COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Reference: Access to justice

FRIDAY, 11 SEPTEMBER 2009

SYDNEY

BY AUTHORITY OF THE SENATE

TO EXPEDITE DELIVERY, THIS TRANSCRIPT HAS NOT BEEN SUBEDITED

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

http://www.aph.gov.au/hansard

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

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

REFERENCES COMMITTEE

Friday, 11 September 2009

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

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

Senators in attendance: Senators Barnett, Crossin, Fisher, 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.

WITNESSES

Committee met at 9.08 am

CHAIR (Senator Barnett)—I declare open this third public hearing of the Senate Legal and Constitutional Affairs References Committee in its access to justice inquiry. The inquiry was referred to the committee by the Senate on 16 March 2009. 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. The committee has received 67 submissions to this inquiry. All those submissions have been authorised to for publication and are available on the committee's website.

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 their mobile phones are either turned off or switched to silent.

[9.10 am]

SNELL, Ms Elizabeth, Member, Human Rights Committee, New South Wales Young Lawyers

CHAIR—Welcome. The New South Wales Young Lawyers Human Rights Committee has lodged submission No. 28 with the committee. Do you wish to make any amendments or alterations to the submission?

Ms Snell—No.

CHAIR—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 Snell—We thank the committee for the opportunity to appear before you on this very important issue. New South Wales Young Lawyers Human Rights Committee consists of approximately 480 members. We are law students or legal practitioners in our first five years of practice, or under the age of 36 years. We come from a variety of backgrounds in law—public, private and commercial—and we share an interest in human rights.

I will only speak very briefly to summarise the New South Wales Young Lawyers Human Rights Committee's submission. We acknowledge in our submission that legal aid and Aboriginal legal services across Australia provide a crucial role in promoting access to justice for the most disadvantaged within society. We further acknowledge in our submission the invaluable work of community legal centres across Australia in this area as well. We also acknowledge the importance of pro bono services. However, there are still people falling between the gaps and more needs to be done to adequately address access to justice for all, particularly the marginalised within our society.

We further note that this is not the first inquiry to focus on legal aid and access to justice and we support calls that the recommendations made in other inquiries—such as the 2004 inquiry into legal aid and access to justice—be implemented. Our submission also acknowledges that an important part of access to justice is knowledge of the law. There are many organisations that play a key role in educating Australians about the law and their rights—such as legal aid, law access, the Law and Justice Foundation, community legal centres, Aboriginal legal services, the Australian Human Rights Commission, and other bodies and organisations as well.

Indeed, the New South Wales Young Lawyers Human Rights Committee also plays a role. For example, we have published an overview of the law of New South Wales for new migrants, refugees and visitors, entitled *New Land, New Law*. We have noted some of the challenges associated with awareness about the law, and just some of those include geographical remoteness and language barriers.

There are further challenges associated with implementing the law—for example, the cost involved for the individual. As our submission outlines, this is not only the financial cost of legal fees, possible lost wages while taking time off work to attend court, cost orders including

possible adverse cost orders, but the emotional and psychological toll as well. This is why in circumstances of structural injustice we particularly support remedies which do not require an individual complaint, such as that proposed as one of the recommendations from the 2008 Senate inquiry report into the effectiveness of the Sex Discrimination Act 1984. We invite any questions in regards to our submission.

CHAIR—Thanks very much, Ms Snell, for all your opening remarks and for your submission. It is greatly appreciated. I will call for questions and ask if Senator Crossin would like to kick it off.

Senator CROSSIN—I am happy to do that. Access to justice or access to legal aid: obviously there is a difference between the two, but is there a delineation in the view of the people you represent that we are doing one better than the other?

Ms Snell—I guess in terms of access to justice that would be as you indicated. Access to justice would be the ability to access different legal services, one of which, a very important one, is legal aid. I guess in regards to issues about whether people are able to access legal services—such as, but not exclusively, legal aid—resources and funding is a significant issue. If the organisations have adequate funding then people who need to access those resources are in a better position to be able to access those resources.

Senator CROSSIN—Do you think there is a problem with the current pricing structure for legal aid representation and the way in which legal aid is determined for people? Should there be a review or should that be changed? We can give a whole lot of community legal centres more money to operate, but do you believe that the pricing structure would still inhibit people accessing legal aid services?

Ms Snell—Are you referring to, for example, the means testing?

Senator CROSSIN—Yes.

Ms Snell—Certainly it would appear—and legal aid would be much better placed to be able to answer this—that the means test is quite strict, so there would be people who are falling through the gaps, which is what we referred to in our submission. The community legal centres are able to assist some of those people who are falling in the gaps. Again those centres would be much better placed to speak more fully about that. I guess the difficulty is with the means test in place. We understand that national legal aid have indicated that if the financial crisis leads to high levels of unemployment then with the means test that is currently in place more people will be eligible. If there is not an increase in funding for bodies like legal aid and community legal centres but there is an increase in the number of people wishing to access the services then decisions will need to be made about who in fact can be assisted. Those are some of the challenges.

Senator CROSSIN—At the end of your opening remarks you refer to one of the recommendations we made in our review of the Sex Discrimination Act. Can you expand a bit on that so we can put that in a broader context?

Ms Snell—Yes. The legislation as it stood was referring to individuals bringing complaints and the difficulties for individuals doing that. For example, not just the financial difficulties and the potential in the federal jurisdiction of an adverse cost order but also the psychological, social and emotional challenges. One of the recommendations—I think it was recommendation 37—was that other bodies be able to instigate investigations, such as the Sex Discrimination Commissioner, and not be reliant upon the individual having to bear the responsibility and the burden of trying to raise the issue of what is a structural injustice not just an individual injustice.

Senator CROSSIN—Are you suggesting that access to justice currently is restricted to just individuals rather than to either organisations or other representative people?

Ms Snell—Not necessarily, but we were just wanting to indicate that there are some circumstances in which the individual bears the brunt, for example in the area of discrimination, and to be aware that it would be helpful in circumstances of structural injustice that there be other mechanisms so it does not just fall upon the individual to be challenging that injustice.

Senator CROSSIN—Did you say that New South Wales Young Lawyers has produced a book?

Ms Snell—Yes. It is called *New Land, New Law*. It is a publication which provides an overview of the law of New South Wales for migrants, refugees and visitors.

Senator CROSSIN—So it is across the board; it is not one specific area?

Ms Snell—I am happy to provide further information about that, but basically it is an overview about immigration, discrimination, privacy, tenancy, traffic offences and police powers.

Senator CROSSIN—Is it written in plain English?

Ms Snell—Yes. It is written in a language which we hope people can understand. It is also in four different languages.

Senator CROSSIN—How did you get funding to do that? Can you remember how it was funded?

Ms Snell—I would have to seek advice. I will have to take that question on notice.

Senator CROSSIN—I am wondering whether it was New South Wales A-Gs funding or whether it came from the federal government.

CHAIR—You can take that on notice and get back to the committee.

Senator CROSSIN—We have not had evidence that there are other states or territories doing something similar to that, certainly not organisations like yours. If it is something which would be worth promoting more broadly, it would be useful to know where the support to develop something like that came from. Has your organisation had a look at the pricing structure in respect of the cost-orders regime and also at some of the recommendations in previous reports?

Ms Snell—No, we have not looked specifically at that.

Senator CROSSIN—Some of the major recommendations talk about doing a reassessment about how in fact the pricing structure within legal aid is determined. You have not looked at that?

Ms Snell—No, we have not. Perhaps Legal Aid would be in a better position.

Senator LUDLAM—Thank you for coming this morning. You talk quite a bit about community education as far as legal rights are concerned. We have heard quite a bit in evidence to date about funding. I am also interested in the structural changes in some of the things you propose. Who do you suggest is best placed to provide the kind of community education you are promoting?

Ms Snell—We would again acknowledge the role of legal aid in community education and the role of community legal centres in community education in particular, and certainly other organisations which are currently doing it—for example, the Australian Human Rights Commission. We are also alerted to the Law and Justice Foundation and the important research that they do which can inform community education around those issues. And indeed organisations such as ours have some capacity to do that on a small scale.

Senator LUDLAM—So if you had your way and you were in charge of budgets and allocation of recourses and so on, what do you think is needed—if you were going to shoot for the moon—in Australia by way of education in particular?

Ms Snell—As the senator has already indicated, plain English resources are very important. Certainly there are some resources about. The Law and Justice Foundation is very important in regard to that and as are legal aid and community legal centres. Certainly, that would be an important focus. Also, having materials available in different languages would be important and pictorial educational resources for people who may not be literate. That could be another way to communicate the message.

Senator LUDLAM—I am trying to visualise how that would work.

Ms Snell—Potentially they could be used as posters to raise awareness and also cartoon booklets could be a possibility.

Senator LUDLAM—Is there much of that material around or is there a best practice elsewhere that you would point to?

Ms Snell—Community legal centres would be somewhere for poster material and cartoon material.

Senator LUDLAM—In your organisation do you deal much with Indigenous people, maybe speaking English as a second or third language? Is that much of an issue for you?

Ms Snell—Not specifically with our organisation. We are aware of it and we certainly raised in our submission the case where the person did not have the things they needed, W are aware and note in our submission the importance of interpreter services.

Senator LUDLAM—It is a huge gap. It was raised really strongly in WA and I am wondering how much of an issue it is in New South Wales.

Ms Snell—Again, legal aid and community legal centres, amongst others, I am sure would will be able to provide—

Senator LUDLAM—You also talk quite a bit in your submission about complexity of legal processing and paperwork and so on. Can you give us some other examples of that, or what your favourite recommendations would be if you could cut through some of that and simplify things for people.

Ms Snell—In terms of complexity, to have the plain English resources for people to be able to understand would be a helpful way to try and unpack that. Also, we raise in our submission the issue of unrepresented litigants and the complexities that they face. It is quite a foreign experience to go into that and try and address that. There are, for example, duty solicitor schemes at court, which are a very important role, but again not the only way to be addressing those issues. That would be one way of trying to address the complexity.

Senator LUDLAM—I guess there are two ways. On the one hand we can educate people better as to their rights and what these processors are and get better at that. On the other hand, we can simplify the processes and perhaps meet in the middle. What would be your candidates for simplification, if you had your way?

Ms Snell—I think our organisation would see both being important. There is early intervention, education, and also awareness. The preventive kind of approach would be important as well, and simplifying the process when you actually have to go through it. So it should not be one or the other, it should be a combination.

Senator LUDLAM—In your submission you also encourage the government to consider other areas of the law where self-empowerment may be of value, to use your words. So there is a divorce kit and I guess you can get will kits and those kinds of things in post offices. Have you got any other areas of law or specific legal issues that you think would benefit from that sort of approach?

Ms Snell—I think that is a question we will have to take on notice. Certainly the divorce kit is one example. In saying that, though, we are not suggesting that that is the only way to address divorce, because clearly if you have got people who have issues of domestic violence and people from difficult backgrounds and what have you the divorce kit may not necessarily be the most suitable way to address that. But certainly that is one example. I am happy to take that question on notice.

Senator LUDLAM—I think that would be helpful, just putting forward any of those practical or creative ideas.

CHAIR—To pick up from Senator Ludlam, you have got a divorce kit. You talked about prevention and the merits of that. Have you ever thought about preparing a pre-marriage education kit?

Ms Snell—We have not ourselves. I just want to make clear that we have not actually created the divorce kit; it is a resource that is available on the Family Court website. But we have not considered that, and I am not sure if there is one that has been considered.

CHAIR—In terms of prevention, could you see the merit in preparing people for marriage at the front end rather than just assisting at the back end in terms of divorce?

Ms Snell—Potentially there could be.

CHAIR—Okay. I want to clarify a few things. You are a submission coordinator for the submission.

Ms Snell—That is correct.

CHAIR—Can you tell us a little bit more about the New South Wales Young Lawyers Human Rights Committee and how many members you have?

Ms Snell—As I indicated at the beginning, we have about 480 members.

CHAIR—Is that the human rights committee or the young lawyers?

Ms Snell—Young lawyers themselves has a membership of about 9,500. Just the New South Wales Young Lawyers Human Rights Committee is about 480 members.

CHAIR—And that includes university students, does it? What proportion?

Ms Snell—I would have to take that on notice in terms of the exact proportion.

CHAIR—Do you mind me asking are you a practising lawyer?

Ms Snell—I have been, yes.

CHAIR—You have been. Right. I see Tilda Hum is a submission coordinator. She is also part of the Australian Lawyers Alliance?

Ms Snell—That is correct.

CHAIR—So there is a bit of a crossover, is there, of that organisation with your members? How does that work?

Ms Snell—I think she is a part of both bodies.

CHAIR—Right. Is there any official link between your group and the Australian Lawyers Alliance?

Ms Snell—No, not that I am aware of.

CHAIR—Is it just unofficial or a crossover of membership between the different groups?

Ms Snell—Potentially there could be.

CHAIR—Does your committee have a constitution or an objective? Is it broad based or do you have a constitution?

Ms Snell—The New South Wales Young Lawyers have a constitution. In regards to the human rights committee, I do not believe that there is a specific constitution for the committee itself, but it is an active part of New South Wales Young Lawyers. As I said, we are speaking on behalf of the New South Wales Young Lawyers Human Rights Committee.

CHAIR—No problem. I am a former member of the American Bar Association, Young Lawyers Division, which was the largest section of the American Bar Association committee, a very powerful and influential group in the US. I am interested in the background of your organisation. I want to ask you about the book *New Land, New Law* so we can have a look at it. Can you give us the source so we can track it down, or perhaps you can send us a link?

Ms Snell—I would be happy to send a link to the resource.

CHAIR—I think that is very interesting. Having practised law myself, I understand there are similar books as the community legal centres prepare similar publications. Are you aware of other similar publications or is this the main one that you are aware of and that you support and use in New South Wales?

Ms Snell—Again, I am happy to take that question on notice. This is certainly one that the New South Wales Young Lawyers Human Rights Committee has been involved with.

CHAIR—On notice, if you are aware of other publications—I think Senator Crossin referred to it as well—it is definitely worth pursuing. If we can get some information that would be greatly appreciated. I want to ask you about your position on pro bono work. That has been a key feature of our inquiry. We are hearing later today from the National Pro Bono Resource Centre. On this topic, we have heard some evidence from other witnesses about governments passing policies to say that if a law firm gets a government contract, the contract should compel the firm involved to do certain pro bono work et cetera. I am interested in whether you have any policy position on pro bono work. If so, could you expand on that?

Ms Snell—We do not have any particular position on pro bono work, other than to acknowledge the important role of pro bono work. Like legal aid, community legal centres and other organisations, we do not see that as a substitute for adequate funding of organisations like legal aid and community legal centres.

CHAIR—Does New South Wales Young Lawyers have a policy position?

Ms Snell—Again, that is a question I could take on notice.

CHAIR—Perhaps you could take it on notice and, if they do, ask them to forward a copy of that view on pro bono. Moving to legal aid and community legal centres and how they are funded, you obviously support the work they do and believe they are underfunded. Do you think they are underfunded and, if so, what is the extent of the underfunding? Please expand on your view. My second question is with respect to the criteria and the terms and conditions of that funding. At the moment it relates to certain criminal cases and matters. Do you think that the criteria should be broadened to include other civil litigation or civil work, for example? There are really two questions, the first being to what extent you believe it is underfunded and can you expand on that.

Ms Snell—In regard to our submission, we made broad comments about the fact that we did think they were underfunded but we also defer—and I will again in this case too—to both legal aid and the community legal centres themselves, to speak more fully about that. They are best placed probably to respond to that. In terms of funding for other areas of law, certainly it would be great if there could be funding allocated to civil matters as well as family law and criminal matters. Again, legal aid and community legal centres would, I am sure, have something to say about that as well.

CHAIR—Means-testing was raised earlier in your evidence. Do you have a view with respect to the means-testing criteria?

Ms Snell—Just in regard to when we refer to the national legal aid submission and its observations, given the financial crisis and the potential for higher unemployment, and the likelihood of more people meeting the current means test and the demands that will then have on the legal services. That would require some kind of re-evaluation of a means test or re-evaluation of allocation of resources, to some extent.

CHAIR—We have heard evidence from the Legal Aid Commission that certainly, I know, in Tasmania and in some other states, even under the current criteria they do not have enough funds to meet the demand currently. With the global financial crisis and concerns regarding unemployment and so on, they believe the demands will probably grow rather than diminish. Are those concerns you wish to support?

Ms Snell—Yes.

CHAIR—Thank you for your evidence today.

[9.37 am]

BLUMER, Mr Mark Edward, President, Australian Lawyers Alliance

CHAIR—Welcome. The Australian Lawyers Alliance has lodged submission No. 27 with the committee. Do you wish to make any amendments or alterations?

Mr Blumer—No.

CHAIR—I now invite you to make an opening statement after which I will invite members of the committee to ask questions.

Mr Blumer—The Australian Lawyers Alliance is a national association of lawyers and other professionals—but mostly lawyers—dedicated to protecting and providing justice, freedom and the rights of individuals. We estimate that our 1,500 members represent approximately 200,000 people each year in Australia. We started in 1994 as the Australian Plaintiff Lawyers Association and our current membership reflects that situation. I think we can all agree that access to justice is important for the continuation of our social system or social fabric. If we take justice to mean the resolution of the righting of wrongs and the resolution of disputes then I do not think anybody will disagree that it is important for our society.

The real question, though, is, 'How is that done?' Our point of view is that access to justice is basically the ability of individuals to find and employ lawyers to protect and further their rights. That is crucial to the existence of those rights, as rights without the means of exerting them are a hollow fiction. If we agree, which I would ask you to do on a temporary basis, that lawyers are an important part of access to justice then a crucial question becomes: are lawyers entitled to be paid for their work? If so, by whom and how much? A lot of the debate in the personal injury spectrum has focused on lawyers rather than on victims of accidents. I think that has led us to a state of irrationality in the personal injury law system.

The rest of our submission does deal with other aspects of access to justice, including other sources of legal representation other than private solicitors; that is, legal aid, community legal centres, pro bono services and duty solicitor schemes. It also deals with specialised schemes, for example, the Aboriginal Legal Service in states and territories. We support all of those things but we do not claim to be experts in those things. I am really open to questions to do with lawyers and legal costs—that sort of thing—because I think that is where we have expertise. I see you have plenty of submissions from people with individual and wide knowledge of other aspects of access to justice. I welcome questions in our area of expertise.

CHAIR—Thanks for your opening statement. You asked if we could consider the merit of lawyers existing on a 'temporary basis'. You are talking to a lawyer, at least in my instance, so I was not sure if that was a joke or a comment. Do you think there is an important role for lawyers in society and are you really wondering who should pay for their services? Is that what you are getting at? Why on a temporary basis and not on a—

Mr Blumer—I asked you to accept on a provisional basis. I meant that lawyers are important in our system of justice and that they are entitled to be paid. I ask you to accept, on a pragmatic basis, that that is the case. We can depend on charity to a certain degree. I noticed there was an article about Victorian lawyers abandoning the legal aid system in droves and so not practising in the legal aid area. So there is a problem there. People will do pro bono and legal aid to a certain degree, but there comes a time when they have to do all the things that ordinary people have to do.

CHAIR—As far as you are aware, how is New South Wales tracking in terms of lawyers undertaking legal aid work?

Mr Blumer—I am not aware.

CHAIR—Do you practise in New South Wales?

Mr Blumer—No, I practise in the ACT. My practice is as a personal injury plaintiff lawyer in the ACT.

CHAIR—You said that you had 1,500 members representing up to 200,000 people and you were formerly of the Plaintiff Lawyers Association in the 1980s?

Mr Blumer—We started in 1994.

CHAIR—Would the 1,500 members be predominantly plaintiff lawyers?

Mr Blumer—Yes. I could not say exactly how many but I would say that at the moment we have about 150 predominantly criminal and human rights lawyers.

CHAIR—The remainder would be plaintiff or personal injury type lawyers?

Mr Blumer—We do have some defendant lawyers in our membership.

CHAIR—When you say you are representing 200,000 people, can you expand on that? What does that mean?

Mr Blumer—We represent them just as clients.

CHAIR—I am just getting the context right. Let's start with legal aid and then go to the community legal centres. With respect to legal aid, to what extent do you think legal aid is under funded? You have mentioned in this submission that it requires 'adequate' funding. This is an inquiry into legal aid. Do you have a view on the extent of the inadequacy? Do you think it is inadequate at the moment?

Mr Blumer—I think it is inadequate but that is really from anecdotal evidence and things that I read in the newspaper. That there needs to be adequate legal aid funding is a systemic view.

CHAIR—Likewise, the funding arrangements for community legal centres: do you have a view on the appropriateness or otherwise of those arrangements and how they should be improved?

Mr Blumer—No.

CHAIR—You do not have a view on that? Let us go to an area in which you would have some area of expertise, and that is tort law reform and tort law generally. Can you tell us about your views of the adequacy of the tort law reform in recent years, particularly with respect to public liability insurance reforms over the last decade?

Mr Blumer—Regarding public liability insurance, I think that most of so-called tort law reform—and I would find it hard to call it reform as such—is mostly being aimed at reducing people's access to compensation when they are injured. For example, the Ipp review was aimed at reducing insurance premiums. Those were the terms of reference. Afterwards, it was bruited as some other thing. Things that have followed the Ipp review, which resulted from a groundswell of sentiment that started in New South Wales that tort law was out of control or at least that insurance premiums were out of control and insurance companies were going broke. The result of that was a reduction in the ability of people to get compensation for injury, and that was achieved by many different means. It certainly increased profits for the insurance industry. In the last five years their profits have been enormous. That is very much a value judgment, but they have been considerable. It achieved that.

CHAIR—Did you oppose the reforms? I assume you did not support those reforms.

Mr Blumer—We supported some aspects of the reforms but, in the main, we opposed the reforms.

CHAIR—Because it took away people's rights to compensation where they were ordinarily and more generally legally entitled to compensation; is that right?

Mr Blumer—Yes, and where they had been previously.

CHAIR—Do you have a view on what should be done in terms of tort reform? Do you think those reforms should be wound back? What do we need to fix the problem? What would you like to do?

Mr Blumer—I would like us—in general—to take a rational view of tort law, to look at the principles behind it, to look at the economic bases of that and to look at its value as a deterrent in some ways, even with insurance. I would like to do that across the country and look at systems in a rational way and say, 'We have to have some way of resolving disputes in our society. Let's keep it rational because we cannot deal with the rest of the world if we do not rely on rationality.'

CHAIR—There are some big generalisations there. I want to drill down a little bit to some of the work practices of your members and how they operate. I assume the no-win, no-fee approach is different in different states and territories. Can you tell us the extent of any restrictions or conditions on no-win, no-fee arrangements?

Mr Blumer—I have to start by saying it is a complete patchwork quilt. For example, in New South Wales no-win, no-fee arrangements are not permitted in motor vehicle claims but they are permitted in other claims; you are allowed to charge a premium of up to 25 per cent on your usual fees.

CHAIR—In motor vehicle claims?

Mr Blumer—No, not in motor vehicle claims but in other sorts of matters. Generally in Australia as part of the uniform legislation you are permitted to charge a premium of 25 per cent on your ordinary fees. Generally around Australia no-win, no fee agreements are permitted. In fact, that is the main way of funding personal injury litigation.

CHAIR—Is most of the work that method of cost recovery?

Mr Blumer—Yes, mine individually and that of most of our members—in degrees though.

CHAIR—We are just talking generalisations with your members. Can you describe the type of work that you and your members undertake?

Mr Blumer—Motor vehicle accidents, work accidents, public liability accidents, medical negligence, other negligence, professional negligence. That is the full spectrum.

CHAIR—Can you describe the types of arrangements that you have? You are really saying that many members of the public would not be able to afford the usual arrangements for paying lawyers on an hourly rate or whatever. Is that right? Is that why you do the no-win, no-fee approach?

Mr Blumer—That is right. It is a wide spectrum but typically members of the public who have been injured cannot afford to pay, particularly when there is a risk of losing.

CHAIR—In most cases is there a requirement that they pay the disbursements or a minimum amount of costs? What sorts of arrangements are put in place?

Mr Blumer—As far as I know, there is no requirement to pay a certain amount of costs. But different firms have different approaches to the payment of disbursements.

CHAIR—Does the law society in each state or even across the country have a policy position on no-win, no fee and the types of arrangements that it should apply to?

Mr Blumer—I cannot speak for the law societies but generally I do not think they oppose them. That is just what I hear.

CHAIR—If you have any recommendations for us in that regard, what would you say to us as a legislature about allowing members of the public to access what you would say is their due right and entitlement to compensation if they cannot afford it? Do you want to put a position to us?

Mr Blumer—I could make one up, but I do not think that is a good idea. I could think it out and put something to you.

CHAIR—But your position is that you support no-win, no-fee?

Mr Blumer—Absolutely.

CHAIR—I am trying to get you to share that on the record and say that approach allows members of the public to access compensation which is their right and entitlement.

Mr Blumer—Yes, absolutely. I could not have put it better.

CHAIR—We will move on to the alternative dispute resolution approach. Do you want to expand on the merit of that? You have referred to it in your submission and the importance of it.

Mr Blumer—I certainly think that it is a useful tool, and it may contain legal costs to some extent. It certainly contains legal costs to the justice system in that the parties themselves pay for mediators and venues and so on. If it works, it is very much a short cut for these actions. There is a rider in our submission, and that is that the ultimate resort to the courts should be available in a case where alternative dispute resolution is not effective.

CHAIR—My final question is with regard to commercial litigation. I have heard some feedback, anecdotal and otherwise, that, certainly in Victoria, commercial litigation has had lengthy delays in the courts. There is the old adage of 'justice delayed is justice denied'; from your experience, either in the ACT or New South Wales and through talking to your members, do we have any significant or serious issues regarding the delay in the court system in providing justice to your clients or others, whether it be commercial litigation or other types of litigation? Do you have an issue there, or are there concerns that you would like to raise with the committee?

Mr Blumer—There have been concerns expressed in the ACT, for example, about the workload of judges recently. That could well be true. In the ACT we do not have great concerns about that. Prompt delivery of judgments is always a concern and we have to allow time off the bench for judges to write the judgments. The fact is that most matters settle before hearing, and the existence of an—in some ways—inefficient court system mandates settlement. I hate to say that outright, but 95 per cent of matters settle before hearings.

CHAIR—Is that right—95 per cent?

Mr Blumer—Ninety to 95 per cent.

CHAIR—Is that across the court system, or just the lower courts that you are talking about?

Mr Blumer—In the ACT there are only two levels, so I think that is across the court system. I would be surprised if it were not similar in other states and jurisdictions in personal injury matters.

Senator CROSSIN—Your submission makes an interesting point about the merit test; access to legal aid is really vetted, essentially, before the case is taken. Legal aid services obviously make an assessment about what is winnable, or what is viable?

Mr Blumer—Yes.

Senator CROSSIN—So it is not a total access to justice, in a sense, is it?

Mr Blumer—No, that is right. In a way the system has probably got to make those judgments. The real question is the quality of the judgments. Not everybody who thinks they have a legal dispute has one, but—

Senator CROSSIN—But that is just sound legal advice, isn't it?

Mr Blumer—Yes, that is right. In a way, what should happen at that stage is that they obtain legal advice anyway and then, even if that legal advice from the legal aid office or organisation is, 'You don't have a winnable legal dispute, and these are the reasons why,' that serves a very important function.

Senator CROSSIN—But if I were cashed up enough, and I ran the risk of taking that matter to court anyway, I suppose I may or may not win, but my access to justice is really determined by the amount of money that I am able to afford, isn't it?

Mr Blumer—Yes, in a way. But you also have to consider that if you have not got a very good case—and the first adviser can be wrong—then it is likely that you are going to lose, in which case you are spending your money on a hobby of some sort, not on access to justice, because the justice was not with you in the first place.

Senator CROSSIN—In your submission you make the point that legal aid does its best to assist as many clients as possible within a limited budget, but it is often difficult for middle-income earners who may not be able to afford extensive private representation yet fail to quality for legal aid to receive appropriate legal assistance.

Mr Blumer—I think that is absolutely correct. There is a middle cohort that falls between the floorboards.

Senator CROSSIN—Do you think that the threshold for assistance, the means test, needs to be lifted?

Mr Blumer—It would be better if it could be applied in more discretionary ways in that there are some types of matters where the amount of income or capital may be less relevant. Sometimes these are matters that might need to be pursued anyway, but the person does not have the means to do so.

Senator CROSSIN—In some previous reports written about this—particularly the recent one in 2004 or 2005, I think—one of the recommendations was that the Commonwealth government address discrimination against the circumstances of women in the application of the current family law Legal Aid Funding Guidelines by commissioning national research into the perceived

gender bias in legal aid decision-making. Do you have any thoughts on or input into whether or not women's access to justice is further compromised by the perceived gender bias?

Mr Blumer—I am not aware of that report or any specific examples of that, but if it exists—which it quite possibly could seeing as it exists in the rest of society—then it should be addressed. Gender bias exists in the law; there is no doubt about that. There are also other things that I will not go into.

Senator CROSSIN—We have heard evidence to this inquiry that there is a very blurred amalgamation of the representation between community legal services and the family violence prevention services and that now attention is on the perpetrator rather than the victim. Does your organisation have any comments about that?

Mr Blumer—In relation to representation?

Senator CROSSIN—Yes.

Mr Blumer—No, not really. It is beyond my expertise.

Senator LUDLAM—Thank you very much for your detailed submission. I want to pick up on some of the threads that the chair asked about before, the part of your submission that deals with alternative means of delivering justice. You made some quite intriguing comments and provided some great statistics. You said: 'Such programs'—you are referring to restorative justice programs—'are currently utilised to varying degrees in the Australian contexts of juvenile justice, Indigenous justice and family law.' How widespread are these alternative restorative programs in Australia?

Mr Blumer—I do not know, but I could take that on notice and get you something.

Senator LUDLAM—Okay. You have given some good evidence of how it has been used in Canada for 35 years, in the UK for quite a few years, so long enough for it to be evaluated and there to be some useful statistics about how it compares with pursuing things in the old-fashioned way. You go on to say: 'By contrast, there has been a marked reluctance in Australia to fully extend restorative justice programs to the criminal courts.' Do you have any views on why that might be or where the reluctance stems from?

Mr Blumer—I can only guess that it could be our desire to see offenders punished rather than to reach any other resolution. I think the law and order debate that goes on at every election, the rush to make oneself more punitive than the next person, is probably another reason.

Senator LUDLAM—Is restorative justice seen as being a bit soft on crime?

Mr Blumer—I guess it is because it is seen as being soft on criminals.

Senator LUDLAM—You have cited some really remarkable statistics in the British instance, that between 70, 80 and 90 per cent of victims, in the mid-80 per cent of victims, said they would choose a restorative justice approach if they were ever tangled up in criminal matters again, and they are using restorative practices for quite serious crimes in other jurisdictions.

Some of the other stuff you have got here, for every pound spent on delivering the restorative justice conferences up to £9 was saved in avoided costs within the traditional court system. Is there a degree to which that has also avoided costs and legal fees? Is there a reluctance within the legal profession to go down this track?

Mr Blumer—I would not have thought so, not in the criminal profession, because mostly those people do not earn a lot of money.

Senator LUDLAM—So there is not a lot of money in it in the first place.

Mr Blumer—It is not the issue. My observation is that most people who practise in the criminal profession do it because they like doing it. I could say something inappropriate—

Senator LUDLAM—Go on, we are on the record!

Mr Blumer—Unless you are acting for a drug dealer—

Senator LUDLAM—In which case there is loads of money.

Mr Blumer—or someone who is wealthy and has got themselves into deep trouble, you are usually doing it for very low rates. And you do not always get paid.

Senator LUDLAM—So it is safe to say that you would be happy to see this committee recommend a greater expansion of restorative justice practices.

Mr Blumer—Absolutely. I think it is not even an experiment anymore; it is an idea really worth applying.

Senator LUDLAM—That comes across quite strongly in your submission. Do you have much an idea of the degree to which it is being used here, or anything you would like to cite about good examples of its use in Australia?

Mr Blumer—I am not sure whether it is a trial but they have got something going in the ACT and I think there is something in New South Wales. But I would really have to do some research on it.

Senator LUDLAM—If you are willing to, if you have the means. One of the things I was really keen for in referring this committee in the first place was not to simply rehearse what has been done quite comprehensively before, including in the recent past, but to actually make some sound proposals for alternatives and for ways forward. This would seem like a pretty fruitful line of inquiry. You talk a bit about the gap between the truly needy who have fallen right through the safety net, for whom we do provide legal assistance; the wealthy, who can fend for themselves; and there being this big gap in the middle. Is there any work that has been done on just how many people are falling through that big gap in the middle?

Mr Blumer—I do not believe so. I think there is work that needs to be done in relation to that, and that would be a useful, if dry, source of information.

Senator LUDLAM—It seems like legal aid and the CLCs are forced to triage and basically look after the most wounded and the most helpless. And then at the other end of the spectrum there are people who would not even contemplate going near those sorts of services. Is it just a matter of funding or is there something structurally a little bit wrong with that picture? Is just throwing more money at it the solution?

Mr Blumer—I think access to a good conversation about the legal system for everybody would be a very useful way of making our legal system work. I think those people in the middle are terrified of approaching a lawyer because they think it is going to cost them their house.

Senator LUDLAM—I guess in many cases they are right. A couple of weeks back a proposal was put to me about the idea of a clearinghouse particularly for family law matters for that middle tier where you could go for one consultation about whether you had a course of action or whether you were wasting your time. Is that an approach that you would endorse, and is there anything like that that exists at the moment?

Mr Blumer—There are free legal aid advice systems that a lot of the law societies run, I think. Certainly there was one run in the ACT, where anybody can go and have a conversation with a lawyer.

Senator LUDLAM—So at least get a first round whether you have got a case.

Mr Blumer—Yes. But a lot of people probably would avoid that. There might be a place, probably run by law societies, for a bigger service which is more acceptable to more people.

Senator LUDLAM—A couple of submissions have pointed out that there is actually no right to legal representation in Australia. Is that a fair assessment?

Mr Blumer—That is right. You do not get to ring a lawyer, as of right, in most jurisdictions, as far as I am aware.

Senator LUDLAM—Do you think the existence of such a right should or could be written into any future human rights charter in Australia?

Mr Blumer—I think the right to legal representation should be written in. That may by implication mean that the arresting police, as part of their protocol, should give you the right to get that representation as early as possible.

CHAIR—That is obviously hypothetical—if we ever had a human rights charter.

Mr Blumer—Well, we do have one in the ACT and one in Victoria.

Senator LUDLAM—So we are hoping it will not be hypothetical for too much longer. But what would happen—continuing in hypothetical mode, if you do not mind—if such a right did exist? We actually do not have the capacity, I would have thought, to meet that demand. If you did have the right to a phone call to call a lawyer in Australia at the moment, it seems from evidence we have taken so far that we do not have the capacity to provide that assistance.

Mr Blumer—That could be right. I do not know. I think when you have people leaving legal aid services or not doing legal aid anymore in crime, that is a big problem. And if that is the case then it is an abstract right, not a real one. It has to be funded to be real.

Senator LUDLAM—Yes. My last question: in your submission you talk a little bit about specific disadvantages faced by Aboriginal Australians in accessing justice and you note the need for improving translating services. Can you talk a bit more about that and how you see that situation in New South Wales, or in the ACT in particular?

Mr Blumer—I think the tyranny of distance does not apply so much in the ACT and possibly New South Wales as it does in other jurisdictions like Western Australia and the Northern Territory, where I think that is a prime and urgent human rights issue. Even though I do not have expertise in it, some of our members do. Some of them are prominent criminal lawyers in Western Australia and the Northern Territory. We need to do whatever we can do. The submission is made at that level. We do not attempt to be experts in that area but something needs to be done about it and something needs to be said about it. This committee is going to get evidence from people who are richly and deeply involved in it. All we are really doing is saying that we agree entirely.

Senator LUDLAM—That is helpful. We have heard quite detailed evidence on that. I will put just one more question to you and pick you up on a point that you raise in your submission. You have indicated that you think there is public confidence in the justice system. We have heard quite a bit of evidence completely to the contrary—that the legal aid system is broken, and people are using words such as 'crisis' and 'emergency' and so on for the domain that we are dealing with here. How serious or how deep are the issues, in your view? Is there a crisis? Is this a structural disaster area, or do we just need reforms at the margins?

Mr Blumer—Are you talking about the legal system in general?

Senator LUDLAM—Yes. Is it working?

Mr Blumer—Sometimes, and in some places. I think we do need to take a more rational approach to it and try not to emotionalise it as much as we do. We need to try to deal with it in a rational way that everybody can agree with. We need to find a point of agreement. That is a huge task but it is one that needs to be undertaken. The justice system cannot work without the agreement of individuals in the end.

Senator LUDLAM—The funny thing is, we have a long list of inquiries. I was even a little bit reluctant to initiate this one. There has been such a long string of inquiries into access to justice that suggest that the funding simply is not there to provide equality of arms and legal representation and the system is structurally pretty messed-up. So in terms of agreement, I think the agreement is there. What do you think needs to change—that maybe this is the last time we have to go through this sort of process?

Mr Blumer—That's up to you guys.

Senator LUDLAM—I thought you might say that!

Mr Blumer—I think you need to say, 'This has to be done.' You need to say to your colleagues that there is not much in it in terms of votes, I wouldn't have thought. There is not much political capital in it, so it is a matter of selflessness more than anything else. It is a matter of not being cynical about it. It is too important to our society to just let it bleed. That really is what it is about.

Senator LUDLAM—I think that is quite an appropriate place to wind it up. Thank you very much.

CHAIR—Thank you very much, Senator Ludlam. Mr Blumer, thank you for you presence today and your submission.

Mr Blumer—Thank you.

[10.17 am]

HALL, Ms Julia Johan, Executive Director, National Association of Community Legal Centres

CHAIR—Welcome. The National Association of Community Legal Centres has lodged submission No 1 with the committee. Do you wish to make any amendments or alterations to that submission?

Ms Hall—I don't. I do have something I have referred to as an update on that submission, if you want to table that.

CHAIR—I would like to invite you to make an opening statement at the conclusion of which I will invite members of the committee to ask questions. If you would like to share your update as part of that opening statement that would be fine. If you want to do it separately, for us to have the submission amended, then that is also fine.

Ms Hall—The way I had done it was to have a short document, which is the update. I was not going to read it but to speak briefly to it. Shall I hand out copies?

CHAIR—Sure. That is no problem at all.

Ms Hall—There is also a new publication, in fact, to be launched next week at our national conference—community legal centres putting social inclusion into practice—and another document, NACLC update on submission to the inquiry into access to justice.

CHAIR—Two documents to be tabled so, with leave of the committee, we will have those tabled. That is moved and agreed to. Thank you very much. Fire away.

Ms Hall—The update document has some snapshot information about the numbers of services that community legal centres provide. The data on the first page refers to 2007-08, which is based on the Commonwealth Community Legal Services Program database, CLSIS. That is the best data we have. It only refers to about 80 per cent of community legal centres because, although our NACLC umbrella covers about 205 centres, only 128 are in the Commonwealth CLSP program.

You can see there the extraordinary number of services provided by centres in that period and we have some figures there about current funding. One of our points, of course, is that until 2007 there had been no increase in recurrent funding from the Commonwealth—and there hasn't been since then. There have been a couple of rather welcome one-offs in funding increases in the last couple of years but no recurrent things. We say that until 2007 there was effectively a decrease of 18 per cent and that has continued. We have had indexation but it has been around about 2 per cent each year—2.2 per cent this year—which, our centres can attest, does not meet the increases in costs for them, especially in the rural, regional and remote areas.

The update also talks a little bit about the value for money that community legal centres provide. There are some figures on the proficiency of obtaining volunteer and pro bono support. In 2006, we had some figures—again, it is an underestimate because not all centres make their returns of surveys—and a total of over 4,000 volunteers worked in CLCs. They are professionals, students, community members and so forth; in total, they contributed over 300,000 hours. A recent survey done a couple of months ago indicates the total number of volunteer hours contributed to CLCs has risen to over 329,000. Part of our submission is that CLCs are very good value because of the way they can garner contributions from volunteers, and also pro bono partnerships. There are some examples there of collaboration with private law firms.

A senior Commonwealth bureaucrat said to me only a week or so ago that if there was no more money that it may be a matter of doing more with less; CLCs have been doing more with less for a very long time and there are many examples of where they get free or subsidised rent from councils and cut costs wherever they can, but have been unable to pay wage increases for some years, apart from award increases, which they are forced to pay. It makes a rather challenging thing of having to decrease services, ultimately.

CHAIR—Who said that to you?

Ms Hall—A senior bureaucrat from the Commonwealth legal services program said that to me recently.

Senator LUDLAM—I suppose we have to apply to see who that was?

Ms Hall—I would prefer not to! It is not an uncommon response though, to suggest that we do more collaboration and work closer with legal aid and law firms. We have many examples of where we do just that, and it is not possible for us to do more of what we are doing with what we have.

I think that you know something about CLCs; they do come in multiple forms and sizes. Some of them actually consist still of only volunteers. The ones in the Commonwealth program, of course, are more than that. They have some funding, and they, too, vary greatly in size. Some of the CLCs are like a law practice, and they may some other community development workers, or they may just work closely with neighbourhood centres and have warm referral protocols and so forth. There is a number of different ways of operating, but the holistic response is integral to CLCs, where it is not just a legal response; it is a response aimed at the causes of the legal problems and related problems. Also, wherever possible, CLCs practice early intervention preventative strategies. They can be community legal education, law reform proposals, law reform campaigns and submissions, community development capacity building, rights information, developing skills in their communities and so forth. There are some examples of those in this update as well.

Also integral to CLCs are the tailored services targeting groups with special needs. That can happen in two ways: sometimes it is an area of law, like welfare rights or something, which needs specialist expertise. Sometimes, though, it targets particular groups in the community who may have extra legal needs, or need their services delivered in a particular way because the normal service delivery by lawyers is not something that reaches that community. It could be

older people, who do not necessarily go out, it could be a cultural matter or it could be Indigenous people, who tend not to come into lawyer's offices so you need to go out into communities. It could be a matter of interpreters for that matter. So CLCs are geared around that.

There are two case studies in this update that I wanted to mention. CLCs practice social inclusion, not just in the sense of attempting to prevent social exclusion of people and minimising disadvantage in that way, but also by involving their communities and target groups in their service planning and delivery. There is an example there of the Mental Health Legal Centre in Victoria, which has client group members on its management committee, as does the Intellectual Disability Rights Service, which is the other example there. They deliver community legal education: they take somebody who has suffered, or who is suffering a mental illness, and they deliver education with that person. The manner of delivery is informed by what that person helps them to develop—the particular course and how it would best reach the audience. It is a very inclusive model of operations, and it has some notable successes.

We have some information there about savings. Savings, of course, can be financial, but they are very hard to measure, and this is always the problem with arguing for more money for CLCs. We can sometimes point to a particular case that has saved somebody some money, but somebody else may say that credit providers lost some money in that case. Our point is about avoided, but also related, legal costs. There is significant research which shows that legal problems, especially unresolved ones, tend to escalate, particularly for the disadvantaged groups. It means that it costs other welfare agencies, health agencies and so forth. We say that the preventive work we do provides savings to government and third sector service providers. It is both a qualitative thing and a further avoided costs issue.

One thing I wanted to mention was that the National Association of Community Legal Centres, NACLC, has developed a strategic service delivery model in which we say the most effective minimum model for a CLC is equivalent to five full-time-equivalent employees. That is two lawyers, a coordinator, community development worker and so forth. A lot of our funding arguments now are based around asking the Commonwealth and state CLSP programs to bring funding up to that level. We say that is the most effective model, and we have some arguments behind that.

The New South Wales state association has been involved in a very interesting project recently—which I am on steering committee for—which is to develop a tool kit which looks at disadvantage in particular communities. It is a tool kit to develop a legal needs assessment framework for a particular service area, which could be a client group and/or a geographic group for a community legal centre. It looks at disadvantage and at legal need, which are quite often confused. Looking to SEIFA indexes can help you move towards identifying legal need but they are not the same thing. This looks at both disadvantage and predictors of legal needs in a particular community. Through working out what the legal needs are and through identifying other legal services in that area, we can better identify the gaps in services and strategically plan the community legal centre's future service delivery around those gaps.

CLC has been very proactive in attempting to address unmet legal need. Most of the figures are about met legal need. That is what databases are for, services delivered. We are trying to be very proactive in moving our services but it is very difficult when the demand at the front door has increased. I gave you the 2007-08 figures. There was a five per cent increase in total figures

in this last year of services delivered at the door but that is not showing you the turn-away rates. The ACOSS community survey, which came out this year, said there was a 16.4 per cent increase in turn-away from community legal services. I think that is a considerable underestimate because a lot of CLCs, unfortunately, did not return their surveys. CLSIS, the Commonwealth database, does not record, unfortunately, people who have been turned away. It just records referrals. If somebody was referred to a legal aid agency, that would be recorded but not if they are turned away for another reason. Unfortunately, it also does not record why they were turned away, whether it was conflict, inability to meet their needs or whatever.

The GFC has had a significant effect on CLCs. There has been a five per cent increase in services coming through the door and an increase too in referrals. I just mentioned in the update there has been a 14 per cent increase from 2007-08 to 2008-09 of referrals from members of parliament and government agencies. They are only one of the referral sources to the CLCs. The profile of legal need has changed in the GFC period. We are seeing a lot more employment related inquiries. Consumer credit and tenancy are up significantly. The other thing I am seeing is more casework. A lot of CLCs' work is initial advice, information, referral and practical assistance such as writing letters and so forth. More casework means more time from CLC lawyers. On the database, the casework matter will be recorded as one just as an advice is, so you are not necessarily seeing the number of hours that may involve but it is significant.

You might like to know the specifics of what we say about funding. We have just done a funding submission to the Australian government and that summarised what we asked for. We were moderate, we thought, in view of the current climate. One thing we did say is that CLCs in the programs, 128 Commonwealth funded centres, should be brought up to the $500,000 per annum strategic service delivery model. There should also be a loading for what we call triple R, rural, regional and remote centres, to cover their extra costs. We also think that the CLSP program should be expanded. First of all, there are a number of state-only funded centres that are administered through the CLSP by the state legal aid commissions. The Commonwealth funding should be to them and also to other areas of unmet legal need, which we are happy to work with the Commonwealth in identifying.

One other thing that I would like to mention is sustainable annual indexation. As I said, the two per cent has not really been matching the real cost increases over the years. That is all I wanted to say at this stage. Thank you.

CHAIR—Thanks for that. I will kick off with some questions. Thanks for your submission and the papers you tabled this morning. Does your organisation have a constitution?

Ms Hall—We are an incorporated association and we do have a constitution, yes.

CHAIR—Who are your members?

Ms Hall—Our members are the state and territory associations—that is, the members of the national association—and their members are the individual CLCs.

CHAIR—All right. Are you primarily the national body that represents their positions on arrangements with government, or do you have a broader role as an advocate for the disadvantaged in the community and your members' clients more generally?

Ms Hall—It is a much broader role. We do have an advocacy role generally for CLCs and for their client groups, the disadvantaged. We also work with the state associations to provide a number of services direct to CLCs. For example, we have a professional indemnity insurance scheme which we negotiate with an insurer nationally, which means it is about half the market cost for CLCs, and we negotiate some online free legal resources. So we provide some services direct to CLCs, we do some social justice campaigns and work ourselves, but we also work with the centres, the national networks and the state associations on their work, supporting them.

CHAIR—Are you publicly funded; and, if not, how are you funded? You are an executive director, I understand, of the national body.

Ms Hall—Yes. We are not recurrently funded. We get a number of project grants; I think they are all annual—no, one was for three years. At the present time they all come from the Commonwealth government—indeed, through the CLSP, the Community Legal Services Program, in the Attorney-General's Department. We have at other times had some project funding from philanthropic organisations. That is probable all, I think. We get contributions from member CLCs, so we ask them for a contribution on a sliding scale depending on their level of funding.

CHAIR—Do they get government funding from their states to survive, or operational funding?

Ms Hall—CLCs are variously funded. As I said, 128 of the 205 or so get some funding. Some are partly funded and some are wholly funded by the Commonwealth. Some also get state funding. There are some that are only state funded, there are some that are not funded all and there are some that get funding from benevolent or philanthropic organisations.

CHAIR—All right. Do you have policy positions on different issues? You mentioned social justice earlier. And, if so, do you have a document listing your policy positions that we could see?

Ms Hall—We do not have a central policy document. At various times, NACLC makes media comments or there are particular policies developed—usually with a national network; we have a number of national networks of CLCs that NACLC supports financially. They do phone link-ups. We support them financially to have a networks day near the conference, and they often develop particular submissions. So our policies are rather scattered, unfortunately. It is something I am attempting to do, to corral them and bring them together into one document.

CHAIR—Are there any current ones that come to mind?

Ms Hall—NACLC is a member of the Australian Legal Assistance Forum, ALAF, and I know ALAF made a submission to this inquiry, and that would encapsulate a number of our policy positions on various things—for example, the need for increased funding for legal aid, with priority given to Aboriginal and Torres Strait Islander legal services.

CHAIR—Would you, for example, have a policy position on the need for a charter of human rights in Australia?

Ms Hall—We have made a submission to the National Human Rights Consultation. It was done in consultation with member CLCs and with the national Human Rights Network, and it does advocate for a statutory charter, yes.

CHAIR—Okay. Let us move on to the funding arrangement that you have with the federal and state governments. I understand that is being renegotiated. Where are things at?

Ms Hall—There was a review of the whole program report that came out in 2008. There were a number of recommendations in that and consultation occurred. It was hoped that the three-year agreement was due last year. In the end it had to be rolled over because the Commonwealth had not finished its process of consultation. The draft agreement has not yet been sent to us. I know that the state program managers have had it but we have been told a number of times that it is arriving imminently. At the moment we are still in that one-year rollover period, but we are expecting the draft agreement for consultation at any moment.

CHAIR—So the one-year rollover period goes to 30 June next year?

Ms Hall—I am not whether it was a calendar year or a financial year. It is presumably a financial year.

CHAIR—Could you take that on notice and let us know. You are therefore expecting another agreement between your members and your members' members, and the Commonwealth. Is that correct?

Ms Hall—The service agreement is actually between the Commonwealth and the legal aid commissions for those centres that have state funding. It is with the individual centres, it is not with the associations. But, yes, we are expecting a new agreement.

CHAIR—That is what I am drilling down to. You are the national association and then you have the state and territory associations. So there would be a standard funding agreement with individual community legal centres?

Ms Hall—That is correct.

CHAIR—Are you saying that there are separate funding agreements with legal aid centres?

Ms Hall—I am sorry, the service agreement may refer to state funding or Commonwealth funding. It is a pro forma, but it may have particular targets adapted for particular centres.

CHAIR—Do you have a view with respect to the adequate and appropriate proportion of funding between state and federal? As you have indicated, and as we all know, it seems to be different depending on the community legal centre. Do you think it should all be 50-50? Do you think the state should be kicking in?

Ms Hall—Just the CLCs?

CHAIR—Yes, I am talking about the CLCs.

Ms Hall—I think the Commonwealth has an obligation to increase its proportion of funding.

CHAIR—Do you mean across Australia or for each individual one?

Ms Hall—Generally to those centres it is funding.

CHAIR—That is a little bit generic, I am afraid. It is not very persuasive.

Ms Hall—It is a very hard question to answer because there are a great variety of legal centres. I can understand that, for example, there may be an argument for a domestic violence advocacy service to have more state funding if that is what it primarily does. Again, immediately you get into a complexity because they do not just deal with domestic violence; they deal with family law in its complexity.

CHAIR—I am not saying it is wrong; I am just trying to get a handle on this. It seems to be horses for courses, different funding agreements and arrangements depending on the community legal centre. Is that your understanding? Does it depend on what they do, the service they provide and the area in which they live?

Ms Hall—I am not even sure it is that rational. A lot of it is historical according to when they entered the program and how it was initially recognised.

CHAIR—Where can we find out? Do you have a list of every community legal centre and the nature of the funding arrangements with that centre?

Ms Hall—I have a list which I got from the Attorney-General's Department of the funding for the centres that are in the CLSP program. It has each of the centres in that program, which is the 128 that have Commonwealth funding and also the state-only funded centres. So there is such a matrix for them. Of course, centres often get funding from other sources and there may be other government departments.

CHAIR—Of course. We understand that. Could you table that or take it on notice and provide us with that list, please?

Ms Hall—Yes.

CHAIR—Let us go to a more difficult area, which is the area of accountability with respect to what community legal centres do and do not do. What accountability measures currently exist and how effective are they?

Ms Hall—I will put aside the ones that may be entirely volunteers and talk about the ones in the funding program perhaps. They would have management committees—or boards—to whom they are accountable. I imagine the ones in the funding committee would all be incorporated associations, so they are accountable. They are obliged to comply with the requirements under their respective state or territory associations acts, which also includes financial accountability—audited financial statements, annual reports, that sort of thing. The legal centres run legal practices and the lawyers there have to comply with the legal profession legislation and requirements. So there is accountability through that mechanism as well.

As I mentioned earlier, the national association runs a national professional indemnity insurance scheme. That is part of a broader risk management scheme that we run. There are 155 centres in that scheme this year. We have produced a risk management guide, and it has a number of procedures about good practice for legal practice, risk minimisation and stuff like that. It also has peer crosschecks, where somebody from one centre goes and checks the files. This happened annually. There is also a buddy system for new centres or people who might be having difficulties with resources with a larger centre. So there is assistance and support in that way.

The CSLP centres, as you have mentioned, have service agreements and under those there are particular standards that the state program manager is obliged to ensure compliance with. There are regular reports required under that arrangement. A more recent development is that NACLC has developed an accreditation scheme. This is a new thing for CLCs. The definition of 'community legal centre' has always been a bit different in different states and territories. From looking at all the different constitutions and their definitions, we have developed a set of common membership rules working with the state and territory associations. That is in the process of being incorporated into the constitutions around the country.

The common membership rules are the minimum standards. You can have rules in addition, but you must have these. There are certain agreed definitions and requirements in those. They bring into play a requirement that full members—there are associate members too—must comply with national association accreditation criteria. We have set some criteria, which are fairly broad at the moment, and we will move to put some indicators, by perhaps example, under them.

We have also registered our trademark—the logo of the national association with the words 'this centre is accredited by'. That has just gone through the process of becoming a certification trademark, which essentially means it is more enforceable to protect through the ACCC. That has just happened. We are at the beginning of a process. We will now be going around to all of the centres—or retaining somebody to do this in consultation with the state associations—to look at each centre. There are some legal practice requirements and other financial and general practice things—it is good governance—and we will be saying, 'Only if you satisfy our accreditation and certification criteria, will you be entitled to have our thing.'

There are a number of reasons for this scheme. One is because we are interested in improving consistency and quality control in the centres and protecting the client base. The second reason is that there are some 'look-alike services'. In some jurisdictions there have been some legal practices or associations who have advertised themselves as free community legal services, not-for-profit associations. We say that they are potentially misleading, because it is usually only the initial interview that is for free. Somebody could get caught. They may be trading on our good name. We are worried about the client base and what protection there is. That is another reason for this. I do have a little summary of that process.

CHAIR—Could you table that? Is it something that you could table?

Ms Hall—Yes.

CHAIR—We appreciate that. How far along the track are you with the accreditation process?

Ms Hall—The trademarks are now through. The certification trademark happened last week. Most of the state and territory associations—and I should mention that a couple of those are so small that they are not even incorporated; they are more informal groups—have voted the common membership rules, which bring in the accreditation criteria, into their constitutions. We are now working on developing some models for how we will implement this.

CHAIR—So you do not have the criteria prepared as yet?

Ms Hall—We do. The accreditation criteria are annexed there on pages 3 and 4. Those are not the certification rules. The certification rules are fairly broad. They just say that we can set some recognised standards and they bring in the accreditation criteria, so that is essentially the main document. We will set some indicators under that, but at the moment we have to work out how to implement it, which is what we are working on with the state associations. We will be talking about that next week in Perth at our conference and management committee meeting. We will need resources.

CHAIR—Yes. So you hope that your members and your members' members will end up being accredited?

Ms Hall—The individual CLCs will be the ones who have the accreditation that says 'this centre is accredited by'.

CHAIR—That is encouraging to hear about that. Thank you for letting us know. With respect to complaints that you receive—not you, but your individual members—how are they handled? Is there a common method? Or is it slightly different for each centre?

Ms Hall—Each centre would be different.

CHAIR—You mentioned that there is a management regime and then there is a board. Is that the case in every community legal centre?

Ms Hall—It would be the case for all the ones that are incorporated associations. They are variously called 'boards' or 'management committees', but yes.

CHAIR—You said that there are 128 that are Commonwealth funded. Are they all incorporated?

Ms Hall—As far as I know. They would have to be, I think, to receive the funding.

CHAIR—Can you take that on notice?

Ms Hall—Yes. Sorry—there are a few that are companies, so they are not all associations.

CHAIR—But in terms of the complaints that are made, we do not know exactly how they are dealt with, do we? You do not know.

Ms Hall—Not universally, no. NACLC has a management guide, and these things are often suggestions and there are model policies that centres might like to have. They often adapt them.

There is a general understanding that you should have a complaints procedure, and I would think that that is generally so, but I could not warrant that it is universally so, or what it is.

CHAIR—Without going into the details, are you familiar with any complaints that have been made at the Launceston Community Legal Centre in the last 12 months which have gone to the board and then to the state association for review and consideration?

Ms Hall—I am not aware of any individual complaints.

CHAIR—Okay. I will not go into that today other than to express my understanding and knowledge that issues have been raised about that.

I now want to ask about the type of work that is undertaken by the community legal centres. We are getting from witnesses the idea that they are underfunded, which is the point that you have made. The other thing I want to know is the other areas of work, in terms of the criteria, that should be supported or funded. Before we answer that question, the committee needs to know the breakdown of the type of work that is undertaken by community legal centres. Have you done an analysis of the type of work that is undertaken in each and every case and at the state and territory level?

Ms Hall—Do you mean types of services, or areas of law?

CHAIR—Areas of law, which flow to the types of services, as in crime, tenancy issues, domestic violence and so on.

Ms Hall—Again, I would have to rely on the centres that are in the CLSP program, which are the Commonwealth database ones. They record areas of law and types of services delivered, so one can get reports on that. The beginning of the update document refers to types of services, and you can see there that information, support and referral is recorded separately from advice, which is recorded separately from casework, community legal education and law reform or policy projects. So it has those broad categories, but it does pick up areas of law. To give you a picture, in 2007-08—this is taken from my annual report—broadly speaking, 60 per cent of CLCs' work was civil, 31 per cent was family and about 9 or 10 per cent was crime.

CHAIR—So that is set out in your annual report?

Ms Hall—Yes, that is in our annual report. Obviously that could be broken down.

CHAIR—At a state and territory level?

Ms Hall—Yes. The Commonwealth database can do all that.

CHAIR—I do not want to put you to too much work, but is that something you are able to do?

Ms Hall—Are there particular areas of law that you are interested in? Or do you mean just broadly?

CHAIR—Yes, just broadly, at a state and territory level, would be good. So as far as the question goes, yes, there is underfunding, but do you think other areas of law should be supported by the Commonwealth or the state, or both?

Ms Hall—It is very hard, especially for disadvantaged clients, to sever out a particular area of law, because someone who presents with a homelessness issue may have a tenancy problem, a debt problem, a family violence problem. Part of the issue is that they often are not that severable for these clients. These clients have multiple issues.

Family law is a significant area that needs funding. I think the state legal aid commissions would very much argue that, with the change in profile of Commonwealth funding for legal aid, they have had to pick up more of that sort of work. That is a big issue. We say that, generally speaking—and this was in the ALAF submission—there needs to be more funding for civil law. Criminal law is probably a bit better off. Perhaps that is because state legal aid has been increasing.

CHAIR—We could go on, but I think I have a feel for where you are coming from. My last line of questioning relates to state government support. We are obviously representing the federal parliament and the federal Senate but we are interested in support that is coming from the federal government and likewise the state government. However, it seems to be higgledy-piggledy. Some states provide support, some do not.

Ms Hall—That is correct.

CHAIR—I am a Tasmanian senator. I know that the level of support down there is negligible to nil. What is your policy position with respect to the role of state governments in supporting your centres?

Ms Hall—We think state governments should be contributing significantly.

CHAIR—But you do not have an overarching—

Ms Hall—I do not have a particular percentage for that funding.

CHAIR—Should there be consistency across the country?

Ms Hall—That is an interesting question. We do not have a policy, as far as I am aware of, but we could take that on notice and consider it.

CHAIR—I am very interested in your views on the role of state and territory governments with respect to funding.

Ms Hall—Funding for CLCs?

CHAIR—Yes, the CLCs. It is all very well to attack the federal government, whether it be coalition or Labor, for not funding CLCs when some state governments are just thumbing their noses at the CLCs.

Ms Hall—I can assure you that we make funding submissions to the states as well. This submission was tailored to the Commonwealth context.

CHAIR—If you were able to give us a matrix of the funding provided by the states and territories, that would be useful.

Ms Hall—I will do that. The Commonwealth used to pay 55 per cent towards legal aid—not CLCs—and that has dropped back considerably. There is an argument that it should be roughly fifty-fifty for both CLCs and legal aid.

CHAIR—Could you confirm that in a response, because that is exactly what I am interested in. I think I have taken up my allocated time.

Senator CROSSIN—On page 5 of your report, you give a breakdown of Commonwealth versus state funding but it is not aggregated by state and territory. You say that in 2006-07, $27.4 million was provided by the Commonwealth and $17.6 million by the states. It is not a state-by-state breakdown. Also, the figures are for 2006-07, which is probably a little out of date.

Ms Hall—The updated document that I tabled this morning has the total figures for 2009-10. Again, this is just for the CLC program. The Commonwealth provided $23,550,000 and the states provided just under $19 million. I should mention that the state funding includes state-only funded CLCs. One other issue that I should mention in relation to state funding of community legal centres is that there has been a bit of a drift recently for state legal aid commissions who are strapped for money to get money from the public purpose funds—the statutory accounts from solicitors' trust account interest funds. One of the things about them is that they might give some money through the public purse fund to a CLC but it is usually an annual or short-term grant. It is not recurrent funding, and that is an unfortunate tendency. We are looking for recurrent funding, because it is impossible for CLCs to plan their services, to recruit properly and to strategically deliver services if they have funding for only a year.

Senator CROSSIN—Sure. In the first couple of pages of your submission, you quite legitimately talk about the three previous federal parliamentary inquiries into access to justice vis a vis funding for legal aid. You make the point that many of the recommendations still have not been implemented and that rewriting your submission for this inquiry would be to reput your position, which you have done a number of times. I can understand and appreciate that. If you were to go to the recommendations of the last report, are there three or four that particularly stand out that have not been implemented that you would want to draw our attention to?

Ms Hall—I do not have the last report with me. I could go back and look at it again and perhaps respond later. But, looking at the broad areas, one is the priority of contributing additional resources to the funding of Aboriginal and Torres Strait Islander Legal Services. Another would relate to the family law area and the end of what we call the Commonwealth-state divide—that is, the insistence on Commonwealth money only being used for Commonwealth matters and the complexity of that. A classic example that is given is that a legal aid commission may have to deal with two grants of aid, one for a family law issue—the Commonwealth part of it—and another for a family violence issue. That is an additional burden and unnecessary.

Senator CROSSIN—So if a community legal aid centre are representing a person who is caught up in a domestic violence situation that leads to a family law matter, they have to acquit their time or their funding under both streams, do they?

Ms Hall—I not talking about community legal aid; I was talking about government legal aid services. Community legal services do not have to do that in the same way. They are a more flexible thing. It is true that they do have to account for their Commonwealth funding but in a much broader sense.

Senator CROSSIN—So the divide you are talking about is more between government bodies.

Ms Hall—The legal aid commissions, yes.

Senator CROSSIN—And they have to acquit their time or their costs under two different budgets.

Ms Hall—They do, for matters which may be completely integral.

Senator CROSSIN—There was a lot of emphasis in the previous report on discrimination against the circumstances of women in the application of the current family law legal aid funding guidelines and priorities. There was an emphasis on perhaps the perceived gender bias in legal aid decision-making. Do you want to make any comments about whether that is still the case and whether there are still problems in relation to that?

Ms Hall—I am unable to comment on that. I can confer with my specialist networks about that more.

Senator CROSSIN—Okay.

Ms Hall—Is there a particular recommendation that you are interested in?

Senator CROSSIN—Yes. It is recommendation 12:

The Committee recommends that the Commonwealth Government address discrimination against the circumstances of women in the application of the current family law legal aid funding guidelines and priorities, by commissioning national research into the perceived gender bias in legal aid decision-making.

The previous government responded to this report in 2006 and they did not accept that recommendation. We in the current government did not initially commission that research, but I wonder if there is a view amongst your members that this bias is still happening? I raise it also in the context that we have had a number of submissions that go to the application of the Family Violence Prevention Legal Services and Indigenous legal aid services, where there seems to be a bit of a conflict between whether or not these services should be assisting the perpetrator, as opposed to the victim, and whether their allegiance should be divided. I wonder if that is a debate that is happening between your members?

Ms Hall—It is something that we care deeply about. I should just mention that there are a few of the Family Violence Prevention Legal Services that are members of state CLC associations and a number that are not. We certainly support very much the critical importance of having specific legal service providers for Aboriginal and Torres Strait Islander women, but there must also be legal aid services for perpetrators. I think it is important that they not be in the same place.

Senator CROSSIN—Currently they are, or they are linked in some way through the Family Violence Prevention Legal Service.

Ms Hall—That may occur in some areas. I am not sure that it occurs universally, though. A lot of the perpetrators would be represented by the Aboriginal Legal Services, I would have thought, in a criminal context.

Senator CROSSIN—And the women are represented through—

Ms Hall—The women need to be represented by a different organisation, for conflict reasons.

Senator CROSSIN—What is the current tone of discussion amongst your members? We certainly had representations that Indigenous women's services need to be established. In the Territory, we have got the Top End Women's Legal Service, which probably represents Indigenous and non-Indigenous women. I am interested in the kind of discussion or debate that is happening amongst your members about where they think all this is heading, and where it ought to be heading.

Ms Hall—There have been some suggestions of folding down an FVPLS, and suggestions that it all be in one organisation. We are against that. I do not think it is the right way to go. As a matter of principle, we say that it is important that the perpetrators be represented, because it is important that both sides have legal assistance and support. When we advocate for the Indigenous women's legal services to be better resourced, or for there to be more of them, we are not for a moment saying that there should not be legal assistance support services for the perpetrators. We say that they need to be separate.

Senator CROSSIN—I think that is the issue: there is no network of Indigenous women's legal services, and the community legal services are also family violence prevention legal services. We have had a lot of representation that women who are victims do not actually believe they have many options or avenues to go to in some states now.

Ms Hall—In some geographic areas that may be right. I think there are around 40 FVPLSs around. Some are located with CLCs, but they are mostly separate bodies. It would not come as a surprise to me that we need more.

Senator CROSSIN—Is there a view amongst your members that perhaps an Indigenous women's legal service needs to be established, or that the family violence prevention legal services should be separated from the CLCs?

Ms Hall—I do think they are mostly separate services. They are sometimes collocated with the CLC.

Senator CROSSIN—Is your preference that they should all be separated and that there should be a government policy position that they need to be separated from the CLCs?

Ms Hall—We have an Aboriginal and Torres Strait Islander women's legal services national network. We would involve them in a discussion about that. They are meeting today and tomorrow in Perth prior to our national conference, so I can certainly talk to them about whether they think that ideally they should be separated.

Senator CROSSIN—If you have a chance to have that discussion with them in the next couple of days and can feed it back to us, I would be interested to know what their thoughts are.

CHAIR—Are they part of your CLC association, or are they a separate entity?

Ms Hall—There are some Indigenous women's community legal services. A few of the FVPLSs are funded and administered under a different scheme, but they are CLCs in the sense that they have chosen to join state associations of CLCs. So we talk about them as members, but they are not traditional or CLSP-type centres.

CHAIR—Is the Aboriginal legal service separate?

Ms Hall—Aboriginal legal services is a separate government—

CHAIR—Okay, is that what you were referring when you said Aboriginal legal services?

Ms Hall—Sorry, I was referring to different things at different times.

CHAIR—I will check the transcript, but I think I know what you were saying. You have got the Aboriginal legal services, and then you have got family violence prevention services.

Ms Hall—Yes, there are those services, and there are also some generalist centres and some specialist centres, including some in the Top End whose main client group is Indigenous women.

CHAIR—We heard evidence in Western Australia referring to what Senator Crossin is talking about. I think it was in the north-west of Western Australia.

Senator LUDLAM—I thank you very much for coming in, Ms Hall. I acknowledge what Senator Crossin has pointed out—that you took a bit of a shot at us for asking you to come in again to tell us about the same things that do not seem to have shifted since the last time you made a submission. Nonetheless, I thank you for appearing. I apologise if we have addressed this already, but right at the beginning of your evidence you mentioned a funding submission that you have just made to the Commonwealth. Is that now a public document? Has it been made available?

Ms Hall—It is not a public document. It was a letter to the Attorney, but the summary at the back of my update is a summary of what we asked for.

Senator LUDLAM—The one that you tabled just before?

Ms Hall—Yes. The last two pages are the specifics of what we asked for in this budget process.

Senator LUDLAM—I might come back to that in a second. You have cited West Heidelberg Community Legal Service in Victoria—they actually appeared when we were in Melbourne, which was great—and Geraldton Resource Centre as two good examples of generalist centres that are kind of twinned, either with academic institutions or other services. They seem like great models, particularly West Heidelberg, which we did hear from. Is there very much of that in Australia?

Ms Hall—There are examples of CLCs who are co-located and an integral part of, say, a neighbourhood centre or a health centre or things like that. It is not a common model here, but it is perhaps on the increase.

Senator LUDLAM—Does your organisation have a policy that suggests that there should be more of that sort of thing explored? They just seem like such good examples, and it kind of makes sense to be co-locating some of these agencies.

Ms Hall—It does often present a number of cost efficiencies and assists in referral and triage, effectively. So in principle it is a good model. We would not want to prescribe it, because CLCs develop in all sorts of different ways.

Senator LUDLAM—That is actually what they said as well, when we asked them similar questions. I want to go into some of the funding issues. We are restructuring the way that legal aid funding is provided to states and territories under the broader Commonwealth-state restructuring via national partnership payments. Do you have a view as to how this arrangement might impact on legal aid commissions and community legal centres?

Ms Hall—I do not know that it is going to impact on community legal centres that much. I cannot really comment on legal aid commissions.

Senator LUDLAM—We can put that to them. Following on from that, in March of this year the A-G's Department, under their review of the Community Legal Services Program, recommended the implementation of a new funding model for the allocation of new funding. Are you aware of where that debate is at? Have there been any recent developments?

Ms Hall—After the review report came down in 2008, there was a quite intense period of consultation and activity. We had a number of meetings with the Attorney-General's Department and a couple of focus groups where we brought people together. They had a consultant who had developed a funding model. We provided a lot of comments to them about that. We did not agree with some things but we thought there were a number of good things in it. That discussion died down for some months due to the busyness of the Commonwealth, not from us. We provided the last set of comments, and there were some outstanding issues for us about that.

Since then, we have proactively sent additional material to them. I mentioned this update, the strategic service delivery model—a legal needs assessment kit that we have developed with a consultant. We think that that provides a much better assessment of an area of looking at legal needs because it looks at legal needs and better identifies unmet legal need. As I said, we took

our consultant down to a meeting of the state program managers and Attorney-General's in Canberra and got her to do a presentation of that model. We said that it would be a better basis for the beginning steps of the funding model. The funding model is looking at new money, though. That is an important point to make. The funding model was not to be applied to existing funding. They call it the 'third bucket', which is a bucket that, sadly, does not seem to be filling. So it was about new funds. But we have been very active and have suggested looking at evidence based ways of identifying need, and that is where the funding should be directed.

Senator LUDLAM—So, in line with some of Senator Barnett's comments earlier, we have got this real patchwork at the moment of different contributions from states and territories, a real hodgepodge. There was no proposal to streamline that at all? It was just 'Let's add another layer of complexity in an empty bucket'?

Ms Hall—The funding model did not look at that at all. I cannot say that they have not looked at it in other contexts but not—

Senator LUDLAM—But not as part of that conversation. That is interesting.

CHAIR—Can I just cut in there?

Senator LUDLAM—Yes, of course.

CHAIR—You say the funding model has not looked at that issue, but that issue is critical, it seems to me, and at the moment the current arrangements are one giant dog's breakfast in terms of what happens where, when and how. In every state and territory it seems to be different. So could you consider, and consider the merit of, providing us with key principles, key proposals—a key overarching approach to the appropriate support that should be provided to community legal centres?

Ms Hall—Such as, for example, a percentage from states?

Senator LUDLAM—It would be somewhere to start.

Ms Hall—Sure. I am happy to consult back about that.

CHAIR—With respect, I would prefer a drilling down into the issue, not just 'give us more money'.

Ms Hall—No.

CHAIR—We do not really want that.

Ms Hall—You want the principles.

CHAIR—We want the key principles: 'These are the key areas where there's a need, and they should be serviced,' such as domestic violence or family law, crime and so on. But there are obviously other key principles that need to be considered—rather than just negotiating a funding agreement to get a few extra dollars for this centre and that centre, and this state and that state,

and every state is different. Let us say we had a clean slate and we were going to start all over again; I would like to know what your views are as to how this arrangement should apply.

Ms Hall—Okay. I think that is a fair call. We have offered to participate in those discussions, and we have done that through ALAF too—and ALAF itself has offered to have discussions with the Commonwealth—saying, 'If there is more money, we are happy to talk to you about how it should be allocated.' But we have never been taken up on that offer.

Senator LUDLAM—With respect, it should not really be your job to lay out that framework, I would have thought. There just appears to be a bit of a vacuum at the Commonwealth level and it is not being provided. And I know your resources are stretched in terms of that kind of policy development, but I would also appreciate it if you could outline those sorts of principles as you see them, because we do not seem to be hearing about that from anywhere else.

Ms Hall—Okay.

CHAIR—Thank you, Senator Ludlam.

Senator LUDLAM—That is all right, Chair. There is a proposition floating around about the restoration of a national civil law program or some kind of clearing house to at least be a first point of contact for advice—to add another layer, I suppose, of advice—as to whether people might have a course of action or not. Do you have a view on whether that would assist the work of the CLCs?

Ms Hall—Is that the phone line idea?

Senator LUDLAM—I do not know if there is a formal proposition out there. It is an idea that has been put to me on a couple of occasions and I am wondering whether you have a view about it.

Ms Hall—In some states there are, as you may know, public interest law clearing houses, PILCHs, and they are very effective. I think they work very well at the regional level, but I think there is a real problem with a national one, because a lot of it is about the local contacts, the local knowledge and the local services. We have heard talk of the idea of a national legal assistance phone line, and there is some history to this which makes people think it would not work, and there is some evidence of that. LawAccess in New South Wales is a very effective phone legal assistance and referral service, and CLCs work very closely with it and with the Legal Aid Commission, but it works partly because of its initial difficulties in the early years and the adaptations it made in response to those difficulties—and it works well because it is a state service with close links. So I am not in favour of adding another body, especially not at the national level.

Senator LUDLAM—Yes. All right; we will work with what we have. I do not know if you were here in the room for previous witnesses' evidence, but we talked about restorative justice and some of the cost savings implicit in that, in diverting matters away from court processes. Does your organisation have a policy on restorative justice as such?

Ms Hall—Not formally, but the whole philosophy of community legal centres is about strategies of early intervention and prevention, so wherever possible we keep people out of the courts. Whether that is through formal alternative dispute resolution, family relationship centres or support, we are very much about that. So, yes, we would support that.

Senator LUDLAM—There seems to be a bit of reluctance in Australia to introduce those sorts of procedures or that kind of culture into the Australian justice system, whereas other parts of the world have now got several decades worth of history in that area. Do you have any idea or any suggestions as to why that might be the case—why it has been so slow to catch on in Australia?

Ms Hall—No, I do not.

Senator LUDLAM—Do you agree that that is the case in the first place?

Ms Hall—I am not sure that I am expert enough to comment on that internationally.

Senator LUDLAM—You are certainly more of an expert than me.

Ms Hall—From what little I know, it would seem to be the case. I guess I should also say that, whilst we are about trying to minimise people's contacts with lawyers and the legal system, in some areas it is important to have legal assistance available. For example, in the early days of the family relationship centres CLCs were sometimes critical about that model. One of the issues for us was that we felt that people were going there who had family violence issues but staff in those centres were not trained to pick those up. They were not referring them to lawyers, whereas we would say, 'These people must see a lawyer immediately; otherwise you cannot have a level playing field'. It is in context but we are in favour of it, and, I am sorry, I do not have an answer about why it might not be being picked up initially.

Senator LUDLAM—That is all right. I think that is a really helpful caveat. I do not think that anybody is suggesting that we abolish people's access to lawyers. It is just that with their time being so precious and the need being so great that any kind of healthy negotiation—

Ms Hall—The triage is important.

Senator LUDLAM—Right. At the moment people are triaged to nowhere. There is a whole middle tier of people who are just getting no access at all.

Ms Hall—It is important with the triage that the lawyers are there for the people who need it at the beginning of a process because sometimes the resolution process can only work if the legal side of it has been resolved first.

Senator LUDLAM—I will leave it there. Thank you very much.

Senator FISHER—Ms Hall, you talked in your submission about how when you sought funding from the federal government you sought a staggered introduction of additional itemised increases in funding to address certain priorities. Your example was rural and regional services. On what basis do you see them as different and separate priorities?

Ms Hall—That their costs seem to be higher is one issue. There are also vast areas which are not covered or not well covered. Recruitment and retention in those areas is a much more difficult issue. We have quite a lot of work on that. It can be small things: the cost of petrol to do outreaches and so forth. That sort of issue is a big one for our CLCs who work in those areas. Recruitment and retention is a very big issue, though. It is a very big issue for the ATSILS, for the family violence prevention legal services, for legal aid and even more so for the CLCs because they are at the bottom of the pay levels of those organisations.

Senator FISHER—So the disbursement costs may well be higher because of the tyranny of distance et cetera, but what about other components of the cost? When you say the costs are higher, I would have thought that may well be demonstrable for the out-of-pockets, the disbursements, but are you saying other costs are higher as well for servicing rural and regional Australia?

Ms Hall—With recruitment and retention, if you have a high turnover, that leads to higher costs. There is training and you lose your investment in the person when they leave and so forth. There are those sorts of issues. There is the difficulty of running services in those areas too. I think that, professionally and personally, as employees, they often need more support than we give them. So there are other issues there about giving them access to appropriate supervision, professional development or any support, really.

Senator FISHER—If staff are travelling physically to see people of course the tyranny of distance impacts on their professional time as well. Have you done any analysis of the basis upon which you say the costs of servicing rural and regional Australia are higher for your centres?

Ms Hall—We do not have the resources to do that. We could get a particular centre to do that.

Senator FISHER—No, given the thinness of your resources in any event, I will not ask that you do that. What about the need per se? On the one hand you are saying that you sought this because the costs for your centres of servicing rural and regional areas seem to be higher. What about the need for the services in the first place? What do you say about that in rural and regional Australia?

Ms Hall—Again, we have not had the resources to find out, although this is starting to happen now with the national legal needs survey that National Legal Aid is doing. Its results will not be available until late 2010, but some of the legal-needs work we have started to do shows that there are black areas where there are no services. I do not just mean that there are no CLCs; there may be no legal aid. One would be in the Murray area along the border between Victoria and New South Wales. There are areas there.

Senator FISHER—When you say there are areas there, what do you mean and why?

Ms Hall—There are areas there where I am absolutely sure that there are high legal needs. There is certainly high disadvantage and there are some other bits about population which would suggest that there are predictors of legal need. There are no services. Some of the CLCs run statewide telephone services now, and, for example, you ask yourself: why are phone calls not coming out of that area? I think sometimes it is people not knowing about services that are

available and things like that. So there is a need to get out to those areas, to talk to the communities and to find out what their needs are. Another issue with some of the triple-R areas is that the work is not just delivering the services; it is getting to know the community and its needs and then tailoring the services—

Senator FISHER—By 'triple-R' you mean rural, regional and remote?

Ms Hall—Rural, regional and remote, yes.

Senator FISHER—I think I know the answer to this but I will ask anyway: have you done any analysis or comparison of the needs of the city versus the needs of the country?

Ms Hall—We have not had the resources to do that. The legal needs assessment toolkit framework that I was talking about and which is referred to in this updated document will enable us to look at a particular catchment area, geographic area or area of legal need. We have developed it so that we can now do that in New South Wales. The national association is applying for funding to get the data which will be necessary to be able to apply that in the other areas of Australia.

Senator FISHER—I would have thought that part of the shortcoming in your argument, if I may, at this stage is that you are not even able to actually assess the need so you can then describe it and say whether it exists or not. Until you can actually demonstrate the need then you are not really at first base.

Ms Hall—We can talk about certain things, and that is what the point of this type of legal-needs tool is. It is to be able to better identify and give specifics. It is partly intuitive but with some basis of the unmet need. The met need, to some degree, we can do. We can talk about the number of people who go to legal aid or the CLC there or whatever.

Senator FISHER—Thanks, Ms Hall.

CHAIR—Ms Hall, thank you very much for your submission and for your time today. It has been most informative. I know you have some questions on notice there, so I really do appreciate in advance any assistance that you can provide our committee with.

Proceedings suspended from 11.22 am to 12.01 pm

PATRICK, Mr Nicolas, Partner, Pro Bono, DLA Phillips Fox

CHAIR—Welcome. DLA Phillips Fox lodged a submission with the committee which we have numbered 32. Do you wish to make any amendments or alterations to that submission?

Mr Patrick—Yes. There is an error in paragraph 2.5. I ask that the last sentence, beginning with the words 'Pro bono providers', be struck out.

CHAIR—On page 3?

Mr Patrick—Yes. It is an incomplete sentence.

CHAIR—No problem. Thank you. I now invite you to make an opening statement, after which I will invite members of the committee to ask questions.

Mr Patrick—I am happy to rely on the submission and just to take questions.

CHAIR—All right. Senator Ludlam, would you like to kick off.

Senator LUDLAM—Thank you for your submission. I will start with point 11 of your recommendations. You say:

> The Commonwealth and States should adopt a policy that the government will not seek costs against an unsuccessful plaintiff in litigation brought to advance the public interest.

Can you tell us a little more about why that is there?

Mr Patrick—In this country we generally have a rule in courts that the unsuccessful party to a proceedings will pay the costs of the successful party. That general rule acts as a barrier to public interest litigation. The reason is that in pro bono you are often dealing with a client who is not particularly well off financially and an adverse costs order at the end of a hearing would be devastating for that individual.

I will give you an example of the kind of case that might come up. An individual who is a tenant in public housing might have a case against the housing commission or the department of public housing and that particular case may be important because its outcome may affect not just the individual who is involved but all public housing residents or, for example, all Indigenous public housing residents. A person with a case of that nature would go to a community legal centre or to a pro bono provider and we would say: 'This is a really important case to run because we need a decision on this, we need to change the practices of the government department. The outcome of this case could be very important; it could have wide implications for all people living in public housing.' But the individual concerned will not run the case because of the risk of an adverse costs order at the end of the proceedings. So the risk of adverse costs orders very much acts as a bar to public interest litigation.

Senator LUDLAM—It is very similar in environmental law as well.

Mr Patrick—Yes, there are a lot of areas. There are limitless examples.

Senator LUDLAM—It is right across. In those cases—and maybe this is too difficult to generalise—what is the public interest test? Who decides whether a particular case is in the public interest or is just in an individual's interests?

Mr Patrick—The test is whether the outcome of the case would have a result for a group of people broader than just the individual who is bringing the proceedings.

Senator LUDLAM—Right.

CHAIR—But who decides that?

Senator LUDLAM—Yes, does that require legislative reform? I know it did in terms of the EPBC Act, which is probably the area I am more familiar with.

Mr Patrick—If you are asking how it would work in practice, the way I would imagine it would work it would be an application to the court to make an order at the commencement of the proceedings.

Senator LUDLAM—Case by case; so not law reform as such—or is it?

Mr Patrick—I think what would be required is that at the beginning of the proceedings are plaintive in the claim would have to persuade the judge that this was a matter that they were not bringing just for their own benefit but because there was an important public interest in bringing the case. At that point the judge would either make the order that there was a protective costs order—

Senator LUDLAM—So it is known in advance.

Mr Patrick—That is right, yes. You would have to, effectively, persuaded a judge that there was a public interest in bringing the matter. If you look at the environmental case, for example, that you mentioned before, in environmental litigation which has a public interest element often there is no benefit to the individual whatsoever. So the only reason for bringing it is because there is a public interest outcome being sought. If you look at the example I gave of a person who is living in public housing, there might be a benefit to that individual, but the cost of running the case and the risk involved may not be proportionate to the benefit that that individual stands to gain. The reason for bringing the case would be because there was going to be a benefit or a change of practice which would impact on all people living in public housing, for example.

Senator LUDLAM—Yes. I am with you. The point, which I may be labouring but I think is an important one, is this. In the case of environmental law there was an amendment to the central piece of Commonwealth legislation dealing with public interest litigation in 2006 or thereabouts which removed protective cost orders. So now it is being argued case by case. I am wondering where in other branches of law you are proposing that be embedded in the legislation governing

the way those cases are heard—or whether, as you are suggesting, that that be argued case by case one at a time.

Mr Patrick—Case by case.

Senator LUDLAM—But here you have recommended that 'the Commonwealth and states should adopt a policy', which is different to leading it to judicial discretion.

Mr Patrick—Sorry, yes, I guess recommendations 11 and 12 crossover in a sense. Not all public interest litigation, obviously, is brought against the Commonwealth or the states. The Commonwealth and the states, as I understand it, have model litigant rules—or the Commonwealth, at least does—and that is something that perhaps could be considered in terms of the model litigant rules. In other words, if a matter was brought to the public interest, it may be that the application that I referred to earlier, which would be made to the court at an earlier point in the proceedings, would not be opposed. But I accept the difficulties that you have raised about who decides what is in the public interest. Some cases will be clear; others will probably be more difficult.

Senator LUDLAM—There are two issues there. One is who is deciding and one is at what point is there a presumption that if public interest is shown that costs will not apply.

Mr Patrick—I think one of the easiest tests is whether or not the individual is bringing the case for their own benefit. That is what I mentioned before. If there is no benefit to the individual in bringing the case and if they are bringing it for the benefit, for example, of an environmental cause, then I think it becomes quite clear.

Senator LUDLAM—Okay. All right then. Recommendation 13 says:

If a National Charter of Human Rights is introduced in Australia, the Commonwealth should fund the Human Rights Law Resource Centre to operate as a national service.

Do you have a view as to whether such a charter should be introduced or are you just saying that as a caveat?

Mr Patrick—My firm does not have a view.

Senator LUDLAM—Yes, okay. That is fine. But can you just tell us a little bit more about, if that were the case—hypothetically speaking, as we are doing a little bit today—what kind of changes you would see and how that would impact the legal landscape for pro bono work?

Mr Patrick—Sure. Sorry, are we still dealing with recommendation 13?

Senator LUDLAM—Yes, and issues around that.

Mr Patrick—The reason I have included that is because a charter was introduced in Victoria a couple of years ago. I think the Human Rights Law Resource Centre has really made a valuable contribution in making sure that the opportunities that came with the charter have been realised. They have become a centre of expertise in relation to charter issues, and I think they have played

a very important role in building the capacity of the legal profession to ensure that the charter is used appropriately and that the benefits of the charter are realised. I suppose what I am saying there is that if we do have a national charter then that is the first step but the second step is to make sure that people understand it, know what its implications are and use it appropriately.

Senator LUDLAM—I am going to ask this question of the National Pro Bono Resource Centre when they come in but I will ask you too: it was put to us in earlier evidence and at some of our other hearings that government, whether state or Commonwealth, is starting to assume the existence of quite a deep pool of pro bono work within the legal community and that that has actually become a front-line response rather than, as you have suggested, the service of last resort. There is now an assumption that lawyers will be doing large numbers of unpaid hours and that is becoming a bit unsustainable. Do you get that sense within your organisation?

Mr Patrick—It is a very difficult question. I think there is certainly an understanding that there is a large amount of pro bono work being done, particularly by the large legal firms. I do not—

Senator LUDLAM—Could I put it to you another way?

Mr Patrick—Yes. It is difficult for me to say what other people are thinking!

Senator LUDLAM—That is okay. I am really seeking your views as well on whether you think there is a culture around it. I forget where exactly it was in your submission but you have given us an example where you have said that it is the equivalent of having a team of about 22 lawyers: $6.5 million in pro bono legal services, depending on how you calculate the costs—

Mr Patrick—That is just at my firm.

Senator LUDLAM—at your firm. So that is $6.5 million that is not being provided through Legal Aid or community legal centres.

Mr Patrick—Yes.

Senator LUDLAM—And those are public services for public good that ought to be provided by government. So we are leaning on the legal profession fairly heavily—I am not sure if this is a question or a statement, I suppose, but are we leaning on the assumption of pro bono work too heavily? You are under privilege in here; you can say what you like.

Mr Patrick—I know. It is a difficult question. I do not think, for example, that there has been a conscious decision that we will not fund Legal Aid properly because people will get pro bono assistance, because, in reality, most people who need legal assistance from Legal Aid who apply for assistance from Legal Aid but do not get assistance through Legal Aid will not get pro bono. There is still a huge unmet need out there, and pro bono really is not the answer to that need. I mean, the goal of pro bono is not to pick up every thing that Legal Aid or the community legal sector cannot handle. We are trying to fill those gaps but we have a different way of prioritising the types of matters that we take on. So I am not really sure. I do not think the front-line services—the legal aids, the CLCs, the Aboriginal legal services—are being funded properly, but

I do not think it is necessarily because there is an expectation that pro bono will pick up what is left.

Senator LUDLAM—That is pretty clear. You have, however, suggested that the Commonwealth and states prioritise building the capacity of front-line CLCs and others.

Mr Patrick—Yes.

Senator LUDLAM—So do you want to tell us, maybe from a funding point of view but more interestingly from a structural point of view, how you think that should be done?

Mr Patrick—I will deal with the community legal centres first. I think the community legal centres play a very important role, a role that legal aid cannot play. In other words, I think they are an important part of the access to justice landscape. They deal with a different segment of clients, they have different ways of dealing with those clients and I think they play a valuable role. But not everybody who goes into a community legal centre looking for assistance gets assistance and those that do get assistance do not necessarily get assistance with their whole matter. They might get some face-to-face advice but, for example, community legal centres are less and less appearing for clients in court. So if a person walks into a community legal centre having been served with a statement of claim in the local court, that person might get some advice about it but, in all likelihood, they are not going to get representation because the resources of community legal centres simply do not allow for people to get that level of support through the community legal centres. I think there has been a focus on statistics and numbers—in other words, 'We've given advice to a thousand people,' rather than, 'We've taken three people and given them comprehensive representation.'

Senator LUDLAM—A few submissions have recommended providing tax incentives for lawyers who undertake pro bono work. Do you have any thoughts on that? Would it help? Would it be a worthwhile expenditure of taxpayers' funds?

Mr Patrick—I have never seen any proposal that I consider workable. From my firm's perspective, we are not motivated by tax incentives and it would not have any impact on the amount of pro bono work that we do.

Senator LUDLAM—That is interesting.

Mr Patrick—I think the same could probably be said for many of the other large firms. The programs we run are largely philanthropic, in the sense that we do them because we want to do something good. They are not really motivated by any commercial or financial gain for the firm. I do not think it would have any impact on the volume of pro bono work that would be done at my firm—in fact, I am absolutely certain about that.

Senator LUDLAM—That is helpful. Thanks.

CHAIR—Can you tell us a bit more about DLA Phillips Fox and the extent of the pro bono work that you undertake, in terms of the lawyers and the proportion of the practice? You mentioned that you are a partner, so congratulations on that and the fact that the firm has taken a

decision to put somebody of great seniority and competence in a position like that. That is to be commended, certainly from my perspective. I am interested to know how you operate.

Mr Patrick—First, thanks for the complimentary remarks. I know not many large firms have made submissions to this inquiry, in some cases because they have made submissions to previous access to justice inquiries, but I should point out that my firm is not unique in terms of its pro bono practice. The practice that I will describe is not dissimilar to the pro bono practices that you would find at many of the top 10 to 13 large law firms. Once you get below that size, the structure and the commitment levels change. At my firm—

CHAIR—Do you think the commitment levels change? Or do you think there is still a commitment there, it is just that there is bigger stress and pressure to provide services?

Mr Patrick—It is a difficult question to answer because I do not interact much with the medium-sized firms so I can only really comment on what happens at the larger firms. At my firm, I am a partner with a full-time pro bono practice. I have a senior associate who is based in the Melbourne office and works part time in our office and part time at the Human Rights Law Resource Centre. In Sydney I have two full-time lawyers working with me in the pro bono team. That team predominantly does human rights type work. We do individual communications to the UN Human Rights Committee. We do shadow reports under the UN human rights conventions. At the moment we are assisting some foreign governments with their government reporting under the human rights conventions and assisting with the implementation of human rights treaties in those countries. That is the type of work that we do in the full-time pro bono practice within the firm.

Other than that, we have a secondment program. Over the last 12 months we have had lawyers on secondment, predominantly to the community legal sector. We have had placements at the Aboriginal Legal Service, at the Public Interest Law Clearing House, at the Environment Defenders Office in both Victoria and South Australia and at the Cape York Land Council. We have had short-term secondees with the Arts Law Centre of Australia travelling out to regional and remote areas, particularly providing advice for remote Indigenous communities. We also have a secondee at the moment with Amnesty in Australia. So we have a fairly strong secondment program. Those people would be out of the office on full-time secondment for perhaps six to 12 months. It is sometimes longer, but generally six months would be a minimum for a person to be on secondment. Then we have—

CHAIR—Is it voluntary? Do they nominate themselves or does the firm nominate them?

Mr Patrick—Nobody goes if they do not want to go. We might approach somebody and ask them to go or they might volunteer, but we certainly do not force people to go if they do not want to. As for the rest of our pro bono practice, apart from the full-time pro bono team, 80 per cent of the lawyers in the firm have a pro bono file on their shelves. We try and spread pro bono work amongst all the teams. About half of those matters are for individuals, and those would be referrals from Legal Aid or from the community legal sector. About half the matters are for charities or not-for-profit organisations. For individuals, the work is generally civil work. We do not do much family or criminal work, with some exceptions.

CHAIR—Is that because of the nature of your law firm?

Mr Patrick—It is because of the nature of the expertise of the law firm and also because we have the view that there are some things which should be properly funded by government.

CHAIR—As in crime and family in particular?

Mr Patrick—Yes, so we have never tried to upskill in those areas, whereas there are other areas where we do not have expertise but we have upskilled our lawyers to take on work in those areas. For example, we go and apply for AVOs at Newtown local court for women who are in domestic violence relationships; that was not a skill we had in the firm but we have trained our lawyers to do that. That is an overview of the pro bono practice. As you said, it is a pretty substantial practice. For us it is more than three per cent of all of our work. In fact, in the last 12 months about 3.6 per cent of all of the firm's work has been for pro bono clients, so it is a pretty substantial practice.

CHAIR—That was my next question, which you have just answered: the proportion of the pro bono work in the practice.

Senator FISHER—Is this measured by the time you spend on it?

Mr Patrick—By the number of hours, yes.

CHAIR—And then you have a nominated rate per hour for that sort of thing?

Mr Patrick—Yes. I think that in the last 12 months we have done about $6.8 million worth of pro bono work. We calculate that at the standard charge-out rate of the lawyer who is doing the work, so we do not actually use a notional rate. If you do the sums, I think it comes out at about $260 an hour. The rate we apply to pro bono work for the purpose of valuing our pro bono work is a reasonably low rate. The blended billing rate for pro bono is about $260 per hour.

CHAIR—Do you have an interaction with the National Pro Bono Resource Centre? Do you provide lawyers to work in that centre?

Mr Patrick—We do have a relationship with the National Pro Bono Resource Centre, but the resource centre does not provide any legal advice and we do not provide them with any lawyers. Effectively, they are a policy centre with a goal of building a pro bono culture in the profession and increasing the pro bono work.

CHAIR—Sure. I was wondering if you provided lawyers for them.

Mr Patrick—We did a significant project with them during the last 12 months. My firm designed an insurance scheme for lawyers who were working in house, to enable in-house and government lawyers to do pro bono work.

CHAIR—Do you have a written policy in your firm with respect to pro bono that says that a minimum of three per cent of all your work should be pro bono or something like that?

Mr Patrick—Yes, we do have a policy. It is a fairly long and detailed policy. It goes into service standards and quantity of pro bono work that we will do. The short answer is yes.

CHAIR—Excellent. Would you take on notice whether you could provide the committee with a copy of that policy?

Mr Patrick—Yes, I will.

CHAIR—Thank you. We had some evidence in Victoria where the Victorian government put a proposal. They had some sort of contract arrangement, I think, and they tendered out a substantial amount of legal work to a law firm and part of the contract conditions was that X per cent—I thought it was five, but I might be wrong—

Mr Patrick—A law firm could nominate between five and 15 per cent of the value of the government contract.

CHAIR—That is right. Do you have a view of the appropriateness of that type of government policy—whether you would support or encourage that type of approach? Whether it should be compulsory or whether there should be other forms of encouragement for lawyers to undertake pro bono or voluntary work in some way, shape or form?

Mr Patrick—First of all, dealing with the Victorian model, we think that model works reasonably well. From my firm's perspective, it does not have any particular impact on our pro bono practice because the value of our pro bono work substantially exceeds the minimum required under the Victorian government contract. Because we are on the Victorian government panel, we are required to do X dollar's worth of pro bono. In fact we do seven times X in any given year. So for my firm it does not have any particular impact. I think it is probably a good thing if it has an impact elsewhere, but I am not sure it does.

I certainly think it is entirely appropriate that governments, who are large consumers of legal services, should preference the purchase of those services from law firms which provide pro bono. I am not sure whether I necessarily agree that it needs to be a contractual requirement. But I certainly think it is appropriate for governments, and for all clients, to ask their firms what pro bono work they do and then preference those firms that show a commitment to the community.

CHAIR—Let's go back to legal aid and CLCs. You have talked about the under-funding of lawyers. Do you think that is getting better or worse, or is it remaining the same?

Mr Patrick—Well, it has gotten worse over the last 10 years. As you probably know, there has been over the last 12 months some substantial injection of funds into the ALSs, the CLCs and into legal aid. It is probably a bit early to tell whether that is going to make any difference. My understanding is that those were one-off injections of funds. They have certainly made a difference but because they are one-off injections of funds it is very difficult to say. I think in my submission I referred to the fact that the funding of community legal centres, for example, was reduced by 18 per cent over the 10 years between—

CHAIR—Over the last decade.

Mr Patrick—Over the last decade, but that is from a figure in January 2008. So in the years 1998 to 2008, CLC funding experienced a reduction in real terms of about 18 per cent. That obviously had a substantial impact on the ability of the sector to provide services.

CHAIR—What is your source for that?

Mr Patrick—That comes from the National Association of Community Legal Centres' report, *An investment worth protecting*.

CHAIR—That is right. I was just going to say that is the same information that they gave to us this morning in their evidence.

Senator LUDLAM—Can I just get a little clarification on that? How much of that is just losing ground against inflation and how much is actually decreases in funding? Has that been broken down?

Mr Patrick—I do not have the answer to that question.

CHAIR—The NACLC this morning in their report said that it is a real decrease, so it is based on taking inflation into account.

Senator LUDLAM—Okay. So it stood still or it increased very slowly compared to what the—

Mr Patrick—That is right.

CHAIR—Have you noticed a drop in the number of lawyers undertaking legal aid work?

Mr Patrick—Anecdotally, I have noticed that there are clients who have secured grants of legal aid and who are looking for pro bono lawyers because they have not been able to find a lawyer who would act for them on the basis of legal aid funding. Last year, for example, for the first time within our pro bono practice, my firm took on a client who had a grant of legal aid, which is something that we would not normally do.

CHAIR—Because that is a matter for the federal government or the state and federal governments?

Mr Patrick—Pro bono generally is not in competition with the community legal sector or with legal aid. We are a last resort; a safety net. If somebody has legal aid then they should be able to find a private solicitor who will act for them in that matter with the grant of legal aid. This particular client came to us because she was from a country town, had seen a couple of lawyers in that country town and had moved firms a couple of times. Notwithstanding the fact that she had a valid grant of legal aid for these particular proceedings, which were in the Supreme Court, she could not find a lawyer who would act for her in those proceedings. Even though there was a grant of legal aid, we really were the last resort. We did it on a pro bono basis, so we did not claim our costs from legal aid, although there was a grant of legal aid over the file.

CHAIR—If you had a clean sheet of paper, how would you structure the funding for community legal centres? Do you have any recommendations for how we should do it?

Mr Patrick—I think one important structural change which should definitely be considered is that the salaries in community legal centres should be tied to public service awards. The reason for that is because community legal centres are managed by independent boards of—almost always—volunteers. Those volunteer board members are constantly faced with a difficult challenge, 'How do we achieve the highest service levels with the money that is available to us?' Salaries in CLCs are almost always sacrificed to have more bodies on the ground. I do not think the sector has really achieved the right balance in terms of pay scales and maximising service delivery. Of course, as you reduce salaries, you get higher turnover of staff and you get staff quality issues; issues in relation to expertise—a role that really requires a lawyer with 10 year's experience is only paid $40,000 a year and you get first-year graduates applying for the job and nobody else.

CHAIR—So what sort of salary they get really depends on the CLC at the moment?

Mr Patrick—The CLCs, effectively, decide what salaries they pay and, because they are under financial pressure, the staff who work in CLCs are subsidising the cost of providing the legal services through their salaries.

CHAIR—Do you have a view in terms of funding the CLCs, as in state and federal, and, if so, in what proportion?

Mr Patrick—No, I do not have a view about that.

CHAIR—In my view it is a dog's breakfast, in terms of the approach that is taken at the moment across the states and territories. It is different in each case and there is no consistency.

Mr Patrick—I do not know about that, but I can say that CLCs invest a huge amount of time in securing funding. That is because a lot of the funding is one-off, or it comes in annual grants. There are only very small amounts of core funding for CLCs. There are people in CLCs who spend most of their time looking for funding, or trying to secure funding for the next period, and that is a huge waste of their time.

CHAIR—Sure. To other areas: disbursement funding—is that undertaken in any states and territories at the moment? Do you get support for that when you are undertaking pro bono work?

Mr Patrick—In practice, the answer is 'no'. There are some disbursement schemes that operate. For example, the Law Society of New South Wales operates a disbursement fund. It does not operate effectively, and we never access it. Yesterday I was in a meeting with the pro bono directors or partners of the 13 largest firms in the country—those firms deliver hundreds of millions in pro bono legal services combined—and the question was put as to whether anybody had access to the disbursement scheme of the Law Society of New South Wales, and the answer was 'no'.

The difficulty is that you can only—

CHAIR—You should have had the Law Society represented at the meeting!

Mr Patrick—The difficulty with that scheme is that you can only access it if the matter has been referred to you by the Law Society through their Pro Bono Scheme. None of our pro bono matters come through that scheme.

CHAIR—Do they undertake any referrals, or just a few?

Mr Patrick—They do, but as I understand it the Law Society mainly refers—and I am just talking about in New South Wales, the situation is different from state to state—to smaller firms, like sole practitioners.

CHAIR—What rules should apply for disbursements?

Mr Patrick—Sorry—one other point about the disbursement fund, and I think this is similar from state to state—it is a maximum of about $500. If you need to get a psychiatrist's report you are really looking at more like $5,000.

CHAIR—Who should pay the disbursements?

Mr Patrick—I do not know the answer to that. But if there were a disbursement fund it would substantially improve access to justice. The reason for that is this: at the moment there are people who cannot run matters in court because they do not have the money to pay the disbursements that would be required to run the matters.

I can give you an example of just one client that we saw at a homeless persons' legal clinic. He came to us and said, 'I'm subject to a community treatment order.' In other words, he is forcibly administered medication for his mental illness. He said, 'Since I have been on this community treatment order my psychological state has been the worst it has ever been. I am absolutely sure that the community treatment order is not the right thing; I am not getting the right medication. I have been to legal aid and they won't represent me to challenge my community treatment order because I don't have evidence that I am on the wrong medication.' He needed to get a psychiatrist's report to prove to legal aid that his case had merit, before they would run it; the psychiatrist's report costs $5,000. I had a paralegal in my firm call every psychiatrist in town to see if we could get a free, or cheap, report for this gentleman. We could not get a free report from a psychiatrist for a person who was on a community treatment order.

We eventually found a psychiatrist who was very kind and gave us a discounted report—we still paid a few thousand dollars, from my recollection. The report said, unequivocally, that this person was receiving the wrong medication, that he should not be on this community treatment order and that the medication was doing him harm. We went back to the tribunal and we had the order changed. If my firm had not been there, not just to represent him but to pay, from our own disbursement fund, the thousand dollars that it cost to obtain the psychiatrist's report, he would still be on the wrong treatment and on the streets. So disbursement funding is a big issue, and it is not just for medical reports.

CHAIR—Thanks for that, it is quite a compelling example that you have given. Finally: prisoners—one of your recommendations is that there is inadequate support for the representation of prisoners. What is happening now, and what should be done?

Mr Patrick—In New South Wales at the moment there is no legal centre which has a specialisation in prisoners. In Queensland, for example, there is the Prisoners' Legal Service, which is a specialist community legal centre. That community legal centre has been successful in referring some matters—not a huge number, but some matters—to pro bono. There is a Prisoners Legal Service within the Legal Aid Commission of New South Wales. For many years, that service principally provided assistance with parole.

They now employ, as I understand it—and this is something you will have to clarify with Legal Aid—a full-time civil lawyer and a full-time family lawyer within the Prisoners Legal Service. That full-time civil Legal Aid lawyer effectively is dealing with the civil legal needs of all prisoners within the state and covering a huge amount of ground and a large population with difficult and complex legal needs. The lawyers who work in the civil section at Legal Aid, as I understand it, are encouraged to go into prisons, where they can, to see prisoners. Legal centres which have a prison in their catchment area also, from time to time, go into prisons. There has been a legal needs analysis done by the Law and Justice Foundation in New South Wales which shows that there is a massive amount of unmet legal need in prisons.

Anecdotally, we see, through our Homeless Persons Legal Clinic, a large number of people who are recently released from prison. They have legal problems that have been around for a long time but have remained unaddressed and have really acted as a barrier to their integration back into society after their release. They end up either homeless or at risk of homelessness. They come into our clinics and they have legal problems which are compounded and increased in complexity because they have been ignored for so long.

Senator CROSSIN—I want to ask you about a good point that you have made. Yours is one of the very few submissions that have made the point about developing the capacity of community legal services so that they have the ability to assess the front-line events. Just for the record, could you tell us how building the capacity would assist when it comes to coordinating the use of pro bono expertise that you have access to.

Mr Patrick—Sure. I will use the Homeless Persons Legal Clinic as an example. That is housed within a community legal centre, the Public Interest Law Clearing House. It is reasonably well funded in Victoria, New South Wales and Queensland. It has specialist lawyers working on the front line with lawyers from pro bono firms. Because that structure is there, they have really been able to leverage the resources of large firms to bring pro bono to the homeless people who need legal assistance.

Senator CROSSIN—So that was about building the capacity of that particular service in that particular outreach.

Mr Patrick—That is right. So with a small amount of funding for that service you now have very large numbers of lawyers all servicing homeless people. Probably there are too many, in fact. But because the Homeless Persons Legal Service is well resourced and able to leverage pro bono resources, it has managed to devote a lot of pro bono capacity to homeless clients. There is nothing like that for prisoners, for example. There is nobody trying to get pro bono resources for prisoners. There are not sufficient front-line services there to enable the referrals to come through. There is no way for pro bono to access those clients. The one civil lawyer within Legal

Aid is quite good at sending matters through, but there is only so much one person can do for such a large client group.

If you look at community legal centres generally, there is a pretty significant disparity from centre to centre. Some of the legal centres are very good at leveraging pro bono resources and some perhaps do not refer their clients to pro bono at all. So in terms of building capacity, if you have two or three people working in a community legal centre, they can manage a certain caseload themselves. But if they are good at referring into pro bono then they can obviously increase the capacity of that centre to service its clients because they can refer matters.

There has to be a balance between referrals and casework. There is no point having people on the ground who only do referrals, because you need lawyers on the ground with the expertise to be able to identify when a client has a cause of action, where there is merit, where there is sufficient evidence and those kinds of issues so that the strong cases can be referred to pro bono. You need to strike a balance. At the moment, in general the community legal sector I do not think has the capacity to run enough matters through from beginning to end. If a client is involved in a big piece of litigation in the Supreme Court, I do not think there are many community legal centres that would have the capacity at the moment to run those kinds of matters for their clients.

Senator CROSSIN—Some of the recommendations of previous committee reports that have been done have gone to access for women to the legal service and perceived gender bias in the legal aid decision-making process. Do you want to make any comment about that? Do you have any knowledge or anything you can add?

Mr Patrick—I have no knowledge whatsoever about that.

Senator CROSSIN—So the work you have done has not been in women's legal aid services? You do not deal with family law or criminal matters; is that right?

Mr Patrick—No. One thing that I have noticed in the last 10 years as a volunteer at Redfern Legal Centre is that when we get Indigenous women coming in and we try to refer them to the Aboriginal legal service they often say, 'We won't go to the Aboriginal legal service because that is the service for the men. They act for the men and they do not help the women.'

Senator CROSSIN—Is this because this grey area has developed now between those services and the family violence prevention services? We heard evidence in Western Australia that the family violence prevention services are also sometimes the community legal services and they tend to be acting now for the perpetrators. So you have had some evidence of that at Redfern, have you?

Mr Patrick—I do not think the issue is the existence of the family violence prevention centres, but family violence does play a role in this issue. When there is family violence, the man is often charged with assault on the woman and the man will go to the Aboriginal legal service for representation.

Senator CROSSIN—Where does the woman go then?

Mr Patrick—That is right. That can be an issue. That is not to say that there are high levels of mistrust of the Aboriginal legal service by Indigenous women, but I have seen examples of it.

Senator CROSSIN—What do you think would be a solution to this? Do you establish a separate women's legal service or a separate women's Indigenous legal service? Where do you go?

Mr Patrick—I do not know the answer to that. It would be a good question to ask the Aboriginal legal service.

Senator CROSSIN—Thank you.

Senator FISHER—How long has Phillips Fox had the pro bono practice?

Mr Patrick—I think there has always been pro bono going on at the firm. We have grown the pro bono practice very substantially over the last five or six years. There has always been pro bono within the firm. It is difficult to say how much because we have really only been managing it professionally for the last five or six years. Before that we did not really measure it. I suspect that people were doing pro bono work but we did not know what they were doing. Now we know what is going on. We are recording and measuring it. I could not tell you accurate statistics from 10 years ago, but there has certainly been a lot of growth over the last five or six years.

Senator FISHER—Hence my questioning. I come from the vintage where I did a brief stint in a large law firm in the late 1980s. Pro bono work was being done, but there was no measurement or management of it. How can we use your example and your experience to contemplate greater availability and spread of pro bono work across law firms? Were you recruited specifically to head up the team in Phillips Fox or was it already there when you arrived? Can you describe that?

Mr Patrick—There were no full-time pro bono positions at the firm when I arrived in 2001. I was recruited as a graduate and worked in the insurance practice and then in the commercial litigation practice and then moved into the pro bono practice.

Senator FISHER—Because the firm had decided to set it up as a stand-alone practice?

Mr Patrick—That is right.

Senator FISHER—Okay.

Mr Patrick—In terms of how we might grow capacity in the profession, I am not sure that there is much room left for growth.

Senator FISHER—Before we go to that, I go to the fact that you said the firm had decided to make it a stand-alone. Why had they so decided? Do you know?

Mr Patrick—As I said before, the motivations for doing pro bono work at my firm were largely philanthropic. The firm wanted to do something good and improve access to justice. The lawyers who were working in the firm wanted opportunities to do pro bono work. We realised

that, in order to have the greatest impact, we were going to have to manage it more professionally. Before I started in my job, there was pro bono work being done but the individual partners would have their own pro bono clients that they would find through their own connections. They might be acting for charities where a friend, a family member or they themselves were on the board. It was a very piecemeal approach. Now it is a much more coordinated approach. My job and the role of my team are to proactively find opportunities so that our lawyers can do pro bono work and make sure that all of them have the opportunity to do pro bono work. It is a change in approach, really.

Senator FISHER—It also changes the culture within the firm, doesn't it?

Mr Patrick—From an organisational perspective, it has definitely been transformative. It is about making sure the work we do has the greatest impact.

Senator FISHER—I have one further question about the stand-aloneness. I was going to ask you what got you to your job, but you have described that. When you recruit lawyers to join your pro bono team, are you recruiting them based on their areas of expertise or on the basis that they want to be pro bono lawyers? It might be a combination of both. Can you comment on that?

Mr Patrick—It is a difficult question and it is different, probably, in each case. Most of the people who come into our firm come through a graduate recruitment process, so they are not applying for a particular job within the firm. The two lawyers I have working for me at the moment both came into the firm through the graduate recruitment process. When they came through that process they did not know which team they would be working in. They go through a process where they are able to rotate through different practice areas and then they can choose somewhere to work at the end or they will be offered positions by a number of teams and choose to go to a particular area. Certainly, if we were recruiting somebody, as we did in Melbourne a couple of years ago, we would be looking for expertise and also potential, I suppose, in the same way that you would with any other legal position.

Senator FISHER—In terms of expertise and the areas in which you are seeking expertise, it is obviously going to be based around the spread of your work. I am presuming that is needs based and that is where you are finding the public interest element and the need for assistance.

Mr Patrick—Yes.

Senator FISHER—I have a couple of questions around legal services in rural and regional Australia, and I note your helpful submission in that respect. On page 16 of your submission you have an extract from a previous Senate inquiry which refers to the acknowledgement by the then committee that the evidence suggests the then current arrangements through rural and regional and remote areas of Australia are 'inconsistent and inadequate'. The same extract you have quoted there goes on to say:

Funding and services should be available to provide assistance to all Australians with similar needs …

Noting all the difficulties that you go on to outline in your submission, what comparator do you have, if any, that assesses the needs of rural and regional Australians as compared with others?

Mr Patrick—I will again use a New South Wales example because I am in New South Wales and it is most familiar to me. In New South Wales the Legal Aid Commission established, maybe 18 months to two years ago, a program called the Cooperative Legal Service Delivery Model. That model is designed to improve access to legal services for people in regional, rural and remote areas. It brings together a number of social welfare agencies and legal service providers in remote areas and partners them with a large CBD based law firm. My firm was partnered in New South Wales with a region called the Central Tablelands Region, which extends from Katoomba out to Forbes and Parkes, up to Mudgee and down to Crookwell. That particular region of New South Wales has no civil law services, in effect. It is a huge region, there are obviously a lot of people there and there are no—

Senator FISHER—You are saying no private sector law firms?

Mr Patrick—No, for people who cannot afford lawyers. There are law firms who may or may not be providing pro bono assistance. There is no civil legal aid lawyer in that substantial region. There is no civil Aboriginal legal service, because the Aboriginal Legal Service in New South Wales, as you may know, only does criminal and family law now. There is no community legal centre in that region apart from the Elizabeth Evatt Community Legal Centre in Katoomba but, suffice it to say, the catchment area for the Elizabeth Evatt legal centre does not extend out to Parkes and people from Parkes or Orange do not travel to Katoomba for legal advice. So a person in that region who cannot afford a lawyer but has a civil legal problem has nowhere to go. Presumably, through this program, my firm is the answer to the civil legal needs of that entire region. We obviously cannot fulfil that function.

In terms of what evidence I have of legal need in that region, I have in front of me the data of information calls to LawAccess which come from that region for the three-month period from May to July this year and also extending back. Calls in relation to civil legal needs were the highest in almost every month to LawAccess from that region. In other words, people were calling for criminal, family, civil or other legal advice and there were substantial numbers of calls for civil legal advice, but unless they could afford to go to a private lawyer, which many people cannot—the reason they are calling a free hotline—there was nowhere for them to go.

Senator FISHER—Maybe; maybe not.

Mr Patrick—Perhaps, but looking at the figures for May to July 2009, there were 688 calls for civil matters; the previous three months, 723 calls for civil matters; the previous three months, 611 calls for civil matters. The only places LawAccess could refer those calls to were private solicitors. I do not think it is unreasonable to assume that a proportion of those callers could not afford to go to a private lawyer, and so for me that is evidence of unmet legal need.

Senator FISHER—Yes, but what I am after is some sort of comparator of that for rural and regional versus for other places, for example metropolitan Australia. It is understandable that you may not have that comparison.

Mr Patrick—But you and I are in the Sydney CBD now. We could walk out of this building and go and get advice in relation to our civil legal problem from the Inner City Legal Centre or Redfern Legal Centre. We could go up to the Law Society and see the pro bono solicitor there.

So we have lots of options available to us. In this region, there is not a single free lawyer, Legal Aid community legal centre or Aboriginal Legal Service providing civil law—

Senator FISHER—Your point is accepted, but the debate I am trying to explore is not so much the options available to service the need but the evidence that the need exists in the first place, which seems to be taken for granted. It may well be so, but there may still need to be a case made that there is indeed the need in the first place—and demonstrably so, to demonstrate and bolster the inadequacy and the need to better service the need.

Senator CROSSIN—Wouldn't they just need the number of clients people turn away?

Senator FISHER—Perhaps, but there is not necessarily any exploration of the reason they come in the first place, the nature of the issue or the reasons for which they are turned away. Even the phone calls that Mr Patrick is demonstrating, as I said, may or may not be from potential clients who are unable to afford service. They may indeed be from someone with a legal issue thinking: 'If I ring there, I can get a freebie. Why don't I do that first before I send off the same sort of call to someone whom I'd have to pay?' Without testing, you do not know.

Mr Patrick—I accept the point you make.

Senator CROSSIN—I suppose that you—

CHAIR—We need to give the witness an opportunity to respond.

Senator FISHER—Sorry, Mr Patrick. Do respond.

Senator CROSSIN—Yes.

CHAIR—So perhaps we will let Mr Patrick respond, and then we will have to wrap up very soon.

Senator CROSSIN—It also assumes they know where to ring. They might not even know it exists.

Mr Patrick—That is right. If you look at legal needs data, in fact the results of the Law and Justice Foundation study of legal needs, for example, show that most people with legal problems who cannot afford a lawyer actually do not seek assistance in the first place. So the point that you make, Senator Crossin, is quite right. Senator Fisher, to go back to your question about how we know there is legal need there, if you were to speak, for example, to John McKenzie, who is the CEO of Aboriginal Legal Service, he would tell you about the busy civil legal practices that he had in all of his regional ALS offices before he was forced to shut down his civil service in every ALS office in New South Wales and the ACT because there was not enough funding. The Aboriginal Legal Service has recently approached the large firms to send lawyers out to the regional Aboriginal Legal Service offices to set up those civil legal services again, because there is no funding from anywhere else to do them and because there is a huge amount of demand there. He has people coming through the door with civil legal problems.

Senator FISHER—Thank you. I have one more question, on rural and regional issues and staff. You may want to take it on notice if we have an issue with timing. It is on staffing. There is significant concern that there is difficulty in attracting and retaining lawyers for country areas in any event, let alone to service those who cannot afford to pay for it. Do you have any comments you want to make on how you deal with the particular shortages in this area when there are shortages even in the run-of-the-mill area, if I can put it that way, with private law firms attracting and retaining staff? You are probably up against them in the first place in that part of the marketplace.

Mr Patrick—I will give you an example of a potential solution to that problem. This goes back to the issue of a disbursement fund for pro bono, which is an issue that Senator Barnett raised earlier. I mentioned earlier that my firm had a number of people out of the firm on a pro bono secondment. Most of those secondments are around CBDs in the various states because, while we can often provide the manpower because we have a lot of lawyers and people allocated out to secondments, it is very expensive for us to have somebody located in a regional, rural or remote area. So, while in a sense we can provide people's time, having somebody located for six months or a year in a regional area is very difficult. That is because the firm would have to bear the cost of moving that person there. While we do have some money to support our pro bono practice, our principal contribution is through the time that we give.

Senator FISHER—What is the solution?

Mr Patrick—If there were a disbursement fund and that disbursement fund could meet the cost of accommodation for keeping a lawyer in a regional area for a six-month or one-year period, there is no reason why the currently available secondments could not be moved, to some extent, into regional, rural or remote areas. But at the moment the cost to a firm of locating somebody in a remote area is prohibitive.

Senator FISHER—Thank you.

CHAIR—Mr Patrick, thank you for your time and the submission from your firm.

Mr Patrick—Thank you, Chair.

CHAIR—I appreciated your comments in your introductory remarks where you said that the top 10 to 13-odd firms have a similar disposition and position to yours. Thank you for that and for your evidence today; it is greatly appreciated.

Proceedings suspended from 1.06 pm to 1.52 pm

CORKER, Mr John Simon, President, National Pro Bono Resource Centre

ROSE, Ms Skye, Project Manager, National Pro Bono Resource Centre

CHAIR—Welcome. The National Pro Bono Resource Centre has lodged submission No. 49 with the committee. Do you have any alterations or amendments you wish to make to the submission?

Mr Corker—We have forwarded to you an additional document about the pro bono incentive schemes under the Victorian government and the Commonwealth government schemes, having regard to the fact that we noticed you had been discussing that in evidence. We thought that might be a useful document.

CHAIR—Excellent. Thank you for that. That is noted. I now invite you to open with a statement, after which we will have questions from members of the committee.

Mr Corker—Thank you for allowing us to appear before you. The centre promotes and supports pro bono through its independent role as advocate, broker, coordinator, researcher and resource provider. Perhaps I will make opening comments under three headings. The first is the increasing pressure on the private legal profession to meet unmet legal need in the community, the second relates to the structure and coordination of pro bono legal services and the third relates to the sorts of barriers and constraints to pro bono which if addressed would significantly enhance the legal profession's ability to meet unmet legal need in our community.

In relation to the increasing pressure on the private legal profession, I know you have heard this morning from DLA Phillips Fox, and no doubt they have told you about the increasing nature of their pro bono practice, which is probably a fairly familiar story across a number of the larger and mid-tier firms. The Australian Bureau of Statistics, in their recent survey of the legal profession, indicated that qualified legal staff spent an estimated 955,400 hours undertaking pro bono work during the 2007-08 financial year. The point to be made about the increasing pressure on the private legal profession is that it is indicative of increased unmet legal demand in the community and also the lack of ability to meet that demand from the existing providers such as Legal Aid, ATSILS and the community legal centre sector.

A couple of other points come under that heading. The current low levels of legal aid funding have placed significant pressure on the pro bono providers. Because pro bono legal services are disproportionately provided in cities, people in remote, rural and regional areas face even greater difficulty accessing legal information and assistance. The private legal profession is not able to meet and cannot be reasonably expected to meet current levels of demand for legal assistance. Pro bono is an option of last resort and should remain so. Nevertheless, it does play a very important role in bridging the gap between legal need and government funded legal services.

In relation to the structure and coordination of pro bono legal services, the effective coordination and referral of pro bono matters is essential at state levels in order to improve access to pro bono representation and make the most of a finite resource. There are efficient models for doing that. We would probably say PILCH Victoria is the best practice model in

Australia for a pro bono clearing house. I know that you have heard from them. QPILCH have recently taken over the referral schemes for the Bar Association of Queensland and the Queensland Law Society and thus brought pro bono referral work under the one roof in Queensland. But there are still three schemes under different roofs in New South Wales. We would certainly see there being increased efficiency if those three schemes could be brought under the one roof.

In relation to barriers and constraints to pro bono, we mentioned in our submission the issue of accessibility of interpreters. I will not say more about that because it is set out in the submission. One of the other issues you have probably also heard about is the need for support for disbursement assistance for pro bono matters. This is an issue the centre has been aware of for a number of years and it is quite a difficult one to tackle. There are existing disbursement assistance funds in pretty much every state, but they tend to be based on a litigation lending model so that they only provide disbursement of those matters where there is merit and where they think there is a reasonable prospect of getting their money back again. The money is not advanced up front; it has to be claimed afterwards. Some of them require payment of a fee even to make an application for those disbursements.

The extent of pro bono work that is being done, particularly by smaller firms and smaller practitioners, can present the real difference between taking on a matter and not taking on a matter. If you need an expert's report to facilitate a matter then the cost of that can be the difference between whether, as a smaller practitioner, you decide to take that matter on or not. Some of the larger firms will sometimes cover disbursements up to a ceiling of maybe $300 or $500. Some of them will cover all of it if they think the matter has merit. But that opportunity is not available as you go down the ladder in terms of the size of firm.

The other issue I raise under barriers and constraints is that, from some of the feedback we get from the pro bono providers, Aboriginal and Torres Strait Islander legal services in the community legal sector in particular do not have the resources to really take full advantage of the pro bono resources that are available to them. They do not necessarily have the staff time to seek out pro bono assistance. Last year we prepared a guide to pro bono legal services for the Aboriginal and Torres Strait Islander legal services in New South Wales and we are in the process of publishing a national guide at the moment. In evaluating that we have had quite a bit of follow-up discussion—we rang all the ALS offices in New South Wales to see whether they have the guide, they have seen it, they have used it and so forth. The result really is that they are so focused on the criminal work, which is their primary day-to-day work, there are very few resources to dig out some of the civil law matters, which are very much a case of need, and refer them on to the firms. The lack of resources in the CLC and ATSIL sector is impacting on their ability to adequately take advantage of the pro bono legal assistance that is available. That is of some concern.

The other aspect—and I am sure you have heard about this as well—is the salaries and conditions in the sector and the need for equality across the sector. I am not sure to what extent when you were in Perth you heard about the WA country lawyers project. In looking at a model to try to deal with this very difficult issue of how you get lawyers into RRR areas—

CHAIR—We did not hear much about that, from memory. You could take it on notice and send us some information. We would be interested in that. I know that Senator Fisher has a particular interest in rural, regional and remote area assistance.

Mr Corker—Quickly, what is good about it is that all the providers in the Western Australian legal sector got together and designed the model. It is a matter of graduates and other lawyers being facilitated to spend a period of time—I think it is a four-year project—where the legal need is. They may spend six months in the family violence protection unit in Broome and six months in a legal aid office in Geraldton, if there is one. They will rotate around the state. It is based on a one-employer model, so that legal aid in WA becomes the employer. The Commonwealth government has agreed to facilitate equal salaries for those people regardless of where they are placed, and it comes with front-end training for those people at legal aid in WA. So over a three or four-year period you might have a graduate move around and be well supported in areas where the legal need is. You have all the agencies cooperating. The key to it is the one-employer model, which is legal aid in WA.

CHAIR—If you have anything further on that, please send it to the committee. Are there any further opening remarks?

Mr Corker—I have a couple of additional issues that were not in contemplation at the time the submission was written. The national review of the legal profession is currently underway by COAG. That represents a significant opportunity to introduce a nationally consistent legislative framework for the regulation of the legal profession that facilitates access to justice by encouraging participation in pro bono legal work to the fullest extent possible.

One issue is the need for all classes of practising certificate to authorise the holder of that certificate to undertake pro bono legal work. At the moment that is inconsistent across jurisdictions. We would say all practising certificates should do that, provided there is a lawyer with an unrestricted practising certificate who is able to supervise that work and provided there is professional indemnity insurance in place.

We would also say that all jurisdictions should offer—and Queensland and Victoria now do—a free practising certificate for those lawyers who want to only undertake pro bono legal work. We think there is significant opportunity through the national review of the legal profession to bring in a practising certificate regime of that order that would facilitate all lawyers to fulfil the professional obligation that a lot of lawyers feel, to do some pro bono legal work.

CHAIR—Have you put a submission to them in that regard?

Mr Corker—We are in the process of preparing one.

CHAIR—Would you send a copy of that to our committee when you have finished it?

Mr Corker—Certainly.

CHAIR—Thank you.

Ms Rose—Just on that point, in Victoria alone in the last financial year I think there were 100 free volunteer practising certificates issued, which means that there are 100 additional lawyers volunteering on a weekly or fortnightly basis at community legal centres.

CHAIR—Thank you. Any other comments?

Mr Corker—I will say something about the pro bono incentive schemes. We have provided a paper to you on that. Part of our role will be to talk to various other governments about the introduction of similar incentive schemes and to advise that they be devised in consultation with firms.

CHAIR—Fair enough. At this point, I will pass the chair to Senator Crossin.

ACTING CHAIR—You are talking about a one-stop shop for pro bono referrals. How would that work? If I am in Perth, do I go to a national database?

Mr Corker—No. We are talking about a one-stop shop per state because the legal profession is structured per state. For example, in the Northern Territory, there is a small pro bono clearing house housed within the Law Society of the NT which only started some 18 months ago. So it would be that sort of model or a public interest law clearing house such as exists in Victoria, New South Wales and Queensland. It would be a one-stop shop.

ACTING CHAIR—What happens in South Australia and Perth at the moment?

Mr Corker—South Australia has got a new pro bono clearing house that was only launched some three months ago, called JusticeNet SA. In Western Australia the Law Society of WA runs a pro bono clearing house scheme.

ACTING CHAIR—Does that satisfy your recommendation or do you think it needs to go further?

Mr Corker—We think it needs to go further in New South Wales in particular.

ACTING CHAIR—In what respect?

Mr Corker—It really needs to follow the Victorian model. The bar, the Law Society and the PILCH scheme keep their identities but they are co-managed in the one building under the one director position. From a customer point of view, there is one phone number to ring if you are seeking pro bono assistance in that state.

ACTING CHAIR—When you say 'you', are you talking about legal services or an individual?

Mr Corker—An individual seeking legal services.

ACTING CHAIR—We have heard evidence in this inquiry that there is actually a decline in the willingness of legal practitioners to continue in pro bono work. What sorts of incentives do

you think ought to be there or what could the Australian government do to encourage more people to take up that work?

Mr Corker—I am not sure I would agree with the statement that there is a decline in the willingness of lawyers to provide pro bono legal services. I think some of the existing pro bono providers are probably getting close to saturation point in the sense that they will not be able to provide a higher level—

ACTING CHAIR—Are you talking about in New South Wales?

Mr Corker—I am talking about some of the national law firms. Even the Victorian bar at one stage indicated that it was getting close to saturation point in terms of the number of matters it could handle pro bono. But there are other—

ACTING CHAIR—But is that because there is a lack of pro bono lawyers?

Mr Corker—No. The demand is so great that there are not enough lawyers to meet it.

ACTING CHAIR—Not enough pro bono lawyers to meet the demand?

Mr Corker—Yes—not enough lawyers who are willing to take on that matter.

ACTING CHAIR—That is what I mean. Is the demand declining? Are they at saturation point because there are not enough lawyers willing to take on pro bono work?

Mr Corker—I see what you are saying. The overall factor is that they cannot meet the demand for legal service. Whether that is not enough lawyers or—

ACTING CHAIR—So what do we do about providing more or better incentives for people to take up pro bono work?

Mr Corker—There is still quite a lot that can be done. One of the things some of the mid-tier firms can do is sign up to the National Pro Bono Aspirational Target, which is something that the centre started in 2006. That is where each signatory aspires to do at least 35 hours of pro bono legal work per year. A lot of the larger firms have signed up to that. In fact, I think there are now about 7,000 lawyers covered by that target. So we will continue to encourage mid-tier firms to sign up to that target. It sets an informal benchmark even though it is only aspirational, and we report on that every year. State governments apart from Victoria can introduce pro bono incentives and encouragement schemes such as the ones that Victoria has introduced or the one that the Commonwealth introduced as of July last year. I think governments can look at the issue of disbursements more closely and look at a way to fund some of the disbursements that act as a barrier to lawyers taking up pro bono legal work.

ACTING CHAIR—How can that be changed or improved?

Mr Corker—I think it needs some research. I do not think the amount of money that would be required to set up some sort of disbursement fund that would facilitate pro bono matters is clear. The other part of the overall relationship is an almost symbiotic relationship between

government and the private profession about pro bono legal work where if the government shows real commitment to fund adequately the government funded legal services then the private profession will also do their part in meeting the unmet legal need to some extent. There is so much unmet legal need that there is plenty for everybody.

ACTING CHAIR—I will ask one more question before I go to the others. You have recommended that courts be prohibited from making personal cost orders against legal practitioners acting pro bono. Are you saying that if there is a case where I might be represented by someone who is doing it pro bono I should not have costs awarded against me?

Mr Corker—Against you personally, yes. This occurs only in the Migration Act area.

ACTING CHAIR—Is that because I would have no capacity to pay it?

Ms Rose—It is a personal cost order against the actual lawyer.

ACTING CHAIR—I see. That is in your recommendation 4, is it not?

Mr Corker—Yes. The point is that the individual lawyer who takes the matter on pro bono should not be personally penalised by a costs order being made against him or her in those circumstances, which is possible under the Migration Act specifically.

ACTING CHAIR—Is it because of the very fact that they are doing the work pro bono?

Mr Corker—Yes.

Ms Rose—I have got the relevant sections and if you like I can provide them to you at a later stage, or I can provide them to you now, if you like.

ACTING CHAIR—In the Migration Act? We could take that now.

Ms Rose—Just by way of summary, sections 486E and F provide that a lawyer who encourages a party to commence or continue migration litigation without giving proper consideration to whether the matter has reasonable prospects of success may have a personal cost order made against them for all of the costs incurred by the party at the time that they acted. So that exposes a lawyer to cost orders made against them when they could be acting in a pro bono capacity. I have got the relevant sections here if you would like.

ACTING CHAIR—You explain that on page 14 of your submission. Thanks.

Senator FISHER—Can I take you to your evidence in the area of your submission about access to justice for regional and rural communities. I do not think there is any dispute about, as you say, the disproportionate lack of access to these sorts of services for rural and regional communities. I am curious to hear what you may want to say about the evidence you have as to the need for those services rurally and regionally in the first place. Your submission demonstrates a bit more knowledge in this respect than some others have been able to help us with thus far. You talk about what rural and regional and remote CLCs report about the need and you have given some illustration on page 9 of your submission of the sorts of areas of law in

which those needs you suggest are significant rurally and regionally. Can you talk about the extent to which you might have some sort of empirical evidence as to the need for these sorts of services rurally and regionally as distinct from in metropolitan areas?

Ms Rose—I do not necessarily think we are the best organisation to comment on legal need given that legal needs analyses are being undertaken by a number of other organisations and it is quite an enormous task.

Mr Corker—There is one interesting thing going on at the moment. To answer your question directly, we do not have any direct empirical evidence of legal need in triple R areas. The community legal centres in New South Wales have been developing a tool to measure legal need in remote, regional and rural areas and I understand they are about to launch that, which is from what I understand quite an interesting way of comparing the socio-demographic factors in a particular area which are indicia of need as against the actual services that are being provided by legal aid outsource and CLCs and identifying gaps both geographically and in areas of law. But I think they are yet to roll that out. That shows promise in terms of being able to provide some good empirical data about need in regional areas.

Senator FISHER—Indeed, and I think unfortunately those are the kinds of pointers we are going to need before we can mount an informed argument about the need to address the problems.

Mr Corker—Pro bono tends to hear of a particular need or almost trip across it and say, 'Okay, we will set up a project here.' There are some really good pro bono projects in regional areas but they focus in on one particular area of need. They have been very productive, I think, in meeting need and supporting the need.

Senator FISHER—To the extent that you acknowledge in your submission that some rural firms may already be providing a level of pro bono assistance, that can also, because it is not tracked, mask the need in itself. Do you want to comment further on that? You make the suggestion in your submission that it is likely that many rural firms are already providing significant levels of pro bono services. On what basis do you say that? Is that speculation?

Mr Corker—No, it is anecdotal evidence from talking to regional law societies, from talking to regional practitioners, that as members of their community they will often provide free legal services to those that need them, but it is really based on simply that.

Ms Rose—I think it is an issue that was also raised at the access to justice and pro bono conference last year.

Senator FISHER—Yes. You refer in your submission to the so-called tort reforms. Are they the sorts of things that you were talking to Senator Crossin about a moment ago in terms of raising challenges for rural firms to represent clients in this way?

Mr Corker—Yes. In fact, that was a survey we did of the legal profession last year. A couple of entries did raise that as a barrier to pro bono.

Senator FISHER—Can you expand on that?

Mr Corker—As I understand it, law firms that used to generate higher levels of income from civil law, particularly personal injury type matters, after the change in the legislation, particularly in New South Wales, to make that a less accessible area of practice their incomes are reduced and accordingly they have less spare capacity or additional capacity to devote to providing pro bono legal services.

Senator FISHER—As you note in your submission, particularly with smaller law firms it is more likely that you will get, whether they are country or city, conflict of interest situations.

Mr Corker—That is right.

Senator FISHER—The final bit of your submission about which I want to ask you is that you say there is also evidence that referrals for pro bono assistance for people from triple R are likely to be for matters that are more serious. On what basis are you saying that? This is the top of page 10. On my copy, it is just above your heading 'Complex litigation'. It is in subitem c, 3.8c, where you address rural, regional and remote. In any event, the life sentence: there is also evidence that referrals for pro bono for people from triple R are likely to be for matters which are more serious.

Ms Rose—I might have to take that on notice and come back to you on that.

Senator FISHER—Thank you.

Senator LUDLAM—I have had to be out of the room and I fear I might ask us to go over old ground, so please let us know if that is the case and I can refer to the transcript. I want to ask briefly about the document you have tabled relating to the Migration Act, and whether you can tell us how often that has actually been invoked and costs orders have been made against lawyers.

Ms Rose—I think it constitutes perhaps more of a threat than anything else, the fact that an individual barrister or lawyer representing an impecunious litigant or someone in a migration matter could be liable for costs where an area of law might not necessarily be clear. This is the real issue for pro bono providers and certainly a serious deterrent. The extent to which it plays out in practice I am not quite sure. I recently attended a session run by the Victorian Bar Association on migration matters and one of the points that were raised was that it is an absolute minefield and you never really know what decision is going to be made in any particular matter in a migration matter because the area of law is so complex. So I think it is a very real threat and a genuine concern for many people wanting to represent people on migration matters.

Senator LUDLAM—I guess it could have the effect of just completely freezing people out without ever having to be invoked. For my benefit, can you tell me when that was put into the Migration Act, or has it been there for a long time? Is it a recent innovation?

Mr Corker—It was put in through a migration legislation amendment act in 2006 or 2007. At the time, a lot of migration matters were being moved from the High Court to the Federal Magistrates Court.

Senator LUDLAM—Are there other areas in law that you are aware of where these sorts of provisions exist, where we are warning lawyers away from taking up certain kinds of cases?

Mr Corker—I think it is unique. That is my understanding.

Senator LUDLAM—I appreciate your tabling that. I think that is a really interesting example. I have one or two other questions. I suspect it is ground that you have already covered because when I was in before you were mentioning the degree to which governments are viewing their funding obligations to the community legal sector and to legal aid through a filter of how much pro bono work actually goes on in the profession, and perhaps using that goodwill as a bit of a crutch. Is that going a bit overboard, or do you think there is an element of that assumption that many, many hours of pro bono work will just be put into the sector?

Mr Corker—It is difficult to comment on how government perceives those centres. I know additional funding was found for community legal centres in the last budget, and hopefully there is an ongoing dialogue to increase that on a permanent basis rather than a one-off basis.

Senator LUDLAM—I am very much hoping that this process can be part of that conversation.

Mr Corker—I do not think it is as blatant as you have put it. Pro bono work does stem from the individual professional obligation of lawyers to help out. That is being taken more seriously across the profession generally now. Part of the role of our centre is to promote that idea and provide support for those lawyers who want to do that.

Senator LUDLAM—But it is something unique to the legal profession, isn't it? There is no equivalent that I can think of in the medical profession, for example.

Mr Corker—It is pretty unique. We have had some dialogue with other professions. Certainly there is quite a lot of pro bono accounting work done. Financial planners have recently embarked on a bit of a pro bono effort.

Senator LUDLAM—I do not want to labour the point, but it seems to me that, if those pro bono services were withdrawn, there would instantaneously be a massive government funding shortfall to provide the sort of public interest work that is done. Now I am labouring the point. Did you talk about the points you have made about interpreting services?

Mr Corker—No, we did not. We really left that to the submission, but if you have questions—

Senator LUDLAM—I am just specifically again trying to quantify how many people are appearing before courts and tribunals without access to adequate interpretive services. Has anybody tried to assess that?

Ms Rose—I know that it is an issue that the Human Rights Law Resource Centre has considered at length, and I think it is referred to quite extensively in their submission.

Senator LUDLAM—I will have a look at that. Just lastly from me, how do you think the landscape would change if we did have some kind of human rights charter or human rights act of Australia, and do you think that would have any impact on the services that you provide?

Mr Corker—Pro bono exists to support those who have human rights issues. I am really not sure—that is the answer. I am not going to hypothesise about what might happen on that issue.

Ms Rose—I think a charter would perhaps provide pro bono legal service providers with an opportunity to be, I guess, a bit less creative. We are increasingly seeing, particularly in Victoria, lawyers using civil and political rights to try and bring about changes in guarantees and protections for people whose economic, social and cultural rights are being infringed, so I think a human rights framework or some kind of protection at a federal level would certainly assist in enabling people to access not just legal services but a broader range of services.

Senator LUDLAM—That is interesting. Thank you.

ACTING CHAIR—As there are no further questions, thank you both for your submission and your time today.

Ms Rose—Thank you very much for having us.

[2.33 pm]

COLLINS, Mr Brett, Coordinator, Justice Action

POYNDER, Mr Michael, Coordinator, Justice Action

ACTING CHAIR—Welcome. I understand you have a written submission to give to us today. Would you like to give an opening statement or some commentary, then we will go to questions.

Mr Collins—We would first like to introduce ourselves as an organisation. We represent prisoners. We are also, unabashedly, ex-prisoners ourselves and with a long experience in the system; we track our history back to the beginning of the penal colony, and we make that statement advisedly. We are resident in Trades Hall and we link up to prisoners in Australia. We in fact represented prisoners nationally on the issue of the right to vote in 2006 and also in 1997 and we presented the defence of prisoners' right to vote nationally before Senate inquiries on both occasions. We were asked also to present before the New South Wales Legislative Council the position of prisoners against privatisation of New South Wales prisons. We were also asked to present before the New Zealand select committee six weeks ago on the issue of privatisation of prisons in New Zealand.

Our position as spokespeople for prisoners and, more lately, mental health patients has been accepted widely. We also network with organisations across Australia and around the world speaking on their behalf. We do not exclude others from representing their voices—in particular, women. We are speaking with independent people and also with Indigenous people. Amongst our members we have women and Indigenous members as well. So that is our base.

I present to the Senate a copy of a newspaper called *Just Us*. It is a newspaper for Australian and New Zealand prisoners. We print 25,000 of these and they are distributed nationally. They go to all members of the national parliament and the state parliaments. It deliberately speaks with a prisoner's voice.

In addition to that, in we are independent. Our independence is founded on the fact that we are not funded but actually fund ourselves. We have run our own design, print and web company for the last 25 years. A network with unions and community organisations provides our financial base. We pay for assistance in a whole range of different areas. We do not speak from a funded base; we speak from a community base. I will give you a half a dozen leaflets about the commercial organisation, which we are told is unique in the world.

Our position on the issue of access to justice is very significant. My co-coordinator and I have both spent significant time inside jails. In fact, I can relate to the time when, after the Nagle royal commission, we were asked to form the Prisoners Legal Service of New South Wales. I was one member of an 11person team that formed the Prisoners Legal Service, which eventually came under the Legal Aid Commission. For many years I was on the founding group and committee, which met every two months to monitor the delivery of legal services to prisoners in New South Wales.

Our submission refers to a number of points, but our main point is that prisoners are unable to access the services when their liberty depends on access to the law. They are unable to use their time and resources properly when they are sitting in cells. They are unable to access the law to understand the issues that are connected with their cases and properly present their defences. So we have many people who are dependent upon very sparse legal aid funding who are persuaded to plead guilty in court and are unable to properly understand the processes.

We are in support of a number of issues. Our submission is a very light submission—unfortunately, we did not have long to prepare it. But the points that we have made very solidly are the same points that are made in a July 2008 landmark report called 'Taking justice into custody—the needs of prisoners', which was written by the Law and Justice Foundation of New South Wales. It is worth while examining this report carefully because it does put into context the special issues of prisoners and how they are not currently getting proper access to the law. They represent 25,000 citizens who are most affected by the law in their personal lives and across the board. They are in legal chaos—and that point has made very carefully in this report, which I recommend that you read. They remain in their cells unable to properly conduct their defence and present their cases, and they are very much in distress.

Mr Poynder—I would like to address you. I hope my views are of more use than probably a lot of others, because I share a dual role in terms of experience. I speak to you as a former lawyer of some 25 years, 11 of those in a top-tier law firm in the city, and as a person who has had close personal contact with the prison system in New South Wales—I have been a former prisoner—and of course through my work with Justice Action.

As a former lawyer, I know of the maxim that every person is entitled to his or her day in court. I know of another maxim that justice must not only be done but be seen to be done. Unfortunately, in prison yards around Australia, there is currently a clash between the implementation of the first maxim—that is, a person's day in court—and the reality of the second maxim, which is the appearance of justice. I have had the opportunity to read many of the submissions made to this committee. It is apparent that legal aid lawyers have huge case loads because there are simply not enough of them. That means they have less time to do their work and to work with their clients in the participation and conduct of their cases.

That, in turn, has led to a growing disconnect in the prison yards between prisoners and their lawyers. Complaints range from lawyers spending very little time with their clients—some say five minutes is all they get before they go to court—and not being prepared to properly listen to the client's side of the story. They feel they have not had a chance to ventilate their side of the story. Also, pressure being placed on clients to plead guilty and a complete lack of understanding on the part of clients of the trial process and what they are going through. That means that in very many cases that, whilst people have actually had their day in court, as the maxim suggests, justice in their eyes and in the eyes of their families and friends has neither been done nor been seen to be done. That causes anger and despair within the prison yards and it causes anger and despair within the families and friends of the people we are talking about.

It is relevant that in an offender's journey through the justice system there are a number of processes. The first process is the conviction process. That should lead directly into the rehabilitation process. To be effective, rehabilitation is all about admitting what you have done is wrong and then saying and accepting that you deserve your punishment. I cannot think of a less

desirable way for an offender to begin his or her rehabilitation than be full of the anger and despair that I speak of that permeates the prison yards of this nation.

It directly and materially impacts on our society through high rates of recidivism amongst offenders because they do not respect the laws of our country that, in their perception, have not given them a fair go. Thus one of our recommendations is that legal aid be increased to enable enough lawyers to be employed to adequately serve the needs of this heavily disadvantaged group. That will not only be just but also lead to a safer society and a less expensive criminal system through lower rates of recidivism.

Senator LUDLAM—I really appreciate your appearance here and putting together the submission at late notice. I am sorry that we did not get to you until just a fortnight ago. You say you have had time to look at a few of the submissions. Very few of them do not speak too much about the rights of prisoners and prisoner access to justice. What else is there in the landscape of your advocacy in Australia? Are there any other specialist law firms that deal with this sort of thing or are you on your own?

Mr Collins—Yes. In Queensland, there is the Prisoners Legal Service and also the Catholic Prison Ministry. Both of those organisations do their job well and are definitely worth following through.

Senator LUDLAM—In other states and territories, is there any sort of network?

Mr Collins—Yes there is. If you like, we could send you a list of the organisations around Australia, which could be of some use.

Senator LUDLAM—I would appreciate that. As I say, it has not been very well sketched in the course of the hearing so far. Depending on the state or territory, the prison population at any given time can be made up of 40 or 50 per cent Aboriginal people. Could you tell us a little bit about how that is represented in your group and how that colours the advocacy that you do?

Mr Collins—We are always shocked at the number of Aboriginal prisoners and juvenile justice detainees that are around us. The proportion is just amazing; 20 times the rate of imprisonment for juvenile justice detainees just says that it will be increasingly worse in the future.

So far as access to justice is concerned, we would say that it is not that much different for them as it is for the average prisoner. What is clearly required is support outside, and alternative ways of giving them justice instead of going to court and ending up in prison. There is no question that there are cultural and court issues involved with the increased imprisonment rate for Aboriginal people. It does require a different cultural response.

We are looking at the way the courts and the governments deal with sensitive issues, such as sex offending and the alternative ways in which they can be dealt with instead of taking them to court. With Indigenous people it is even more important. Sex offending is one of those issues that are dealt with so badly by governments, by courts and by police. A significant case in point is where we had to intervene in Queensland. There was a man who had some notoriety, and so a lot of media attention. He had been released after finishing his sentence and he had no refuge.

He was hounded from town to town, but entitled to be free, and entitled to existing accommodation. He was harassed by all the people around to the extent that there were a thousand people who met with the police minister in Queensland, who tried to explain how they would be protected from this man.

We actually said that we would give this man refuge, and did. We are currently mentoring this man and we discovered, to our horror, that he was actually a 62-year-old blind pensioner, who from the time of his birth had six per cent vision in his best eye. Here was a man who had been hounded and beaten, consistently, and because he had a cringe—he was a man who was always unsure of himself—he was then subject to attack by all these people. He actually denies the offence; nevertheless, he was hounded and feared. It was totally out of kilter to the offence.

We say that people like that, and the victims of those sorts of offences, need to be treated differently. These are issues that would be much better dealt with in the Family Court because most of these issues are actually family issues. Over 90 per cent of sex offences in fact happen in the home—most times it is the uncle or the nephew. The problem we make there is that those very issues which are the highest profile media issues are the issues that should, in fact, be dealt with in ways other than bringing in police and coercive apparatus. But they should be dealt with sensitively.

The resounding point is that the over-response by government, police and legislature to things like child sex offending means that the children who are subject to abuse do not dare raise their hands and ask for assistance because they know that most times it is the father, the uncle or a family member who will then be accused of the offence and it will cause the total disintegration of their family. So they do not complain. The consequence of that sort of law enforcement is that the people who are supposed to be protected by the laws do not dare complain, and the offences continue. One in four women and one in eight men are liable to sexual abuse; we are not talking about a minor issue now, we are talking a major issue which is denied and not properly dealt with.

So: access to justice? There should be alternative ways of dealing with these sorts of offences, and when we deal with them properly then we can deal with other issues properly, such as drug offences and real community problems which need community solutions, and for which there are health and education solutions.

Senator LUDLAM—You have made one or two very clear recommendations just since you have been here, and also in what I have had a look at here, which is around funding legal aid and the community legal sector commensurate to the demand which is out there. Would the other measures that you allude to here fit within that broad concept of restorative justice?

Mr Collins—Restorative justice, without a doubt, is a winner. The opportunity for people to deal with it in the community instead of dealing with it through the court process is 100 per cent better. We are very much involved these days in juvenile justice because we discovered that the issues we were confronting inside adult persons were in fact reflected inside children's institutions, and that if we did not deal with them we were actually wasting our time. We felt it was much better to go back to the base and start talking about changing people's attitudes to juveniles and to women, and then roll back out again to the males. Likewise with mental health, so we are now involved with mental patients in a way that we never were before because we

discovered the same attitudes were involved in the administration of justice for them as well and we felt they were much more defensible than the adult male prisoner who is the archetypal prisoner.

So, on restorative justice, what we are asking for is that there should be a process of diversion which involves the police at the early stages, with proper training of the police, so that they can identify cases in which restorative processes can be useful and properly supported by the community. We would say those processes would not be involving the police. There would be initial involvement by the police, but there should be an empowerment of the community and of the Aboriginal community, and circle sentencing is a case in point.

Senator LUDLAM—You mentioned in your opening statement some advocacy work around privatisation of prisons in New South Wales, which is occurring elsewhere as well. What measurable differences are there in your field of advocacy for prisoners' rights between publicly run prisons and the private prison sector?

Mr Collins—It is always very dense to access private jails. We have a particular jail here in New South Wales, the Junee jail, where we constantly have to struggle for information—for example, to access welfare officers. There are no welfare officers in that private jail in New South Wales. The only access to any support at all is via the clergymen. There is lack of access to education. We have had a number of family members ask us what is available in education because they are really concerned to get assistance. We discovered that the Gippsland TAFE supports the education systems in Junee and just recently changed. When we then asked for information about what courses were available from Junee itself they would not respond, so we were not able to assist. That is very different from the relationship we have in New South Wales jails generally, because we can talk to the Teachers Federation and to the head of the education department within Corrective Services, we can get direct answers and know what is available and we can work with them.

Senator LUDLAM—What reason was cited back to you for not wanting to disclose that kind of information? Is it commercial-in-confidence?

Mr Collins—No, it was not presented like that. They just blocked us; they just did not talk to us. They did not feel they needed to.

Senator LUDLAM—That is very helpful. Thank you very much.

ACTING CHAIR—Mr Collins, I do not know if you are aware that we heard this morning from Nicolas Patrick from DLA Phillips Fox.

Mr Collins—No.

ACTING CHAIR—You may have read their submission in which they mentioned increasing the availability of legal services for prisoners. I am not sure if you were aware of that, or even if you work with them, but it is the first public evidence we have had today in this inquiry where access to justice for prisoners has come up. They go into some detail about it in their submission, where they talk about prisoners being the most marginalised in the community and I think essentially reflect your first recommendation about the need for more money to provide legal

services for prisoners. Is that because prisoners want to appeal their sentences or do not feel that they had a fair trial in the first instance?

Mr Poynder—That is generally the feeling. They just do not feel that they have had a fair go, to use the Australian expression. They have not been able to feel that their concerns and their case have been put properly and they have not been able to perceive that they have received justice.

One of the issues that are of major concern after speaking to the Women in Prison Advocacy Network is that for women prisoners their particular needs which, much more so than men, relate to access, custody and maintenance issues, which are very relevant to them, are not dealt with from a Legal Aid perspective. They cannot get Legal Aid to deal with those particular issues. It is not just the fact of Legal Aid but it is also the type of Legal Aid. One size does not fit all unfortunately with men and women in the prison system. The real anger—and it is anger—is that people do not feel that they have had their day in court. They are angry. They start getting upset about the system of justice that they have, they disregard the rules, they say, 'We haven't been given a fair go.' It makes it very hard for them to be reintroduced back into society with a level head and ready to accept society's requirements. They tend to become a little bit aggressive. It is not a good way to start.

ACTING CHAIR—Would increased funding for legal services help that or is it more increased about funding for things like welfare, social work and support.

Mr Poynder—I think it is a combination of both because a lot of these problems are welfare based, for instance on a social basis, there are alcohol and drug problems, homelessness and a lot of mental health problems. There is the phrase, 'the new asylums are the prisons' and there are a large number of mental health issues that we work with in our jails and the people really should not be there. It is a combination of those things but, certainly, it is this ability to actually have their case heard and for them to feel that they have had it heard is so important.

I can give you a really good example. I remember one guy, he went to his trial, he thought he would get one year and that was all. His lawyer said he would get one year. It was a Legal Aid lawyer. He could not read, he could not write, and he really did not understand the trial process. The trial finished, the judge made a pronouncement, he did not understand it. His lawyer because he was a Legal Aid lawyer did not have funding to go down to the cells afterwards to explain to him what had happened. So he said to the officer, 'What happened, mate, what happened?' The officer said, 'You got 10 years, mate.' This guy came back to Long Bay and he was devastated. He told his family and they were devastated. Everyone was amazed and he was just beside himself for a period of two weeks before his lawyer had the time to get back to him and tell him that he only got a year which was what was expected. It was because the lawyer did not have a chance to communicate with him. A privately funded lawyer could have done that. These guys are under a lot of pressure. I am not necessarily blaming the lawyers but I am saying that issues like that happen quite often.

Mr Collins—Increased money is always a difficulty and we know that we would be competing also with a number of other areas in raising our hand for that. But what we would say first of all is that any money spent on legal services actually saves money in the long term because it means that the people are more likely to survive out in the streets and therefore it

lowers recidivism. This is a point we made earlier so far as rehabilitation is concerned, people being involved, feeling as though they have been acknowledged and their dignity is retained. It actually saves money in order to pay additional money to ensure they have proper services. But the other issue that we have raised in our paper on page 3 is the lack of ability of prisoners to effectively participate in the legal process. There is nothing worse than being charged, not understanding your charge properly, not understanding what the documents are, being given, for example, a CD from your lawyer and not being able to access the information on the CD because you cannot access a computer or, if you have access to a computer, it is in a library and you have to compete with another, say, 300 people for access to that computer. Library access is only for, say, two hours a week.

ACTING CHAIR—I was going to ask you about that Mr Collins because you have a recommendation here about facilitating a network of computers. At the moment it is grossly inadequate.

Mr Collins—Totally inadequate. But the most frustrating thing is that there are many people like professional people who are actually in jail or have been charged with offences and have not been given bail who could properly analyse their cases and brief their lawyers and ensure that they have full access to justice but who cannot use their time.

ACTING CHAIR—So what is the situation like? There would be, what, one computer between many.

Mr Collins—A computer is only allowed at the moment inside the library or if it is an education area, and it is only when the teacher is there able to supervise the computers. It means that they cannot use their time and most time is in their cell. So you have got 18 hours in the cell which you cannot use, and you are sitting there bored with a television sitting in the corner which they throw into your cell, whereas a similar bit of equipment with a plug in the back of it going to a server would mean you could then be accessing your case with a CD drive reading your transcripts.

ACTING CHAIR—Wouldn't it open up the argument, though, about providing people with a whole lot of other additional benefits that they would normally be denied access to?

Mr Collins—Not really, because you can have a server which can be resident in the wing or in the centre of the jail, or you can have a server that goes to, say, AustLII or some place like that.

ACTING CHAIR—It would block any other site or block any other access.

Mr Collins—Yes. In fact, it has been adopted in a number of jails. I gather that in Western Australia they have access to the internet. Remember about three years ago there was a discussion, I think through the Inspector-General, about the use of computers. They did an audit of the computers and what had happened. There were so few abuses it was surprising. No access to computers in their cells is an outrage in not being able to use the time properly. The different there means that people can interact properly with their lawyers. If you give people access to AustLII you also give access to their lawyers or the legal aid commission. So people can actually give proper briefs and receive information up on their computer. To not bring the internet age

and the digital age to prisoners is a mischief, even if it is only for access to the law. But what about education generally? It is obvious that it could be there for many reasons. And training, so people could actually use their time.

ACTING CHAIR—So people cannot actually do, say, an online degree if they are serving a prison sentence.

Mr Collins—No. They can get a CD and then they can use the time only inside the education block under the supervision of the teacher. It is outrageous. Every time we have asked our questions, they are just about to put a server in. They took computers out of New South Wales jails. We were told, and it went to New South Wales parliament, that there were two people who abused computers in Long Bay. Remembering there are 10,500 prisoners in New South Wales, two did. What did they do? We were thinking it was some horrible child pornography or something. We understood it was some low-level pornography of some sort which is generally available. Abuses will always occur, as we all know. There will always be people who misbehave and they should be personally targeted. But to remove all people's ability to have access to computers is malicious, dangerous and counterproductive. It cannot be justified.

We ask that this committee makes a recommendation that prisoners have access to computers in their cells. In our submission we make a comment on this. We had a charity called Tech Help whose patron is the Governor of New South Wales. That charity said to us, 'You can have unlimited computers for use by prisoners.' We then took 100 computers from that charity and distributed them inside the jails in New South Wales and Queensland. It was very successfully set up working through the Teachers Federation. Corrective Services then discovered that Justice Action was involved in that distribution and they then issued an order that they should all be removed. All these functioning computers that were in place were removed. They had a van outside the front of our office with all the returned computers. That is the sort of obstruction to justice that we are confronting, and that is why we do want the support of this committee to assist us with that.

Mr Poynder—Perhaps I can give you a practical example of how useful a computer can be. When I was at Silverwater there was a guy on double murder charges and he wanted to look at all of the evidence that was against him. He managed to persuade Corrective Services to give him everything in folders. He had to get someone outside to photocopy it for him at great personal expense to that other person, who basically donated their time and the cost of the photocopies. It ran to 33 folders. Thirty-three folders in a tiny cell when you are sharing with another person is impossible to manage, but to convert that down to a CD-ROM that you could plug into a computer is much easier to manage. It took him a lot of effort but he was able to assist his lawyer in going through all the statements and saying, 'This is where I disagree with this particular policeman's statement; this is what I agree with.' It is impractical for the lawyer to come out and ask the prisoner to deal with that, and it is really difficult for a cellmate to be putting up with 33 folders when it can all be done on a single computer. It would be of great benefit.

ACTING CHAIR—Okay. We need to wrap up soon.

Mr Collins—There is one further issue we raise, and once again it does not involve money, it involves management. We would like support from this committee and assistance on this. Firstly,

we have raised several issues there. We put emphasis on the issue of computer access and maybe some funding for a server in the wings as part of the access to justice. We would see that as being something to focus on as a recommendation. Another issue we would like the committee to make a recommendation on is support for community support for prisoners themselves. We have a significant difficulty in being able to give support for prisoners that we want to give and that we know will be effective. For example, I cannot enter the jails; I have been banned from entering the jails—

ACTING CHAIR—In New South Wales?

Mr Collins—That is right. I have been dealing with prisoners for the last 30 years and I have a postgraduate diploma in criminology and no-one suggests for a moment I would be doing anything illegal. I was asked to go in because women at Emu Plains had had access to their children but children were no longer able to have all their visits to the women prisoners. That was on the basis that the manager had said that the women prisoners themselves did not want the children in for all day, the mothers did not want their children, which is a total lie. We then had to go in in order to facilitate some sort of negotiation. I actually went in there and because I went in there they said, 'You are banned.' When we said, 'That is unfair,' they said they would not enter into semantics on the issue, and they documented it all. On that basis we were banned. We are unable to give the support that we should be able to. So we are asking for support in some sort of way—

ACTING CHAIR—Is that the case in Queensland or Victoria, where representative groups of prisoners cannot get access to them?

Mr Collins—Often it happens. In fact, Citizens Inside in Queensland has the same problem. I suggest that when you take evidence up there you should ask that question as well. So community access is something that is really significant. We suggest that if there is some way in which the committee can support the external community organisations to facilitate the delivery of access to justice, we ask that you do so. Even following this landmark report which, as I say, is referred to in our submission, there were a number of committees that were set up in which we participated. But when it came to negotiations with the government about changes, the government said that it would not continue the discussions at all with the legal services and those other people if we were involved. In that process the prisoners community organisations themselves were excluded from negotiations. So we would like support from the committee to say that it is extremely important that ex-prisoner organisations participate in the process. If there is a way in which that could be built in, that would very valuable.

ACTING CHAIR—That will be a matter the committee will determine when we get the chance to draft.

Mr Collins—We appreciate your goodwill.

ACTING CHAIR—On behalf of the committee, I thank you both for coming here this afternoon and also for your submission. Now that we know you exist, we will make sure you stay on the Legal and Constitutional Committee's database. We will be able to notify you of other relevant inquiries as they come up. Thank you again for your time.

Committee adjourned at 3.09 pm