you provide a breakdown of your clientele in terms of Aboriginal and non Aboriginal women and a more definitive breakdown of family law, and the other matters as well?

**Ms Davis**—I do not have those figures with me but I can certainly provide them to the committee.

**CHAIR**—Thank you. Can you outline to the committee how your organisation is funded and provide a breakdown of federal and state government funding, and specifically which departments?

**Ms Davis**—Certainly. I can speak for the Women's Law Centre WA but not for Women's Legal Services Australia. The Women's Law Centre WA do not receive any direct funding from the state government. We receive about \$330,000 of recurrent funding through the Community Legal Services Program of the Commonwealth Attorney-General's Department. We receive the occasional one-off payment from the Commonwealth Attorney-General's Department which this year has been \$58,000, which we have applied to a wages top-up. The Attorney-General has indicated that we will receive an additional \$70,000 for domestic violence prevention service and a further \$70,000 which, again, may be to continue the wages top-up of the previous grant.

**CHAIR**—That all federal?

**Ms Davis**—Yes. We then receive funds through the Public Purposes Trust of the Law Society which we share with the Welfare Rights and Advocacy Service which funds a solicitor one day a week for our prison outreach.

**CHAIR**—How much is that?

**Ms Davis**—The total of the grant is about \$75,000, which is shared with the welfare rights service. We have about \$15,000 of that.

**CHAIR**—Any state funding?

**Ms Davis**—We do not have any funding directly from the state government. We receive some shared funds from other community legal centres to host the domestic violence legal workers network coordinator. That is about \$10,000.

**CHAIR**—Thank you.

**Senator CROSSIN**—Do the family violence legal services now have more of a focus on the perpetrator rather than the victim? Is that where the emphasis is?

**Mrs Hovane**—From my perspective, the guidelines and so on talk about the services being available for any victims of sexual assault, domestic violence and child sexual abuse. To me, that is not providing a dedicated women's legal service. I understand it was a response to that gap.

**Senator CROSSIN**—Will the family violence legal centres need to focus on the victims of the violence?

**Mrs Hovane**—Yes, the victims.

**Senator CROSSIN**—The perception now is that their efforts have swung from assisting perpetrators to defending perpetrators more.

**Mrs Hovane**—I think it was based on a romanticised idea about Aboriginal women all wanting to stay with their abusive partners—some may, but not all of us do. From what I am told, and you probably need to speak directly to some of the people working in those family violence prevention legal services, there are some practices that are moving towards a focus on men—setting up men's groups, for instance.

**Senator CROSSIN**—Then what would be the difference between having a specific family violence legal centre and just legal aid, or between having a family violence legal centre and a women's legal service?

**Mrs Hovane**—A women's legal service could have a broader brief. At the moment, from what I understand of the way the services are funded there is limited funding, so the services do not necessarily have the resources to do law reform to assist women with civil matters. They have quite a narrow brief, if you like, which restricts the assistance that they can get.

**Ms Davis**—Another key difference would be either that family violence units, which are community managed, or an Aboriginal women's legal service would be run by Aboriginal women, so the Aboriginal women would be setting the agenda, determining the priorities and determining the ways in which the services are delivered.

**Senator CROSSIN**—If you enhanced Women’s Legal Services in the states and territories, why would you then need to duplicate that by having an Indigenous women’s service? Wouldn’t the brief or guidelines of Women’s Legal Services just be expanded to include all women?

**Ms Davis**—It is not that Aboriginal women are excluded from the services currently provided by Women’s Legal Services; it is that the need is so great in providing direct services to Aboriginal women and also that providing services to Aboriginal women requires community connection and cultural appropriateness. All of those things are best achieved by having a service that is developed and managed by Aboriginal women.

**Senator CROSSIN**—Even if you have to set up a duplicate structure? Would that be best served by that or would it be best served by expanding Women’s Legal Services, which already exists?

**Ms Davis**—The Women’s Law Centre has taken the approach that we are willing to partner Aboriginal women in whichever way they see as appropriate. If Aboriginal women in Perth wanted a program to run from the Women’s Law Centre we would be happy to facilitate that, but Aboriginal women are consistently saying that they would like to have a separate service that is dedicated, that is responsive to the community and that can provide the law reform and advocacy—provide that voice for Aboriginal women.

**Senator CROSSIN**—So the board of management would be Indigenous women rather than a community based board of management.

**Mrs Hovane**—How is that different? Aboriginal women are community members and usually represent—

**Senator CROSSIN**—A community board of management might not necessarily consist of all Indigenous women or women who have an Indigenous background, that is all. The makeup of it might be just a bit different.

**Mrs Hovane**—And I suppose on any kind of board you can bring in particular expertise and have people who advise the board et cetera so there are different models and approaches that can be taken. I was involved with the previous Women’s Legal Service in Western Australia when it was also sent the funding of women’s Indigenous projects. In answer to your question could we incorporate and expand existing women’s legal services to include services for Aboriginal women?: it depends on the maturity of the organisation and the people in it, I have to say, because the amount of discrimination that Aboriginal women faced, even from within that service, created an untenable situation. So it depends on the maturity and, I guess, the willingness of existing services to work together with Aboriginal women.

There is a mistrust that has developed around that. Can we trust mainstream services to include us in a way we want to be included? A way to get around that is to have our own service that has as its core the interests of Aboriginal women. It is not something that you take into account as an added-on thing: ‘if we get around to it we will do something for Aboriginal women.’

**Senator CROSSIN**—I am also trying to grapple with how you set up something that would be useful, meaningful and relevant without spending money on duplicating structures—like having two CEOs and having two principal legal officers. Why wouldn't you just try to expand what is there? I have seen the arguments about the family violence centres having lost their focus and the need to pull them back in again. I am wondering if establishing a duplicate structure is going to be beneficial as well.

**Senator FEENEY**—It is your evidence, isn't it, that you need a separate agency because the Aboriginal legal services failed to properly take account of the opinion, the management role and so forth that Aboriginal women can provide? Why should we turn our minds to fixing that failure rather than creating a new agency? You are being very diplomatic.

**Senator FISHER**—Mrs Hovane has also talked about conflict of interest issues.

**Senator FEENEY**—That is true.

**Mrs Hovane**—Again—and I keep on coming back to this—it depends on the willingness of people: not just what they say but how they do it. I am trying to be very diplomatic here. People talk about providing a culturally appropriate service and say they do this and that for Aboriginal women, but when we look at the actual practice and processes that are being engaged in we have to say as Aboriginal women that it has not been appropriate for us. The net effect has been to, if you like, silence the Aboriginal women's voice and to undermine us and undermine our position. It depends on the willingness of agencies to change, and my experience of working in government and non-government agencies is that it is hard to get agencies to change. When we talk about cultural appropriateness it is not just being appropriate for men; it is for our women and making sure that proper processes are engaged in to make sure that women are not being marginalised further.

We can toss around these ideas and so on, but there is a huge mistrust of trying to change the systems of the existing agencies. A lot of work needs to go into that if we are to go down that track. A lot of us expend so much energy in trying to change systems that do not want to change. If we keep on hitting these barriers, where do we best spend our energy? I am a grandmother. I am very busy in my life. Where do I spend my limited energy? A lot of women out there are busy trying to survive. Where do we spend our energy?

We have been at the forefront of driving change in our communities. You have the Fitzroy women, the Halls Creek women and the women in remote communities on the Dampier Peninsula, who, at great risk to themselves, stood up in the mid-1990s and said, 'We've had enough of domestic violence and child sexual abuse.' Unfortunately, all levels of government have not capitalised on the strength, energy and commitment of those women. We keep on having things imposed on us. We have been the driving force behind getting those changes happening in our communities.

**Senator FISHER**—Your organisation is national, but you are making a particular case, Mrs Hovane, in respect of Western Australia. I have three questions, but you might want to roll the answer into one. Is that because you are saying there is a particular need in Western Australia or there is a particular gap in the provision of services? Ms Davis said earlier that in Western Australia there is no Aboriginal legal service for women. I thought you also in answer to Senator

Crossin suggested that a while ago there was something like that. If there were, would that suffice? If there used to be one, did it work? Is there a reference point elsewhere in Australia for what you are proposing for Western Australia or are you saying that every other state and territory that has this issue has an Aboriginal women's legal service so the issue does not arise? Do you have a reference point somewhere else in Australia that you can draw on?

**Mrs Hovane**—First of all, in relation to whether there is a gap in existing services, yes. But in terms of the need, yes. That is not, perhaps, giving you what you are looking for. There is a huge need.

**Senator FISHER**—Are you saying Western Australia's need is different from other states'?

**Mrs Hovane**—No, I do not think so. I think there is a huge need by Aboriginal women across the country. I was just looking back at a previous Australian Law Reform Commission report on women's access to justice. There was talk around a national women's justice program. I am wondering why we do not have something like that.

**Senator FISHER**—Back to the second question, did there used to be an Aboriginal women's legal service and, if so, did that fit the bill?

**Mrs Hovane**—No. Back in the mid-90s there was some funding provided by the Commonwealth Attorney-General's Department. There were consultations conducted by Ms Robyn Ayres from the ALS around Aboriginal women's legal needs. As a result of that there was some project funding provided for specific projects in different regions, not about legal service as such.

**Senator FISHER**—Then, I think, you swing to the third part of the question: is there an example somewhere interstate of what you are talking about, or are you saying that where there is a need in every other state and territory it is met because there is an Aboriginal women's legal service? Or are you saying something different and I have lost the plot?

**Ms Davis**—No, that is right. In most other states and territories there is either an Aboriginal women's legal service, such as ATSIWLAS in Queensland, or there is a strong Indigenous women's program run through the women's legal service where they continue to operate on a partnership, such as in South Australia. There are varying degrees of funding to those programs, and they need to be responsive to the particular areas that they are in. Our recommendation for Western Australia is to establish an Aboriginal women's legal service.

**Mrs Hovane**—That is not to say that as Aboriginal women we are not willing to work with and negotiate with, say, the Women's Law Centre around a partnership arrangement. We are not, if you like, taking a hard and fast stance and saying that we will not be open to considering other options which reflect some of what Senator Crossin was asking about. We are reasonable people, I guess, is what I am saying. If there could be some model, again, that we participated in developing that involved something like a partnership with the Women's Law Centre, I am sure women would be happy to consider that because, again, Women's Law Centre has a women specific focus and that is something that is important to us.

**Senator CROSSIN**—The only thing I would like to raise that you have not expanded on which would be useful is the issue about wages. I am assuming that goes to the lack of funding for wages. I mean the disparity between what your solicitors and legal advisers get compared to the broader community. Just tell us a bit about that, because I think that is useful.

**Ms Davis**—Yes, that is right. I think it is the case for most community legal centres across Australia but particularly in WA. The Australian Services Union has identified that there would need to be a 30 per cent increase in funding to bring wages to a level that recognises work value in comparable sectors. The National Association of Community Legal Centres commissioned a work value report in 2008, and that found that community legal centre wages were 69 to 71 per cent of those in comparable services, and that was compared to Commonwealth and New South Wales public sector solicitors.

The discrepancy is such that, where we may be in partnership—for example, with the Legal Aid Commission—a principal solicitor in the community legal sector may be expected to supervise a legal aid restricted practitioner who is on a higher wage than them. Seriously, it means a \$30,000 to \$40,000 pay difference between the two. If one of our principal solicitors or managing solicitors wanted to leave the sector, they would be able to secure a position in legal aid with either a substantial increase in pay or a similar pay level to what they were receiving and with substantially reduced responsibility. To give an indication of the actual figures for what we are talking about, my managing solicitor position and the principal solicitor position at the Women's Law Centre in the ACT, as noted in their submission, were both on about \$54,000. A comparable position in legal aid would be closer to \$80,000. Certainly there are higher positions within legal aid that take account of the larger size of the organisation and the different expertise that might be required.

The one-off funds that were provided to the community legal centres in the last financial year were used by a lot of the centres to increase wages. We spread ours over two years to provide a bit of certainty for our staff, which means a 10 to 12 per cent increase in wages. So there is still a big gap between that and the 30 per cent that would provide some comparable work value recognition.

I would like to draw the committee's attention to the Queensland pay equity decision for the social and community sector workers. Most of the community legal centre workers are paid according to the SACS award. In Queensland a collective of unions and employer groups took the matter to the commission and argued on a gender pay equity basis. There was a successful decision which has led to increases of between, I think, 17 and 38 per cent for workers in Queensland.

**Senator CROSSIN**—Who ran that case?

**Ms Davis**—The QSU, the QCCI and others for the Queensland Community Services and Crisis Assistance Award. The arguments that were made there are certainly true for community sector workers across the whole of Australia. Essentially, a lot of the caring work is associated with the supposedly inherent caring skills of women. Within the sector and within the broader community, that care work was seen as a vocation rather than an occupation. Although you may think that does not really apply, the professional sort of work we do is often not taken as seriously as perhaps other commercial work may be. The contribution of volunteers within the

sector is incredibly valued but it has also had the unfortunate effect of undermining the paid value for workers. The nature of the client group means that workers will often compensate for shortfalls in funding by providing unpaid or underpaid work.

**Senator LUDLAM**—Have you done any modelling for or much thinking about what a separate agency for Aboriginal women would cost?

**Mrs Hovane**—No.

**Ms Davis**—The National Association of Community Legal Centres has identified that about \$500,000 is an appropriate base figure for a community legal centre that provides a state-wide specialist service. That would be a good ballpark figure.

**Mrs Hovane**—You would have to take account of the great distances. WA is a huge state. Again, if we wanted to establish a dedicated service, it would have to be able to establish its credibility in terms of being able to deliver a service to women in remote towns and communities.

**Senator LUDLAM**—That is where I was going to go next. Can you tell us a bit more about the Fitzroy practice—what sort of work is done there?

**Ms Davis**—Sure. The Fitzroy practice was initiated by the Marninwarntikura Women's Resource Centre. They have given us quite clear directions to not say no to anybody, which is part of establishing a reputation and a relationship with the community. A lot of the work that we provide would include very warm referrals to other specialist services, which would include networking clients with the Welfare Rights and Advocacy Service, the Tenants Advice Service or specialist solicitors who practise in compensation matters. We would provide the face. As for providing direct services ourselves, a lot of all that has been in terms of violence or restraining order matters and child protection work. The child protection work has been in one of the major areas for which people have been asking for services.

**Senator FEENEY**—So Fitzroy Crossing was chosen essentially because you had an invitation? Is there any comparable service in the Pilbara or in the Goldfields or in any other regional area?

**Ms Davis**—The funding for the Fitzroy Crossing service is from the family violence prevention legal service program. There is a family violence prevention legal service in South Hedland, in the Pilbara. There is also a Pilbara community legal service which has specialist funding for women's services as well. It has offices in South Hedland and Roebourne and in Newman as well.

**CHAIR**—We thank the witnesses for their evidence today. It is most appreciated.

**Proceedings suspended from 10.36 am to 10.50 am**

**COLLINS, Ms Priscilla, Chief Executive Officer, North Australian Aboriginal Justice Agency**

**DOOLEY, Mr Glen, Principal Lawyer, North Australian Aboriginal Justice Agency**

**JOHNSON, Mr Julian, Managing Solicitor, Civil Law Section, North Australian Aboriginal Justice Agency**

**FOX, Ms Dorothy, Board Member, North Australian Aboriginal Justice Agency**

*Evidence was taken via teleconference—*

**CHAIR**—I welcome you and the other witnesses from the North Australian Aboriginal Justice Agency, or NAAJA, appearing via teleconference today. You have lodged submission No. 6 with the committee. Do you wish to make any amendments or alterations to that submission?

**Ms Collins**—Yes, there is one addition under section 4.3. We would like to include that there is a lack of services available for Indigenous people with hearing impairment.

**CHAIR**—Thank you. I now invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

**Ms Collins**—Thank you for giving us the opportunity to present a submission today. NAAJA provides legal advice and representation to Indigenous people in the Top End of the Northern Territory for criminal, civil and family law. We also provide services in mediation, welfare rights, research, advocacy and community legal education. Indigenous people continue to be disadvantaged in the criminal and civil justice systems in the Northern Territory. A clear example of that is that over the last 12 months the adult prison population has risen by 23 per cent. We have the highest imprisonment rate in Australia, at 3½ times the national average, and we have the highest rate of recidivism, at 44.6 per cent, in Australia.

One positive mechanism to address that disadvantage in the criminal justice system is to ensure the provision of ongoing, culturally appropriate legal aid services is available to reduce Indigenous peoples contact with the system. In the civil justice system disadvantage can only be addressed by culturally appropriate legal aid services, including mediation, education, and access to justice and advocacy. In our submission we have detailed some of the reasons why Indigenous people are unable to access justice. This is due to: lack of funding and resources for Indigenous legal services in the Northern Territory; a significant lack of parity of funding between Aboriginal and mainstream legal aid in the Northern Territory; difficulties for victims of crime in accessing crime compensation; lack of legal advice and representation available for defendants for domestic violence order applications; the cost of delivering justice with particular reference to language and cultural barriers; travel costs, which impact upon legal services, clients and their families; and the adequacy of funding and resource arrangements for community legal centres, with reference to inadequate provision of independent tenancy advice in regional and remote communities in the Northern Territory.



Without vastly increased resources from governments, both the Northern Territory and the Commonwealth, we believe there will continue to be a major overrepresentation of Indigenous people in the Northern Territory criminal justice system and a massive under representation of Indigenous people in the civil justice processes seeking redress for violation of their rights and entitlements. We are happy now to answer any of your questions.

**Senator CROSSIN**—It seems weird talking to you from down in Perth, where it is much colder. It is good to hear from you and thank you for your submission. I want to go to quite a few areas but, first of all, your submission was obviously written back in April prior to this year's budget. Can you update us on any funding you may have got from the federal government since your submission.

**Ms Collins**—Since our submission, we received a one-off grant of \$1.1 million for the financial year 2008-09. Of that, \$200,000 is allocated to expensive Indigenous cases and we are speaking to the attorneys-general about the other portion of it. We received \$897,000 for the Northern Territory intervention for 2009-10. We also received funding of \$201,000 for advocacy and community legal education and \$500,000 for welfare rights. They were the main ones.

**Senator CROSSIN**—What does that take your total funding to?

**Ms Collins**—It increases our funding but only increases it for projects; it does not increase our actual operational funding.

**CHAIR**—What is your total funding?

**Ms Collins**—Next financial year?

**CHAIR**—This financial year until 30 June 2010?

**Ms Collins**—I do not have that figure in front of me. Our budget for this current financial year is close to about \$5 million for operational funding. We have a contract with the Attorney-General that takes us to 30 June 2011. For each financial year it increases by about one per cent and in the final financial year it increases by three per cent. Those sort of small increases barely cover our basic CPIs let alone take into account the large increase in matters in criminal and family law.

**CHAIR**—So all of your funding at the federal government level is from the Attorney-General's Department?

**Ms Collins**—Yes, we receive all of our funding from the Commonwealth. We receive no funding at all from the Northern Territory government.

**Senator CROSSIN**—On page 8 in your submission you talked about how in June last year you applied to the Northern Territory government for funding to act as agents for CVSU clients.

**Mr Johnson**—Yes, victims of crime.

**Senator CROSSIN**—And you have actually had no response as opposed to a negative or even a positive response. Is that right?

**Mr Johnson**—That is right. We have had a number of meetings with attorneys-general since that time. On all of those occasions we have been told, at least orally, that the NT government will not give us money for anything, including to assist victims of crime.

**Senator CROSSIN**—What is their reason for giving you no money for anything given that, I am assuming, some, if not 50 per cent, of the clients you represent are breaching Northern Territory law. Would that be right?

**Mr Johnson**—That would be right in the vast majority of cases. I think it is a political and philosophical issue. I think the Northern Territory government would see their providing us with any funding as the thin edge of the wedge, so to speak—that the Commonwealth would reduce their funding accordingly.

**Ms Collins**—I have raised this with the Northern Territory Attorney-General when it was Syd Stirling, Chris Burns and the current Attorney-General. We have been advised by all three of them that any funding for NAAJA is a Commonwealth responsibility.

**Senator CROSSIN**—What percentage of the clients that you represent have allegedly breached Northern Territory law.

**Mr Dooley**—In the criminal side of things, say, 95 per cent of our clients, if not a higher percentage, would be facing charges under Territory criminal legislation. It would only be a very small percentage that would face any charges under federal legislation.

**Senator CROSSIN**—The Commonwealth guidelines for community legal centres—and I am assuming that is what you would be classified under—

**Ms Collins**—Yes.

**Senator CROSSIN**—clearly state that the money is there to be used for breaches of Commonwealth law. Does that put you between a rock and a hard place, really?

**Mr Dooley**—It definitely does. The short description of NAAJA at the moment is that despite some funny increases which are welcome in certain areas, which are mainly used for the intervention, our core funding which gives us the basics to get out there and, certainly on the criminal side, deal with an ever increasing raft of charges against our clients, is not increasing and it is getting harder and harder to do the work. There is more and more pressure on lawyers and on the system.

**Senator CROSSIN**—Have you done any research and can you tell us what other state governments provide Aboriginal legal services in, say, Queensland or New South Wales? We had evidence this morning from Western Australia.

**Mr Dooley**—We do meet reasonably regularly with the other services throughout the country. Certainly in Victoria the state government assists the Aboriginal legal service quite substantially,

and also in other jurisdictions. But mainly it is in kind—properties to use and other forms of support. We have actually tried that here in the Territory; we have actually said, ‘Can you give us an office down at Palmerston?’ We desperately need space at Palmerston to reach down to a lot of our clients who are, obviously, based there. We need to support them and we just cannot get any support to get an office at Palmerston. We have tried that with the local government.

**Senator CROSSIN**—Would it be fair to say that you are the only state or territory Indigenous legal service that does not get assistance from the state or territory government?

**Mr Dooley**—It could be close to that situation. Some of the other services at other places do not get a lot, they do not get much. But there does seem to be some evidence that they do get something, but Victoria seems to be the best of them.

**Senator CROSSIN**—I am assuming that the majority of your work is for perpetrators, although you do get some victims coming to you. Is that how it works? What percentage of your representation would be victims versus perpetrators?

**Ms Collins**—Just to give you an example, in the financial year 2007-08 we attended to about 7,500 matters. Of those, 3,500 were criminal matters—that is, representing perpetrators. We would have done about 3,200 cases of providing duty lawyer services and legal information. We have also represented 515 matters in family and civil law. In addition we provide services for mediation, advocacy, community legal education, research and welfare rights. Unfortunately, I do not have those figures. There are quite a large number that we would represent or provide advice to.

**Mr Dooley**—Perhaps one broad indication of how we operate which demonstrates how we are split is that there are 27 lawyers who work from NAAJA across three offices; 18 of them are in crime and nine are in civil and family. That might give you some idea of the relative sizes of our left and right arms. We are possibly unique in Australia in that our criminal law team tackles crimes across the spectrum from relatively minor matters right through to the fact that we have represented 24 people charged with murder since February 2006.

The numbers get high because a lot of those criminal matters are matters that are put through the system quite quickly. There might be 100 matters on at a bush court in two days, so you can see how the stats will come up quickly, whereas in the civil section they have nine lawyers, as against the criminal section of 18, and civil matters on the whole—would you agree, Julian?—tend to be more complicated and longer running.

**Mr Johnson**—Longer running, yes.

**Senator CROSSIN**—What has been the impact of the Northern Territory intervention on your workload?

**Mr Dooley**—On the criminal side of things, I think we are beginning to see it now. We have been monitoring this quite closely and, as the police stations become more entrenched, we are beginning to see an increase in the rate of charging and an increase in the number of matters going to court. The stats tell us that there has been an increase in matters to the tune of about 25 per cent between the 2007-08 financial year and 2008-09. I think that is just the beginning of it.

If you are going to put 18 new police stations into the Territory, of which probably a good 10 or so would be in the Top End, you are going to see start seeing a lot more charges. For example, at Galiwinku, which formerly did not have a police station and now has one, the court list is starting to grow. It is not growing with people charged with violent offending; it is growing with people charged with traffic offences, relatively minor breaches of domestic violence and offences involving police themselves. What really causes a lot of trouble for our clients is what we would term overpolicing. There are so many police per capita now in remote Territory areas that the charges just start to flow and a bush court can see \$20,000 to \$30,000 worth of fines levied just in a day or two, from what is already a fairly poverty stricken place. This is for driving uninsured and minor traffic offences.

**Senator CROSSIN**—The money you got from the federal government in relation to the intervention—was that in response to dealing with that extra workload?

**Mr Dooley**—Not really, no. We have picked up a couple of extra criminal law positions but not really enough to meet what is happening. A lot of that extra funding for the NTER has gone into welfare rights lawyers and the civil section, which has been tremendous, and community legal education—a lot of positives there. But with the criminal side of things we are starting to lag further and further behind.

**Senator CROSSIN**—Finally, I just wanted to ask your opinion about access to justice for Indigenous women. You have got the Top End Women's Legal Service, but other than that where do women who are victims of crime go for support or assistance? Should there be a separate Indigenous women's service established?

**Mr Dooley**—I think Julian is going to talk a bit more about what is happening on the civil side of things, but with the criminal side of things the point can be made that a lot of Aboriginal women get charged with criminal offences and they really need a topnotch, sterling defence team behind them. For example, of those 23 or 24 people charged with murder since February 2006, I think seven or eight were women charged with killing. The imprisonment rate for Aboriginal women is going up more dramatically than it is for men at the moment. Also, the number of women getting charged is getting higher and higher, so there is a real issue there. Julian might be able to talk about the story with women on the civil side.

**Mr Johnson**—There is an Aboriginal family violence legal prevention service operating in Darwin. They go to outlying communities, but their task is 99.9 per cent applying for DVOs on behalf of Aboriginal women. There is the Top End Women's Legal Service—you are right—but I think they are generally restricted to two solicitors at most; it may only be one at the moment. They do a bit of work around the town camps and close to Darwin but do not really get out of Darwin.

The short answer to your question is that Aboriginal women on Aboriginal communities have virtually no way of accessing this service unless they are very articulate and very literate. Even then, they will basically have to fend for themselves when it comes to providing any documentary evidence, any sort of medical examinations or anything like that. The administration of the system is entirely Darwin based, and they have no travel budget and no capacity really to communicate effectively with Aboriginal people on communities whose English is a second, third or fourth language.

**Mr Dooley**—Since the NTER and some of the extra money that has flowed to NAAJA, for the first time, NAAJA has been able to employ extra civil lawyers who have got out on a more regular basis to communities and have at least begun to assist Aboriginal women in understanding what possible rights they have. Prior to the extra NTER funding, our presence in the bush was necessarily quite limited, simply because we did not have the money to get out there. We now have some capacity to go. I think there are at least the beginnings of an opportunity for Aboriginal women to be aware of their civil rights.

We find that most of the perpetrators of the violence are male, because of our Chinese wall—that is, our two distinct services within one—our civil section can still act for the victims of those crimes. So we ensure that we can offer a service to the victims as well as the perpetrators. Because our civil and criminal arms are completely separate, the Law Society has given us the green light to act on both sides of the fence, so to speak, in these types of matters. One of the really good things for our service in the recent couple of years is that we are beginning to feel that our civil section is taking flight and really offering this to some important people who previously did not get it.

In terms of legal education type things and beginning to offer people more knowledge, we are getting out to the bush to help people understand what legal rights they have—again, which previously was not happening—and a mediation service is beginning to take hold in a couple of communities in an effort to try to prevent disputes getting out of hand before they turn into criminal matters and there are victims and perpetrators. We are trying to get in at the ground floor to help people resolve their problems before they end up in violent action. There were not really any great fans of the NTER here but, from what we have seen so far in the first two years, we are hoping it will improve but there has at least been some chance in the last two years for NAAJA to broaden its important effort in communities.

**CHAIR**—Thanks for that. Senator Crossin, do you have any further questions? We are a bit tight on time.

**Senator CROSSIN**—I do, but I will see if Senator Ludlam has a question and then I will come back to you if I have a bit of time at the end.

**CHAIR**—I have two questions before we go to Senator Ludlam. Firstly, do the federal government guidelines for your funding require you to undertake matters relating to federal law?

**Mr Dooley**—Not, strictly. Under our funding arrangements, on the criminal side of things we are funded to basically act for Aboriginal people who are before the courts. That could be under Territory laws or federal laws. So we do not have that restriction.

**CHAIR**—That is on criminal matters. What about on other matters?

**Mr Johnson**—It is the same for civil matters.

**CHAIR**—Do you know why that is? Is that the reason that the Northern Territory government is not offering to provide any financial assistance?

**Ms Collins**—NAAJA, which was previously NAALAS, has always been funded by the Commonwealth. I think the Northern Territory government has a position that anything to do with Aboriginal legal services is a Commonwealth responsibility. I think the Northern Territory government is a bit hesitant to fund us in case funding gets reduced to the Northern Territory government.

**CHAIR**—Can I ask a second question. I think you indicated in your statement, Ms Collins, regarding Indigenous people in jail, that there had been a 23 per cent increase in the Northern Territory. Is that right at what are the reasons for that—is that the intervention or are there other reasons for that?

**Ms Collins**—We got those statistics from the ABS corrective services March 2009 print-out. It is difficult to say what that rise is. I presume that it does relate to the intervention. Glen Dooley can update you.

**Mr Dooley**—What you are seeing now are with the explosion in jail numbers in the Northern Territory is the slow-ticking bomb created several years ago by the late CLP government and the current Labor Territory government. Mandatory sentencing still is very much entrenched in the Northern Territory. There is very little money put into non-imprisonment options. Home detention has dropped away. Community service work once was a fairly viable alternative to jail. That has dropped away.

There has also been a marked increase in Supreme Court sentences. In 1999 there was a Court of Criminal Appeal decision called *Queen v Wurramara*, where the Court of Criminal Appeal acknowledged that the tools at the disposal of the criminal courts were pretty blunt and if we were going to address male Aboriginal violence on females and kids in communities, we had to start imposing heavier sentences. Those heavier sentences have now been happening for the last 10 years. Gradually, with the appointment of the recent new Chief Justice, sentencing is much heavier than in the past. So the jail sentences are getting longer and longer. What you have now is a lot more prisoners staying in the system for longer periods. The parole board is tougher than it used to be—it is not letting people out as much. Part of the reason there is that the parole board is not confident that the offenders have got a worthwhile pathway so they have the option of getting parole. There are no halfway houses up here. There is not much support for prisoners who put their hand up and say, 'I want parole.' They are getting knocked back because there is no clear path for them once they get out of jail.

**CHAIR**—That is fine. I appreciate your feedback. We are limited for time. That is adequate.

**Mr Dooley**—Sorry—a lot of factors are combining to cause this.

**CHAIR**—Sure, I appreciate that. I will pass to Senator Ludlam.

**Senator LUDLAM**—I have a couple of questions. You have been describing I guess a fairly hardline law and order approach to these sorts of cases over the last 10 years. What has happened to domestic violence and assault statistics in the Territory over that period of time? Can we say that it is having a measurable impact? Is it working?

**Mr Dooley**—Sorry, a lot of that question dropped out. Are you asking what has happened to the crime statistics?

**Senator LUDLAM**—Yes. If we have had 10 years of a bit of a zero tolerance approach, what is actually happening to domestic violence and assault statistics?

**Mr Dooley**—The tragedy is that the crime rate is not going down. In fact, the last lot of statistics we saw on the Territory crime rate showed that the violence rate was stagnant at a very high level. The property crime rate does jump around a bit, but it is arguable now that the property crime rate has actually begun to increase again in the last two years. Several years ago across Australia property crime dropped off a fair way, maybe because of affluence—a number of factors there. The Territory crime rate is certainly not dropping and in some cases it is going up in the face of this huge increase in imprisonment. There is a real problem.

**Senator LUDLAM**—Can you describe for us what categories of offences attract mandatory sentences in the NT?

**Mr Dooley**—Sorry, Senator, hardly any of that question got through.

**Senator LUDLAM**—Can you describe what categories of offences attract mandatory sentencing in the NT?

**Mr Dooley**—One which is causing a lot of problems in terms of incarceration rates is breaches of domestic violence orders. A second breach gives you a mandatory seven days in custody. A lot of these breaches do not involve any violence; they are simply people turning up at the wrong place at the wrong time. It is a long story, but that is one area. Another is first-time assaults that cause harm, even an aggravated assault causing harm. The test for harm is any bodily injury. It is quite a low test. That is a mandatory period of imprisonment, some of which must be served. Various categories of property offences still carry sentencing where you either have to get community work or jail. Of course, one of the big inflating factors in people's prison sentences is the minimum non-parole period—50 per cent and in sex cases 70 per cent. So the opportunity to get parole is denied for some time in a lot of cases. These are all drawing together to create a pretty difficult landscape for some offenders. Don't get us wrong, there is a place for punishment; there is no doubt about it. Some crimes are very serious and punishment is a factor. But the problem in the Territory is that 15 per cent of the prison population is there for drink-driving or driving disqualified. People who have never committed a violent offence are in jail because of their use of cars in places where there is no public transport.

**Senator LUDLAM**—Fifteen per cent?

**Mr Dooley**—Yes, 15 per cent are in jail for Traffic Act offences. The overpolicing causes a lot of people's records to quickly accumulate. Relatively young people can have lengthy records and find themselves getting jail sentences for pretty moderate offending just by dint of their repeated offending, which I do not think would be picked up in a bigger community with less policing and where perhaps other ways would be utilised to try and curb people's behaviour rather than simply pushing them through courts all the time and into jail. We understand that people do the wrong thing and we are not encouraging that any way, but the actual way that this is

approached—if it is all police and punishment and penalties and prison—I do not think is going to lead to positive changes.

**Senator LUDLAM**—I have one last question, which is about arrangements for customary law. Has much work being done in the Northern Territory about integrating European law with customary law with these sorts of cases?

**Mr Dooley**—I heard the words ‘customary law’—I did not quite hear the rest of the question.

**Senator LUDLAM**—I am wondering what sort of work is being done there in that regard. Is there any integration of customary law with the sort of court work that you are doing?

**Mr Dooley**—Not much at all, really. The Territory at the moment is on a pretty harsh drive. The NTER laws themselves actually restrict the material we put before courts concerning customary law when it comes to bail applications and sentences. It is not a huge restriction, but it has been looked at recently in a Supreme Court case as to its breadth. Getting away from courts, that is not really the sense I have up here in the Territory at the moment. The powers that be are not that interested in trying to work with Aboriginal communities to see whether some factors of customary law could be brought into play to try and really address offending. Probably 10 to 15 years ago they might have been entitled to that, but not in the last decade.

**Senator LUDLAM**—Would that be something that you would support, though?

**Mr Dooley**—Absolutely. If what is happening in the Territory is proving anything it is that this relentless imprisonment of people is not protecting people. If we are going to make some dent in those crime rates I think we need to look at taking the best features of the two systems to try and really make it better. A lot of Territory young men are desensitised to prison very quickly. It is not a penalty; it is not a deterrent. I think about one in every 18 or 20 adult Aboriginal males in the Northern Territory is in jail at any given moment. So it is a whole alternative society; it is not a place that people fear; it is not a deterrent. I think we need to find things that people—not fear; deterrence more than fear. If we are trying to protect people I think we are going to need to find some ways of getting through to them. As we know, a lot of the young offenders are in the 15 to 25 bracket. What has an impact on those people? Certainly not jail, because jail has become a second home for a lot of people.

**CHAIR**—Thank you very much indeed for your evidence today. There are no further questions by senators. On behalf of the committee, we thank you for presenting your submission and your evidence by teleconference. We will conclude on that note.



[11.25 am]

**COLLINS, Mr Peter, Director, Legal Services, Aboriginal Legal Service of Western Australia Inc.**

**EGGINGTON, Mr Dennis, Chief Executive Officer, Aboriginal Legal Service of Western Australia Inc.**

**NINYETTE, Ms Robyn, Managing Solicitor, Law and Advocacy Unit, Aboriginal Legal Service of Western Australia Inc.**

**CHAIR**—Welcome. The Aboriginal Legal Service of Western Australia has lodged submission No. 62 with the committee. Do you wish to make any amendments or alterations to the submission?

**Mr Eggington**—No, thanks.

**CHAIR**—I invite you to make a short opening statement.

**Mr Eggington**—I think it needs to be pointed out first up that for us it is not a matter of access to justice. For Aboriginal people it is really about fighting injustice, which stems from things like the power of privilege. High court judges many centuries ago, or in this country after 1902 when we got the High Court, had opinions about Aboriginal people that were based on racism and Darwinism. When it came to us getting justice for ourselves in the area of land rights we had to fight the power of privilege, where some High Court judge did not reckon that we were people who had culture, religion or any kind of priority rights in land. That injustice equates today to someone like Bernie O'Hara, who is our lawyer in Carnarvon, doing a Meekatharra circuit and having to look after 49 clients in one day. Mr Collins can give you an idea of the horrific numbers of Aboriginal people that are actually locked up and come before for the justice system in WA.

You have heard from NAAJA up in Darwin that a lot of our work is criminal work, the main reason being that we are so overpoliced, discriminated against and marginalised. We are not born any more criminal than anyone else, but society creates that problem. Continually fighting this oppressive regime of tougher laws which affect Aboriginal people indiscriminately is the real issue of access to justice for our people. I think the committee has to rethink some of the ways that we think about these matters, particularly the issue of access to justice, because it is really about fighting injustice. The terminology is of victim versus perpetrator. I have heard this morning a lot about perpetrators, and I consider most of the Aboriginal people that come before us as victims of the society that I have just talked about. There are people who are suffering terrible mental illnesses. Once again, we would love the committee to get a handle on the current debate about mental illnesses within the justice system, as well as about people with social morbidity who cannot fit into society or who are suffering mental illnesses through co-dependence on alcohol, drugs and all kinds of things. These things are all part and parcel of the huge numbers of Aboriginal people that come before us, who we see as mainly victims. Of

course, there are some pretty bad people out there and no-one is going to try and defend the indefensible. That is what I would like to say as a beginning.

**CHAIR**—Mr Collins and Ms Ninnette, do either of you wish to make an opening statement?

**Mr Collins**—What I would like to provide the committee with as a bit of snapshot initially is some of the statistics in relation to Aboriginal imprisonment in this state. Many of the issues that confront the ALS here in WA are paralleled in the NT. You have heard something about it in the evidence given by NAAJA this morning. Aboriginal people in WA comprise a touch under 3.5 per cent of the overall population yet the rate of Aboriginal imprisonment in WA is the highest in the country and has trebled in the past 20 years. On any given day, between 40 and 50 per cent of the adult prison population is Aboriginal and 77 per cent of the juvenile detention population is Aboriginal. These statistics are as recent as Friday of last week. So of the 144 children in detention at the moment, 112 of those are Aboriginal. The rates of reoffending within the Aboriginal community are these: among male juveniles, 79 per cent; amongst female juveniles, 64 per cent; amongst male adults, 68 per cent; and amongst female adults, 54 per cent. So it is not overstating things to say that there is a crisis in terms of Aboriginal involvement in the justice system in Western Australia at the moment.

ALS does a large majority of criminal law work. That is of necessity by virtue of those figures, and our society holds dear the concept of liberty of the subject. However, funding constraints that we are confronted with mean that our capacity to provide the Aboriginal community in WA with access to justice in non-criminal areas is very limited indeed. We have 18 offices across the state and only nine of them are staffed by lawyers; the rest are staffed by Aboriginal court officers. By contrast, the Legal Aid Commission has seven offices. Legal Aid has a total annual budget, drawn from their most recent annual report, of what we can see is about \$41 million. Our annual budget this year is \$10 million. We are funded exclusively by the Commonwealth; we do not receive one cent from the state government. That means that our capacity to provide legal assistance to the Aboriginal community, especially in regional and remote areas, in non-criminal areas, in areas such as Centrelink, employment law, discrimination, guardianship, probate and family law, is very limited indeed simply because we are not provided with enough money to be able to provide those services. We would like to be able to do it but we are not allowed to.

That is what we are confronted with in Western Australia. In comparison to other Aboriginal legal services in other states, quite frankly we receive a raw deal. For example, in Kununurra, which is about the same size as Katherine, we are funded to provide one lawyer. We currently employed two. By contrast, the Katherine office of NAAJA has around five or six lawyers. That is where we sit in the overall scheme of things, and that completes what I would like to say by way of an opening statement.

**CHAIR**—Perhaps I can kick it off and ask a few questions just to drill down. Thank you very much for that evidence, Mr Collins. The bulk of your work is crime. You say you are funded \$10 million from the Commonwealth. Is that through the Attorney-General's Department?

**Mr Collins**—Yes.

**CHAIR**—And the bulk of your work is criminal related matters.

**Mr Collins**—Yes.

**CHAIR**—Over 90 per cent?

**Mr Collins**—I would say between 80 and 90 per cent, yes.

**CHAIR**—And the remainder?

**Mr Collins**—The remainder is family and civil law and what we call law and advocacy, which is law reform, community legal education—that area of the law.

**CHAIR**—And the guidelines under which you operate with your funding agreement with the Federal government, do they say that you should only do criminal? What do the guidelines actually say?

**Mr Collins**—The guidelines provide for us to provide services in criminal, family and civil law. They do not prescribe a certain percentage of those areas of the law.

**CHAIR**—Right. And the fact that you deal with crime is that you see that as the priority area obviously rather than family, and you mentioned Centrelink, employment law and other areas.

**Mr Collins**—It becomes the priority, of necessity. If I can give an example which Dennis touched upon a moment ago. Our Carnarvon office does a circuit to small communities in the desert, Meekatharra, Mount Magnet, Wiluna and Cue. That circuit takes place every three weeks and we are the only agency which attends that circuit. So we are it. It is forced upon us to appear for clients charged with criminal offences. There is one lawyer going there to those circuits. To give you a snapshot of the most recent figures, on 27 May the lawyer from our Carnarvon office appeared for 50 people. On 10 June he appeared for 69 people and on 24 and 25 June he appears the 98 people.

**CHAIR**—In a day?

**Mr Collins**—That is a two-day circuit, 98 people, on his own. Legal Aid do not go there by choice. So that is an issue not so much about access to justice, that is what I would describe as access to injustice.

**CHAIR**—Do you liaise with Legal Aid as to which entity represents and which one does not? How does that work?

**Mr Collins**—There is a very loose arrangement with Legal Aid. They make the call about which circuits they go to. It is very much an ad hoc thing on the ground as to who does what. Sometimes Legal Aid, depending on the personality, will provide a great deal of assistance, in another office not so much assistance and we get to carry the burden of that work.

**CHAIR**—That is one of the issues for the committee, the falling between the gaps. You have got the different services like yourselves and Legal Aid, community legal services, the women's legal services. We heard from them earlier today. So there are issues there that we have to work through. If you have a view as to how that should be better structured, we are interested in it.

**Mr Eggington**—One of the important thing to recognise is that when we went into contract with the Commonwealth government it was based on historical figures of criminal matters, family law matters and civil matters. Basically they would not have enough money to be able to contract the real work to our communities. They based their figures around pre-existing caseloads for us. That is how we come to be doing 6,000 criminal matters a year and 2,000 family law matters.

**CHAIR**—It is based on past history, is it?

**Mr Eggington**—Yes.

**CHAIR**—We had evidence this morning from witnesses regarding access to justice for Aboriginal men and then, from a witness's perspective, the lack of access to justice for Aboriginal women. Do you want to comment on that and do you want to make an observation on whether that is accurate is and how it could be better administered?

**Mr Eggington**—I will start off by saying that the access for our people is of concern for all of our community, including of course our women and children, and for our men in the circumstances Peter has just described. Just prior to picking up the contract with Attorney-General's probably six or seven years ago, there were some priority areas around services, and they included remote services, women and children. So a lot of effort has gone into trying to overcome those, and they are not perceived problems but real problems, about that kind of access. It just seems to me that while there is this continuing competing of resources internally in legal services around the country, it is very difficult to try to balance all of that work out.

But there is a greater need for more cooperative arrangements between ALSs, legal aid, community legal centres, women's legal services and, should we be lucky enough to have an Aboriginal women's legal service in WA, an Aboriginal women's legal service. The gap is so big that there is a need for all of those, but a more cooperative approach is needed. For instance, we have considered whether or not we should have our operation in Kununurra. Peter has described the situation in Kununurra and Katherine. Between Kununurra ALS and Kununurra Legal Aid they have got three lawyers, I think, in Kununurra now. We have considered whether or not we should take our resources out of Kununurra and put them somewhere else, like Meekatharra, so that there would be a lawyer out there instead of a court officer which is justice on the cheap for Aboriginal people. We love our court officers; they are a tremendous addition to our service. And we are the only state or territory which has court officers who can actually do representation. But, as an Aboriginal man, I kind of feel, 'Are our people really getting a good deal here when we have got paraprofessionals doing some very serious matters?' There could be a rationalisation.

**CHAIR**—Do you acknowledge that there is a conflict of interest issue in some of the methods, as perhaps was referred to in earlier evidence, in, say, domestic violence and sexual abuse matters?

**Mr Collins**—There is always a conflict of interest issue. It can never be underestimated nor ignored. If, for example, we are acting for a male accused—as I would prefer to call him, rather than 'perpetrator'—and the female complainant comes to us for assistance and we are conflicted out of it, we have got processes in place to try to ensure that that female is represented.

**CHAIR**—Can you describe the processes, please.

**Mr Collins**—First of all—and these are imperfect processes, I must say, and I will try to say why in a second—it is a requirement of our contractual obligations within the Attorney-General's Department that the female complainant go to Legal Aid and seek legal assistance from them. If Legal Aid refuse to provide assistance, the female complainant is then asked to come back to ALS. We will then make an assessment based on merit—that is, that there is a reasonable prospect of success. We will then brief a private lawyer to act for the female complainant—say if it is a criminal injuries compensation claim. It is an imperfect system because—

**CHAIR**—But that is only in the case of compensation; what about in the case of a criminal matter?

**Mr Collins**—In a criminal matter the same process applies. For example, if we have acted for a male perpetrator in the past and the current matter involves the female victim of the male perpetrator's crime being charged with his assault, we cannot act for her because we have acted for him in the past. She will have to go to Legal Aid and then come back to us and, provided there is merit, we will brief a private lawyer.

There are three aspects of that which need to be emphasised. Point No. 1 is that that is an imperfect process, because you are dealing with people who are profoundly disadvantaged, as a rule, have poor literacy and numeracy skills, and who often do not have the wherewithal to be able to go to Legal Aid and seek a grant of aid from them. Point No. 2 is that the categories of assistance provided for by Legal Aid are incredibly restrictive. In the criminal arena, unless you have a mental illness or an intellectual disability or you are on parole or a suspended sentence and are facing immediate imprisonment, you will not get a grant of aid from Legal Aid for them to defend you in a criminal matter. You will not get it.

**CHAIR**—Why wouldn't you get it?

**Mr Collins**—Because those are their rules. They would say, 'We will not provide a grant of aid unless those criteria are met.' In our Perth head office, for instance, I cannot recall the last time when someone who we were conflicted out of acting for got a grant of aid from Legal Aid for a contested summary hearing.

Point No. 3 is money. It is incredibly expensive for us to pay private lawyers. For example, we will have a matter shortly up in Roebourne where we are going to have to brief a private lawyer from Perth to go and appear for a woman. She is deserving of a defence. But it is going to cost us thousands of dollars. We are forced into that position.

**CHAIR**—Can I ask the type of case?

**Mr Collins**—She is the victim of a history of acute, incredibly violent, domestic violence who has been charged with, in effect, making a false report to police, because she made a statement to the police indicating what had happened to her and then, as a consequence of pressure from her male partner, went to the police and sought to retract that statement. That is an awful state of affairs, but—

**CHAIR**—But what about criminal situations where you have an accused and the woman is a witness and not a complainant? Do they have any support through your service?

**Mr Collins**—Not in a criminal context, no.

**CHAIR**—So how would they get support—either counselling or other support services? Where would they go?

**Mr Collins**—They would have to go to an outside agency. The Family Violence Prevention Legal Service, Legal Aid or another legal service. One of the critical things that needs to be highlighted is that access to justice is not simply about having a legal service provider available to provide that assistance. In Aboriginal communities it has a lot to do with understanding and knowing that you are entitled to pursue that assistance. So many of the Aboriginal community in WA simply do not know that, for example, if Centrelink make a decision cutting of their pension then that decision can be challenged. People do not know that. People do not know that if child protection takes your child from you there are legal avenues of redress that you can pursue.

The other aspect to it which is equally important is that WA has a land mass the equivalent of Western Europe. The number of places in WA where there are lawyers on the ground, regardless of who they are working for—the government or the non-government sector—is very small. There is a vast array of Aboriginal communities out there where people have not got the faintest idea that they are entitled to access legal advice let alone have access to it.

**Senator CROSSIN**—I want to pick up on something in your submission to us on page 9. You wrote that the Commonwealth should, in consultation with the family violence legal centres, review the current operation of these in WA. What is the background to you making that statement? Give us a bit of evidence about why you think that review is necessary.

**Mr Collins**—It is a flawed model.

**Senator CROSSIN**—Why?

**Mr Collins**—Its genesis was flawed. I do not think that anybody would seriously contend that there is not a need for a family violence prevention legal service or something akin to that. However, those services—as I understand it—were rolled out without any proper consultation with organisations such as ours. What happened was that attempts were made to set up a standalone legal service, agencies and family violence prevention legal services in remote areas which did not have the faintest possibility of being sustainable entities. It is impossible to set up a family violence prevention legal service in Fitzroy Crossing on its own unless it is incredibly well resourced. You cannot pay a lawyer \$60,000 to live in a place like Fitzroy Crossing as the only lawyer in town, when the nearest professional support is 600 kilometres away in Broome. It is not going to work.

**Senator CROSSIN**—And so they are not working?

**Mr Collins**—They haven't been up until now. They needed to have appropriate infrastructure and governance, managerial and administrative supports in place to enable them to be successful operations. That has not happened.

**Senator CROSSIN**—If you defunded them, could you pick up the work that they are doing?

**Mr Eggington**—That is not where we are going. You are well and truly aware of the role that the legal service here plays with the AGs in putting our hand up to basically be the saviour of these programs. While Peter has not come out and said it, there are certainly aspects of pecuniary interests and conflicts right across all of those bodies that are intricately linked with the management bodies. Some were trading insolvently; some were having perceived issues with the AG's office.

At the moment, we are working with the Attorney-General's office to put in place a very separate incorporated organisation which could be a company limited by guarantee with a very small number of board members—five or six people—with a whole range of expertise that will come together as the Western Australian family prevention legal services. We are not looking at incorporating those into our structure but facilitating a move so that they can become quite autonomous. I think there are lots of good issues around centralised administration and outsourcing administration and payroll systems. The ALS or other groups could possibly do that and save a lot of money so that you do not have 10 accountants et cetera. That is something that we see as being a good role for the ALS.

We genuinely put our hand up some time ago. There have been lots of criticisms of ALS not just in WA but all over about the role we play in supporting women. We were very genuine in looking at developing our own women's unit and that did not work. The A-G's came in and said, 'This is the way that you can fulfil that,' and we were very genuine in wanting to show our community that we did care about women, so we put our hand up to help this program along. That is where we are with them now. It is a very independent organisation.

**Senator CROSSIN**—Yes, sure, but if the Family Violence Prevention Legal Services are not working or delivering, why would you just bundle them up into some huge, incorporated family violence legal services organisation? Isn't that like changing the logo on a dysfunctional organisation?

**Mr Eggington**—It could be, but we are currently working with the A-G's and those organisations and getting some proper administrative and separation of power processes and good governance. In the end what we see as being a board of expertise with the organisation having its own principal legal officer and being able to manage its own affairs is, I think, probably a better way to go than incorporating those structures elsewhere, whether it be with the Aboriginal Legal Service or not.

**Mr Collins**—This issue of conflict of interest is a vexed one, especially with ALSWA auspicing Family Violence Prevention Legal Services in WA. There are a couple of things about that. First of all, it needs to be noted for the record that ALS did not seek out an auspicing role for the FVPLS. It was effectively thrust upon us by the A-G's Department. They came to us and requested that we undertake this role and they provided some financial incentives for us to do it. We need money, so we could not look an opportunity like that in the mouth. However, as part of that, we consulted very carefully with the legal practice board here about the conflict of interest issue, which I understood was a very real and important one. After that consultation, the legal practice board said that it did not have any concerns with the processes we had put in place to

deal with conflict of interest; however, it added a rider that it would have to deal with that conflict of interest complaint if and when it arose on its merits, which is fair enough.

However, I acknowledge that there may very well be and probably is out there in the community a perception of a conflict of interest on the part of ALS, given that we do crime and that men are not charged with assaulting their partners and domestic violence is a very serious issue in the entire community. There is a perception out there, and the perception is probably not going to go away as long as ALS is involved in that auspicing role with Family Violence Prevention Legal Services. There is a need to provide women and children, especially in regional and remote WA, with access to legal assistance. If it comes to the FVPLS, that is fine, but I think there are some real negatives with a standalone, wholly independent family violence prevention legal services across regional WA. A centralised service, as our service has proved, provides efficiencies, reduces costs but also provides the professional support that is crucial to the success of these sorts of agencies. I think it would be very hard working on your own in, say, Fitzroy Crossing as the only lawyer in town without having access to, say, senior lawyers elsewhere, even if it is only over the phone, to provide you with assistance.

**Mr Eggington**—Senator, that model that we are talking about is the model that is in Victoria. It is recognised as a best-practice model.

**CHAIR**—We will go to Senator Fisher.

**Senator FISHER**—Mr Collins, you spoke of perception. Perception has essentially become reality. Do you think you can pierce the perception here, for example, if you deal with concerns like those that Aboriginal women were not consulted in auspicing? Can you neutralise the perception through some sort of procedural mechanism so you can retain a centralised service or are you accepting that there needs to be another solution because of the perception?

**Mr Collins**—I think we perceive our role with the auspicing of the FVPLS very much as a short-term role and more of the nature of a caretaking role to hopefully ensure that the processes that need to be developed are developed to ensure that these services provide the assistance that they are required to do. Again a lot of this gets back to resourcing and if we were to be properly resourced. At the moment we have got one person, a senior Aboriginal woman, working permanently through our head office in trying to assist the individual FVPLS across the state. It is not enough. We would need a dedicated staff of anywhere up to six, I would imagine, to be able to do the job properly and to engage in the consultation which we acknowledge is really important. It is pointless setting up an Aboriginal legal service or a family violence prevention legal service unless you engage the community, because that has been the failure of successive governments and government departments over the years where these things have been thrust from outside with no consultation and no engagement and no community involvement taking place. I take your point but I probably have not got the right answer.

**Senator FISHER**—I think you are suggesting that in an adequately resourced world your service could do what you need to do to pierce that perception, which may be totally and understandably in people's heads but very understandably so given this area?

**Mr Eggington**—I am not sure. We have actually done lots and lots and that perception is still current. We have put on women contact officers and women support groups. Our organisation is



actually an organisation whereby 50 per cent of the board members are made up of very strong Aboriginal women. Up until very recently all of our management, civil, family law, criminal, and law and advocacy sections were all headed by women.

**Mr Collins**—Women lawyers.

**Mr Eggington**—Yes, women lawyers. That perception has existed and is still existing even with all of that effort going into trying to do something about it.

**Senator FISHER**—And you cannot alter the fact that a lot of your clients are blokes.

**Mr Eggington**—Well, no, because this state is hell-bent on locking up Aboriginal men. It is a worldwide trend. That is why some of the United States and England are now actually looking at reduction policies instead of locking more people up.

**Senator LUDLAM**—Thank you very much for your evidence today. I am wondering if you could go through for us the proportions of accused that are male or female and that you find yourselves acting for.

**Mr Collins**—I knew you were going to ask that question. That is the question you asked of NAAJA. I do not have the figures at my fingertips. What I can tell you is this. As is the case in the NT, we are increasingly acting for more females. Over 50 per cent of the adult female population in WA is Aboriginal. The majority of them are in jail for unpaid fines. The increasingly Aboriginal female juveniles are becoming removed from the system. I do a lot of work as an advocate in the children's court. I think the breakdown would be very close to 50 per cent as between male and female in the children's court criminal jurisdiction. Like the NT, regrettably a number of clients are charged with murder. I could give you a rough calculation. We have had 17 clients charged with murder since 2005. Of those 17 six have been women, all of whom are my clients and all of whom came from backgrounds of domestic violence at levels almost incomprehensible by those of us who live in non-Aboriginal urban areas. There is a perception out there—and perceptions are important—that ALSs act almost exclusively for men. It is palpably incorrect. We act for lots of women, and rightly so.

The point needs to be made, and it is an obvious one, that Aboriginal people are entitled to the same defences and to the same defence of their cases as any other members of the community. I get quite angry when we get criticised for acting for Aboriginal accused who happen to be men. But no-one bats an eyelid when a Catholic priest abuses a pupil at his school and is charged with serious sexual offences and he runs his case into the ground. In my book, that is no different from an Aboriginal accused who wants to run his case and who is entitled to the same representation as a priest gets. However, I acknowledge that there is a lot of work to do in terms of providing access to justice for women and children particularly in remote areas. There is no getting around that.

**CHAIR**—But you will take Senator Ludlam's question on notice?

**Mr Collins**—Yes, I will.

**CHAIR**—Thank you, Mr Collins.

**Senator LUDLAM**—That would be much appreciated. I am wondering whether the perceptions of conflict are basically as to there not being enough lawyers to go around for serious assault cases.

**Mr Collins**—I think that is an important aspect.

**Mr Eggington**—Senator, one of the other things that I think Peter might want to mention is this. There is this whole idea of conflict. I am not a lawyer, so I do not profess to know too much about the law, but what I have come to understand, after years of working in the legal service and coming to know the community as I do, is that if our service were to adhere to strict conflict processes, to get conflict out of the way, we would not represent anyone. It is a serious problem that the Attorney-General's office has got a national project on. It is on conflict, not just about conflict as to whether or not we can auspice a family violence centre but on the whole gamut of what we do. Peter, might want to add to that.

**Mr Collins**—It is a very important issue. There are rules in place in WA and also there are Supreme Court decisions on conflict of interest to do with lawyers. For example, say we acted 10 years ago for someone who was charged with disorderly conduct and pleaded guilty on the day that they first appeared in court and received a fine. The record of that appearance would be kept as part of the ALS archive records. If that person is today the victim of an assault and our new client pleads guilty, strictly speaking we cannot act for that new client because the prosecution witness is an old ALS client. That is ridiculous, in my opinion, but those are the rules. What we effectively do, rightly or wrongly, is almost turn a blind eye especially in places like Meekatharra, because you have got no choice. If you were to apply conflict rules strictly—this is as Dennis has said—you would not act for anybody.

**Senator LUDLAM**—One proposal that was put fairly strongly by an earlier witness was the idea of a separate Aboriginal women's legal referral centre or resource in WA. I think, Mr Eggington, that you said at the outset that you would be supportive of that. Would it help if you had a separate catchment of lawyers working in that capacity? Would that help take the pressure off you guys in terms of conflict?

**Mr Collins**—Yes.

**Mr Eggington**—The gap is so big that it is needed. We could almost ask for a separate one for children. Our children's lock-ups are overflowing with Aboriginal kids.

**Senator LUDLAM**—I have got a couple more questions mainly around some of the issues that you touched on really briefly in your submission. I am interested in issues around language and translation services. I gather there is a pretty serious shortfall. Can you sketch a picture for us?

**Mr Eggington**—I am not sorry. I will get Peter to do that, Senator. It is not a shortfall; it is a miscarriage of justice. Our people are going to court and they should not be going to court, because they cannot understand half the things that are going on around them, let alone read back the statement that they are supposed to have made to the police. It is just unbelievable, this question of interpreters for Aboriginal people. It is a terrible injustice that happens in this country.

**Mr Collins**—There is no interpreter service.

**Mr Eggington**—In this state.

**Mr Collins**—There is no state funded, properly accredited and resourced interpreter service in Aboriginal languages in WA.

**Senator LUDLAM**—So it is not a shortfall; it is a complete absence.

**Mr Collins**—Correct.

**Senator LUDLAM**—If I am a French speaker or German speaker and I am brought before the courts—I do not know if this is a question for you guys or not—can I request translation services?

**Mr Collins**—Not only can you request them; you are entitled to by the law. The High Court said that. You can get an interpreter. If you are an Indonesian fishermen charged with people-smuggling who appears in a Perth court today, you will be provided with an Indonesian interpreter—and rightly so.

**Senator LUDLAM**—How many language groups are we talking about for Western Australia; what would it actually take to adequately meet that?

**Mr Eggington**—Lots—not a huge amount, not like hundreds, but certainly 10 or 20. You would probably get away with something like 10. But then you have got the issue too of not just languages but also the whole construct of Aboriginal English and the use of English words in an Aboriginal way that sometimes does not mean the same thing. So it is a very complex situation, but the cost and the number of languages should not override people's human rights.

**Mr Collins**—Senator, it leads to real injustice, as Dennis has touched upon. I was involved in a murder trial a number of years ago now of a young man—he was 18—from a community called Balga, a terribly disadvantaged community, which is 300-odd kilometres from Halls Creek. He spoke English as a third language. He was in custody. The case involved very complex issues in relation to the cause of death and also cultural issues, because he was in what is called a wrong-way skin group relationship with his female partner, who died. We had to get the trial on because he had been in custody for about 16 months. There was no interpreter available, and we were forced to use another prisoner from the jail—he was in Broome Regional Prison—who sat next to him in the dock. After about two hours he fell asleep on the client's shoulder, and that was the extent of the interpretation for a two-week trial. The client was facing life imprisonment on conviction. We were acutely conscious of the issues arising from that but we had no choice but to box on because we knew that if we put it off there was no guarantee we would get an interpreter in the future. I was involved in a case where a desert man was a prosecution witness—he was not even a client of ours—and he got in the box, was asked his name by the magistrate and said, 'Guilty.' The magistrate went on: 'What's your name?' 'Guilty.'

**Senator LUDLAM**—Not to labour the point but are there not grounds just over and over again for mistrials?

**Mr Collins**—There are, but we are caught between a rock and a hard place. The focus inevitably comes on providing an interpreter for serious matters. If there is a list of 100 clients in Meekatharra and you have got misgivings about the capacity of three, four, five or six, or 10 or 20 clients to understand the process, you cannot afford to take the point, because the whole list stalls and the magistrate gets unhappy. So our focus is on the clients charged with murder or for other serious criminal matters. Invariably they are in custody and cannot get bail, so if the matter is delayed because there is no interpreter the client suffers, because they are the one in custody who cannot get out. So the point is not taken.

**Senator LUDLAM**—Are they doing this better in the Territory or anywhere else?

**Mr Collins**—Of course they are, yes—exponentially better.

**Senator CROSSIN**—So there is no interpreter system run by the West Australian government here. I am assuming there are Indigenous people in those communities who speak those languages fluently, but because there is no interpreter service there is no way they can be accredited or registered; is that right?

**Mr Collins**—There are small interpreter services in WA. There is the Kimberley Interpreting Service, which does a wonderful job but is incredibly underresourced, and there is an organisation called Wangka Maya at Port Hedland, but they are very small agencies. I could talk to you for hours about the issues associated with that—but, to answer your question, yes.

**CHAIR**—I think Senator Feeney has a follow-up question on this matter.

**Senator FEENEY**—I am interested to get a thumbnail sketch from you—forgive my ignorance—about the extent to which Aboriginal communities in Western Australia have English as a second or third language. Do you have any statistics you can offer us as we try to get a fix on how dramatic a problem this is?

**Mr Collins**—I think the best way to approach that question is by saying that very few Aboriginal people speak standard English, which is a part of the criminal justice system. With regard to Aboriginal languages, a vast majority of the people we see in remote and rural areas would find it very difficult.

**Senator FEENEY**—In their typical life, English is not their first language. Would a traditional language group be their first language?

**Mr Eggington**—Correct.

**Mr Collins**—Or some form of creole or Aboriginal English which is very different and, if you do not understand the system, the phonetics or how languages are understood, then it is very easy to be misunderstood.

**Senator FEENEY**—Is there any recognition of those traditional language groups in the education system?

**Mr Collins**—Yes, there is.

**Senator FEENEY**—As I understand it, there are textbooks and the opportunity for Indigenous children to learn and retain their language through the formal education system.

**Mr Eggington**—There has been. There has been some great work done on that, work that comes from looking at places like New Zealand and Te Kohanga Reo, which is ‘languageness’ and the development of those processes, but recently it has taken a backward step here. There seems to have been a deliberate move to try to take that type of learning out of the education system. Very quickly, the evidence is that you get better outcomes in English and understanding other concepts if they are taught to you in your first language.

**CHAIR**—We are going over time, Senators.

**Senator LUDLAM**—I want to ask you about customary law practices in WA, but that is probably a very big subject to unpack. Can you give us just a brief idea, because I gather we are a bit further ahead than what we heard before about the Territory.

**Mr Eggington**—Once again, it is certainly one of those areas where we would state there is an injustice because these processes are not really considered and put in place; they are ad hoc across WA. The reality is that our law reform commission tried to do something about that by incorporating some things. Some of the issues we have raised are language, alternatives to the normal court systems, recognition of adoption laws and criminal punishment within the system. Peter may be better equipped to say on a daily or a weekly basis how much that is taken into account.

**Mr Collins**—I am glad you have asked, if you do not mind me saying, Senator. We do not suffer from the same impediments, if you like, that ALSs in the Territory are facing as a consequence of specific legislation being introduced to prevent sentencing courts in particular taking into account customary law practices in the imposition of sentence. Our courts have been very receptive to issues in relation to customary law practice in the imposition of sentence; however, it is not enshrined in legislation, so it is therefore very much determined according to individual judges. Where it arises most frequently is in the context of traditional punishment, where someone is punished in the traditional way as a consequence of a wrongdoing. In, say, manslaughter cases that we deal with, very frequently the wrongdoer has faced traditional punishment at the hands of their community. From where I sit, that is a very important consideration in the imposition of sentence.

However, what I would like to mention is that I have been associated with the ALS on and off since 1995. I have done a lot of the serious criminal cases that we have been involved in and on not one occasion during that nearly 15-year period have we received instructions from a client that some sort of sexual offence was justified on the basis of cultural practice. It has not happened in my experience, and to that extent I think WA Aboriginal communities must be somehow or other different to where those controversial cases are emanating from—for example, Arnhem Land communities in the Territory.

**CHAIR**—Thank you. You said in your evidence that ALS WA gets a raw deal compared to other states and territories. Can you be more specific as to why that is? I am happy for you to take this on notice?

**Ms Collins**—I will take it on notice. The fact is we have Aboriginal court officers, who are not lawyers, who are able to appear in court and do on a daily basis, and do a wonderful job. I think what has happened, whether deliberately or otherwise, is that that often translates into fewer lawyers on the ground for our individual officers. Also, the law is becoming increasingly complex. I think it is unfair on our court officers and grossly unfair on our clients that they are not being represented by qualified lawyers in all sorts of areas of law, not only criminal law but also civil and family law.

**CHAIR**—Thank you. Mr Eggington, do you have a final comment?

**Mr Eggington**—I think we must reiterate the fact that in 36-plus years of operating, we have had no support at all from the state in providing our service. The history of Commonwealth funding of Aboriginal organisations since the seventies has been all about supplementary funding. The Commonwealth topped up states' contributions to health, education and housing. Unfortunately, legal issues got left aside and we have been surviving on supplementary funding ever since. It is why the legal service in South Australia has a case before the United Nations on discrimination. Unlike other states and territories, we cannot go to Legal Aid and get a briefing to do matters. It is very difficult for us. WA has missed out.

**CHAIR**—Thanks again for your evidence today.

[12.17 pm]

**COPELAND, Ms Anna Gabrielle, Director, Southern Communities Advocacy Legal and Education Service**

**CHAIR**—Welcome. We have your submission which we have numbered 39. Do you wish to make any amendments or alterations to the submission?

**Ms Copeland**—No.

**CHAIR**—I invite you to make a short opening statement at the conclusion of which I will invite members of the committee to ask questions.

**Ms Copeland**—Thank you. Thank you very much for the opportunity to speak to you today. As you have seen in my submission, the main areas I want to cover today are the funding and sustainability of CLCs generally, and also the funding and sustainability of clinical legal education and the contribution that clinical legal education can make to access to justice issues. Before I do though, I just want to highlight the fact that there are endless examples of barriers to access to justice for different groups of people, particularly in Western Australia but I believe across Australia too. I want to highlight some of them; I will not be dealing with them but I am happy to take questions on them. These are ones that come to our attention at SCALES.

First, I should give you a little background about SCALES. SCALES is a community legal centre that was started in conjunction with Murdoch University School of Law. It is a community legal centre and a clinical legal education service, which means that we run a clinical program for law students at Murdoch University. We are based in Rockingham, which is a southern suburb of Perth suburb, about 20 minutes drive. We run a generalist service, so we see pretty much what any CLC generalist service would see—a lot of family, a lot of crim, social security and small debt, and all of those sorts of issues. We also have students from Murdoch University who assist us with the practice, who interview clients, who formulate advice, who do the legal research and who often give that advice under the supervision of the solicitors.

We see some of the major issues, down at SCALES. They are about people not being able to access justice. We see Indigenous clients, particularly Indigenous children and young people, and also Indigenous women. But generally speaking Indigenous clients across the board have a lot of difficulty being able to access justice. The other major group that we come into contact with all the time is, of course, children and young people. It has been over 10 years since the *Seen and heard* report, which really highlighted all of these difficulties that young people and children have in accessing the legal system, accessing justice and being able to assert their rights. Hardly any of those recommendations from that report have ever been taken up. That still remains a big issue for the people that we see.

We also, as part of our service, run a weekly drop-in centre for homeless people up here in the city. In fact, I am supposed to be at it in about half an hour. I had to just pop out to ring to make sure that that was covered. Another major area of problems with access to justice is homeless people and indigent people. The problem in WA is ever-growing because homelessness in WA is

just completely on the rise and has been for the last five to 10 years. It is becoming pandemic, and that is a real problem.

Having said that, I wanted to really point out the major issues from our perspective around the value of CLCs, community legal centres—what they do and how they do it. The point I want to make is that the structure of community legal centres is a structure that actually gets to the core of many of the access to justice issues that we have in this country. We interestedly listened to the discussion with ALS, particularly about the family violence protection services. The difficulty is balancing a central model, where you have a central office that is really controlling the services that are out in the regions—and the benefit of that is that they can resource it much better—against individual services that are in those regions but struggling for sustainability because they are on their own. In my mind community legal centres offer the best of both worlds, or could do. They are based in the community. They have, most of them, arisen out of community need and community activism. What I mean by that is people within that actual community saying: ‘This legal system is not working for us. What do we need to do in order to make sure that it better does?’ It is the essence of access to justice. That is where most community legal centres come from.

Over time that has been eroded because more and more pressure has been put on community legal centres to do a more legal aid role. The distinction I would make there is that legal aid—which is very necessary—operates in a similar paradigm as private practice in the sense that a person will come in with a legal problem and the legal aid lawyer will take that issue on and operate as a lawyer would in most legal contexts. They will represent the person or sort the problem or do the correspondence in order to effect change or get a result for that person and then hand it back to that person. Community legal centres operate in a very different way. They have a much broader prospective. They are educating. You heard Dennis say just a moment ago, and I think Peter also, that access to justice is about knowledge, that many of the problems are that these people in communities or remote areas do not even know they can claim criminal injuries compensation, do not even know that they can get protection. If a benefit gets cut off, they do not even know they can challenge that decision. Community legal centres start with that aspect of educating people and making sure that people are aware of the legal system and how it might affect them. Also, they are aware of how they might have an impact on that.

In addition to that, in practising, because of the way community legal centres are set up, we are always looking for the opportunity to give the resources that are necessary to support the client for the client to resolve their own issue. Wherever that is possible, up to a certain point, the client does what they can do. The lawyer will do whatever is necessary, or the legal centre worker will do whatever is necessary, to take that next step if it is necessary for the client. But what you end up with at the end of that process is that the client has seen that process, they understand that process, they have been through that as an educative experience. If it happens again, they know what to do. They might come back to the community legal centre and they might get some more assistance, but it will be less assistance because they know more about what they have to do to start with. So what we are actually doing at community legal centres is building capacity within the communities that we are working in to deal with the legal system and to get true access to justice.

The problem that we have is that the underfunding of community legal centres has meant that fundamental things such as systemic and network issues have not been as fully funded or as



strong as they could have been. For agencies, for example, like Katherine's women's service or women's services or community legal services that are in remote or regional areas there is much more that could be done to properly resource and support them within the community legal centre network. The reason it is not being done is that there just are not the resources.

The issue about parity of pay I think you have probably had brought to your attention. There is a very good report on the website of the National Association of Community Legal Centres which talks very much about that issue. But what is hidden in these sorts of figures about the percentage of community legal centre workers and the money percentage they get above equal jobs is that there is a whole lot of work being done by community legal centre workers that is pushed towards case work because that is the funding model and therefore is taking away from what I call that more systemic network work that could be done.

In my mind, for something like access to justice we should have every single community legal centre here giving evidence on their particular client base and what the issues are for their client base. But we do not, and the reason that we do not is that it is just impossible for a community legal centre functioning with the resources that it does to have the opportunity to do some of this extra work as well.

**CHAIR**—Ms Copeland, we will need to go to questions, so if you could wrap up your opening statement, that would be useful.

**Ms Copeland**—Certainly. I will go on to clinical legal education, because that is the other major area that I want to talk to you about today. I am not sure how familiar you are with clinical legal education. It is basically a process by which students are involved in real practice with live clients and in doing legal work alongside community legal centres or other practices in order that they can gain skills and build their knowledge of lawyering. The benefit as far as access to justice is that there is lots of evidence coming through now that clinical legal education actually builds in students an understanding of a lawyer's role within the broader community, including commitment to pro bono and commitment to professional ethics, which require that lawyers, given that they are in a privileged situation and that they have this high level of education, have a responsibility to give some of that back to the communities that they are working in in the form of pro bono or community work.

What we are seeing with our students is that that is very much growing. We have been around now for 12 years, and about five years ago staff members from SCALES were involved in setting up a community legal centre specifically for refugees, given that at the time there was a big demand for and issues around that and there was no funding for any legal services to those people. We started up a service that had over 400 volunteers, and 80 per cent of them were alumni of SCALES. That was enormously rewarding for us. It really showed that there is that sort of acknowledgement. We have just had a clinical legal conference in Perth, and we have a guest here from that conference here today. That is all I will say.

**CHAIR**—Thank you very much for that.

**Senator FEENEY**—Just to clarify, 80 per cent of them had served as volunteers with SCALES previously. Is that what you are saying?

**Ms Copeland**—They had not volunteered; they had been our students.

**Senator FEENEY**—I see. Through Murdoch.

**Ms Copeland**—Yes. They had done the work through the SCALES clinic and they had then volunteered. We see that a lot. We have students who do all sorts of different things with their careers, but what we often see is that in a long-term way they have commitment to pro bono and often social justice as they go forward in their careers, and they give time to or they end up working in the area. But, even if they are working in private practice or government offices, they give a lot of time.

**Senator FEENEY**—Can you tell me a little bit more about how SCALES works with the university and with the law school there? What is the nature of the linkage and how do you attract students into your work? Is it part of their curriculum?

**Ms Copeland**—It is an elective unit, so students do not have to do it; they choose to do it. They get credit towards their degree by coming to us. It is a 20-week program in the first semester and the second semester. Our semester obviously goes across the academic semester. Students come to the clinic for a whole day once a week. They might have to do follow-up work on their cases or what they are working on. On the day they are there, they will interview a client and then discuss it with their supervisors. To start with, the supervisors interview with them and, as they get more experience, they interview the client-take or give the instructions and discuss it with the supervisor; they will do the research and formulate the advice. All the advice has to be approved by a supervisor. They can often give that advice to the client, depending on the complexity of the advice. They have ongoing files to work on and they also might work on things like this. We had two students working on the submission to this inquiry.

**Senator FEENEY**—Are they assessed?

**Ms Copeland**—There is an ongoing assessment. We have a grid of criteria that we look at. It is mostly practice criteria that we have against all of the work that they do. Then they get a grade at the end. Many clinical legal education programs across the country use a pass/fail model. Ours does not; ours is a graded model.

**Senator LUDLAM**—Thank you very much for coming in this afternoon. Your submission talks about Commonwealth funding declining quite dramatically compared to the contribution that Murdoch University is making. Does that cause you to have to look for other sources of funding? Are you hitting up the university harder? How is it working?

**Ms Copeland**—It is more about external funding. We have been able to attract a lot more external funding, although that has its own limitations. For example, for 10 years we got some funding from the Public Purposes Trust of the Law Society and, given the global financial crisis impact on that, that stopped last year. There is philanthropic funding, funding from state government bodies and funding from the Law Society. It is a battle to keep the funding constant enough to keep staff employed.

**Senator LUDLAM**—The trust has been mentioned a couple of times today. That is obviously a fairly key source of funding for CLCs. Can you tell us a little bit about that? That was cut off?

**Ms Copeland**—Yes. The fund has not stopped; it is just that have reassessed how they assign their funds. I should also say that they are very clear when they give the funding that it is one-off, one-year funding. But, when they give it to you for 10 years in a row, you kind of forget that they said that.

**Senator LUDLAM**—That has been a continuing theme. Could you give us a rough idea of how many people you are turning away—the number of people you are not able to help that you would have helped if you were resourced to do so.

**Ms Copeland**—That is a very difficult question because clients come to us through a whole range of ways. They might be referred by telephone or they simply might approach us because we are not able to get out and do outreach in the way that we would like to. I can certainly give you figures. I do not have them here today, but I can definitely follow up with figures about how many people we need to refer on because we do not have the capacity to see them.

**Senator LUDLAM**—Where would you refer them to?

**Ms Copeland**—That is the difficulty. There are not a lot of choices. If they can in any way get Legal Aid we will try to get them Legal Aid. We are quite often successful in getting clients Legal Aid. But if it is an area that Legal Aid will not cover, we try to harness pro bono solicitors—private solicitors. We have been very lucky in getting pro bono assistance. We have a group of barristers and solicitors in WA who are willing to help us and have done some wonderful work for us, including Federal Court appeals on migration matters and things like that. We will use private practitioners whenever we can.

**Senator LUDLAM**—Is that just in the case of really important precedents or key cases or are they doing nuts-and-bolts work?

**Ms Copeland**—They do some nuts-and-bolts work. Often it comes down to us on the phone saying, ‘Please, can you see this person? This is why we think this is important’—giving them some indication as to why we think this person really needs that assistance.

**Senator LUDLAM**—You were set up in 1997?

**Ms Copeland**—Yes.

**Senator LUDLAM**—Has the agency got larger during that time?

**Ms Copeland**—It has got larger partly because of the funding issues that you have mentioned. What has happened is that when we set up we had half Commonwealth government money and half university money. The community legal centre was set up as the clinic, they were one and the same thing, the staff worked in both. Because the federal funding has shrunk and we do not want to reduce the services that we provide to clients, we have gone for more funding externally. Of course, with that come service delivery requirements that have also impacted on the staffing and how we have done that. The community legal centre has grown. The community legal education service within that, the clinic, is now a subset, if you like, of the community legal centre partly because of our success in attracting other funding but also partly because the other funding draws the focus away from the educative aspect of the clinic.

**Senator LUDLAM**—Does anyone else such as Notre Dame offer a similar service or are you one of a kind?

**Ms Copeland**—We have been a bit of a one of a kind until recently. There was one at Notre Dame that was opened up in conjunction with the Fremantle Community Legal Centre but it did not last very long, a couple of years, and then Notre Dame withdrew their support for that.

**CHAIR**—Why was that?

**Ms Copeland**—The model that they had was not really very sustainable. There are details of how clinical legal education programs really can work. That was an existing CLC. The clinical program came in on top. It was supervised and monitored by an academic who had very little experience in CLCs and there were some issues around that. Now I see on TV, ads for what looks like a clinical program at the new law school at ECU, Edith Cowan University. So I have heard little bits of information about that and I understand that they are setting up a clinical program in a community legal centre in the Joondalup area which is fantastic. That is the other end of Perth to us.

**Senator LUDLAM**—Are there any in the eastern corridor at all?

**Ms Copeland**—No. There are very good volunteer programs with CLCs in the eastern corridor, Gosnells particularly. I know a lot of students are involved in that but they are not getting credit for their degrees. As for UWA, no, and no time soon, I would say.

**CHAIR**—Thank you. I do not have any further questions. Thank you very much for your evidence today and coming in and making the time available.

**Ms Copeland**—Thank you.

[12.40 pm]

**GOULDING, Dr Dorothy Helen, Director, Centre for Social and Community Research, Murdoch University**

**STEELS, Dr Brian, Senior Research Fellow, Centre for Social and Community Research, Murdoch University**

**CHAIR**—Welcome. Would you please state the capacity in which you appear.

**Dr Goulding**—Apart from being the Director of the Centre for Social and Community Research at Murdoch University, I am also a member of the Prison Reform Group of Western Australia and the Institute for Restorative Justice and Penal Reform.

**Dr Steels**—I am Senior Research Fellow at the Restorative Justice Research Unit at the Centre for Social and Community Research at Murdoch University, a founding member of the Institute for Restorative Justice and Penal Reform and a founding member of the Prison Reform Group of Western Australia.

**CHAIR**—Thank you. I now invite you to make a short opening statement at the conclusion of which I invite members of the committee to ask questions.

**Dr Steels**—We have assembled a few papers and documents for your perusal. We thank the committee for inviting us to speak today. We are extremely concerned with the overrepresentation of Indigenous people within the criminal justice system and the reasons that we believe lead to their connection with the criminal justice system, be it in WA or elsewhere. Dr Goulding and I have extensive working knowledge through field research and connections with four main native title groups and a couple of others on the periphery. So we engage with people at the grassroots level. When we were invited to appear, we thought, ‘What is the best thing for us to talk about?’ Our concerns, of course, relate to how people get into the criminal justice system and, when they connect with it, what that does to them. The difficulty connecting and the difficulty getting representation and the underlying issues that lead them there are our concern. It is easy to see the facts and figures, so that is where we begin. We look at the underlying issues that many, many people in WA have to cope with on a day-to-day basis. Our research has been in the courts down here and the courts in the bush. It throws light, I guess, on the bigger picture.

**Dr Goulding**—We are also very concerned about the gross overrepresentation of Indigenous people in the Western Australian prison system. The current proportion of Indigenous people in the adult system is 41 per cent while they make up 3.5 per cent of the general population. Indigenous youth in particular are disadvantaged. They make up to 75.5 per cent of youth held in custody in Western Australia.

**Dr Steels**—I am printing out some statistics. There have been reports over a number of years that have highlighted this. It is not as though it is anything new. Our researchers have found that there are solutions at grassroots levels, but there are still difficulties even putting those solutions into place. The other aspect is to look at alternatives to going through the mainstream criminal

justice system, which highlights the situation from the point of the arrest. We have put a couple of stories in our submission. Item 1 is an article in the *Indigenous Law Journal*: 'When it's a question of social health and wellbeing, prison is not the answer'. And Dr Goulding and I did some research on the courts here.

We are concerned that it is not just a cost-saving event when local people at grassroots levels can participate. It does not just save you about \$9 to \$12 for every dollar you spend; it actually does something for the people. It does something for their feeling of self-determination. As Tom Calma has spoken about, when you are in an Indigenous community and suddenly you get all this stuff from without, you do not get a good sense that you are in control of your own affairs. That is the kind of thing that is always coming up.

By the side of that, when we discuss these stories with prisoners, we find an undercurrent of trauma—trauma that they have witnessed from one generation to the next—that permeates right through their lives and through their communities, and this does not seem to be addressed in the criminal literature. People go into prisons because they have an anger management problem or they go in because they have a drinking problem. In item 1, we have a snippet of a person going through this. You can clearly see that, when you have so much accumulated loss and trauma, there is very little hope that you are going to come out of the system any better than when you went in. In fact, as we saw last week when we were in Roebourne, there were 11 adults and 13 or more children in a three-bedroom house. If I were in those circumstances I think I would want mind-altering drugs and to stay pissed forever. It is that bad; it really is. And we wonder why 80 per cent of the residents of that house, if they do not connect today with the criminal justice system, will be connected with the criminal justice system in the next five or six years as the little ones grow up.

**Senator CROSSIN**—Thanks very much. Have you done any research on and had a look at the connection between mental health and the justice system?

**Dr Steels**—Yes, especially in the bush, where there are very few services. Within five or six hours of being there, a grandmother came and took us to one side and said, 'Can you help us?' That morning, her grandson had been seen by a couple of the other children taking a chair to the tree and the rope was already in the tree. We get those stories every time we go up there, which is once every month or two. With regard to the other issues within that community and down here, the accumulated trauma and losses come up in mental health issues. When we look at the prison population, it is just incredible—

**Dr Goulding**—I have recently done some research in this area with women in prison in Western Australia. Anywhere between 50 per cent to 60 per cent of the female prison population at any given time is Indigenous, and the level of mental health issues and mental illness for women in prison is over 80 per cent. It is not terribly much lower for men in prison—it is about 70 per cent.

**Senator CROSSIN**—What sorts of symptoms or mental health issues—

**Dr Goulding**—We are looking at mental health problems that range from clinical depression through to psychotic episodes and schizophrenia—the whole range.

**Dr Steels**—Many of the people from the bush suffer from chronic loss when they are off country and accumulated intergenerational post-traumatic stress disorder, which is something that governments seem to be very wary of but, if you look at the Indigenous literature, like you are suggesting, it is quite evident.

**Dr Goulding**—As to what happens in the courts, Brian and I sat in the magistrates courts here for two years doing a restorative justice research project. When people with obvious mental illness symptoms presented in the court, basically there was no place for the magistrates to send them except to prison. When they go to prison, they are not always recognised as having a mental illness, so it is not diagnosed and they do not get treatment and they become more and more traumatised and so on and so forth and the cycle goes on and on.

**Senator CROSSIN**—Have you done any research that also shows where there is a lack of funding in mental health services and rehabilitation services versus, for example, more policing?

**Dr Steels**—It seems incredible that we find opportunities to develop police stations, police services and police officers and build prisons and yet when we go up to the Pilbara or the Kimberley regions and, yet when it comes to getting an Indigenous healthcare worker who has experience in mental health, we see that the first one is being trained now in Roebourne—the first they have ever had. That is just one isolated community. It is very rare to have an Aboriginal healthcare worker with mental health qualifications and nursing qualifications.

**Dr Goulding**—Within the prison system, when there are prison counselling services, they are not always culturally appropriate and it is dealing with the issue once the horse has bolted, really. Just being in prison is obviously a life-changing event for many people and it is certainly not a happy event. I think prevention really needs to be looked at. We need to invest in more resources out in the community rather than building more prisons.

**Senator CROSSIN**—In the paper work that you have given us this morning and in your introduction, you say that you firmly believe that nothing is likely to change while we do things the same as we always do. What is it that we continue to do that you think needs to be fundamentally changed?

**Dr Steels**—What Dr Goulding and I look at is very different. We look at the very point of the connection of the arrest. Research elsewhere has firmly contributed to our thinking—for example, research by British Home Office, where police are really trained in restorative practices. At the intervention of the arrest, when people are seen as a likely candidate for the criminal justice system, the police first of all in their toolbox use restorative and mediative techniques, saying: ‘You’re on the brink of committing offence,’ or ‘You’ve just committed an offence. What has driven you to that?’ How can we help you?’ rather than grabbing hold of them, pushing them before the court. The UK Home Office has plenty of evidence on this. Research from Dr Joanna Shapland, from Sheffield university, and Sir Charles Pollard, from the International Institute for Restorative Practices, is quite out there that, at the point of arrest, if the police channel it off into another area, it is different.

From our perspective, if a family comes to us and says, ‘We need help here; our young boy has mental problems and he is chasing everybody around with an axe’—and this is a real case—‘Do we call the police or can you help at the clinic?’ We go in and, as researchers that help in the

community in peace-making stuff, provide a restorative solution at what we call a healing circle. There is plenty of evidence on what healing circles are in restorative practice. We look at the focal person and say to them and others around them, 'How are we going to help the situation? What can we do in your life to help you sort all these issues out?' With issues such as overcrowded housing, taking too much gunja, always on the grog, food insecurity in the house—you come home and the wife has gambled all the money away and there is no food left in the fridge—we ask: 'How are we going to sort all this out?'

**Dr Goulding**—Another thing that is relevant in this process is not looking at individuals in isolation. We have to look at them in terms of their family, their extended family and their community. It really works well if restorative justice is actually used in that way rather than the sort of talk-down bureaucratic model. Governments tend to redefine the words 'restorative justice' to suit themselves. We are suggesting a community based model which can be diversionary or actually work with the courts.

**Dr Steels**—It is identifying the problem and getting the people to participate in what has gone wrong and finding solutions themselves from within the community and within their families. It is such a lovely way to go.

**Senator LUDLAM**—Thanks very much for coming here and for your submission. To what degree, particularly for young Aboriginal people, is prison time or custodial time seen as a bit of a right of passage?

**Dr Goulding**—Unfortunately, it is seen quite a bit as a right of passage. When you look at 75 per cent over a long period of time of Indigenous youth held in custody here, you can see that it is not working as a deterrent factor for those kids who tend to offend and re-offend.

**Senator LUDLAM**—I have seen some research that showed the opposite was the case—that you could get a roof over your head and a hot meal and somewhere safe to sleep.

**Dr Steels**—Yes.

**Dr Goulding**—Unfortunately, that is true.

**Senator LUDLAM**—So we are using custodial services instead of some kind of social—

**Dr Steels**—Yes, As we say in item 1, 'You have already been taken to kiddies jail and next time it is a men's prison where you become tough and not afraid of pain—pain within your heart, pain on your body—and you have got the scars that are all around and scars of the criminal justice system.' What I am saying there is become a man on both sides of the fence.

**Dr Goulding**—One of the other things that is related to that of course is the number of young people who are held in juvenile detention who then go on to be imprisoned within the adult system. Unfortunately the juvenile system is quite different—there is, I guess, emotional care and wellbeing which is inherent in the juvenile justice system which has not been completely eroded now that it has been taken over by correctional services. We are now seeing that when young people go into the adult system they are very often severely traumatised by the different



in the regime. We have had lots of suicides from young people who have actually moved from one system to the other.

**Senator LUDLAM**—Does your research look outside WA or are you mainly state focused?

**Dr Steels**—We have enough to focus on here. We do look at Canada, New Zealand and the UK. We are off to Belgium on the weekend to look at prisons there. We are going to be in Barcelona next week talking about restorative justice and learning alternative practices and showing them our practices here that are different. So we do kind of look outside the box.

**Dr Goulding**—But within Australia we tend to focus on the West Australian system, which is basically the most punitive system in terms of incarceration rates.

**Senator LUDLAM**—Okay, that is what I wanted to pick you up on—

**CHAIR**—Sorry, just to quickly interrupt, is that compared to the rest of the world or compared to other Australian states?

**Dr Goulding**—No, it is compared to the rest of Australia.

**Senator CROSSIN**—Even in comparison with the Northern Territory?

**Dr Goulding**—In terms of Indigenous incarceration, although the proportion in the Northern Territory is higher if you look at the proportion of Indigenous people who live in the territory and the proportion of Indigenous people who live in Western Australia then you see it is much more punitive. In the last ABS figures we had I think it was something 3,800 per 100,000 population for the Indigenous population here in Western Australia.

**Dr Steels**—Yes, it is on the end of one of the stats that I put in here.

**Senator LUDLAM**—So we manage to be worse than a state with mandatory sentencing.

**Dr Goulding**—Yes.

**Dr Steels**—Yes.

**Senator LUDLAM**—Who is doing it well internationally? In your travels and your research internationally, what are the good examples you can point to?

**Dr Steels**—Certainly New Zealand were doing pretty well until they decided to up the ante on building prisons. For first-nation people there is much more inclusion of the Maori population.

**Dr Goulding**—Northern Europe is very good—the Scandinavian countries and Denmark. The Netherlands has increased its imprisonment rate but it is still way below ours. The Scandinavian countries also within the general social system tend not to say, ‘Do not do this. You can’t do this.’ They more or less tell you what you can do rather than what you cannot do. So there is a much more positive attitude just to general social issues.

**Senator LUDLAM**—Is there anything we can learn from Canada, which also has a sizeable Indigenous population?

**Dr Steels**—Yes, the interesting thing with Canada of course is that they have the removal of kids to go to school, similar to the stolen generation here, but they had much more ability nationwide to use restorative justice practices. The most famous example of all is the community of Hollow Water, which we have refer to in our submission. In Canada it is a priority of federal and state governments to provide restorative solutions at local levels at every opportunity—from school bullying to workplace bullying to how you treat people in your community. The interesting thing there is that the mounted police, way back in the eighties, on board restorative justice and said, ‘We will operate that way.’ It is similar to the Thames Valley Police in 1986.

**Senator LUDLAM**—So what are the incarceration rates, in proportion, in Canada compared to Australia? You can take that on notice if you do not know it off the top of your head.

**Dr Steels**—I do not know it off the top of my head. But when we look at the cost savings and effectiveness over there we see that first-nation people are, again, over represented in Canada—but it is nowhere near the 15 times that we get in the state here.

**Senator FEENEY**—You used a term in your opening remarks to us, and forgive me if I do not quite have this right. I think it was something like accumulated intergenerational acute loss syndrome. I am sure I have said that incorrectly so please correct me. I was wondering if you could explain the notion contained in that term.

**Dr Steels**—People like Dr Julie Atkinson really developed this in her body of research from the late 1990s. The actual terminology used was intergenerational post-traumatic stress disorder. What happens is that we see it transmitted from one generation to the next. Let us take the example of one of these houses that we visited on Friday. There might be a little kid growing up there—he may be five or six years old. We know from the likes of Albert Bungera’s research in 1954 that what that kid sees that kid will act on. That evidence has been around for 30 or 40 years. We know that these things happen. We see kids from an early age repeating the adult behaviour they see in their families. That is passed down. We hear stories about loss with the colonial imposition of power or authority. Kids grow up with that. They witness it in crowded housing. They witness violence. They begin, as I have in story No. 1 here in the submission. That kind of gives you a glimpse of what happens. That is accumulated all the way through.

My final comment there was, ‘and people in authority ask you why you drink.’ I am sarcastically saying that we have not bothered to actually ask. We know the literature on post-traumatic stress disorder and the accumulation of it being intergenerational. And yet we still provide more stick than carrot in these communities—so the child witnesses an uncle or their mum being taken away by the police or witnesses their brother being sent off country down here. It is about all of those accumulated thing—for example, coming home and seeing mum, auntie and everyone else moaning because the fridge, if they even have one, has no food in it because they cannot budget. The home-making service was taken away.

**Dr Goulding**—I am thinking about another issue. I am currently embarking on seeking funding for a research project looking at the impact of parental imprisonment on Indigenous children. Currently in Western Australia there are approximately 35,000 Indigenous children—

that is, Indigenous people under the age of 18. Approximately 6,000 of those, as we sit here, have one or both parents in prison. We talk about the stolen generation and removing the children from their parents but currently what we are doing here is removing the parents from their children. The impact and the seriousness of the impact of that is just as traumatic. If that is the norm in the family—that mum or dad will spend at least one term in jail—then that becomes the norm for that child, and so we are perpetuating this constantly increasing proportion of Indigenous people being held in custody here.

In April 2003 in the Western Australian parliament, and this in the *Hansard*, the then Minister for Justice Jim McGinty spoke about the international scandal of Indigenous imprisonment in Western Australia. Unfortunately since he said that it has risen—it has risen about five per cent in six years. So we are not getting better at it; in fact we are getting worse.

**Dr Steels**—I do refer to family violence as a health issue in the submission and we talk about post-traumatic stress disorder. On the next page it talks about grief and trauma and the long-term impact of forced removals. So I think it is probably addressed in all of that stuff there.

**CHAIR**—I have spent four days in Central Australia living with an Indigenous community. There is this idea of jail being a deterrent but it is clearly not the case—rather it may even be an incentive, particularly for young people. So I am interested in your views in terms of better ways to go. Senator Ludlam asked you about your preferred model. You mentioned New Zealand, northern Europe and Canada. Can you actually describe for us some of the models that they are using and some of the methods that they are using. It would assist us a little further in terms of options that we may have.

**Dr Goulding**—So you are talking now not about imprisonment but about criminal activity?

**CHAIR**—Yes.

**Dr Goulding**—I think first of all we have to think outside the square. We should not be thinking, ‘How can we punish this person?’; we should be thinking, ‘How can we heal the situation so that the community can return to some sort of mutually beneficial order?’ Unfortunately, here in Western Australia—and probably in most states in Australia—we are particularly punitive. I think that we really need to think quite differently. In terms of just the economic costs, forgetting about the social cost, to actually deal with someone in the community costs somewhere in the vicinity of eight per cent of what it costs to keep someone in prison. Currently in Western Australia it costs \$105,000 per year per adult held in prison. It is about three times that for a juvenile.

**Senator FISHER**—That still begs the question, with respect, of what you would do. How do you avoid the risk of turning what is currently, in your view, overly punitive into an attraction, as Senator Barnett said?

**Dr Steels**—In concrete terms, an example in WA is that we are setting up a men’s house to complement the safe house for women. It is a men’s house. We are looking to challenge and affect behaviour, like justice does. It does not say you can get away with criminal activity; it says quite the opposite. It is not often seen as tough; it is seen as soft. When you have to apologise to your whole mob and say what is going to happen to you and why you did it, usually you have

family around nodding away and saying, 'He's a bit too young to understand that', or an uncle may come in and say, 'He just got on the grog last night.' What justice processes do in healing circles is challenge those remarks from other family members as well. People are trained to facilitate in those communities.

The men's house does not get any funding whatsoever. It seems like we often have governments who will provide safe houses but nothing for blokes' business. That is one option that is happening up in Broome also. As in the Kimberley they are taking young fellows and young girls and providing them with some mentoring. It is very similar to what they do in Canada in smoking houses. They bring people in. Instead of just taking them to a law ground, they introduce them to cultural ways. There is some really positive stuff. Quite often the families, such as grandmas, who are left with the kids will say that they need a break. Some of them will even say, 'I don't care. Send them to Perth. They just get under my skin.' What we recommend usually is that those communities be given the resources to up the cultural awareness and be given the resources to take the ones that are currently really misbehaving. Most of the communities have somewhere on-country where the boys and girls can go into a community where other elders will help them. But to date those communities have not got any support. They get overloaded with a few kids to look after by the criminal justice system here but there is no money to go with it, so things happen there.

**Dr Goulding**—For two years Brian and I sat in court 37 in the local magistrates court here in Perth. We brought victims, defendants and their support networks together. We worked with the defendants to find out the basic underlying cause of their criminal activity. We did not work with them in isolation; we worked with their families. It basically cut out the boo factor that otherwise happens when you call someone into an office Monday to Friday, nine to five. They know what you want to hear so that is what they tell you. That does not happen when you actually go to their homes and work with them and their peers or their families. We also worked with victims to prepare them where the victim was willing to do a face-to-face meeting with the person who had offended against them. Quite frankly, it is much easier for someone to go into court, plead guilty and get it over and done with than it is for them to face the person that they harmed. They cannot then depersonalise their crime.

The increase in responsibility taking is very significant. John Braithwaite, from the ANU, who is the worldwide guru, found that the model we developed was very robust, particularly in removing offender neutralisation—that is, 'They were insured so it didn't matter,' or 'She made me do it, she really got up my nose,' and that sort of thing. So basically it is much tougher and much more effective to have to make an apology or reparation in front of people who mean something to you and with them you have a sense of belonging. So it is not a soft option but, in fact, a much more effective option. We had very socially significant results in that project.

**Dr Steels**—And that is the way to go in Canada and New Zealand.

**Senator FEENEY**—What does the evidence tell us about recidivism?

**Dr Steels**—Certainly in the UK studies recently—

**Dr Goulding**—There was a reduction of about 27 per cent.

**Senator FEENEY**—As opposed to ‘business as usual’?

**Dr Goulding**—Yes.

**CHAIR**—Is that an option in and of itself, or is it combined with other methods? The law has an educative role. But let us face it, while our traditional thinking is that jail is a deterrent, in this case it appears not to be.

**Dr Goulding**—In this case it was court ordered and court sanctioned. Each of these offenders had to go back to be sentenced in court.

**CHAIR**—Which court?

**Dr Goulding**—Court 37 of the Federal Law Courts.

**Dr Steels**—The Magistrates Court.

**Dr Goulding**—We were dealing with fairly serious repeat offenders. We did not have any first-time offenders except those who were facing a custodial sentence.

**CHAIR**—You think this is a definite option?

**Dr Steels**—It is. It is nothing new. Other jurisdictions use it as the preferred tool. Particularly in WA—

**CHAIR**—Are there any further options you want to draw to our attention?

**Dr Goulding**—One thing is the we have to step back and look at the social conditions in which many, if not most, Indigenous people in Western Australia live. We have just come back from Roebourne, which is a particularly impoverished community surrounded by some other remote communities which are also very impoverished. There is very little for the youth and indeed the men and women to do. There is no work. There is very little employment. If they do go for employment in the mining companies, quite often they cannot get it—because they need a police clearance and most of the men up their have spent at least some time in prison.

**Dr Steels**—They need a driver’s licence.

**Dr Goulding**—They need a driver’s licence, and many of them have lost their licences for life. Quite often they are just driving on the dirt tracks and the police wait for them when they cross the bitumen and pick them up.

**CHAIR**—Thank you very much for your evidence today. It has been very insightful. We very much appreciate the efforts you have undertaken.

**Proceedings suspended from 1.13 pm to 3.26 pm**

**COLLINS, Dr Rebecca Ann, Genesis Coordinator, Genesis Legal Clinic**

**CHAIR**—Welcome. You have agreed to speak to our committee about the Genesis Legal Clinic here in Perth. Thank you for that. We are aware that it is a pro bono legal clinic operated by the Salvation Army for homeless and marginalised people. We appreciate your being here to talk to us today. We invite you to make a short opening statement, after which I will invite senators to ask questions.

**Dr Collins**—My statement will focus largely on the ability of homeless people to access legal representation. It is based principally on the insights that I have gained through working at the Genesis Legal Clinic. I thought it might be best if I provided some background to the clinic so that you know what it is about.

In around 2006, the Salvation Army set up a drop-in centre for homeless people in Northbridge, called Genesis. The idea behind the centre was that it would operate as a one-stop shop, so homeless people could go there to have a shower, to wash their clothes, to get food. They also have medical staff coming in. As part of that, the Salvation Army thought one service that would be very helpful would be a legal advice clinic, so they approached Mallesons back in 2006 and asked whether Mallesons would be interested in providing that service.

In March 2007, Mallesons, in conjunction with SCALES, agreed to establish this legal clinic at Genesis. It opened its doors in late March 2007. Before that time I am not aware that there was another clinic in Perth that was specifically dedicated to providing legal advice to homeless people. The clinic has now been running two years.

The way that the clinic operates is that, every Monday, we have two solicitors—not always two solicitors; sometimes we have a law graduate—who go down there. There is a pool of about 16 volunteers from Mallesons. They are supervised by a solicitor from SCALES. It runs for one hour, between one and two, and we basically get through as many people as we can.

Some of the areas of law on which we have provided advice include criminal law, tenancy law, family and custody law, criminal injuries compensation, debt collection, violence restraining orders and policing powers. Over the last year, we have had approximately 88 advice sessions and seen 53 clients, some of whom are repeat clients, because a lot of them are.

Moving on to the issue of access to legal representation, I think that there are probably six factors that, from my experience at least, appear to affect the ability of homeless people to access legal representation. The first and most obvious one is money. They are generally unable to pay for private legal representation, so they are fully dependent on free legal representation or pro bono assistance.

The second major factor is the limited resources of the Genesis Legal Clinic. As I mentioned earlier, it only operates for one hour on one day of the week. There is a whiteboard and people put their names up, but often when we come in we do not have enough time to get through all the people who do seek legal advice. We are often limited to acting as a referral centre and we will not actually take on cases on a continuing basis but will direct clients where they should go.

For example, if somebody came in that was facing criminal charges, rather than assisting them in the court we might help them to fill out a legal aid application or ring up a duty lawyer. So we try to help them as much as we can within the limited time we have.

The third main factor concerns mental health issues. Many of the homeless people that come in suffer from mental health issues and so it makes it very difficult for them to articulate and for us to understand exactly what their legal issue is. Similarly, once we have worked out what their legal issue is, or appears to be, then there is also the difficulty for them to follow through with the advice to go and see the Legal Aid solicitor or to go and ask for a duty lawyer down at the court.

The fourth factor affecting access to legal representation is that they often do not have an address. Even if we fill in a form or send correspondence out, because they do not have a home address or reliable contact details, there might be approval for the legal aid application but unless they come back to the centre it is difficult to track them down and we do not really have the resources to track them down. Similarly, if it does not involve going to court but rather sending a letter to some public authority or to another individual, even if we receive correspondence it is difficult to get in contact with them again.

The fifth factor relates more to accessing justice than accessing legal representation. We have had some clients who face considerable difficulties because they do not have records or adequate documentation. Often when they come into the centre all they have is what is on them. One example here concerns the man who was trying to access his superannuation fund due to severe financial hardship. He had worked for a number of years and contributed to his super and then he lost his job and ended up living on the streets. He had been living on the streets for about six months when he came in to see us and he was desperate to get off the streets and to try to get a home. He wanted to access some of his super fund but the fund maintained that he could not prove severe financial hardship unless he was able to produce some household bills or expenses. But as he was homeless, obviously he did not have electricity bills and so on. So we advocated on his behalf and he successfully gained access to some of his super so he was able to pay for a bond and move into rental accommodation. Although that does not really relate to the issue of accessing legal representation, it does relate to the difficulties that homeless people face in accessing justice.

Then the final factor is that even within the centre there are not many women or children or Indigenous people. Largely, the people that we have coming into the homeless centre are 20- to 50-year-old males. So within accessing legal representation there are further access issues there. They are the six main factors that I had wanted to state.

**CHAIR**—Thank you very much indeed for that.

**Senator LUDLAM**—Could you give us a bit of an idea of the kind of break-up—and I know you were describing it earlier—between SCALES and Mallesons and how you divide the labour?

**Dr Collins**—SCALES send down one solicitor who acts as the supervisor, and Mallesons sends down two solicitors or one solicitor and a law graduate who actually take instructions from the clients. We will come up with a view as to what advice should be given but then we have to

go and speak with the supervisor who has more experience in non-commercial areas than Mallesons' solicitors.

**Senator LUDLAM**—Are you having to deal with one person at a time or can you take a few people in one go?

**Dr Collins**—The clients? No, we will only ever deal with them one at a time, mainly for confidentiality reasons.

**Senator LUDLAM**—How many can you get through in an hour?

**Dr Collins**—On a good day? Today I just came back and we had one client for a whole hour because he had lots of different issues. But sometimes we have been able to get through seven clients in an hour. But that is pushing it and it assumes that the legal issues they have are quite easy to resolve or we are able to direct them elsewhere.

**Senator LUDLAM**—How is the service promoted? How do people find out about it?

**Dr Collins**—Through dropping in at the clinic, I believe. There are lots of posters up there. I think also by word of mouth. The homeless community is such that word travels between them if there is a free legal advice clinic.

**Senator LUDLAM**—Do you have to be a client of Genesis, of that house overall, to participate in the legal clinic, or can you just come in?

**Dr Collins**—You could just walk in off the street. There is no registering process that I am aware of. But if somebody walked in who did not seem to fit the requirements—for example, they looked like they could afford legal representation, or they were working somewhere—then we might discuss that with the supervisor.

**Senator LUDLAM**—We have heard on three or four occasions today the importance of pro bono assistance from qualified lawyers. I am just wondering whether it is relatively common or whether this is just the one that your company chose because you were approached by the Salvation Army. Is this sort of practice fairly common amongst the legal community in WA?

**Dr Collins**—Yes; I think it is. I cannot really speak for other firms but I know at Mallesons they have a program called 'Mallesons in the community', which has pro bono charities, volunteering assistance and partnerships with organisations like the Red Cross and the Smith Family. But Mallesons considers that, as part of being a lawyer, you should contribute some of your time to pro bono work, so we run Genesis in Perth, but there are similar legal clinics in the Brisbane, Sydney and Melbourne offices. There is also a national program that provides free legal advice to young children who write in their request by email and the emails get forwarded.

**CHAIR**—On that point, are those Brisbane and Sydney offices of Mallesons dealing with the homeless only or pro bono work on other community related matters for disadvantaged people?



**Dr Collins**—I am not exactly sure. I do not think that they all provide services for the homeless. I think the clinic in Brisbane is targeted more at young people, but I think the Melbourne clinic provides services to homeless people.

**Senator LUDLAM**—Most of the witnesses that we have heard today have been doing community legal work or public interest advocacy, but it might be interesting to hear your perspectives, if you want to share them, on the broad terms of reference about access to justice from your point of view, personally, or from your law firm. Do you have anything that you want to share about the context of this—about the terms of reference and the inquiry about access to justice and so on?

**Dr Collins**—I think my statement really focused on the first term of reference in relation to accessing legal representation, and my experience in the pro bono sector is really limited to the homeless community.

**Senator CROSSIN**—Dr Collins, what is your analysis of the intersection between access to justice and the implications of the justice system on people who also have mental health issues?

**Dr Collins**—The consequences of the justice system?

**Senator CROSSIN**—Yes.

**Dr Collins**—Probably about 60 per cent of the people who I see down at the clinic suffer from mental health issues, so I am not sure whether they understand fully what is going on all the time. One person who came was asking about his tax returns, but there was no comprehension as to what he was really seeking. I see it more at the front in how people's mental issues prevent them from getting access to justice.

**Senator CROSSIN**—Do you have clients who come through the door who, at the end of the day, need legal representation in a court scenario?

**Dr Collins**—Yes.

**Senator CROSSIN**—Does the Genesis Centre take it through to the end stage or, if someone needs representation, do they then get referred to Legal Aid or some other body to actually represent them?

**Dr Collins**—The latter. We only really work as a referral centre, so we do not go down to court and represent people unless it is a specific case that the firm might take on, and then we might represent them in court. But in that case we would probably brief a barrister, who would do it on a pro bono basis. But I have not been involved in a case where we have actually done that.

**Senator CROSSIN**—How many clients would you see in a six-month period, for example?

**Dr Collins**—We have seen 53 over the last year and the lot of them are repeat clients. They might come in for four weeks in a row. So in a six-month period probably about 30 to 35.

**Senator CROSSIN**—We are only talking about one section of Perth, are we?

**Dr Collins**—Yes, just in Northbridge, which is next door.

**Senator CROSSIN**—Have you got any idea of what the unmet demand is in other areas or across the state?

**Dr Collins**—No, I don't.

**Senator CROSSIN**—I do not have any other questions.

**CHAIR**—I have got a few to follow up on that. Thanks, Dr Collins, for being here. Just going back a step, is the Genesis clinic an incorporated association or is it just part of the Salvation Army homeless centre?

**Dr Collins**—It is not an incorporated association.

**CHAIR**—When did it start and what is the origin of the name?

**Dr Collins**—The Salvation Army called the centre Genesis. I am not sure why they called it that but that is what it was called. Then when we got involved we referred to what we provide as the Genesis legal clinic, and that was back in March 2007 when it started.

**CHAIR**—The lawyers are only from Mallesons; is that correct?

**Dr Collins**—All lawyers except the supervising solicitor, yes.

**CHAIR**—With these homeless people that you advise, it is information and advice. What happens if you provide that advice if it is domestic violence or if it is a criminal matter or rent assistance? I can understand the merit of information advice but from time to time they may need legal representation. Do you refer them to Legal Aid? What happens next?

**Dr Collins**—We have a three-page document that has all the various centres throughout Perth. There is a tenancy advice centre, there is an employment law centre, Legal Aid and so on. We will look through and see which is the most appropriate place to refer them to. If it is a criminal case, it will be a duty lawyer who will fill out a legal aid application if that is appropriate. Otherwise we will try and answer the queries that we can on the day. If they do not fit nicely with any particular referral centre then we will often ask them to come back the following week.

**CHAIR**—You indicated that they do come back, or sometimes they do. To what extent do they fulfil their side of the commitment to come back and get that advice or to follow up? Let us say you refer them to legal aid: do they actually go and get it?

**Dr Collins**—I actually do not know because I do not follow up to see whether they have made the connection. We try to advise them if they come back the following week that, yes, their application has got through or been approved. But if they do not come back then we might not see them again.

**CHAIR**—Sure. My church in Launceston has recently established a homeless centre and I am rostered on each month to provide help and assistance. We see the same people coming back. Do you as one of the lawyers involved see the guys you have given assistance to last month last week coming back and say, ‘How did you go?’ Do you have an ongoing relationship with the homeless people?

**Dr Collins**—The way that it works is that we have a roster and you have to go down for a training session initially, but then you might be rostered on only once every eight weeks. So the person that comes back the following week might not see you, they might see somebody else. But within the firm we will send an email around so that the people scheduled on for the next week know what came up that day.

**CHAIR**—So the duty lawyer who comes every week would probably see the same people coming back.

**Dr Collins**—I would say so, a lot of the time.

**CHAIR**—To what extent are you aware of what happens in other states and territories? You mentioned you are aware of a similar service being provided in Melbourne and to some extent in Brisbane, together with support for children. Do you know what happens in other states and territories regarding this sort of assistance for the homeless?

**Dr Collins**—As in how it operates?

**CHAIR**—Yes, and are there other services like yours in other states and territories for the homeless?

**Dr Collins**—I am not sure what other services or clinics there are interstate. I am only aware of the similar clinic that the Melbourne office runs.

**CHAIR**—Are the facilities in the Perth centre adequate to meet the needs? Do you have a separate area for consultations, interviews and so on?

**Dr Collins**—At this stage the facilities are quite limited. The Salvation Army are actually looking to build a much larger space. At the moment it is set up in an old house and a lot of the sessions that we give are taken in the chapel. Often we run out of room, so we use the chapel as another room. The facilities could be much better.

**CHAIR**—It could be a wonderful place to do it—you might be divinely inspired in the advice that you provide to the homeless!

**Dr Collins**—And better confessionals perhaps!

**CHAIR**—In terms of the men-women breakdown, I assume it is predominantly men.

**Dr Collins**—Yes.

**CHAIR**—What percentage?

**Dr Collins**—I would say 90 per cent male. If a female comes in, usually she will be accompanied by a man.

**Senator CROSSIN**—Where do you think women are going for advice?

**Dr Collins**—Perhaps the women's refuges. There is a women's legal centre that we occasionally refer women to. But it is quite rare that we see any women in the homeless centre.

**CHAIR**—I would assume there are quite a few other homeless centres in and around Perth. Are you aware of the other homeless centres and whether they refer their clientele on to Legal Aid or other relevant support services?

**Dr Collins**—I do not know of other homeless centres, although I am sure there must be some.

**CHAIR**—I know we have three in Launceston, one main one and two support centres, and Perth is a bigger city. What you and your colleagues do in your programming work is very much appreciated. Thanks for your evidence to the committee today.

**Committee adjourned at 3.49 pm**