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Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Legal aid and access to justice

WEDNESDAY, 10 MARCH 2004

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SENATE

LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Wednesday, 10 March 2004

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

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

Senators in attendance: Senators Bolkus, Buckland, Kirk, Ludwig, Payne and Scullion

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

WITNESSES

Committee met at 4.12 p.m.

NICHOLSON, Chief Justice Alastair Bothwick, Family Court of Australia

CHAIR—Welcome. This is the fifth public hearing of the Senate Legal and Constitutional References Committee inquiry into legal aid and access to justice. The inquiry was referred to the committee by the Senate on 17 June 2003 and we are to report by 31 March 2004. The committee's terms of reference, copies of which are available from the secretariat, focus on: the capacity of current legal aid and access to justice arrangements to meet community need, including uniform access to justice across Australia; the effect on particular types of matters such as family law and civil law matters; and the impact of current arrangements on the community, including pro bono legal services, court and tribunal services and levels of self-representation. We received some 103 submissions to this inquiry, all of which have been authorised for publication and are available on the committee's web site.

Witnesses are reminded of the notes they have received relating to parliamentary privilege and the protection of official witnesses. Further copies are available from the secretariat. Witnesses are also reminded that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Before I welcome the Hon. Justice Alastair Nicholson, the Chief Justice of the Family Court of Australia, I would like to indicate that on the line we have the National Network of Women's Legal Services, the Queensland Association of Independent Legal Services and the Petrie Legal Service. Chief Justice Nicholson, you have lodged submission No. 85 with the committee. Do you wish to make any amendments or alterations, or would you like to start with an opening statement?

Chief Justice Nicholson—I would like to update the submission a little bit with some recent figures in terms of unrepresented litigants. Earlier figures referred to in our submission suggested that about 37 per cent of Family Court litigants were unrepresented at some stage of the proceedings, and our current figures suggest that that is now up to 47 per cent. Those are very recent figures; in fact I only got them today. They indicate that the problem is not getting any less.

The other update is that one of the responses that the court has had to the problems of unrepresented litigants has been to experiment with a less adversarial method of conducting proceedings. That is not just driven by the unrepresented litigants; that is driven by the desirability of examining the way we conduct proceedings anyway to see if there are better ways of doing it. We have opened in Parramatta and Sydney a pilot which involves this less adversarial process. It started last week. Just to explain it briefly, it is done by consent; no-one is forced into it. If they agree upon it, it gives the judge much greater control of the way the case is conducted. The judge determines the issues and determines what evidence he or she wishes to hear, in consultation with the parties. The judge will, where necessary, direct that other evidence be obtained that parties may not have sought to call before the court, so it is a more inquisitorial process which has really borrowed to some extent from those in Germany and France—more so Germany. It does not exclude lawyers; in fact, we encourage lawyers to be involved. It is in its early days, because it has only been running for a week, but we have had about six references in Sydney and three in Parramatta. Most of them have been represented, so it suggests that there is a take-up by the profession, which I find heartening in the sense that this means the project will have a better chance of working.

It does have the advantage that if someone is unrepresented—and very often people are inarticulate and not able to put their case properly—the judge can take a more active role in questioning that person and attempting to find out more about the matter and perhaps disclose material that is useful. It also abolishes for this purpose the hearsay rule so that evidence can come in. We hope it will be a much cheaper system. The only affidavits will be those of the parties themselves. All other evidence will be oral and will often be taken by telephone or video link. So that is it in short compass. It is a 100-case test. We have it being evaluated by Professor Rosemary Hunter, the Dean of Law at Griffith University, and we are hoping that it will give us a lead into perhaps a new way of doing things.

CHAIR—I will start off the questioning by asking you one or two questions about that project. There has been some concern that domestic violence type situations do not lend themselves to this sort of approach. How are you handling that in the project?

Chief Justice Nicholson—We are very conscious of domestic violence issues and we are very conscious of power imbalances. We are hopeful that this approach may assist the judge to deal with those power imbalances better than can be done now. One of the features of it is that, for example, the configuration of a courtroom is very much in the hands of the judge, so if you have a case that does involve violence he or she will probably sit in a conventional courtroom. If it is a less fierce type of contest, the judge may well sit in a conference room type of format. There are factors that we hope we have built in to consider that, but we felt we could not exclude cases where allegations of violence were made, because that would give you a skewed result in terms of how effective this process was. The other thing is that the judge is empowered to prevent cross-examination at any time, so if, for example, you have an overbearing person who is in effect adopting a threatening position the judge will simply say, 'All right, that's enough; I'm not hearing any more of that,' and can do it much more readily.

CHAIR—I might have missed your reference to this. How do you handle self-represented litigants in this process?

Chief Justice Nicholson—Very much the same. We treat all litigants the same way but we can be a bit more understanding of their difficulties. Indeed, the judge can adopt a more inquisitorial role in asking them about their case, what their issues are, what they want to contest and what it is that is troubling them. In effect, the first part of the process is that the judge, with the litigants or their representatives, will try to determine the issues. The case starts the minute it comes before the judge, even though it is a preliminary hearing, so the parties are sworn in and they are on oath from then on. The judge can use mediation techniques, which is normally a bit difficult to do in a trial situation, so we are really looking for a much more flexible type of proceeding.

CHAIR—I wish to ask a couple of questions about self-represented litigants before passing the questioning to other committee members. You have mentioned that increased from 37 to 47 per cent. Firstly, is that an adjustment of previous figures or do those figures actually indicate an increase and over what period of time? Secondly, can you describe to us the sorts of problems that self-represented litigants pose to the administration of the Family Court?

Chief Justice Nicholson—I wonder if I could take the first question on notice. I know you have a very short time in which to report but I have only just verbally received these figures today, so I would like to answer the question more accurately than I could now.

CHAIR—Certainly.

Chief Justice Nicholson—As for the second question, it always seems to me that you can help a self-represented litigant a lot by simplifying your procedures, which we are trying to do, and by giving them more information about how the system works. Again, we are trying to do that. We have a web site which has an interactive capacity with a lot of information on it and people are finding that very helpful. We also have pamphlets. For example, we recently put out a Family Court book in Chinese and Arabic. You can do all these sorts of things, but once you get to the actual courtroom it is a very different situation.

The other problem is that quite often the unrepresented litigant just has no hope of complying with the procedural requirements. I was sitting on a case in Cairns a couple of weeks ago in which the father had not sworn an affidavit—he had been given numerous opportunities to do so; obviously English was not his first language and he did not attempt to do it—and I thought the only thing to do was get on with it. I simply called him, took the evidence verbally and to an extent did what we are doing in this other project. That is quite a difficult issue. When you go to the actual courtroom situation it depends so much on the capacity of the individual concerned. So often people are inarticulate; so often they are nervous. They may be fearful of the other party or they may be so emotionally engaged that they really cannot sit back and take an objective viewpoint. Indeed, you often find, where people are unrepresented, that the same buttons that they have been able to press during their relationship are pressed again in the course of the courtroom situation and you get quite confronting situations between the parties that are not of great help to the person determining the issue, so it is a real problem. Of course, once you put English as a second language into the context, it becomes worse. You may have someone who is not at the point of normally needing an interpreter but who really is not able to grasp the concepts as readily as someone who is a native English speaker, so there are a number of problems there. We supply interpreters where necessary but again that is of limited value if the person is not able to present their case.

Senator PAYNE—Chief Justice, I think the 100-case test approach is the way you went about starting the Magellan project.

Chief Justice Nicholson—It is; that is why we took that figure.

Senator PAYNE—You mentioned that Professor Hunter will be doing the evaluation. When do you expect that to be carried out? What sort of time frame are we looking at?

Chief Justice Nicholson—It is very much dependent upon the number of cases. Actually I was commenting as we came here that we seem to be getting them rather more quickly than we had expected and that if that continues we might even revise the 100 to 200 and do 100 in Parramatta and 100 in Sydney, but that is so dependent on what happens and it is very early days at this stage. I have been very impressed by the attitude of the legal profession to this project, particularly that of the New South Wales profession. Both the bar and the law society came to

the launch and their representatives expressed full support for it. I think that is being reflected, at least at this early stage, in what is happening.

Senator PAYNE—I think the committee will be very interested to see how that plays out if the opportunity arises for the court to tell the committee. That may happen in the estimates process or it might happen in another hearing process, but I am sure we will pursue that. In terms of Magellan and its efficacy in handling cases of child abuse, is that a template you think you can roll out on other similarly sensitive areas of the court's work?

Chief Justice Nicholson—I believe so. The problem about doing it, though, is that one of the ingredients of the success of Magellan has been the cooperation of the state welfare authorities and their investigative activities. You would not normally have that in other sensitive areas.

Senator PAYNE—Although it would not be beyond the bounds of credibility or possibility to pursue it on domestic violence, for example.

Chief Justice Nicholson—Yes.

Senator PAYNE—And still get the cooperation of state authorities.

Chief Justice Nicholson—Yes, and I would hope to get it. The state authorities, with the exception of New South Wales, I must say, have been very good on this issue.

Senator PAYNE—Why do you except New South Wales?

Chief Justice Nicholson—We have been trying to get them to cooperate with Magellan. It is the only state where we have not been able to launch it because the state department is simply not cooperating. I have seen the minister, and she has indicated cooperation, but we do not seem to be able to get past the bureaucratic backlog.

Senator PAYNE—That is very disappointing.

Chief Justice Nicholson—It is, and for us too.

Senator PAYNE—Particularly for the children.

Chief Justice Nicholson—Exactly. Parramatta is where we were going to start. It was the most obvious place to do it.

Senator PAYNE—Indeed. Obviously, I am very familiar with the work of the registry in Parramatta. The committee might take that on board as well. I will leave it there and let other members ask questions; I know we have a short time. Thank you, Chief Justice.

Senator BUCKLAND—I was very interested in your opening comments and appreciate some of the things you said. I am a new member of this committee. I have only had a very cursory look at the submission. I was interested in some of the comments that were made in the T and S case that you referred to. That is a case where the mother was denied legal aid funding because the child was represented.

Chief Justice Nicholson—Yes.

Senator BUCKLAND—One of the things that continually comes to my attention—in Family Court matters, not only in looking at the welfare of the child—is that, if the woman of the partnership has legal aid funding because she is unemployed, is not working or is very low paid, as is often the case in some areas, and the husband of the marriage is working, then, despite him providing funding for the children until the mess they are in is sorted out, he cannot get legal aid funding. Is anything being done to address that inequity?

Chief Justice Nicholson—It is not a decision in the court's hands, as you would appreciate. There is undoubtedly a gap, if you like, between qualification for legal aid and the ability to fund your own legal proceedings. Too many people fall into that gap. The one you have mentioned is a classic example. A lot of these people have no hope of being able to pay for legal expenses, yet the means test is set at such a level that they are excluded. It is really up to the governments—I use the word 'governments' because it is a common problem whoever is in power—and fiscal decision makers as to what happens.

Senator BUCKLAND—It is a matter that has concerned me for some considerable time. It appears to me that too often people are appearing before the court unrepresented when they clearly cannot—be it for emotive or other reasons. If my family went into a situation like that, I would be absolutely no good trying to represent myself.

Chief Justice Nicholson—I do not think I would be too good myself.

Senator BUCKLAND—It means that one party may try to represent themselves because they cannot afford legal representation. I cannot see how the court can properly deal with sorting that through. It seems to be tying up court time when it could be spent better elsewhere.

Chief Justice Nicholson—It certainly does, and that really is one of the factors that led us into the other project that we are running. But there is a second problem about that too. It is something that you cannot find out statistically and it applies to both men and women. It is that people who cannot get legal representation often will just chuck the towel in and not play any further part in the proceedings. I think that is equally troublesome because the child may well be not properly protected in those circumstances.

Senator BUCKLAND—That is the biggest concern I have. In a previous life, I was, on more than one occasion, asked to give evidence in the form of statements of character for people, which I was very reluctant to do on most occasions. But, when I did appear, I would see a lawyer who was very good at what they were doing, and then another member of the partnership—and it applied to both sexes—was in the situation where they were just stuck and did not know what they were talking about. It was all emotive feelings, and hearsay came into it. I found very difficult to understand how the judge was dealing with that.

Chief Justice Nicholson—You cannot do much about it. You simply listen to it but you apply the rules in that you only take notice of the admissible evidence and you try and tell people that it is hearsay. But it is very difficult to explain to someone what hearsay evidence is. It is a very difficult process. It has been a concern that, with the reduction in the availability of legal aid, the system is not working as fairly as it should. When I came to this bench in 1988, it was

comparatively rare to have a case go ahead with someone who was unrepresented. If it did, they would normally be someone who was deliberately wanting to be unrepresented, who really had a bee in their bonnet or thought that they could do better than anybody else. You did not find people of the sort we are talking about at the moment coming to the court unrepresented.

Senator BUCKLAND—How far down the track is the formalisation—I suppose that is partly what we are looking at—of this less confrontational or less adversarial approach to it?

Chief Justice Nicholson—There are two factors. First, we have to see if it works, and that is what we are trying to do. Second, at the moment we can only do it by consent, because the provisions of the Evidence Act—the usual provisions in relation to due process and the conduct of trials—would prevent us doing this. So you would need legislation. If it worked, then you would need legislation. Then you would have to look very carefully at the constitutional validity of the legislation. I still think it is possible. We have an opinion in relation to the present scheme from the former Solicitor-General, Dr Griffith QC, who has gone very extensively into those issues. We are confident that what we are doing at the moment is okay constitutionally, but if it were to be taken further it would be necessary to look at a legislative solution.

Senator KIRK—On page 4 of your submission, you have given us the most up-to-date figures in relation to self-represented litigants, but I notice that you say in the paragraph entitled 'Unbundling':

... the percentage of parties who are unrepresented throughout the entire Court process is very low ...

Then you go on to talk about the current research indicating that most self-represented litigants have partial representation at different stages throughout their proceedings. Then you say:

It appears that an informal process of unbundling is taking place.

I wonder if you could explain further exactly what this unbundling process is.

Chief Justice Nicholson—It is a strange piece of terminology.

Senator KIRK—Yes, it is.

Chief Justice Nicholson—It is not my choice but it is widely used. Basically it is just that: instead of going to a lawyer, seeking advice and engaging that person to represent you throughout the proceedings, you go and say, 'Will you draw an affidavit for me? How much will that cost?' You might go along and seek advice about some legal issue from that person or you might go to another lawyer and do it. It is a piecemeal approach. It is better than nothing, in my view, but it has obvious limitations. I think we mention that.

Senator KIRK—I noticed that on the top of page 6 you noted that the court has written to the Attorney-General inviting his further consideration of the issues surrounding unbundling, and your submission suggests that the A-G's Department have come back and said that they are considering this.

Chief Justice Nicholson—Yes.

Senator KIRK—I wonder whether there have been any further developments.

Chief Justice Nicholson—No, not that I am aware of.

Senator KIRK—In the letter that you wrote to the Attorney-General were you suggesting to the Attorney-General that this unbundling is a desirable thing or an undesirable thing?

Chief Justice Nicholson—We were suggesting that in the current context it was worth giving some further consideration to it. I would much prefer not to see things go that way but I would rather have someone get some legal advice and assistance than no legal advice and assistance. That is where it does have merit.

Senator KIRK—You note that it might be an effective way of dealing with funding shortages but obviously not the ideal way—

Chief Justice Nicholson—No, exactly.

Senator KIRK—and you would rather see resources. It puts you between a rock and a hard place in a sense, doesn't it, if you are making that suggestion?

Chief Justice Nicholson—Yes, it does.

Senator KIRK—You mentioned earlier Professor Hunter providing an assessment of the pilot program. I wonder how she is going to go about that. Is she going to look at the cases that have been before the court?

Chief Justice Nicholson—Yes, as I understand it. I have not had a chance to discuss it with her, so my knowledge is a little bit second-hand in relation to this. I hope Ms Buring, who is with me, will correct me if I am wrong, but as I understand it what we are hoping to do is run these cases against ordinary cases that are going through the same registry at the same time. You will be able to compare what happened in those cases to what happened in these. That seems to me to be a pretty logical way to do it.

Senator KIRK—What is Professor Hunter's role? Is she just going to look at the end result or is she going to observe the way that proceedings are taking place?

Chief Justice Nicholson—She is observing the process as it happens. She has given advice to us about what we could exclude and not exclude. For example, we were excluding property cases from this pilot but after discussion with her it was decided that we could take a combined children's property case only dealing with the children's component. The judge will determine the issue and then invite the parties, if they want to, to have a settlement conference to see if they can solve the property issue. Quite often if you solve the children issue it has a significant effect on what happens to the property.

Senator KIRK—You might have mentioned this to Senator Payne, but what is the time frame for Professor Hunter's report? Over what period are you going to be—

Chief Justice Nicholson—I do not know, because I do not know how quickly we are going to get the take-up. If we get it at the speed that we seem to have been getting it in the last week or so then we might have it quite quickly. The sooner the better, in my view. I am reminded that we are going to get progress reports from Professor Hunter as to what she is observing as we go along.

Senator KIRK—Will they be made available?

Chief Justice Nicholson—There is no secrecy about it, so certainly, yes.

Senator KIRK—Perhaps in estimates we will use the opportunity to ask you about it.

Chief Justice Nicholson—Yes, certainly.

CHAIR—I have one last question. You raise issues in respect of the merit test requirement, which requires a matter to be a substantial issue. Do you make any recommendations as to how that should be changed?

Chief Justice Nicholson—It is very difficult. You have to have some sort of merit test. It seems to me that you cannot fund quite hopeless litigation but sometimes I think that the way the system has worked is possibly too bureaucratic in its form and perhaps there is not enough discretion to overcome that sort of problem. One of the great difficulties in dealing with legal aid authorities is a sense of rigidity. I do not say that critically of them, because I have found when you talk to them they will do their best to try and assist but they are pretty tightly constrained by the guidelines that they operate under.

CHAIR—We all have time restraints. Before you leave I want to note that this is probably the last time you will be appearing before a parliamentary committee as the presiding member of the Family Court. I know you have held what is probably one of the most difficult jobs in Australia. From time to time you have not pleased everybody and have caused some discomfort to the odd minister along the way, including me. For myself and on behalf of the rest of the committee, I congratulate you on a very long and successful period in the job. From time to time the job has been enormously difficult but you have managed to keep the show running extremely well. I wish you all the best in retirement.

Chief Justice Nicholson—Thank you very much. That is very kind. I will just table our report by Justice Faulks's committee on self-represented litigants.

[4.41 p.m.]

RATHUS, Ms Zoe Scott, Law Reform Advocate, National Network of Women's Legal Services and Legal Coordinator, Women's Legal Service

CHAIR—Welcome. Do you have anything to say about the capacity in which you appear?

Ms Rathus—I am the Legal Coordinator of the Women's Legal Service and I am one of the workers who do a lot of law reform work with the National Network of Women's Legal Services. It is that group I am representing today.

CHAIR—You have lodged a submission, which we have numbered 86. Do you wish to make any amendments or alterations to it?

Ms Rathus—No.

CHAIR—Would you like to start with an opening statement?

Ms Rathus—I would just like to make some comments on the areas that we consider to be most vital for those of us who work in this area. I want to start by reminding the committee of the number of areas of law that are simply not covered anymore by legal aid and the concern amongst community legal centres generally that there are areas of law where people can say, 'There's no legal aid for that.' There seems to be a full stop, particularly in areas such as immigration law and large areas of civil law for which legal aid is simply not available anymore. We do not consider it acceptable for those kinds of areas to exist.

In respect of issues for community legal centres themselves and women's legal services in particular, we want to point out the concern that we all feel for the possible survival of community legal centres. It is becoming more and more difficult to recruit lawyers to community legal centres anywhere. For regional or remote areas, it is extremely hard. It is not, of course, restricted to community legal centres; it also occurs in legal aid commissions and in a range of other types of agencies, but it is particularly significant in community legal centres. The kind of work that people do in remote and regional community legal centres is really quite extraordinary, particularly in the women's legal services and Indigenous women's legal services, where you have single women workers who travel to remote areas, often travelling hundreds of kilometres at times. There is often not sufficient recompense for the expense of doing that and for the expense of having the family looked after while engaged in such activities.

As women mature, they may have their own families or whatever and in the end it becomes almost unsustainable to stay in a CLC. We do see rapid staff turnover in some community legal centres. We do not see the diversity of people involved in community legal centres that we would really like to see because of the difficulty of doing the kind of work that is expected when they do not have a commensurate salary. I can say personally that I am quite tired of spending my week working, sometimes my weekend working and my spare time mopping my kitchen floor and vacuuming. That is simply the reality of my life. I have stepchildren. I have to clean up. I have to live. I have to be able to cook. I certainly cannot afford help in the home whereas contemporaries who work in private practice or for government can. Those are serious and significant issues in terms of quality of life.

Moving away from those issues, the main area of concern for women's legal services is family law and legal aid. We are seeing more and more women who are self-representing, as the chief justice indicated. Quite frequently, particularly with the women's legal services based in capital cities, where family law becomes so much of our workload, we end up spending our time assisting women who are representing themselves in the Family Court. This means we do not have an opportunity to develop other areas of expertise; we do not have the capacity to assist women with other legal problems; and we are engaged in the very bizarre process that the chief justice was describing of the unbundling of legal services, where you do bits and pieces for clients. If we took on individual clients fully we simply would not be able to meet the kinds of performance targets expected of us in terms of number of clients assisted. So we end up grappling with very difficult decisions.

We are very concerned about the way the merit test is applied. It is basically a budgetary control mechanism used by legal aid commissions, which are drastically underfunded. We are very concerned about the way that has had a bearing on legal matters, because it often means that legal aid is withdrawn just before trials or even during trials. In our submission we pointed out some examples of that. I recently heard of further examples of that in the Victorian Women's Legal Service. We are concerned to see things like cost orders becoming more likely, the issues around cost orders being made in respect of paying for child representatives and the expectation legal aid commissions appear to increasingly have that people are advised of the possibility of having to make a contribution towards a child representative once that representative has been appointed.

All these things are extremely worrying and detract from the capacity of people to participate in legal proceedings with any confidence, because they are so worried about all the other consequences. There are particular groups of women who are very seriously affected by this: women in prison—I am not talking about the issue that has put them in prison but the family law and other legal proceedings that might affect their lives—for whom it is very difficult to get legal aid; Indigenous women and the enormous issues for those women, whether they are in capital cities or remote communities; women with disabilities and the issues they have, particularly in relation to family law; and women from non-English-speaking backgrounds. I expect to have an opportunity to talk about mediation. I assume that will come in a question. If it does not I will say something more about that later.

CHAIR—Would you like to say something more about it now?

Ms Rathus—It is hard to know where to start. I could talk about mediation for about five days. As I cannot see your faces, it is very hard. I am not completely serious! In women's legal services we are very concerned about the extent to which mediation appears to be seen by decision makers as an answer to the problems in family law. It was extremely disturbing in the last months of last year to be deeply involved in the submission writing and the processes of this committee and the committee that was looking at 'joint custody'. It was very worrying to see the way the joint custody committee started off with the hopeful expectation that mediation—this is just what one infers through reading; in the report it is tempered significantly—will provide a way of keeping people out of courts.

Mediation is sometimes the precise way people end up in extremely complex legal proceedings. There is no one form of mediation anymore; there are many things which get called 'mediation'. There is the kind of mediation which is done at the major counselling services that

come under the Family Relationships Services Program; there is the kind of mediation that happens at the courts; and there are so-called mediations which are done at legal aid commissions, which are usually called conferences.

The reality is that mediation, as it is called, is very rarely voluntary any more, in the true sense of that word, because people are always under enormous pressure to settle, because otherwise the consequence so often is having to self-represent in the Family Court. The difficulty is that in those circumstances people really do agree to all kinds of things which are often extremely inappropriate. A case was brought to my attention this morning of a client of ours from a non-English speaking background who tried to get legal aid last year. It is not a case that particularly involves violence; it is a case where both parties are of non-English speaking background and the father had really disappeared out of his child's life for about eight years and then suddenly turned up again. The child has significant disabilities and suffers from serious autism. When the father came back into the child's life, the mother actually tried to negotiate something with him and they were able to do that for a while, but it was not working. In the end, he ended up getting either a grant of aid or employing private lawyers to go to court. Our client was unable to get any legal aid to respond to that, so she represented herself. She ended up with a consent order that gave the father two weeks full-on contact over this last Christmas. This man had never spent two weeks with his son, who is severely autistic, and he really did not cope with it very well. The son certainly did not cope with it very well and came back extremely distressed about what had happened. The mother then endeavoured to make some new arrangements, but it simply was not possible. Now the father is taking her back to court on contraventions.

I suppose the issue for us is, if our client had been given legal aid in the first place and had really been able to put her issues on the table and have some serious discussion in whatever context about what it really meant to look after this boy and the issues that were involved in his daily care, it might never have gone like this. In the end it is now likely that quite a lot of money will be spent from the public purse on that case, because everything has gone a long way down the track and everything is being undone from a different point.

This is what we see. We see a lot of back-loading of legal aid when everything goes wrong as opposed to front-loading, which is really what the Magellan project appears to be an example of and to show the success of, but it is not the way that legal aid grants are generally made around Australia. It is: 'Let's put in the smallest amount we can first and see where we go from there.' That actually often leaves people with very inappropriate consent orders—and it is the use of mediation, which steps into that process and really does not always come out with effective outcomes.

I suppose that that is our concern about what might happen with the recommendations of that other committee, and it is very important, in our opinion, for this committee to be aware of the connections between its work and the work of the committee on joint custody and to ensure that what this committee comes out with does not end up encouraging ideas—whether it is the families tribunal or whatever it might be—assuming that we are going to save a lot of legal aid money and other money by not allowing people to properly ventilate the issues that they really have, in these very private mediation scenarios which are so popular.

CHAIR—Is one of the fundamental sources of the problem you mentioned what you referred to on page 11 of your submission—the application of the merits test? You say it works

particularly unfairly in respect of women with intellectual disabilities, Indigenous women and women of non-English speaking backgrounds. In answering that, can you give us some idea about how you think the test should be made more flexible to accommodate those three groups of women?

Ms Rathus—There was a paper presented by ATSIWLAS, which is the Indigenous women's legal service here in Brisbane, which I referred to in our submission. I think the answer is quite complex, and a lot of it really does involve the training of grants officers to understand a lot more about the lives of those particular people. It does seem to be different around Australia. In some legal aid commissions grants officers are nearly always lawyers, in other legal aid commissions they are generally not lawyers. One of the difficulties is that you may have a very experienced lawyer putting an application in for a client for legal aid and that is actually assessed by quite an inexperienced new worker in the legal system who has never been inside the Family Court and does not understand the nuances that the Family Court has to decide. There are issues like Indigenous background—particularly if you have, for example, an Indigenous mother and a white father. There are cases where one or both parents have some level of disability, and there are issues around culture. These are matters where training can be helpful.

Back in the old days when I first started practising as a lawyer—I am talking about the 1980s—Legal Aid Queensland would often do a merit report. A social worker would do that report, which would look into the merits of the case. Perhaps that kind of expense simply cannot be met any more, but those kinds of issues are not really examined at all by legal aid commissions unless the solicitor who has submitted the application—or the client, if they have put in an application to legal aid themselves—is able to explain the complexity and nuance that the particular circumstances of their case bring. They need to explain what it might mean to be bringing up a child who is severely autistic or what it means when you are an Aboriginal woman living in Parramatta and your husband is a white man. It is not possible at the moment for the people who are legal aid grants officers to grapple with those extremely complex social issues. What happens is that legal aid becomes the gatekeeper to family law decision making. If people are not given legal aid, we know, as the chief justice said, that a lot of them just drop out of the system—there are others who try to stay in it for a short time but have such appalling results, which deeply affect their self-esteem as well, that they are quite unable to continue.

CHAIR—So what you are saying to us is that this sort of cultural problem is not one that, as is commonly expected, can be handled by interpreters and translators. Flowing on from the cultural problems, there are social problems that need to be accommodated somewhere early in the decision-making process.

Ms Rathus—Exactly. It is long before you would ever have an interpreter involved at the legal aid end. There may have been an interpreter in the private interview between, say, a solicitor and a client who was preparing a legal aid application. A grants officer will just get whatever has been filled out, either by that client or on behalf of that client, and that is where the first decision is made. No additional information is obtained, so it is entirely dependent on how much information that person is able to put forward at that time.

One of the other issues is that each legal aid commission develops its own process for doing this. For example, Queensland Legal Aid have developed what they call a check list. That check list, I might say, is an extremely complex matrix of things that you go through. In section 1 you

have to get (a), (b) and (c), and in section 2 you have to have two out of five and you only answer certain parts if you have answered certain other parts. It is not the kind of document that is easy to navigate around, but it is an internal document; it is not navigated around by clients.

As the chief justice indicated, this process leads to extreme rigidity in decision making. Instead of involving someone who has a real capacity to know the kind of way that the Family Court might make a decision and to look at that nuance and complexity and balance those issues, legal aid grants officers work out whether or not the right boxes have been ticked to go on to part (c). If they have not been, the answer comes back as no. As we outlined in our submission in some detail, that answer comes in a fairly curt letter that is not individualised in any of the commissions and that does not explain to a client why they did not get aid. It simply puts in one of the standard reasons for refusal, which do not really elucidate for a client—or even for a solicitor for a client—what really was the issue with that particular case.

CHAIR—Thank you. I think Senator Scullion has one or two questions and then I suspect our time will be up.

Senator SCULLION—Ms Rathus, I have a couple of issues. First of all, I notice that recommendation 11 of your submission relates to the need to maintain and increase the participation of private practitioners in legal aid. Could you make any practical suggestions about how we might achieve that?

Ms Rathus—Increasing fees would help—that is certainly part of it. There was recently a very small increase in the fees in family law. I think that took it from $110 to $112 or a little bit more per hour. These are simply not rates that bear any real relationship to the rates that family law solicitors can charge privately any more. The differential between doing legal aid work and doing private work is now extreme. So there is that problem. I also have a sense that the capping does not really help. In fact the irony is that, although the fees were increased very slightly recently, the capping amounts were not. So actually you hit the cap earlier now. I think that for a lot of lawyers who are very serious about being good family law solicitors the caps actually create quite a dilemma, because it really takes away your job satisfaction to represent someone all the way through to trial and then at the door of the court have to say goodbye to that client—or say goodbye three days through a six-day trial. So those kinds of issues are of great concern.

It is the same in community legal centres. Although one understands modern practice, there are very high levels of accountability which now apply—the kinds of audits and those sorts of things that now happen here: I know more about the way it happens in Queensland—I do not mean to be unfair there, it is just the area that I know more intimately. When practitioners who have been doing family law legal aid for 25 years have someone fairly new around the ridges arrive at their office one day and say, 'Hi, we are here to audit your family law files and decide whether or not you do the right things by your clients,' it is understandable that some of them might feel offended by that in the end.

On the other hand, from Legal Aid's perspective, they are looking to streamline these things. They are looking to ensure that they have a small group of lawyers who they have a very close relationship with and who work very well in these areas. At the moment we have not brought those things together. I think we need to do a lot more research with the private profession. We have to understand what would bring people back into doing legal aid family law work. We have

to look at better ways of providing support. Maybe there are systems that could be used: for example, if you were on the legal aid panel then you could get a free subscription to the CCH Family Law Service, you could have free access to precedents and you could have free access to the family law notes which are created at legal aid offices from the high level of case load that they are involved in. Improving the quality of service that they can provide to their clients and taking away some of the expenses of their practice might be one suggestion, but involvement of the private profession in that issue does not seem to have occurred a lot. The whole new place to go is the big pro bono firms, which certainly have a contribution to make, but there is a reluctance about family law. These are not the people who have put the blood, sweat and tears into providing services for disadvantaged people in Australia for 25 years; these are new kids on the block. Let us not make the mistake of leaving the people who have made the commitment over the years out of the equation at the moment.

CHAIR—Thank you very much for your submission. Thank you also for your time this afternoon.

[5.03 p.m.]

MITCHELL, Mr William John, Convenor, Queensland Association of Independent Legal Services

CHAIR—I welcome Mr Bill Mitchell, who is also appearing via teleconference, from the Queensland Association of Independent Legal Services.

Mr Mitchell—This afternoon I understand that I am appearing primarily on behalf of the Queensland Association of Independent Legal Services but I am also the principal solicitor of the Townsville Community Legal Service and I am happy to wear both hats and try to answer questions from the perspective of a regional practitioner, if the committee would like to ask questions of that nature.

CHAIR—Thank you very much. You have lodged submission No. 73 with the committee. Are there any amendments or alterations you would like to make to it?

Mr Mitchell—No, thank you.

CHAIR—Would you like to give an opening statement?

Mr Mitchell—Just a very brief one. I want to thank the committee for giving us an opportunity to make submissions. It is a few years since I had the opportunity to make a submission before a parliamentary committee. I remember it with mixed feelings, because it sometimes can be very interesting and it sometimes can be quite rugged from the perspective of a witness.

CHAIR—You are at a safe distance this afternoon.

Mr Mitchell—Exactly, and I was going to say that sometimes the tyranny of distance has its advantages. I would like to thank the committee though, because it is obviously important to have a very detailed and widespread consultation process in order to get a range of views. I just want to raise with the committee something I noticed by press release from the Attorney-General's office on 9 March. I am not sure whether any of the committee members have seen the *Federal civil justice system strategy paper* which was released very recently by the Attorney. I want to take this opportunity to congratulate the Attorney's department at this stage for making recommendations which are aimed squarely at increasing legal aid—and I am referring to recommendations 9 and 12 particularly. The Attorney's department makes a recommendation to give funding to community legal centres—and specifically those that have undertaken reviews, such as Queensland, where a shortfall has already been identified by some concerted efforts. I certainly want to raise that today. I note that clearly the department itself has an interest in raising the profile of legal centres and identifying that funding issues are very much at the forefront.

CHAIR—That will get you a long way. I will ask a few questions that probably flow from that. In your submission you argue that there are deficiencies in the consultation process and also that it has been very hard to assess, under the renegotiated agreements between the

Commonwealth and the states, whether there has been a real increase in funding levels for family law. Could you elaborate on those two points?

Mr Mitchell—If you would draw my attention to the specific page in the submission, it might assist me.

CHAIR—The first, which is the point about consultation, goes to recommendation No. 3, which is at page 25 in the last paragraph. The family law issue concerns paragraph 2 on page 26.

Mr Mitchell—I will deal with the first one. In terms of the protocols for consultation, having been a community legal centre lawyer who, prior to the breakdown of the Commonwealth-state agreement, never had much to do with family law in any sustained way, I suddenly found, after the breakdown of that agreement, that I was a community legal centre lawyer who had an awful lot to do with family law. It seemed to me and to many others in our sector that, once the Commonwealth and the states could no longer agree on the way in which legal aid funds should be spent in a kind of combined or holistic manner, the actual way in which clients were dealt with by a legal aid commission changed quite dramatically. One of the serious flow-on effects of that was the widespread move or referral of clients from legal aid commissions, where they would normally have been dealt with, to community legal centres as a first point of call, rather than, as they had been in most cases up until that point, a last point of call.

One of our real concerns is that, when large-scale agreements such as legal aid agreements between Commonwealth and state governments are being renegotiated or, in fact, reconceptualised at any level, there needs to be very widespread consultation with the stakeholders who are most likely to feel the real brunt and effect of the changes. I am not sure whether this has been an issue for witnesses before this committee so far, but certainly the impact of the changes on community legal centres has been, in my view, quite dramatic. However, because we are not really a part of that system, we do not have particular knowledge about the way that worked and the way that continues to work. We cannot really describe it in a way that is accurate. We cannot really describe what exactly happened at that time or what is happening now. We simply know that a very large increase in demand for those sorts of services has been placed on community legal centres and that demand was not as significant prior to the agreement breaking down. That is probably the background, I would suggest, to that recommendation.

Senator PAYNE—Mr Mitchell, in your submission one of the issues which you raise concerns interpreter services for clients. That is interesting to me because it has been raised with us from a slightly different perspective previously—for example, interpreter services for Indigenous clients. I think you talk about a hearing impaired client. From your perspective, what level of unmet need do you think there is in this regard? What sort of money might we be talking about to resource it?

Mr Mitchell—To be perfectly honest I do not know the scale of the problem, and what follows from that is that I do not know the quantum of the cost to fix the problem. My understanding is that these sorts of things do occur across the justice system in various places. Various courts, tribunals and forums have different ways of dealing with them. Certainly if you looked at the types of claims that are regularly raised under, for instance, the Disability Discrimination Act or the Racial Discrimination Act and their state counterparts then you would

probably find that—and let us not kid ourselves, courts and the justice system are really services, in the end, that will be subject to the same sorts of complaints—there are a whole range of problems with people accessing services. There are the problems of the person who is hearing impaired who really cannot self-represent. Perhaps because it is the Small Claims Tribunal or some jurisdiction that is not viewed with such lofty notions, the system or the service just not does not accommodate that person's particular needs. I suspect that, to get a taste for how big the problem is, you would only need to look at the sorts of complaints that are regularly lodged under, as I said, legislation such as the DDA. That would really show you that there is potentially a very large problem out there.

Senator PAYNE—When you cannot find an interpreter or funding at least for an interpreter in these sorts of circumstances, how do you—if at all—solve the problem? Do you use volunteer organisations?

Mr Mitchell—No. We regularly have the problem in Townsville where we cannot have a face-to-face interpreter, and I am speaking about a language interpreter now, because we simply do not have a big enough community to have experienced and accredited interpreters on the ground. So we are pretty much reliant on using the telephone interpreter service, which has its drawbacks. We certainly appreciate our access to that service, but it is not ideal. As I think we said in our submission, while having teleconferenced legal advice is probably better than nothing, it is certainly not the same as having a face-to-face interview with a lawyer. The same must be said for interpreting services.

Senator PAYNE—The same could be said for legal committee hearings.

Mr Mitchell—Of course. I think again it is a difficult area. If people out there have not had a clear indication from service providers that they are welcome to access the service and able to access the service, they probably will not access the service. It is a bit like saying if we only had five inquiries per year from Palm Island then that is the size of the legal need on Palm Island, and that is not the case. It is really a question of public education—and then you might be able to gauge what the size of the issue is.

Senator PAYNE—I appreciate that. Thank you, Mr Mitchell.

Senator LUDWIG—I was looking at page 50 dealing with the heading 'Working hours of Queensland CLC workers', particularly the second paragraph where it starts:

A survey of Queensland CLCs undertaken ...

It continues on from that. I wondered whether any of that data had been collated and was in a form that could be provided to the committee, just to examine the breadth of hours in addition to what ordinarily a person would work in this area.

Mr Mitchell—I can certainly make some inquiries. I think the data that it is referring to is raw survey data provided to each centre in the form of a questionnaire—and then written up by that centre. In fact, there were some telephone interviews conducted as well. I can certainly find out what form that raw data is in. If it is in an appropriate form, I can provide it to the committee.

Otherwise I can undertake to collate that data into a summary document and provide that to the committee at a date later on.

Senator LUDWIG—I was trying to be careful not to ask you to do too much additional work, given the problems that face everybody in trying to find time to do these things, but if you would not mind having a preliminary look to see what form the data is in and whether it could assist the committee that would be good. If you do need to undertake some additional work, bear in mind that we do not want to put you to too much task in relation to this. But it would be helpful to understand the significance of the additional hours that are worked for free.

Mr Mitchell—I agree, and I think it is a very important point. One of the factors that we faced in drafting the submission was finding a balance between a submission which, on the face of it, may appear to be very self-serving, but makes clear the message that there are organisations like community legal centres that are really struggling with internal factors. They are struggling with things like wage levels, working hours, leave entitlements—and some of the professional development issues as well. We have tried to capture that spirit in the submission. It is becoming more and more obvious that it is an issue for centres and their workers—and really, that is an issue for their clients. If the workers are getting burnt out or we cannot find staff, we simply cannot offer a decent service.

Senator LUDWIG—As I understand it, it is not only solicitors but also the other staff who man the centres.

Mr Mitchell—I include all workers in the organisation in that picture. Certainly someone who is answering the phones would be dealing with difficult clients. You would probably only have to talk to your own electorate offices to get some feel for the breadth of questions and the difficult clients—clients crying, clients shouting and so on—that centres deal with. They are probably a very similar group of people in that sense. It is not only the lawyers who are dealing with this. In fact, the front-line staff probably have greater stress levels in some ways, because they are the front line.

Senator LUDWIG—As I understand it, you also receive additional assistance outside of what is funded in this area. That includes in-kind work and the like. Have you been able to summarise the level or nature of the additional work that is provided in kind to CLCs?

Mr Mitchell—No, not beyond what is in the submission. It is something that I think we really need to focus on, and it is something that we need to study. All too often we are caught up in doing studies around the actual salary levels or things like that, when in fact the quality of life that Zoe was referring to really is controlled by many other factors. You can be paid very well, but if you work very long hours, that may not be the answer to your problems. Certainly it would be useful to do some research in this area and actually work out the nature of these issues—in a more quantifiable sense, anyway.

Senator LUDWIG—That is perhaps something the Attorney-General can consider.

Senator BUCKLAND—Mr Mitchell, on page 28 of your submission you talk about 'legal aid deliverers battling legal aid', and you have a quote from one staff member who says, 'Almost

every client we see now who has applied to legal aid for assistance in family law is refused.' What brings that situation about?

Mr Mitchell—This is really linked to the point I made initially. When the Commonwealth-state agreement changed, people on the ground, like legal centre workers, really were not aware of the kind of changes that took place within legal aid commissions and, for that matter, within the complex funding arrangements that exist. But we did find ourselves doing more work of particular sorts—which we had tried to avoid in the past because everyone had always told us that it was duplication. We now find ourselves battling not just legal aid but other organisations. Obviously these are our colleagues; they are people who are providing a similar service to us, so it is not a comfortable situation to be in, and it certainly causes tension when it comes time to meet with our colleagues in other places for other reasons. For instance, if we are going to speak with legal aid about how we can address a particular local need, it may be cause for some argument between the service providers, whereas in the past we were able to work on a much more collegiate and much more supportive level. But now, because we do not really know where the lines of demarcation lie, we are really finding that we are suffering the effects of the increased demand on our services without really understanding how we got there. In that sense, we seem to be at the end of the road, but we do not really know the road we took. We are not privy to those complex arrangements or those complex negotiations that take place between governments.

Senator BUCKLAND—Do you think that this problem could in part be responsible for what we understand is the increase in the number of cases that are self-represented, particularly in family law?

Mr Mitchell—My feeling is that that is most definitely the case, and I think that is borne out by some research that has been done. Some research done at Griffith University has pointed towards those findings. My personal feeling as a lawyer seeing clients at the Townsville Community Legal Service is that most definitely people are not getting grants of aid for things that they used to get grants of aid for. For instance, people are not getting grants of aid to run Administrative Appeals Tribunal matters if they have a challenge to an aged pension decision made by Centrelink. People are missing out on aid that, it seems to me, used to be available. Likewise, family law has been the area where it has most commonly been identified as a problem, but it certainly appears to have worked its way across a number of areas of law. You only need to look at the proliferation of self-help kits. Those things do not just pop up because someone says, 'Wouldn't it be great to have one of those'; those things are driven by need and demand, where people are saying, 'Look, we have got so many people coming to us about how to draft a family law affidavit, we had better develop a kit.' Those things do not spark out of goodwill; they spark out of trying to deal with a flow of clients that have a similar problem.

Senator BUCKLAND—Mr Mitchell, did you hear the evidence of the previous witness?

Mr Mitchell—Yes, I did.

Senator BUCKLAND—I had to leave the room for a brief period of time so this question may have been answered, but there was reference in the previous witness's submission to cases of domestic violence and family law matters. In situations where the child is in protection or

there are child protection proceedings, is it the case that, if the child is represented, the women in those cases—I assume that to be the mothers—are denied legal aid?

Mr Mitchell—I hesitate to make any submission from our association on that basis, but certainly from a personal point of view I am aware of it occurring, anecdotally. I have heard stories that indicate that funding bodies will suggest that, where one of the parties is represented, that may be enough. Because the idea is that the issues that need to be raised and put before the judge will, in fact, be put before the judge. But just from a professional point of view—for instance, from that of a child representative—it would put that child representative in an invidious situation because their role is already somewhat confused in terms of what they are meant to do. It would put them in an invidious situation to have to be the person to raise the issues before the judge. It is just not the role of that advocate. You have to come back to the situation that there is no real substitute for face-to-face, personalised legal representation, particularly where there is a complex matter involving either complex factual situations or complex legal issues, and particularly where there are issues such as domestic violence or some of the other issues raised that often lead to complex court proceedings.

CHAIR—Thanks very much, and particularly thanks very much for a very comprehensive and high-quality submission. We really appreciate that. The deputy chair has asked that it be noted that it was very impressive, so thanks very much from both sides of parliament.

[5.25 p.m.]

McKINNON, Mr David Elliott, Administration Manager, Petrie Legal Service

CHAIR—Welcome. You have lodged submission No. 88 with the committee. Is there any need for any amendments or alterations to it?

Mr McKinnon—I have an opening statement which will update parts of the submission, if that is in order.

CHAIR—Please go ahead.

Mr McKinnon—In the month since our written submission we have progressed along the road towards full implementation of the new service agreement. Full-time critical requirements have been met satisfactorily. However, the difficulties referred to in our written submission—namely, the lack of administrative funding for both the implementation of and ongoing compliance with the new regime—have placed undue hardship on us. It needs to be borne in mind that the new service agreement applies equally to all community legal centres that receive Commonwealth funding. Petrie receive $6,000 from the Commonwealth, yet we must comply to the same standards as a centre receiving $100,000. Such a centre would undoubtedly have an existing administrative structure.

While we do not disagree with the concept of the new regime, we do disagree with the lack of foresight in its application. When the current funding arrangements were established, the potential difficulties for part-time centres were clearly not considered. Part-time centres traditionally do not have large amounts of administration and therefore administration represents a small component of their funding. It appears that this status quo was maintained under the new arrangements, without consideration for the need for change. Consequently, scarce resources and, in our case, volunteer time, which would otherwise have been used to assist solicitors and to develop community legal education projects, have been diverted from the legal service to attend to administrative matters. Had those developing the funding policy considered administrative costs, a part-time administrator could have been appointed to attend to administrative matters.

Petrie is a busy community legal centre. Our client numbers for this financial year are in line with budget estimates. Family law clients now represent 60.2 per cent of all clients. We have a two-week waiting list for appointments. Up to 10 clients access our two-hour drop-in service operating on Thursday nights. There is a definite need for our service in the local community, and we cannot afford to introduce further policies that would reduce our ability to service our clients. Smaller centres need support if they are to achieve their ultimate goal of providing legal services to the committee. We recommend that the formula for funding allocation be reviewed to take into account the difficulties smaller centres experience in fulfilling their administrative responsibilities.

CHAIR—How much do you receive from the Commonwealth government?

Mr McKinnon—We receive $6,000.

CHAIR—And you have to go through the whole process of accountability that a full-time centre goes through?

Mr McKinnon—Yes, exactly the same.

CHAIR—That would just about cost you $6,000, wouldn't it?

Mr McKinnon—Yes. We have assessed that it would cost us at least the entire grant from the Commonwealth to comply with the Commonwealth's requirements.

CHAIR—Does it make it worth while?

Mr McKinnon—We have wondered that.

CHAIR—You mentioned some particular areas of concern. I suppose the primary one is the area of family law for self-represented litigants. Is there something you would like to relate to us about your experience with this area and type of client—which maybe we can focus on?

Mr McKinnon—As I have said in the submission, the number of family law clients has increased this financial year from last financial year. It has gone up from 50 per cent to 60.2 per cent. We are seeing an increase all the time. Lots of clients seem to be coming in with self-help kits, particularly consent orders, that they do not seem to be able to complete themselves without assistance. They are intending to proceed themselves. Ms Rathus and Justice Nicholson have talked about unbundling. We see that too, where they come in for advice on part of their matter, go away and attend to the rest themselves. We are seeing that a lot with the family law matters we are dealing with, where they come in, get assistance, go away and perhaps come back again later for assistance with a further part of their matter. While the self-help kits are useful in part, they often do not assist the clients totally, and they still need assistance.

CHAIR—Have we reached the stage where we may have to consider a dedicated—maybe stand-alone—service for self-represented clients, who may have different needs to your other clients, or is it best to filter them through the services they are going through now?

Mr McKinnon—There is certainly a need, in our experience, for something that assists clients when there is no dispute. We do have a number of clients who come in about cases where there are consent orders and there is no dispute between the parties but they are still not able to manage the documentation. It is often a matter of literacy issues or language skills. I am not quite sure whether something could be established to make it easier for them. We are in the catchment area of the Caboolture legal aid office, and I know that they also offer some assistance with completion of divorce applications. They have obviously recognised that assistance is needed with family law matters as well.

CHAIR—You also mentioned admin law matters and particularly Centrelink. What is your experience with legal aid in that area?

Mr McKinnon—We have started to discover that clients are often coming in with difficulties with the completion of detailed Centrelink forms. It is often an advocacy matter rather than a legal matter, so they are not necessarily needing a lawyer to help them so much as someone with

some ability to help them go through and complete detailed forms and maybe make a few phone calls for them. Because we operate from a community centre, the legal service is seen as a part of the community centre. I guess we offer an add-on service to the community centre in an advocacy sense, so you could say we have an administrative law function, although we are not actually taking administrative law action against Centrelink in that sense.

CHAIR—That is a function that used to be performed by the agency—

Mr McKinnon—It is an earlier step in the chain than proceeding against Centrelink.

Senator PAYNE—In your submission you refer to the use of volunteers in your system, both as solicitors and as other support staff. To what extent do you have to rely on volunteers in the process these days, and has that changed in recent times?

Mr McKinnon—Apart from the employed solicitor, who provides all the day time legal work, and me—I work three hours a week—virtually all the other work is performed by volunteers. We are very dependent on volunteers; we could not operate without them. The night-time legal session is worked by volunteer solicitors, reception is manned by volunteers and data processing is done by volunteers. They are essential to the operation of the legal service.

Senator PAYNE—The training of the solicitors probably speaks for itself or is at least self-explanatory in terms of their studying and their activities. How much of an effort do you need to make in offering training to the other support staff?

Mr McKinnon—We operate from a community centre, and the volunteers are given staff induction and training as part of their introduction to the community centre. So they are trained in that sense. The difficulty has arisen since the new service agreement. There are more requirements on staff in relation to what they need to know for the legal service. That has become more difficult for them because the community centre operates eight programs, so they need to have knowledge of those eight programs. The add-ons that are now required for the legal service have made it more difficult because, as you can imagine, they need to have a lot of knowledge, and they are all on rosters, so they do not work every day—most of them only work once a week. It is very difficult.

Senator PAYNE—Thank you for setting that out; I appreciate it.

CHAIR—Thanks very much, Mr McKinnon, both for your submission and for your evidence this afternoon. I also thank all other witnesses who have appeared this afternoon.

Committee adjourned at 5.35 p.m.