

The family and civil law  
needs of Aboriginal people  
in New South Wales

# FINAL REPORT

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## Acronyms

ABS	Australian Bureau of Statistics
ACSS	Aboriginal Client Services Specialist (Courts)
AJSDP	Aboriginal Justice Service Delivery Plan (Legal Aid NSW)
ALAP	Aboriginal Legal Access Program (CCLCG)
ALS	Aboriginal Legal Services NSW/ACT
ALST	Aboriginal Legal services of Toronto
ARIA	Accessibility/Remoteness Index of Australia
ATFRS	Aboriginal Trust Funds Repayment Scheme
ATSILS	Aboriginal and Torres Strait Islander Legal Services
AVL	Audio Visual Link
AVO	Apprehended Violence Order
CCLCG	Combined Community Legal Centres Group (NSW)
CDEP	Community Development Employment Projects
CLC	Community Legal Centre
CLE	Community Legal Education
CLO	Community Liaison Officers (LAQ and NTLAC)
CLSD	Cooperative Legal Service Delivery
DOCS	Department of Community Services (NSW)
DOH	Department of Housing (New South Wales)
FG	Focus Group
FVPLS	[Indigenous] Family Violence Prevention Legal Service
HECS	Higher Education Contribution Scheme
HREOC	Human Rights and Equal Opportunity Commission
IISU	Integrated Indigenous Strategy Unit (LAQ)
ILO	Indigenous Liaison Officer (LAQ)
LAF	Legal Assistance Forum (LAQ)
LAA	Legal Aid Society of Alberta (Canada)
LAC	Legal Aid Commission
LAO	Legal Aid Ontario
LAQ	Legal Aid Queensland
LSA	Legal Services Agency (Pokapu Ratona Ture, New Zealand)
LSC	Legal Services Corporation (United States)
LSO	Legal Support Officer (Legal Aid NSW)
LSS	Legal Services Society (British Columbia, Canada)
MOU	Memorandum of Understanding
NAAJA	Northern Australian Aboriginal Justice Agency
NALSC	Nishnawbe-Aski Legal Services Corporation (Canada)
NARF	Native American Rights Fund (United States)
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NLADA	National Legal Aid and Defender Association (United States)
NSW	New South Wales
NTLAC	Northern Territory Legal Aid Commission
SCROGSP	Steering Committee for the Report of Government Service Provision
PDR1	Primary Dispute Resolution (NTLAC)
PIAC	Public Interest Advocacy Centre
SDRO	State Debt Recovery Office
TAFE	Technical And Further Education
VALS	Victorian Aboriginal Legal Service
VLA	Victorian Legal Aid
WALS	Western Aboriginal Legal Service
YLS	Yukon Legal Service Society (Canada)

# CONTENTS

<b>Acknowledgements</b>	
<b>Acronyms</b>	
<b>List of Tables</b>	
<b>EXECUTIVE SUMMARY</b>	<b>9</b>
<b>1 INTRODUCTION AND BACKGROUND</b>	<b>21</b>
<b>1.1 Introduction and Research Questions</b>	
<b>1.2 Structure of this Report</b>	
<b>1.3 Methodology</b>	
<i>1.3.1 Identification and Selection of Research Site Areas</i>	
<i>1.3.2 Focus Groups: location and composition</i>	
<i>1.3.3 Focus Groups: process and discussion areas</i>	
<i>1.3.4 Stakeholder Interviews</i>	
<i>1.3.5 Identification of Stakeholders</i>	
<b>1.4 Service Delivery Context: Legal Aid NSW</b>	
<i>1.4.1 LAC/ATSILS Partnership</i>	
<i>1.4.2 Legal Aid Outreach Service at ALS Offices</i>	
<i>1.4.3 CLSD</i>	
<i>1.4.4 Rural Client Services Strategy</i>	
<i>1.4.5 Aboriginal Service Delivery Plan</i>	
<b>1.5 Service Delivery Context: Community Legal Centres</b>	
<b>1.6 Importance of a Legal Needs Analysis for Aboriginal People in Civil and Family Law</b>	
<i>1.6.1 Access to Justice</i>	
<i>1.6.2 Existing Barriers to Accessing Justice</i>	
<b>1.7 Previous Research: Legal Needs</b>	
<i>1.7.1 The New South Wales Law And Justice Foundation Legal Needs Research Reports</i>	
<b>1.8 Previous Research: Indigenous Legal Needs</b>	
<i>1.8.1 Hawkesbury Nepean Community Legal Centre Study</i>	
<i>1.8.2 Previous Legal Aid NSW Reviews and Evaluations</i>	
<b>1.9 Definition of Legal Needs</b>	
<b>2 ABORIGINAL USE OF LEGAL AID CIVIL AND FAMILY LAW SERVICES</b>	<b>41</b>
<b>2.1 Legal Aid for Civil Law Matters</b>	
<i>2.1.1 Applications for Civil Aid</i>	
<i>2.1.2 Applications for Civil Aid by Gender</i>	
<i>2.1.3 Successful Grants of Legal Aid for Civil Law Matters</i>	
<i>2.1.4 Grants of Civil Aid by Gender</i>	
<b>2.2 The Provision of Minor Assistance for Civil Law Matters</b>	
<i>2.2.1 Provision of Civil Minor Assistance by Gender</i>	
<b>2.3 Legal Aid for Family Law Matters</b>	
<i>2.3.1 Applications for Family Law Aid</i>	
<i>2.3.2 Applications for Family Law Aid by Gender</i>	
<i>2.3.3 Successful Grants for Family Law Aid</i>	
<i>2.3.4 Grants for Family Law Aid by Gender</i>	
<b>2.4 The Provision of Minor Assistance for Family Legal Aid Matters</b>	
<b>2.5 Conclusion</b>	
<b>3 LEGAL NEEDS ANALYSIS: FAMILY, HOUSING, NEIGHBOURS AND EDUCATION</b>	<b>61</b>
<b>3.1 Family</b>	
<i>3.1.1 Children</i>	
<i>3.1.2 Accessing Legal Advice</i>	

3.1.3 <i>Divorce and Separation</i>	
<b>3.2 Housing and Tenancy</b>	
3.2.1 <i>Disputes with Landlord</i>	
3.2.2 <i>Disputes Relating to Supported Accommodation</i>	
3.2.3 <i>Other Legal Needs Relating to Housing</i>	
<b>3.3 Neighbours</b>	
<b>3.4 Education</b>	
<b>3.5 Conclusion</b>	
<b>4 LEGAL NEEDS ANALYSIS: EMPLOYMENT, STOLEN WAGES AND DISCRIMINATION</b>	<b>77</b>
<b>4.1 Employment</b>	
<b>4.2 Stolen Wages and Stolen Generations</b>	
<b>4.3 Discrimination</b>	
<b>4.4 Conclusion</b>	
<b>5 LEGAL NEEDS ANALYSIS: SOCIAL SECURITY, CREDIT DEBT AND CONSUMER ISSUES</b>	<b>87</b>
<b>5.1 Social Security and Centrelink</b>	
<b>5.2 Credit and Debt</b>	
<b>5.3 Consumer Issues</b>	
<b>5.4 Conclusion</b>	
<b>6 LEGAL NEEDS ANALYSIS: VICTIM'S COMPENSATION, ACCIDENTS, INJURIES AND WILLS AND ESTATES</b>	<b>97</b>
<b>6.1 Victim's Compensation</b>	
<b>6.2 Accident and Injury</b>	
6.2.1 <i>Motor Vehicle Accidents</i>	
6.2.2 <i>Work-Related and Other Injuries</i>	
<b>6.3 Wills and Estates</b>	
<b>6.4 Conclusion</b>	
<b>7 ABORIGINAL EXPERIENCES OF LEGAL AID</b>	<b>105</b>
<b>7.1 Aboriginal Legal Needs: The Priority Areas</b>	
7.1.1 <i>Determining Priority Areas</i>	
7.1.2 <i>Housing</i>	
7.1.3 <i>Discrimination</i>	
7.1.4 <i>Credit and Debt</i>	
7.1.5 <i>Family law / Care and Protection</i>	
7.1.6 <i>Other unrecognised needs</i>	
<b>7.2 Observations on Legal Aid NSW Service Delivery</b>	
7.2.1 <i>General observations on Legal Aid as a service to Aboriginal people</i>	
7.2.2 <i>Literacy issues, complexity of Legal Aid forms and lack of assistance</i>	
7.2.3 <i>Issues involving conflict, referral and lack of assistance</i>	
7.2.4 <i>Level of attention and friendliness given to clients</i>	
7.2.5 <i>Breakdowns in client-practitioner communication</i>	
7.2.6 <i>Issues concerning flexibility of service delivery</i>	
<b>7.3 Conclusion</b>	
<b>8 CIVIL AND FAMILY LAW INITIATIVES IN OTHER JURISDICTIONS</b>	<b>123</b>

## **8.1 Legal Aid Queensland**

- 8.1.1 Integrated Indigenous Strategy and Integrated Indigenous Strategy Unit*
- 8.1.2 Outreach*
- 8.1.3 Legal Assistance Forums*
- 8.1.4 MOUs with ATSILS and FVPLS*
- 8.1.5 Family Law Conferencing Program*
- 8.1.6 Other*

## **8.2 Northern Territory Legal Aid Commission**

- 8.2.1 Access and Education*
- 8.2.2 Family Dispute Resolution*
- 8.2.3 Outreach Project and Indigenous Community Liaison Officers*
- 8.2.5 Other*

## **8.3 Victorian Legal Aid**

- 8.3.1 Statement of Cooperation with VALS*
- 8.3.2 Secondment Arrangements*
- 8.3.3 Legal Aid Offices*
- 8.3.4 Cross Cultural Training*

## **8.4 Western Australian Legal Aid Commission**

- 8.4.1 Country Lawyers Program*
- 8.4.2 Other initiatives*

## **8.5 Other Australian Legal Aid Commissions**

- 8.5.1 Tasmanian Legal Aid Commission*
- 8.5.2 ACT Legal Aid Commission and South Australian Legal Services Commission*

## **8.6 Civil and Family Law Legal Aid to Aboriginal People in Canada**

- 8.6.1 Civil and family law services in Canada*
- 8.6.2 Legal Aid Ontario*
- 8.6.3 Legal Services Society British Columbia*
- 8.6.4 Legal Aid Society of Alberta*
- 8.6.5 Yukon Legal Services Society*
- 8.6.6 Saskatchewan Legal Aid Commission*
- 8.6.7 Legal Aid Manitoba*
- 8.6.8 Nova Scotia Legal Aid Commission*
- 8.6.9 Legal Services Board of the Northwest Territories*
- 8.6.10 Other Legal Aid Offices*

## **8.7 New Zealand**

- 8.7.1 Legal Services Agency*
- 8.7.2 Community Law Centres and Legal Aid*
- 8.7.3 Research and Advice*
- 8.7.4 Provision of legal education and information*

## **8.8 United States**

- 8.8.1 Native American Nationhood*
- 8.8.2 'Legal aid' services in the US*
- 8.8.3 Legal Services Corporation*
- 8.8.4 Other Services*
- 8.8.5 National Legal Aid and Defender Association*
- 8.8.6 Legal aid services working with Native American communities*

## **8.9 Conclusion**

# **9 PROPOSALS FOR REFORM**

147

## **9.1 Existing Staff and Services**

- 9.1.1 Current Employment of Aboriginal people in Legal Aid NSW Offices*
- 9.1.2 Cultural awareness training for non-Indigenous staff*
- 9.1.3 Special disadvantage test*
- 9.1.5 Improving Legal Aid NSW Offices*
- 9.1.6 Flexibility in service delivery*

## **9.2 Improving Service Delivery through Connecting to the Community: Outreach**

- 9.2.1 Outreach services in community locations*
- 9.2.2 Existing Legal Aid Outreach Models*

9.2.3 <i>Indigenous Family Violence Prevention and Legal Service Outreach Models</i>	
9.2.4 <i>Court Registrar Outreach Service in Wagga</i>	
9.2.5 <i>Developing Legal Aid Outreach Models</i>	
<b>9.3 Employing Aboriginal field officers</b>	
9.3.1 <i>Aboriginal Field Officer in Community Legal Centres and Other Legal Aid Offices</i>	
9.3.2 <i>The Role of Field Officers</i>	
<b>9.4 Expand the use of Audio Visual Links (AVL) for advice</b>	
<b>9.5 Ensuring better understanding by Aboriginal people of civil and family law</b>	
9.5.1 <i>Civil and family law community legal education</i>	
9.5.2 <i>Indigenous Telephone Advice line</i>	
<b>9.6 Aboriginal Reference Group</b>	
<b>REFERENCES</b>	<b>169</b>
<b>APPENDICES</b>	<b>173</b>

COVER ART The artistic work titled "Ray of Light" was supplied by Clint Lingard (Jongaragee Mata). He is a member of the "Ewamian People" whose ancestral lands are in "Far North Queensland" and he is also a Civil Law Solicitor at Legal Aid NSW's Parramatta Office. Clint describes "Ray of Light" as comprising of three sectional bands of colour in the form of a "bandaid", with the colours red, orange and yellow representing elements of the colour spectrum for a flame and more particularly the colours found in the light of a camp fire. Superimposed over each coloured section are impasto/textured flame symbols of the relevant monochromatic colour or its shades in each band.

The title "Ray of Light" reflects the story that after aid comes light and that after the provision of legal aid/advice comes light or hope - essentially aid generates a shining light in terms of outcome and so is a beacon for assistance. The number three is used in this work as inspiration reflecting Clint's conception of the three means of problem solving: self-help, collaborative help, and the full help or assistance from another person. Clint also drew inspiration from all the recent relief efforts in 2009, particularly in Victoria, particularly those through artistic expression, and most notably music."

## LIST OF TABLES

Table 1.1	Location and Gender of Focus Group Participants
Table 1.2	Age Range of Focus Group Participants
Table 2.1	Applications for Civil Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.2	Applications for Civil Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.3	Aboriginal Applications for Civil Aid by Gender and Category of Matter. Legal Aid NSW 2007
Table 2.4	Successful Grants for Civil Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.5	Grants for Civil Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.6	Aboriginal Grants for Civil Aid by Gender and Category of Matter. Legal Aid NSW 2007
Table 2.7	Civil Minor Assistance by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.8	Civil Minor Assistance by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.9	Aboriginal Civil Minor Assistance Gender and Category of Matter. Legal Aid NSW 2007
Table 2.10	Applications for Family Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.11	Applications for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.12	Aboriginal Family Aid Applications by Gender and Category of Matter. Legal Aid NSW 2007
Table 2.13	Successful Grants for Family Law Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.14	Grants for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.15	Aboriginal Family Aid Grants by Gender and Category of Matter. Legal Aid NSW 2007
Table 2.16	Family Minor Assistance by Indigenous Status and Category of Matter. Legal Aid NSW 2007
Table 2.17	Family Minor Assistance by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007
Table 2.18	Aboriginal Family Minor Assistance by Gender and Category of Matter. Legal Aid NSW 2007
Table 3.1	Number and Percentage of Focus Group Participants Who Identified Family Law Issues Relating to Custody and Access to Children
Table 3.2	Number and Percentage of Focus Group Participants Who Identified a DOCS Related Matters
Table 3.3	Nature of Family Law / DOCS Problems
Table 3.4	Number and Percentage of Focus Group Participants Who Sought Legal Advice
Table 3.5	Number and Percentage of Focus Group Participants Divorced or Separated
Table 3.6	Number and Percentage of Focus Group Participants Who Positively Identified Housing and Tenancy Related Issues
Table 3.7	The Reason for Tenant / Landlord Disputes
Table 3.8	Number and Percentage of Focus Group Participants Who Sought Legal Advice
Table 3.9	Agency Contacted for Assistance with Housing and Tenancy Issues
Table 3.10	Number and Percentage of Focus Group Participants Who Positively Identified Neighbour Disputes as an Issue
Table 3.11	Number and Percentage of Focus Group Participants Who Sought Legal Advice
Table 3.12	Agency Contacted for Assistance with Neighbour Issues
Table 3.13	Number and Percentage of Focus Group Participants Who Were Responsible For a Young Person in Education

Table 3.14	Number and Percentage of Focus Group Participants Who Reported Problems Relating to Expulsion, Fees, etc.
Table 3.15	Education Issues
Table 4.1	Number and Percentage of Focus Group Participants With Identified Employment Disputes
Table 4.2	Employment Problems
Table 4.3	Number and Percentage of Focus Group Participants Affected by Stolen Wages, Trust Funds or Stolen Generations.
Table 4.4	Number and Percentage of Focus Group Participants Who Had Advice Relating to AFTRS
Table 4.5	Number and Percentage of Focus Group Participants Who Identified Discrimination as an Issue
Table 4.6	Discrimination: type and location
Table 4.7	Number and Percentage of Focus Group Participants Who Sought Legal Advice
Table 5.1	Number and Percentage of Focus Group Participants Who Were Receiving A Benefit or Allowance
Table 5.2	Number and Percentage of Focus Group Participants Who Identified a Dispute with Centrelink
Table 5.3	Number and Percentage of Focus Group Participants Who Sought Legal Advice
Table 5.4	Number and Percentage of Focus Group Participants Who had Debt Problems
Table 5.5	Number and Percentage of Focus Group Participants Who had Credit Rating, Loan or Bankruptcy Problems
Table 5.6	Credit and Debt Issues
Table 5.7	Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Superannuation or Bank Fees
Table 5.8	Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Insurance
Table 5.9	Number and Percentage of Focus Group Participants Who had Problems with a Commercial Scam
Table 5.10	Number and Percentage of Focus Group Participants Who had Other Consumer Issues
Table 5.11	Other Consumer Issues
Table 6.1	Number and Percentage of Focus Group Participants Who Have Been the Victim of a Violent Crime.
Table 6.2	Number and Percentage of Victims Who Were Aware of the Victim's Compensation Scheme
Table 6.3	Number and Percentage of Victims Who Pursued Victim's Compensation
Table 6.4	Number and Percentage of Focus Group Participants Who Were Involved in a Car Accident Over the Last Couple of Years
Table 6.5	Number and Percentage of Participants Involved in an Accident Who were Insured
Table 6.6	Number and Percentage of Focus Group Participants Who Reported Work-Related Injuries
Table 6.7	Number and Percentage of Focus Group Participants Who Reported Injuries Outside the Home
Table 6.8	Number and Percentage of Focus Group Participants Who Reported Injuries Requiring Medical Treatment
Table 6.9	Number and Percentage of Focus Group Participants Who Have Completed a Will
Table 6.10	Number and Percentage of Focus Group Participants Who Would Like Assistance Completing a Will.
Table 6.11	Who Would You Approach for Advice on Completing a Will?
Table 6.12	Number and Percentage of Focus Group Participants Who Have Been an Executor for a Deceased Estate
Table 6.13	Number and Percentage of Focus Group Participants Who Have Been Involved in a Dispute over a Deceased Estate
Table 7.1	Geographic Location and Housing
Table 7.2	Geographic Location and Discrimination
Table 7.3	Geographic Location and legal action faced on account of Debt
Table 7.4	Geographic Location and Custody/Access
Table 7.5	Geographic Location and Care/Protection



## **EXECUTIVE SUMMARY**

### **Background to the research (Chapter 1)**

This research seeks to provide a greater understanding of the civil and family law needs of Aboriginal people in New South Wales. Its purpose is to benefit Aboriginal communities by improving access to and effective provision of civil and family law services to Aboriginal clients.

The report addresses two broad research questions:

- The first is an analysis of the civil and family law needs of Aboriginal people in New South Wales.
- The second arises out of this legal needs analysis and explores how Legal Aid NSW might improve the services that they provide to Aboriginal clients in the areas of civil and family law.

The research was based on consultation with Aboriginal communities and with those who provide services to those communities, in eight focus sites: Redfern/Waterloo, Penrith/Mt Druitt, Dubbo, Wagga Wagga, Moree, Bourke, Tabulam and Goodooga. The sites were chosen for geographical spread as well as to represent remote, rural, regional and urban Aboriginal communities.

In each focus site, two focus groups were held; one for men and one for women, where participants were asked to fill in a questionnaire which identified the legal incidents that they had encountered recently in the areas of law that the research covers. There was then broad discussion about these incidents and about the current level of access of and satisfaction with legal services to seek remedies for the problems encountered. Focus groups were also asked about any experiences of Legal Aid NSW that they had, and asked about suggestions for improving the current mode of Legal Aid service delivery.

In each focus site, interviews were also undertaken with legal practitioners, Aboriginal people working as support people within the legal system and other organizations providing associated services. Selected stakeholders providing relevant state-wide services were also interviewed.

Quantitative data provided by Legal Aid NSW was also used to examine the extent of current usage of Legal Aid family and civil law services by Aboriginal clients, as well as the nature of the matters for which Aboriginal clients were most likely to approach Legal Aid NSW for advice or representation.

### **Usage of Legal Aid NSW civil and family law services (Chapter 2)**

The profile of Aboriginal civil law applications, grants and minor assistance differed in various ways from non-Aboriginal clients in this area. Two striking differences were the different gender profile with Aboriginal women being the majority among Aboriginal clients, while men were the majority among non-Aboriginal clients. A second difference was in the type of matters for which assistance was sought. For

example, mental health matters were more pronounced among Aboriginal clients and veteran's affairs among non-Indigenous clients.

The main findings arising from examination of the usage data in relation to civil law show that, in 2007:

- Aboriginal people comprised 4.6 per cent of all civil aid applications, 5.1 per cent of all grants of civil aid and 5.8 per cent of clients who received minor assistance for civil aid. The rate of Aboriginal applications for civil aid and minor assistance per 100,000 of population was more than twice the non-Aboriginal rate.
- The most common civil law applications for Aboriginal people were, in order: mental health (19.5 per cent), personal injury/accidents (16.6 per cent), miscellaneous civil matters (12.4 per cent) and consumer issues (10.7 per cent). The most common grants of civil legal aid were for mental health (27 per cent), personal injury/accident (14.3 per cent) and consumer (12.7 per cent).
- Many of the mental health (forensic patient) and personal injury matters (victim's compensation and civil assault) were generated through crime or contact with the criminal justice system.
- Aboriginal women comprised the majority of Aboriginal applicants for civil aid (57 per cent), for grants of civil aid (59 per cent) and of Aboriginal clients receiving minor assistance for civil aid (62 per cent).
- Mental health was a major category for Aboriginal male applications for civil aid (30 per cent) and for grants of civil aid (44.2 per cent). Aboriginal women's applications for civil aid and grants of civil aid were spread across a broader range of civil law areas. For Aboriginal women, personal injury was the most frequent category for applications (17.7 per cent) and for grants of civil aid (18.9 per cent).

The main findings arising from examination of the usage data in relation to family law show that in 2007:

- Aboriginal people comprised 7.7 per cent of all family aid applications, 7.9 per cent of all grants of family aid and 6 per cent of clients receiving minor assistance for family aid. The rate of Aboriginal applications for family aid and minor assistance per 100,000 of population was more than three times (applications) and twice (minor assistance) the non-Aboriginal rate.
- The most common family law categories of applications for Aboriginal people were, in order, 'children' (primarily, residence and contact) (50.3 per cent), and care and protection (41 per cent). The most common grants of family legal aid were for 'children' (47.4 per cent) and care and protection (45.1 per cent). The most common categories for minor assistance were for 'children' (37 per cent), child support (28 per cent) and family law 'other' (19 per cent).

- Care and protection matters and ‘children’ matters under the Family Law Act were the dominant categories in both Aboriginal and non-Aboriginal grants of family law aid. However, care and protection formed a greater proportion of Aboriginal successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and ‘children’ matters under the Family Law Act were 13 percentage points lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).
- The categories of family law grants were similar for Aboriginal men and Aboriginal women clients. However, Aboriginal women were much more likely than men to seek minor assistance about child support and Aboriginal men were more likely than women to seek assistance in relation to children under the Family Law Act.

### **The civil and family law needs of Aboriginal people in New South Wales (Chapters 3-6)**

Civil law, we just know nothing about it. We don’t know about this civil law stuff (*Aboriginal legal support workers 1, Dubbo*).

Based on the information collected from the focus group questionnaire and discussion, as well as through stakeholder interview, various civil and family law needs were analysed as follows:

#### *Family law*

The evidence suggests that family law matters tend to be worked out by the parties without legal assistance. Disputes usually involve children. Overall 17.2 per cent of focus group participants identified an issue relating to custody or access. Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

Children being taken into care was identified as a significant problem, and Aboriginal women were more than twice as likely (22.5 per cent) to identify such as issue than men (9.9 per cent). There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS.

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed. Focus group participants indicated that very few people (14.9 per cent) sought legal advice in relation to the issues around family law and DOCS associated matters. Although the numbers were small, Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

#### *Housing and Tenancy*

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. Overall 41.2 per cent of focus group participants identified disputes involving landlords, primarily the conduct of the Department of

Housing or Aboriginal housing bodies. The most frequently noted matter was the issue of repairs, followed by rent.

Of the 63 Aboriginal people who identified a dispute with a landlord, some 70 per cent of individuals indicated they did not seek legal advice. Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent).

### *Neighbours*

Some 26.8 per cent of focus group participants identified neighbourhood disputes as an issue that had affected them in recent years. Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent), and Aboriginal women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent).

Overall however, the majority of individuals (67.5 per cent) did not seek legal advice. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

### *Education*

More than a third of the focus group participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than for Aboriginal men (30.1 per cent).

Half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per cent) who had responsibility for a young person in education. The main problems identified by participants were suspension and expulsion.

Five of the 27 individuals (or 18.5 per cent) who indicated a problem at school sought legal advice (four women and one male).

### *Employment*

Overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace. Some 29 per cent of the 31 individuals who indicated they had an employment-related problem also indicated they sought legal advice.

### *Stolen Wages and Stolen Generations*

Some 15.6 per cent of participants indicated that they had been directly affected by policies relating to Stolen Wages and Stolen Generations. The proportion of

Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was probably influenced by the older age of Aboriginal women participants.

The vast majority of participants (92.9 per cent) had not received advice concerning the AFTR scheme.

### *Discrimination*

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. More than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently. Racial discrimination was the main type of discrimination identified, and pubs and clubs were the main problems, followed by real estate agents.

Of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.

### *Social Security and Centrelink*

Some 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent).

In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of Centrelink benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent)

Approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

Of the 44 people who identified having a dispute with Centrelink, five (11.6 per cent) sought legal advice.

### *Credit and Debt*

Some 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

Some 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

Telephone bills and Credit Reference Rating were two frequently mentioned problems.

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem.

### *Consumer Issues*

Some 19.9 per cent of participants indicated a dispute or problems accessing superannuation, or with a bank or financial institution. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

Some 6.1 per cent of participants indicated a dispute relating to insurance. There was little difference between the male and female responses.

Some 13.1 per cent of participants indicated a problem with a 'scam' such as a funeral fund or door to door sales. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent). Many participants in the men's focus groups identified problems with Aboriginal funeral funds.

Overall, seven individuals (four males and three women) indicated they sought legal advice.

### *Victim's Compensation*

Some 28.9 per cent of participants reported being the victim of a violent crime. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

The majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victim's compensation scheme. Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

Only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

### *Accident and Injury*

Some 14.2 per cent of the participants indicated they had been involved in a motor vehicle accident over the last couple of years. Of this group, slightly more than half were insured and less 20 per cent sought legal advice.

Some 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent). 17.8 per cent of participants reported other injuries outside of the home.

### *Wills and Estates*

Only 6.1 per cent of the participants indicated they had completed a will. Twice the number of women compared to men had completed wills.

Almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.

## **Aboriginal Legal Needs: The Priority Areas (Chapter 7)**

In discussing the legal needs of Aboriginal clients it is important to recognise that these needs are often more complex than those of other clients. Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population (ABS 2002: 28). Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people) (SCROGSP 2007: 8), and are twice as likely to have experienced high levels of psychological distress than non-Indigenous people (SCROGSP 2007: 9.41). In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with (see generally ABS 2002; SCROGSP 2007). Thus the legal needs of Aboriginal clients are complex, not only often involving several areas of law, but also a range of social and cultural issues.

In relation to the areas of civil and family law that were explored in this report, the areas of housing, discrimination, credit and debt and family/DOCS issues arose the most frequently in consultations as being the areas of highest priority for Aboriginal people across New South Wales. This is not to say that other areas of law were not considered urgent in some locations. Matters involving employment, neighbourhood disputes, social security and education emerged in some places as causing a lot of grief to individuals, largely without satisfactory resolution.

In addition, there were a number of legal areas where there may not have been a high recognised legal need, but where there was yet a substantial unrecognised need. The lack of identification of need spoke more of the absence of community legal education in the area rather than an absence of need. Three legal areas that we have identified as falling into this category are victim's compensation, stolen wages and wills.

## **Observations on Legal Aid NSW Service Delivery (Chapter 7)**

A substantial component of the research involved the exploration of Aboriginal clients' experiences of Legal Aid NSW and stakeholder reflections on that experience. The responses showed a number of areas where it was felt that obstacles to effective service delivery arose. Many reflected a feeling that Legal Aid NSW does not provide the level of assistance that Aboriginal clients require at all stages of the legal process, from filling in application forms to apply for aid, to being referred to another services where Legal Aid cannot assist. The observations were grouped under the following headings:

- The issues arising from the fact that Legal Aid is not an Aboriginal service provider
- Literacy issues, complexity of Legal Aid forms and lack of assistance
- Issues involving conflict, referral and lack of assistance
- Levels of attention and friendliness given to clients
- Breakdowns in client-practitioner communication
- Issues around flexibility of service delivery

Despite the range of difficulties that were identified as impeding effective access of Aboriginal clients to Legal Aid services, there was widespread consensus among community members and stakeholders alike that it was possible for Legal Aid NSW to improve in large measure the effectiveness of their services to Aboriginal people.

### **Civil and Family Law Initiatives in Other Jurisdictions (Chapter 8)**

Several Australian legal aid commissions are attempting to improve their service delivery to Aboriginal and Torres Strait Islander communities. Outreach services are provided by the Northern Territory and Queensland LACs. In particular the NTLAC has a large outreach project from its two offices in Darwin and Alice Springs.

Some of the LACs have specific cross cultural training for their staff – see for example Victoria and Western Australia. VLA has also concentrated on access and equity issues in their offices, including considering location; trying to ensure positive first contact with the service by telephone; running art competitions; and ensuring that copies of the Koori Mail are available at reception. The LAQ also has an Indigenous information hotline line that enables Aboriginal and Torres Strait Islander people to access legal and referral information for the cost of a local call.

There are some innovative developments, particularly in Queensland involving the use of community liaison officers and Indigenous liaison officers. The CLOs provide court support, promote LAQ services, deliver CLE and provide referral information. They also work with solicitors providing outreach services. In addition there are a number of Indigenous liaison officers employed part-time in communities. They provide advice and referral to the community, and inform the CLOs and solicitors of community issues.

International comparisons need to be treated with care because of the substantial differences in the provision of legal aid services to Indigenous and non-Indigenous people. The Canadian system has Legal Aid Offices in each of the thirteen provinces or territories. However there are variations in coverage of family and civil law. Some offices only operate a ‘judicare’ model where private lawyers are paid to represent legal aid clients. In addition, Canada does not have an established, formal network of government-funded Aboriginal legal services, as we do in Australia.

New Zealand also operates under the judicare model with 12 regional Legal Aid Offices responsible for granting aid and funding a *private* lawyer to provide legal services to individuals. There are also 27 community law centres (one of which is Maori-specific) but no equivalent to the Aboriginal legal services.

In the US, legal assistance for Native Americans may be offered by any number of different service providers, and as part of mainstream or Native American-specific services. The Legal Services Corporation (LSC) funds 138 independent local programs covering over 900 offices, including Native-American specific programs. The LSC funds programs which provide legal assistance to Native Americans, some serving as ‘stand alone’ Indian Law services (covering legal issues which are specific to Native American persons), others as ‘component programs’ (covering the same areas of law, but within a larger legal aid service), or offering broader legal assistance



to Native American clients (both on an off reservation). The US situation is made more complex by the recognition of Indigenous jurisdiction in Indian nations.

### **Proposals for Reform (Chapter 9)**

The final chapter of this report deals with recommendations for the improvement of Legal Aid NSW civil and family services to Aboriginal people. The recommendations and discussion involve the following:

#### *Better equipping existing staff and improving existing services*

In particular the need to provide support for existing Aboriginal staff is highlighted, as is the need to provide cultural awareness training for non-Aboriginal staff.

Improvements to the CLSD program, changes to office space and a greater flexibility in service delivery are recommended.

#### *Improving Legal Aid NSW service delivery by establishing better connections to the community through outreach*

There are significant changes that can be made to the provision of outreach services to Aboriginal communities, particularly taking into account outreach services offered by other justice organisations.

#### *The employment of field officers*

A key recommendation to this report is the employment of Aboriginal field officers by Legal Aid NSW. The development of effective outreach services is dependent upon the use of field officers.

#### *Greater use of Audio Visual Links (AVL)*

There is significant scope for increasing the access of Aboriginal people to civil and family law advice through the use of AVL. However, the report notes that certain preconditions should be met before AVLs are used.

#### *Ensuring better understanding by Aboriginal people of civil and family law*

The report highlighted the lack of knowledge by Aboriginal people of civil and family law and the possible remedies available. Recommendations relating to this issue include skilling Aboriginal workers in various justice agencies so that they can provide assistance and referral; the development of targeted community legal education for Aboriginal communities, particularly focusing on specific communities and specific needs; and the further exploration of creating an Aboriginal telephone legal advice line that might cover criminal, civil and family law.

Finally, an essential part of developing better links between Legal Aid NSW and Aboriginal communities is the need for a process of engagement. A key recommendation in this regard is the establishment of Aboriginal reference groups at the local level.

### **RECOMMENDATION 1**

#### **Cultural Awareness Training**

It is recommended that current initiatives for cultural awareness training for all Legal Aid NSW staff be supported and that training be ongoing.

**RECOMMENDATION 2****Special Disadvantage Test**

It is recommended that any changes to the Special Disadvantage Test not specifically refer to Aboriginal people but refer to barriers arising from language, culture or lack of access to services due to remoteness.

**RECOMMENDATION 3****Cooperative Legal Service Delivery (CLSD) program**

While recognising that the CSLD program has led to some improvements in access to legal services by Aboriginal people, it is recommended that CLSD undertake initiatives to better include Aboriginal organisations in the CLSD process.

**RECOMMENDATION 4****Improving Office Space**

It is recommended that Legal Aid New South Wales office managers, in consultation with the Director, Aboriginal Services, develop strategies to improve office space through, for example, art exhibitions/competitions, copies of the *Koori Mail*, etc.

**RECOMMENDATION 5****Greater Flexibility in Service Delivery**

It is recommended that Legal Aid NSW through the Director, Aboriginal Services develop strategies for ensuring greater flexibility in service delivery. These strategies should include flexibility in the system for appointments with a trial 'drop in' initiative at one or more offices, an allowance for extra time when meeting with Aboriginal clients, and greater assistance for Aboriginal clients in the completion of legal aid forms.

**RECOMMENDATION 6****Improving Outreach**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for improving outreach both in areas where there are already existing Legal Aid offices and in rural and remote areas where there is at present no Legal Aid service. It is recommended that those strategies adopt the principles and cornerstones for services delivery outlined in this report.

**RECOMMENDATION 7****Employing Field Officers**

It is recommended that Legal Aid NSW recruit and employ Aboriginal people to work in a role of field officer; the statement of duties for the position to be developed in consultation with the Director of Aboriginal Services. It is recommended that minimum training for the position be the National Indigenous Legal Advocacy Course (or equivalent).

**RECOMMENDATION 8****Increased Use of Audio Visual Links for Legal Advice**

It is recommended that Legal Aid NSW develop the use of AVLs as part of their improvements in outreach services to Aboriginal communities. The use of AVLs should be adopted only when the concerns identified in this report have been satisfied.

**RECOMMENDATION 9****Skills and Resources**

Following Recommendation 29 from the Dimos (2008) report to Legal Aid NSW, we recommend that Legal Aid NSW take a lead role in skilling and resourcing Aboriginal people working in justice agencies on civil and family law.

**RECOMMENDATION 10****Community Legal Education**

It is recommended that targeted community-based promotion strategies on civil and family law services provided by Legal Aid NSW be developed for Aboriginal people. It is also recommended that targeted community legal education on civil and family law be developed for Aboriginal people. Targeted CLE strategies are best developed at the regional level and in response to identified local issues.

**RECOMMENDATION 11****Telephone Advice Line**

It is recommended that Legal Aid NSW discuss with the Aboriginal Legal Services (New South Wales/ACT) the desirability and feasibility of establishing a telephone advice line for Aboriginal people which covers criminal, civil and family law issues.

**RECOMMENDATION 12****Aboriginal Reference Group**

It is recommended that Legal Aid NSW offices, in consultation with the Director Aboriginal Services, establish Aboriginal Reference Groups to provide advice on matters relating to improved service delivery to Aboriginal communities and legal needs in local Aboriginal communities.



## **CHAPTER ONE**

### **INTRODUCTION AND BACKGROUND**

#### **1.1 Introduction and Research Questions**

This report addresses two broad research questions. The first is an analysis of the civil and family law needs of Aboriginal people<sup>1</sup> in New South Wales. The second arises out of this legal needs analysis and explores how Legal Aid NSW might improve the services that they provide to Aboriginal clients in the areas of civil and family law. The purpose of the research is to benefit Indigenous communities by improving access and equity through the provision of more effective and culturally sensitive services when dealing with civil and family law needs.

The research seeks to provide:

- A greater corporate understanding of the civil and family law needs of Aboriginal people based on consultation with Aboriginal communities;
- An understanding of what is successful in the current service delivery structure and what is not working;
- Strategies to enable Legal Aid NSW to deliver more effective civil and family law services to Aboriginal people in NSW so as to affect an increased usage of these services by Aboriginal clients.

The research was commissioned by Legal Aid NSW and was developed in consultation with the Director, Aboriginal Services, Legal Aid NSW. Oversight for the research was provided by a Legal Aid NSW Steering Committee (the Aboriginal Justice Committee).

#### **1.2 Structure of this Report**

The purpose of this report is to provide the following:

- An analysis of existing materials discussing Indigenous civil and family law needs and of current programs responding to those needs;
- A description of the available data of patterns of use of civil/family law services by Aboriginal clients;
- A discussion of the identified legal needs;
- A discussion of client and stakeholder satisfaction with the current system of service delivery to Aboriginal clients and identification of gaps in service delivery and barriers to the effective access to these services;
- Identification of possible changes to current Legal Aid NSW service delivery approaches through analysis of other Australian best practice and as proposed by clients and stakeholders;
- Recommendations as appropriate.

The report is divided into nine chapters and an Executive Summary.

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<sup>1</sup> A note on terminology: Legal Aid NSW uses the term Aboriginal to cover Indigenous people in New South Wales. We have followed their terminology. However we have used Indigenous or Aboriginal and Torres Strait Islander when the context is clearly national rather than specifically relating to New South Wales.

Chapter One provides an overview of the research and discusses existing knowledge and research relating to the civil and family law needs of Aboriginal people in New South Wales.

Chapter Two provides analysis of data provided by Legal Aid NSW on the usage by Aboriginal clients of Legal Aid NSW family and civil law services. This includes the provision of minor assistance as well as applications for and grants of aid.

The next four chapters provide an analysis of Aboriginal civil and family law needs. Each chapter addresses a number of areas of law and discusses the types and extent of legal needs that arise in those areas. This is done by drawing on material gleaned through sixteen focus groups and from stakeholder interviews.

Chapter Three discusses legal needs in family law, housing and tenancy, neighbourhood disputes and education.

Chapter Four continues the legal needs analysis, focussing on the civil law areas of employment, stolen wages and discrimination.

Chapter Five discusses social security, credit and debt, and consumer issues.

Chapter Six concludes the legal needs analysis, focussing on the areas of victim's compensation, accidents and injuries, and wills and estates.

Chapter Seven relies on the discussions held in the focus groups and stakeholder interviews to explore priority areas of legal need and the experiences that Aboriginal people have had when using Legal Aid as clients. It discusses barriers to effective service provision and identifies areas of potential improvement.

Chapter Eight discusses initiatives from other jurisdictions or organisations aimed at improving civil or family law services to Indigenous clients. This includes Legal Aid Commissions in jurisdictions other than NSW, community legal centres, and international initiatives.

Chapter Nine provides proposals for reform of Legal Aid services to better cater for the needs of Aboriginal clients as identified in this research.

### **1.3 Methodology**

This research examines Aboriginal people's legal requirements, how well they are currently met, and what can be done to improve access to and quality of services. It is a study of policy and practice in a practical context, which lends itself particularly to a qualitative research framework. The qualitative approach enabled an exploration of aspects of people's lives that civil and family law touches, about clients' experiences of legal services, and of the factors that inhibit use of those services. This research method enabled a relatively small number of interviews to provide information-rich data to facilitate insight into less quantifiable matters such as cultural, historical, environmental and other issues that impact on legal needs and the use of services, and into the attitudes and experiences of individuals towards those services. The sampling

method for stakeholder interviews and focus groups was purposive sampling (Sarantakos 2005: 164): focus group participants were selected by the Aboriginal focus group coordinator in each site, and the researchers purposefully selected key participants to ensure information rich interviews.

Quantitative data provided by Legal Aid NSW has also been utilised to evaluate the extent to which current civil and family law services are utilised by Aboriginal people in New South Wales. This use of quantitative data has added depth and breadth to the research analysis by providing empirical evidence as to the extent of access to services and the nature of the services being accessed.

The data that was received and analysed from Legal Aid NSW was, in the areas of civil and family law, by Indigenous and non-Indigenous status for 2007: minor assistance provided, applications for aid and grants of aid. Also requested was data relating to the usage by Aboriginal clients of the LawAccess NSW telephone advice service. This information was, however, unavailable.

### *1.3.1 Identification and Selection of Research Focus Sites*

Eight locations were chosen as focus sites where the qualitative research would take place. The selection of sites was made in consultation with Legal Aid NSW and sites were chosen for geographical distribution across the state, as well as to provide some representation of remote, rural, regional and urban communities.

Given that issues of practical access to services were important considerations in the research, the eight focus sites were chosen with reference to the Accessibility/Remoteness Index of Australia Plus (ARIA +)<sup>2</sup>. The definition of *very remote* is a place that is “locationally disadvantaged with little accessibility of goods, services and opportunities for social interaction”. The rural, regional and urban communities are based on moderately accessible, accessible and highly accessible access to goods and services. The research focus sites were:

Remote: **Bourke and Goodooga** (both classified as *very remote*).

Rural: **Tabulam and Moree**.

Regional: **Wagga and Dubbo** (Wagga and Dubbo are covered under the Legal Aid NSW CLSD program).

Urban: **Penrith** (including Mt Druitt) and **Redfern/Waterloo**.

### *1.3.2 Focus Groups: location and composition*

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<sup>2</sup> ARIA+ is widely accepted as Australia's most authoritative geographic measure of remoteness. Indexes of remoteness are derived from measures of road distance between populated localities and service centres. These road distance measures are then used to generate a remoteness score for any location in Australia, with values ranging from 0 (high accessibility) to 15 (high remoteness).

The qualitative research centred around focus groups held in each focus site. In each community, two focus groups were held, one for men and one for women. There were sixteen focus groups in total.

The focus groups were fundamental in gathering information about:

- the nature and extent of legal needs;
- levels of satisfaction with and effectiveness of current service delivery models;
- limitations of the current system;
- potential for effective change, where necessary.

To ensure the most optimum discussion forum, the men’s groups were facilitated by a male interviewer and the women’s groups by a female.

A local Aboriginal person was employed in each focus group community to arrange for an appropriate venue for the consultation and to ensure attendance by community members. In some locations one person was employed to coordinate the men’s focus group and another for the women’s, as appropriate. The researchers corresponded with the coordinators on a number of occasions leading up to the focus groups to discuss the research, expectations for the focus groups and practical arrangements.

Focus groups were sound recorded. Attendees were paid \$50 to cover any expenses arising from their participation and refreshments were provided.

It was envisaged that the focus groups would comprise a minimum of six members, with an optimum attendance of ten people per group.<sup>3</sup> Table 1.1 shows that in total there were 153 participants out of a possible 160. The male : female ratio overall was close to even (49.7 per cent male and 50.3 female per cent female participants).

**Table 1.1  
Location and Gender of Focus Group Participants**

Location	Focus Group Participants					
	Male		Female		Total	
	No	per cent	No	per cent	No	per cent
Bourke	12	57.1	9	42.9	21	100.0
Dubbo	7	41.2	10	58.8	17	100.0
Goodooga	9	45.0	11	55.0	20	100.0
Moree	9	60.0	6	40.0	15	100.0
Mt Druitt	9	47.4	10	52.6	19	100.0
Redfern	11	52.4	10	47.6	21	100.0
Tabulam	9	45.0	11	55.0	20	100.0
Wagga	10	50.0	10	50.0	20	100.0
Total	76	49.7	77	50.3	153	100.0

Table 1.2 shows that participants represented a spread of age groups from 18-24 years to those 55 years and older. The female participants tended to be older than the male participants with 41.6 per cent of the women participants being 45 years or older compared to 27.6 per cent of male participants.

<sup>3</sup> Between five and ten people is the optimum size for gathering information in this manner (Sarantakos 2005: 196).



**Table 1.2**  
**Age Range of Focus Group Participants**

Age	Focus Group Participants					
	Male		Female		Total	
	No	per cent	No	per cent	No	per cent
18-24	19	25.0	13	16.9	32	20.9
25-34	10	13.2	14	18.2	24	15.7
35-44	25	32.9	18	23.4	43	28.1
45-54	9	11.8	17	22.1	26	17.0
55+	12	15.8	15	19.5	27	17.6
Unknown	1	1.3	-	0.0	1	0.7
Total	76	100.0	77	100.0	153	100.0

A Participant Information Statement and Consent Form was provided to all Focus Group participants outlining the purpose of the research; the voluntary nature of participation and the ability to withdraw from the consultation at any time; an assurance of the confidentiality and anonymity of individuals in participating in the research; and the contact details of the researchers for any complaints or questions concerning the conduct of the research.

### *1.3.3 Focus Groups: process and discussion areas*

An information sheet distributed to focus group co-ordinators explained the structure of the focus groups as follows:

We will start with a questionnaire that will help explain exactly what we mean when we talk about civil/family law issues, and there will be opportunity for participants to talk about their experiences with the legal services that deal with civil/family law issues, including giving an opinion about whether these services do a good job and how they could do things better.

The focus group was semi-structured to provide participants with the opportunity to raise issues they considered important to them and to allow open discussion to explore new themes as they emerged. This approach allowed people to answer questions on their own terms but still provided structure for comparability (May 2001). The discussion included a range of common questions to allow comparison and to ensure that a focus was maintained on key themes central to the research (Patton 1990).

The focus group questionnaires<sup>4</sup> nominated specific areas of civil and family law and asked participants to identify whether any legal issues or problems had presented themselves in those areas over the last few years<sup>5</sup>; whether legal advice or assistance was sought; what the source of the legal assistance was; and whether they were satisfied with it. In this way, participants were able to identify how many legal incidents they had experienced and thus to give a picture of their legal needs. The

<sup>4</sup> The questionnaire can be found as Appendix A.

<sup>5</sup> The 'last few years' was selected rather than a specific time frame in recognition of the well documented differences in Aboriginal concepts of time.

questionnaires also provided information concerning the nature and frequency of legal assistance that participants were likely to seek, and the level of satisfaction with the current state of civil/family law legal services. The focus group facilitator read through all the questions aloud as they were being completed by the participants, to overcome potential literacy problems.

The guided discussion that constituted the second part of the focus group allowed participants to expand on the legal issues that they had experienced. Participants also identified barriers to accessing legal services and proposed the changes that they thought would be effective in overcoming the shortfalls that they had identified.

#### *1.3.4 Stakeholder Interviews*

Stakeholder interviews were used as a source of data collection to determine the experiences, perspectives and understandings of those providing legal or legal support services. Stakeholders were selected on the basis of their direct role in civil and family law service provision (or associated support services) to Aboriginal clients. The majority of stakeholders interviewed were those providing services in the focus sites. They included:

- a) Legal Aid NSW (family and civil law solicitors, office managers and Indigenous staff);
- b) Aboriginal and Torres Strait Islander Legal Services (ATSILS);
- c) Family Violence Prevention Legal Services (FVPLS)<sup>6</sup>;
- d) Local court registrars;
- e) Aboriginal court workers in local courts;
- f) Domestic Violence Court Assistance Schemes;
- g) Community Legal Centres;
- h) Aboriginal Medical Services;
- i) Community justice groups and elders groups;
- j) Alternative dispute resolution practitioners;
- k) Specialist legal services eg disability, tenancy services;
- l) Aboriginal community organisations such as men's groups, women's refuges, neighbourhood centres and other working groups.

Selected organisations providing state-wide services were also interviewed, including:

- a) Legal Aid NSW head office;
- b) Wirringa Baiya Women's Legal Centre;
- c) Women's Legal Resources Centre;
- d) Combined Community Legal Centres Group NSW.

The key questions for interviews with stakeholders concerned their perception of Aboriginal legal needs and the use and limitations of the current service provision model. Areas of discussion included:

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<sup>6</sup> For the purposes of this research, situations where family violence gives rise to family law, property law or other civil law issues, were treated as criminal matters.

- a) The most common types of non-criminal matters that Aboriginal people access the service for;
- b) The perceived nature and extent of the civil/family law needs of Aboriginal people;
- c) Current relationship of the service with Legal Aid and their understanding of Legal Aid policies that bear on the provision of civil and family law services to Aboriginal people;
- d) Perceived gaps in or barriers to current service delivery and proposed changes to increase access or effectiveness for Aboriginal clients.

Interviews were sound recorded. Participant Information Statement and Consent Forms were provided. Appendix B provides a list of all interviews with stakeholders.

### *1.3.5 Identification of Stakeholders*

Stakeholders were assured of their anonymity when they were interviewed for this research. To maintain that confidentiality we have identified stakeholders in a general way according to their service and provided their site location.

- Aboriginal court support staff, community justice group members, circle sentencing convenors, Indigenous Family Violence Prevention Legal Service staff, Domestic Violence Court Assistance Scheme staff are referred to as *Aboriginal legal support workers*. If the person is non-Aboriginal, then *legal support worker*;
- Non-Indigenous organisations providing support in the community (eg financial counsellor, etc) are referred to as *community organisation worker*. If the person is Aboriginal, then they are referred to as an *Aboriginal community organisation worker*.
- Community legal centre lawyers and private solicitors are referred to as *Legal practitioners*;
- Those working at Aboriginal and Torres Strait Islander Legal Services are referred to as *Aboriginal Legal Service staff members*. This includes solicitors and support staff.
- Legal Aid staff are referred to as *Legal Aid solicitors* or *Aboriginal Legal Aid staff members* (the latter includes both solicitors and support staff).

Given that there were multiple interviews with different Aboriginal and non-Aboriginal stakeholders in each location, the interviews have been numbered. So for example, *Aboriginal legal support workers 2 Bourke* refers to the second interview done with Aboriginal people working in a justice-related field in Bourke.

## **1.4 Service Delivery Context: Legal Aid NSW**

The focus of the provision of services by the Legal Aid Commission NSW to Aboriginal clients has been in criminal matters and family law services and to a much lesser extent civil law matters. Recent data suggests that Aboriginal clients comprised

7.7 per cent criminal law casework and advice services, 7.9 per cent of family law services and 3.0 per cent of civil law services (Legal Aid NSW, Aboriginal Justice Service Delivery Plan (Draft), 2). By 2009, Legal Aid NSW aims to increase the provision of civil law services to Aboriginal clients to 8 per cent of the total.

#### *1.4.1 Legal Aid/ATSILS Partnership*

A partnership has been formed between Legal Aid NSW and ATSILS to develop and enhance cooperation in service delivery, and Legal Aid NSW is committed to finding ways to “better support ATSILS in their role and start to strategically see where we can assist in that work, in order to compliment the work of ATSILS” (Legal Aid NSW, Aboriginal Justice Service Delivery Plan (Draft), 1). Legal Aid NSW is also committed to “developing partnerships with Aboriginal organisations and communities which provide equal roles and responsibilities for Legal Aid NSW and Aboriginal communities”. By 2009, Legal Aid NSW aims to double the number of services delivered in partnership with Aboriginal people from 3 (in 2007) to 6 (Legal Aid NSW, Aboriginal Justice Service Delivery Plan (Draft), 2).

#### *1.4.2 Legal Aid Outreach Service at ALS Offices*

Aboriginal Legal Services NSW/ACT (ALS)) and Legal Aid NSW signed a Protocol for the Delivery of Civil Law Services in February 2006. Legal Aid NSW agreed to provide a civil law outreach service at a number of ALS offices: Redfern, Parramatta, Nowra, Wollongong, Lismore and Taree.

The ALS outreach is a regular advice session provided by Legal Aid civil lawyers at the designated ALS office.

Appointments are made by the ALS. The clients assisted through the outreach service, are clients of Legal Aid NSW. Advice is given face to face or by phone if the client is unable to attend the ALS. Minor assistance is also given in most instances. This includes a wide variety of work such as negotiations to resolve a dispute, assistance with letter writing, completion of other documents, further investigations, referrals, etc. Grants of aid are made in appropriate cases for representation in legal disputes (Dimos 2008:35).

A recent review of the service found that “the outreach services are providing effective civil law services for Aboriginal people except that the service had ceased at two locations: Wollongong and Taree” (Dimos 2008:5). However it is also noted that, “in the absence of clear targets, it was not possible to review the outreach service against specifically measurable indicators” (Dimos 2008:35).

#### *1.4.3 CLSD*

The Cooperative Legal Service Delivery Program is a regionally based approach to legal service delivery in New South Wales that aims to improve outcomes for economically and socially disadvantaged people by building cooperative and strategic networks of key legal services and community organisations.

The CLSD program’s three main objectives are to ensure that:

- economically and socially disadvantaged people are able to efficiently and effectively access legal services which can help them to understand, protect and enforce their legal rights and interests;
- consideration is given to legal need and equity in the provision of legal services and resources; and
- planning and delivery of legal services is approached in a coordinated and cooperative manner between service providers.<sup>7</sup>

Aboriginal Legal Services are one of the key services that may make up the regional coalition in a CLSD site.

#### *1.4.4 Rural Client Services Strategy*

The Strategy sets out the key priorities of the Commission in improving access to its services for rural clients. It recognises that geographic isolation remains a real obstacle to accessing services, particularly legal services, for people living in regional and rural areas of the State.

The Strategy includes:

- The Regional Solicitors Program;
- Outreach services in a large number of regional centres;
- Telephone services;
- Duty solicitor programs;
- Practitioner panels.

#### *1.4.5 Aboriginal Service Delivery Plan*

The Aboriginal Justice Service Delivery Plan (AJSDP) is a two-year plan which looks at ways that Legal Aid NSW can better address the needs of Aboriginal people.

The Plan looks towards:

- the development of sustainable partnerships between Legal Aid NSW and Aboriginal communities;
- fair and appropriate legal representation, advice and information for Aboriginal people;
- outcome driven service delivery programs focusing on unmet legal needs as identified by Aboriginal people, particularly in family and civil law;
- a workforce more reflective of its Aboriginal client base.

### **1.5 Service Delivery Context: Community Legal Centres**

Community Legal Centres (CLCs) have received support from the Combined Community Legal Centre's Group (CCLCG) for initiatives aimed at providing effective and culturally appropriate services to Aboriginal people. The Aboriginal Legal Access Program (ALAP), administered by CCLCG and funded since December 2006 through the Public Purposes Fund, is a state-wide program which aims to

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<sup>7</sup> Cooperative Legal Service Delivery Program factsheet, <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=708>, 1.

increase access by Aboriginal people to legal services and awareness among Aboriginal people of their legal rights and the legal services available to them. (CCLCG 2007: 1).

ALAP has a grants scheme which provides funds to individual CLCs within NSW to support or develop projects aimed at improving the access of Aboriginal people to CLCs and to legal services more generally. Part of its strategy is to focus on “forming two-way links between CLCs and Aboriginal communities so that Aboriginal people know what their legal rights are and where to get legal assistance” (CCLCG 2007: 1).

CLCs have been able to access funding through ALAP to continue to operate established long term Aboriginal Legal Access programs that are threatened by funding cuts; to develop new initiatives for improving Aboriginal peoples access to legal services; and to respond to urgent arising needs relating to Aboriginal peoples access to legal services (CCLCG 2007: 2). Recipients of grants and the projects are shown in Appendix C. It is noteworthy that a substantial number of projects involved the employment of an Aboriginal access worker or the establishment of outreach projects. An overview of existing services for Aboriginal clients in NSW CLCs is shown in Appendix D.

### **1.6 Importance of a Legal Needs Analysis for Aboriginal People in Civil and Family Law**

It has been long recognised that Indigenous people in Australia have a high level of complex legal needs that are often not met by existing legal services or public legal aid. The 1994 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) showed that 17 per cent of Aboriginal persons aged 13 years and over reported using legal services during the previous twelve months (ABS 1994, 57). The proportion of Indigenous people in the 2002 NATSISS survey who reported using legal services in the previous twelve months had risen to 20 per cent (ABS 2002, 4). Those who needed legal services but did not use them had almost doubled from 1.6 per cent to 3.1 per cent between the 1994 and 2002 surveys (ABS 2002, 32). It has been previously estimated that some 31 per cent of the Indigenous people in Australia require some kind of legal service – criminal, family or civil (Office of Evaluation and Audit 2003: 3.4).<sup>8</sup>

Research into the legal needs of Aboriginal and Torres Strait Islander people has been largely focussed on the area of criminal law. This is due primarily to the over representation of Indigenous people in the criminal justice system. The demand for assistance in criminal matters means that ATSILS predominantly provide legal aid services for criminal matters (89 per cent of case and duty matters in 2001-2; compared with only 2 per cent family matters and 2 per cent violence protection matters) (Senate Legal and Constitutional References Committee 2004: 5.5).

A growing demand for child protection, civil and family law matters has also been identified and ATSILS report being unable to service this demand due to insufficient

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<sup>8</sup> Quoting the 1994 National Aboriginal and Torres Strait Islander Social Survey (NATSISS). No similar calculations have been provided for the 2002 survey data.

funding (Senate Legal and Constitutional References Committee 2004: 5.6, 5.14).<sup>9</sup> The reasons are various: the cost of establishment of a civil law practice is prohibitive (Joint Committee of Public Accounts and Audit (2005): 2.20)<sup>10</sup>; family law is a ‘paper-driven’ jurisdiction requiring time and specialised skills<sup>11</sup>; private practitioners often choose not to service remote communities for civil or family matters, thus limiting the possibilities for referral (Joint Committee of Public Accounts and Audit (2005): 2.28-30).

Geographical isolation is also a major inhibitor to access to justice for Indigenous communities. In remote communities, access to justice is “so inadequate that remote Indigenous people cannot be said to have full civil rights”.<sup>12</sup>

### *1.6.1 Access to Justice*

A sound understanding of the non-criminal law needs of Indigenous people is essential in ensuring access to justice. Inaccessibility of family and civil law services compromises the ability of Indigenous people to realise their full legal entitlements. It also introduces a danger that civil or family law issues can escalate to criminal acts, resulting in charges and a perpetuation of the cycle of criminal overrepresentation (Senate Legal and Constitutional References Committee (2004): 2.41)<sup>13</sup>

Improved understanding and servicing of the legal needs of Indigenous communities across a range of civil law spheres - housing, consumer rights, credit and debt, employment law, negligence, corporations law and so on – will assist in the provision of effective access to authorities currently under-utilised by Indigenous communities, such as Ombudsmen, the Consumer, Trade and Tenancy Tribunal, the Anti-Discrimination Board and HREOC, the Administrative Decisions Tribunal, the Industrial Relations Commission and the Victims Compensation Tribunal. Improved access to legal services for Indigenous people, particularly in remote communities, and particularly in relation to civil law, is likely to ultimately assist in the necessary infrastructure for economic development.

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<sup>9</sup> See also 5.14 (submission of the Katherine Regional Aboriginal Legal Aid Service).

<sup>10</sup> The establishment of a civil practice necessitates an initial injection of funds (estimated by SRACLS to be around \$250,000-\$300,000) which will only begin to be recovered around 18 months later. Scant funding does not allow ATSILSs to invest in civil practice in this way. Further, funding bodies do not acknowledge in their allocations the greater costs of running non-criminal matters, thus disincentivising the undertaking of civil matters (which effectively sacrifices taking on comparatively more criminal matters): see Joint Committee of Public Accounts and Audit (2005) at 2.24-5.

<sup>11</sup> See SEALS submission to Joint Committee of Public Accounts and Audit (2005) at 2.21.

<sup>12</sup> Top End Women’s Legal Service submission in Senate Legal and Constitutional References Committee (2004): 5.120. See also House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (1980): 11; Recommendation 32 of Senate Legal and Constitutional References Committee (2004).

<sup>13</sup> And SEALS submission quoted at 2.23.

### 1.6.2 Existing Barriers to Accessing Justice

It is important to acknowledge that existing barriers that Indigenous people face in accessing legal services have been relatively well identified in various reports over the years. Recent reports include Senate Legal and Constitutional References Committee (2004); Joint Committee of Public Accounts and Audit (2005) and Cunneen and Schwartz (2008). We mention briefly three areas of importance: socio-economic disadvantage, cross cultural issues and language issues.

#### Issues of Disadvantage

Aboriginal people in New South Wales face well documented disadvantages in the areas of education, housing, employment, income and health. The 2007 *Overcoming Indigenous Disadvantage Report* provides clear documentation of these issues in New South Wales and other States and Territories. While there have been some improvements in some areas (such as educational levels), other areas have not changed (for example, the prevalence of hearing loss). The level of Indigenous disadvantage remains entrenched. Some categories of disadvantages are particularly relevant to client's needs and the requirements placed on legal representatives.

- Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population and are less likely to progress beyond Year 9 at school and to complete Year 12. Aboriginal people are less likely to have a post-school qualification than the non-Indigenous population (DAA 2008:34-42);
- Hearing loss arising from ear disease is much higher among Indigenous people of all ages up to 55 years of age. Between 2001 and 2005 there has been no change in the overall prevalence of hearing problems among Indigenous children (SCROGSP 2007: 5.25);
- Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people) (SCROGSP 2007:8);
- Indigenous people are twice as likely to have experienced high levels of psychological distress than non-Indigenous people (SCROGSP 2007: 9.41).

In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with (ABS 2002; SCROGSP 2007).

#### Cross Cultural Issues

Cultural awareness is crucial to providing effective legal service to Indigenous people. While this is particularly the case in more traditionally-oriented communities, it is true in all Indigenous contexts. Provision of services – legal advice, education and advocacy – to Indigenous people can be complex and far more time consuming than comparable work in non-Indigenous communities (Senate Legal and Constitutional References Committee 2004: 5.108).

Cross cultural issues cover a broad range of matters including who has the right to speak, Indigenous kinship relations, gratuitous concurrence, eye contact, and temporal and spatial definitions.



## Language issues

In some Indigenous communities, English is a second, third or fourth language and is not spoken at home. In metropolitan communities, Aboriginal English may be spoken, and lack of training in the nuances of this language may mean that understanding between client and lawyer is compromised (Senate Legal and Constitutional References Committee 2004: 5.102-103).

In a 2002 Office of Evaluation and Audit survey, 13 per cent of ATSILS practitioners reported having difficulty in understanding what their clients were saying 'very often/often', and a further 50 per cent had difficulties 'sometimes'. Practitioners also reported problems with the client understanding what *they* were trying to convey. The reasons given for these communication issues included the clients' shyness or discomfort (65 per cent); their having a disability which hindered communication (51 per cent); their inability to communicate adequately in English (40 per cent); and their lack of comprehension of legal process (77 per cent) (Office of Evaluation and Audit 2003:3.6.4.1).

Adding to these difficulties is the fact that Indigenous kinship relations can determine who should speak, and the subject matter about which particular people can speak. These restrictions can effect the giving of evidence or the participation in processes like mediation and conferencing (New South Wales Law Reform Commission 2000). These issues impact on the ability to provide legal services. For example, lack of literacy hampers communication by mail; hearing loss requires particular understanding and skill in interviewing.

It has been noted that:

The legal needs of Indigenous clients are complex, not only involving several areas of law, but also a range of cultural issues that require a multiplicity of skills in the legal service provider. The ability to attract, train and retain high quality legal advocates is essential if requirements of fairness and equality before the law are to be met (Cunneen and Schwartz 2008:43).

### **1.7 Previous Research: Legal Needs**

There have been relatively few large-scale surveys of legal needs in Australia, and none of the large scale surveys concentrated specifically on Indigenous people. The first major legal needs survey was conducted by Cass and Sackville (1975) among three disadvantaged communities in Sydney.

In the Cass and Sackville study it was found that 69 per cent of people reported experiencing at least one problem situation in the previous five years. Incidence rates varied over the six categories: accommodation (44 per cent), accident (35 per cent), consumer (21 per cent), police (13 per cent), money (12 per cent) and family (9 per cent).

A legal needs survey was conducted by the Australian Bureau of Statistics (ABS) in association with Legal Aid NSW as an adjunct to the October 1990 ABS Labour

Force Survey. The legal needs survey had a relatively narrow focus, asking respondents whether they had experienced a small number of predefined legal events (11) in the previous year. The majority of people surveyed (81 per cent) had not experienced a legal event in the previous year (Fishwick 1992). The most common event experienced was conveyancing followed by wills, damage and accidents.

The Australian Government Attorney-General's Legal Aid Branch commissioned research on legal needs for matters arising under Commonwealth law and did not examine legal needs for matters arising under state/territory law (Rush 1996, 1999). Rush (1999) reported that 23 per cent of the low-income people surveyed experienced a need for legal assistance in relation to a Commonwealth matter over the past two to three years.

### *1.7.1 The New South Wales Law And Justice Foundation Legal Needs Research Reports*

The most recent large scale legal needs survey was conducted by Coumarelos et al (2006) for the New South Wales Law and Justice Foundation. The survey was conducted in 2003 via telephone interviews in three suburban areas within Sydney (Campbelltown, Fairfield, South Sydney), one major provincial centre (Newcastle) and two rural/remote areas of NSW (Nambucca, Walgett). The areas were selected on the basis that they had a relatively high risk score for cumulative socioeconomic disadvantage (Vinson 1999), covered geographically diverse areas of NSW, included an area with a relatively high Indigenous population (Walgett), and included an area that is culturally and linguistically diverse (Fairfield). The estimated survey response rate was between 24 and 34 per cent (Coumarelos et al 2006:xvii).

Of particular relevance to the current research, the Coumarelos survey covered 76 civil law events which were categorised into 11 groups (accident/injury, business, consumer, credit/debt, education, employment, government, health, housing, human rights and wills/estates) and one group of nine family law events. It also covered 16 criminal law events categorised into three groups (domestic violence, general crime and traffic offences).

The major findings of the study were:

- A relatively high incidence of legal events over a one-year period. Over two-thirds of participants reported experiencing one or more legal events in the previous 12 months, suggesting a high level of legal need across the six disadvantaged regions. The 10 most frequent types of legal events were general crime (experienced by 27 per cent of all participants), housing (23 per cent), consumer (22 per cent), government (20 per cent), accident/injury (19 per cent), wills/estates (15 per cent), employment (12 per cent), credit/debt (12 per cent), family (9 per cent) and education (7 per cent) events;
- Some individuals, such as those with a chronic illness or disability, experienced a wide range of legal events and reported higher rates for most types of events. Indigenous people had a higher incidence of credit/debt, employment and family events. Indigenous people also had a lower incidence of wills/estates events. People at different life stages tended to experience

different types of legal events (eg credit/debt, government and housing events peaking at 25 to 34 years; family events peaking at 35 to 44 years; wills/estates and employment events peaking at 45 to 54 years);

- A substantial rate of inaction in response to legal events. Respondents sought some sort of help, advice or information for just over half of the events they reported;
- Traditional legal advisers, such as private lawyers, local courts, Legal Aid NSW, LawAccess NSW, Aboriginal legal services and community legal centres (CLCs), were used very rarely—in only 12 per cent of cases where help was sought. In three-quarters of the cases where help was sought, only non-legal advisers were consulted, including friends and family, and non-legal professionals;
- A substantial proportion of people experienced barriers in seeking help. The most frequent types of barriers identified in obtaining help from all advisers were difficulty getting through on the telephone (18 per cent), delays in getting a response (17 per cent), difficulty getting an appointment (11 per cent), the lack of local or easily accessible services (8 per cent), problems with opening hours (8 per cent) and difficulty affording the assistance (6 per cent). Respondents in rural or remote areas also had to travel considerable distances in some cases to access services;
- A high rate of satisfaction with the outcome of events that had been resolved. However, some types of events appeared to be genuinely more difficult to resolve. Accident/injury and wills/estates events had relatively high resolution rates while business, employment, government, health and family events had relatively low resolution rates (Coumarelos et al 2006: xviii-xxiv).

The main conclusions drawn from the research included the need for:

- more accessible legal services;
- general community legal information and education;
- tailored legal education, information, advice and assistance services to meet the specific needs of different groups and individuals;
- non-legal professionals acting as gateways to legal services;
- improved coordination between different legal services;
- a more coordinated response from legal and non-legal services for people with multiple legal and non-legal needs (Coumarelos et al 2006: xxiv-xxv).

The New South Wales Law and Justice Foundation commissioned a series of reports on various specific aspects legal needs including:

- The role of non-profit agencies assist with access to justice (Scott and Sage 2001);
- The legal needs of older people in New South Wales (Ellison, Schetzer, Mullins, Perry and Wong 2004);

- The legal needs of homeless people in New South Wales (Forell, McCarron and Schetzer 2005);
- The legal needs of people with a mental illness in New South Wales (Karras, McCarron, Gray and Ardasinski 2006);
- The legal needs of prisoners (Grunseit, Forell and McCarron 2008).

These reports contain limited information in relation to Indigenous people. For example four of the thirty homeless people interviewed were Indigenous. The report also notes that Indigenous people have higher rates of homelessness than non-Indigenous people in New South Wales (Forell et al 2005: 27, 46-47). In the legal needs of prisoners study, some 27 per cent of the prisoner interviewees were Indigenous (Grunseit et al 2008: 44). However the analysis of prisoner's legal needs does not specifically consider the needs of Indigenous prisoners.

## **1.8 Previous Research: Indigenous Legal Needs**

Very little research has been conducted that specifically addresses the question of Indigenous legal needs nationally or Aboriginal legal needs in New South Wales.

### *1.8.1 Hawkesbury Nepean Community Legal Centre Study*

One of the few local studies to look specifically at Aboriginal legal needs was research organised by the Hawkesbury Nepean Community Legal Centre (Beyond Consulting 2003). The purpose of the research was to determine the legal needs of Aboriginal people in the area of western Sydney covered by the community legal centre.

The research covered civil, criminal and family law. Participants were asked to rank the three most important legal issues for their community. Financial matters and police matters both scored the highest, followed by family matters, criminal matters and discrimination matters.

The types of financial matters that were identified included investments, loan applications and agreements, bankruptcy applications and credit and debt in general. Family law matters included legal advice and assistance in divorce, child residency arrangements and property settlements. In relation to discrimination, legal advice and assistance was required to lodge complaints with agencies such as the New South Wales Anti-Discrimination Commission and the Human Rights and Equal Opportunity Commission (Beyond Consulting 2003:33).

Other matters noted as requiring assistance included:

- Wills (legal advice and assistance in drafting and registration);
- Care for the aged (legal advice and assistance particularly in situations where an older person was suffering dementia or mental illness and power of attorney or guardianship was required);
- Employment law (legal advice and assistance in relation to awards, rates of pay, employment conditions, unfair dismissal and discrimination);
- Contract law (legal advice and assistance where people become involved in businesses with no prior experience);

- People with disabilities (People with disabilities require legal advice and assistance in a wide range of matters);
- Tenancy advice (the rate of evictions would indicate the need for tenancy rights education);
- Education (the rights of parents in relation to the Department of Education and Training was raised, particularly given the high rates of school suspensions) (Beyond Consulting 2003:36).

It was also noted that Aboriginal people need assistance in relation to matters involving the Department of Community Services (Beyond Consulting 2003:33) and consumer rights (Beyond Consulting 2003:34).

### *1.8.2 Previous Legal Aid NSW Reviews and Evaluations*

In 2003 Legal Aid NSW conducted a review of civil law services provided by the Commission. It found that few Aboriginal people were aware of the scope of the law and the range of services available for non-criminal problems, particularly in the housing law and consumer areas. “In fact, most people may be unaware that they have a legal problem for which they should be seeking advice” (cited in Dimos 2008:5).

The 2003 Review was a wide ranging review of the delivery of civil law Legal Aid services in NSW. The 2003 Review noted the high level of unmet civil law legal need experienced by Aboriginal communities due to the lack of accessible civil law services. As a result, Aboriginal people and their communities were identified as the first LA NSW priority client group (See Dimos 2008: 23-24). At the time of the 2003 Review, Aboriginal people were 2.6 per cent of the Family and Civil Law Division’s clients.

A more recent Legal Aid NSW report noted that this lack of knowledge by Aboriginal people was still an issue (Dimos 2008:5).

In March 2008 the review of the ALS civil outreach service provided by Legal Aid NSW was completed (Dimos 2008). The review considered:

- The effectiveness of outreach civil law services currently provided to Aboriginal communities by Legal Aid NSW;
- Ways to improve the coordination and delivery of outreach services (including their location and structural responsibility within Legal Aid New South Wales and the development of appropriate liaison points with other organisations);
- Gaps in service provision (either as to existing services or the need for new services);
- Greater collaboration between Legal Aid NSW and Aboriginal services (including but not limited to the ALS);
- The development of a consistent state-wide approach to the delivery of civil law outreach services to Aboriginal communities through training and guidelines;
- Data collection and reporting requirements (including the need to monitor performance and quality standards).

As noted above (s1.4.2), the review found that the outreach services are providing effective civil law services for Aboriginal people. However, “in the absence of clear

targets, it was not possible to review the outreach service against specifically measurable indicators” (Dimos 2008:35).

Other significant findings of the review in the context of the current research were:

- There was consistent feedback that not only were communities generally unaware of the ALS outreach service, but other legal aid partners in the community legal sector (including Wirringa Baiya and LawAccess) were also unaware of the service (Dimos 2008:55);
- There is a need for Cultural Awareness and other Training for LA NSW staff (Dimos 2008:56);
- Feedback has demonstrated that the most effective service is that where there is “continuity” of service. (Dimos 2008:59);
- LA NSW staff should actively seek out key people working at local government and non government agencies, particularly Community Justice Groups and Aboriginal Client Service Specialists, that provide services for Aboriginal people, to build awareness about LA NSW civil law services, build relationships of trust and cooperation and gain a better understanding of options for venues for outreach services that are likely to be effectively accessed by Aboriginal people. (Dimos 2008:63);
- Feedback received through consultations, consistently drew attention to the need for Aboriginal people to have a better understanding of what “civil law” encompasses, how lawyers can assist in resolving problems they are experiencing and the range of services available for assistance to deal with civil law problems. However, the consultations were generally in agreement that community legal education (CLE) as traditionally understood is of limited value (Dimos 2008:72);
- There is potential in educative initiatives that are developed in consultation with communities and are specifically targeted to meet an identified, practical need ... A model found to be effective by pro bono providers, involves providing CLE for an identified legal need such as will drafting. Advice is given concurrently with the delivery of a will drafting service for the community. The lawyers take instructions from participants and prepare wills for execution before they depart the respective outreach location (Dimos 2008:72).

The report made 38 recommendations, including that the Civil Law ALS Outreach should continue with other improvements, and recognising the need for flexibility that allows for the service to be provided in ways appropriate for each community (see Recommendation 1).

## **1.9 Definition of Legal Needs**

There is no simple consensus on the meaning of the concept of ‘legal needs’. The *Justice Made to Measure* report notes that, “While there is general agreement that

actively seeking a legal resolution to a problem reflects the existence of some form of legal need, there is little consensus about what else indicates the existence of legal need.”

The current study avoids a narrow approach to defining legal need as pertaining only to those problems where a legal resolution may be sought. Failure to seek a legal resolution to an issue may indicate a number of different possibilities, including:

- the individual’s lack of awareness that the issue is a legal one or that the issue has a potential legal resolution;
- failings in the legal system (e.g. barriers to efficient, inexpensive legal resolution);
- the existence of other, non-legal means for resolution (Schetzer et al. 2002).

Lack of awareness that an issue has a particular or potential legal resolution may be particularly important in regard to Indigenous people because of their long term historical position as second class citizens without equal civil and political rights (Chesterman and Galligan, 1997). One might expect that systemic discrimination in access to civil rights (for example, to various social security benefits, workplace protections, or to control bank accounts) may have had longer term consequences in a contemporary lack of knowledge of potential legal remedies to various problems.

We follow Genn’s (1999) approach that does not rely on respondents’ legal knowledge for the identification of legal problems. As quoted in the *Justice Made to Measure* report, Genn’s study measures ‘justiciable events’ where a justiciable event is: “a matter ... which raised legal issues, whether or not it was recognised by the respondent as being ‘legal’ and whether or not any action taken ... involved ... the civil justice system” (Genn 1999:12).

As *Justice Made to Measure* notes, “the advantage of this approach is that it minimises the under-reporting of legal issues by allowing for the inclusion of legal issues that are handled outside the justice system, legal issues that are not always recognised as such, and legal issues that are ignored or remain unresolved.”

Thus we define legal needs<sup>14</sup> as arising:

- in situations that are generally thought of as involving a legal problem (e.g. family law dispute);
- in situations that have legal consequences (e.g. making a will);
- in situations that potentially have legal implications or remedies, but may not always be recognised as such (e.g. dispute with Centrelink in relation to payments).

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<sup>14</sup> Law and Justice Foundation (2006) uses the term ‘legal event’. However, we do not see any advantage in moving away from the more commonly understood concept of ‘legal need’.





## **CHAPTER TWO**

### **ABORIGINAL USE OF LEGAL AID CIVIL AND FAMILY LAW SERVICES**

The purpose of this chapter is to discuss the current use made by Aboriginal people of the civil and family assistance provided by Legal Aid NSW. Legal Aid NSW provided data on applications by Aboriginal and non-Aboriginal people for legal aid in civil law and family law matters for 2007. This data included:

- Applications for civil aid;
- Grants of civil aid;
- Provision of minor assistance for civil aid;
- Applications for family aid;
- Grants of family aid; and
- Provision of minor assistance for family aid.

We have analysed applications and grants of aid by Indigenous status but also by gender, highlighting some of the important differences in the use of legal aid services by Aboriginal men and Aboriginal women.

#### **2.1 Legal Aid for Civil Law Matters**

The following discussion of legal aid for civil law matters distinguishes between applications for aid, successful grants of aid and minor assistance. In the first section we discuss the applications by Aboriginal and non-Aboriginal people for 2007<sup>15</sup>.

##### *2.1.1 Applications for Civil Aid*

Table 2.1 shows the number of applications for grants of Legal Aid in various categories of civil law by Indigenous status. It shows that 4.6 per cent (169) of the total number of applications (3506) came from Aboriginal clients. According to the 2006 Census, Aboriginal and Torres Strait Islander people comprised 2.2 per cent of the New South Wales population. Aboriginal people have a rate of applications for civil law assistance at 114 per 100,000 of their respective population, compared to a non-Indigenous rate of 52.6 per 100,000.<sup>16</sup>

Table 2.1 shows that for Aboriginal people the three most common civil law areas for which applications were made for legal aid in 2007 were in mental health (19.5 per cent), personal injury/accidents (16.6 per cent) and in miscellaneous civil matters (12.4 per cent). These constituted 48.5 per cent of all applications for aid by Aboriginal clients. Consumer issues represented another 10.7 per cent of cases.

In comparing the two groups, mental health was also the largest category for non-Aboriginal applications (15.1 per cent). However the next major categories were consumer issues (13.9 per cent) and veterans' affairs (12 per cent). Other matters

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<sup>15</sup> All data in relation to use of Legal Aid NSW relates to calendar years rather than financial years.

<sup>16</sup> All population figures used in this chapter are based on estimated residential populations from the 2006 Census (see DAA 2008: 11-14).

where there were a greater percentage of Aboriginal applications compared to non-Aboriginal applications included discrimination and harassment, employment, and civil matters arising from crime. Those areas with comparatively few Indigenous matters included social security, immigration, and administrative law.

**Table 2.1**  
**Applications for Civil Aid by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	5	3.0	303	8.6
Civil Matters Arising From Crime	8	4.8	63	1.8
Civil Miscellaneous	21	12.4	365	10.4
Civil Obsolete	0	0.0	10	0.3
Civil Other – Commonwealth	1	0.6	1	0.0
Civil Other – State	4	2.4	15	0.4
Consumer	18	10.7	487	13.9
Debt (non-consumer)	0	0.0	13	0.4
Discrimination & Harassment	13	7.7	140	4.0
Employment	5	3.0	49	1.4
Environment / Neighbours	0	0.0	12	0.3
Human Rights / Civil Liberty	0	0.0	23	0.7
Immigration	0	0.0	143	4.1
Landlord / Tenant	9	5.3	164	4.7
Matters Following Death	13	7.7	168	4.8
Mental Health	33	19.5	528	15.1
Personal Injury & Accidents	28	16.6	189	5.4
Phone/Counter Enquiry General Law	0	0.0	9	0.3
Professional Negligence	4	2.4	39	1.1
Public Interest	0	0.0	13	0.4
Real Property	5	3.0	185	5.3
Social Security	2	1.2	165	4.7
Veterans	0	0.0	418	12.0
Wills/Estates	0	0.0	4	0.1
Total	169	100	3506	100

Table 2.2 provides more detailed analysis of the major categories for Aboriginal applications: mental health, personal injury and accidents, and civil miscellaneous.

**Table 2.2**  
**Applications for Civil Aid by Indigenous Status and Most Common Type of**  
**Matter. Legal Aid NSW 2007**

<b>Type of Matter</b>	<b>No</b>	<b>%</b>
<b>Mental Health</b>		
Civil Commitment	1	3.0
Financial Management	4	12.2
Forensic Patient	24	72.7
Guardianship	3	9.1
Mental Health Appeals	1	3.0
Total	33	100.0
<b>Personal Injury &amp; Accidents</b>		
Assault (Civil)	4	14.3
Other Personal Injury	1	3.6
Personal Injury	5	17.9
Personal Injury - Motor Vehicle	1	3.6
Victims Compensation	17	60.7
Total	28	100.0
<b>Civil Miscellaneous</b>		
Common Law Negligence	1	4.8
Government Depts / Instrumentalities (Civil Law)	4	19.0
Other Civil Matter – State	12	57.1
Other Matters Miscellaneous – State	4	19.0
Total	21	100.0

Table 2.2 shows that nearly three quarters of mental health matters (72.7 per cent) were related to forensic patients – that is people whose requirement for Legal Aid assistance arose via their contact with the criminal justice system because of their mental health status.

In the personal injury and accidents category, 60.7 per cent of matters related to victim’s compensation and a further 14.3 per cent to civil claims arising from assaults. Thus 75 per cent of matters where civil assistance was sought under the personal injury category related specifically to assault matters.

Legal Aid NSW practitioners in several regional locations have identified the following issues as some that may fall within the ‘Civil Miscellaneous’ category: restitution orders; advice on how to take out and enforce AVOs; disputes with family members; disputes with community members; governance advice for organisations<sup>17</sup>.

<sup>17</sup> Two other explanations for the frequency of use of the ‘civil miscellaneous’ category were suggested by Legal Aid NSW staff. One suggestion was that it is used, particularly in some regional offices, for circumstances where advice or assistance is given to Aboriginal clients for matters that do not fall strictly within the Legal Aid guidelines, but where it was judged that assistance should be granted in any case for the purposes of building relationships with that community. The other suggestion was that recording matters as ‘civil miscellaneous’ may reflect that the data is being

### 2.1.2 Applications for Civil Aid by Gender

There are important gendered differences in terms of the use of Legal Aid. Table 2.3 shows that 96 of the 169 applications by Aboriginal people for legal aid in 2007 were made by Aboriginal women. This comprised 57 per cent of the total number of Aboriginal applications. Aboriginal women have a rate of applications for civil law assistance at 129.4 per 100,000 of their respective population, compared to an Aboriginal male rate of 98.6 per 100,000.

Interestingly, the gendered nature of non-Aboriginal applications for civil law aid is the reverse to Aboriginal applications. In 2007, non-Aboriginal women represented 39.8 per cent of all non-Aboriginal applicants and non-Aboriginal men were 60.2 per cent. Thus Aboriginal women are the majority of Aboriginal applications for civil aid, and non-Aboriginal men are the majority of non-Aboriginal applications.

**Table 2.3**  
**Aboriginal Applications for Civil Aid by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	2	2.7	3	3.1
Civil Matters Arising From Crime	3	4.1	5	5.2
Civil Miscellaneous	9	12.3	12	12.5
Civil Other – Commonwealth	0	0.0	1	1.0
Civil Other - State	0	0.0	4	4.2
Consumer	7	9.6	11	11.5
Discrimination & Harassment	7	9.6	6	6.3
Employment	0	0.0	5	5.2
Landlord / Tenant	1	1.4	8	8.3
Matters Following Death	6	8.2	7	7.3
Mental Health	22	30.1	11	11.5
Personal Injury & Accidents	11	15.1	17	17.7
Professional Negligence	2	2.7	2	2.1
Real Property	0	0.0	2	2.1
Social Security	0	0.0	2	2.1
<b>Total</b>	<b>70</b>	<b>100</b>	<b>96</b>	<b>100</b>

N=166. 3 missing 'male' cases

Not only do Aboriginal women have a higher rate of application for legal aid for civil law matters, but Table 2.3 points to some important differences in the type of civil aid applications between Aboriginal men and women. Applications for civil aid relating to mental health were 18.6 percentage points higher for Aboriginal men – the greatest difference across any category. One might assume this is directly related to legal aid

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recorded by Legal Support Officers at first contact with clients, who may not have a specific enough sense of the matter to be able to categorise it more appropriately than as 'miscellaneous'. This then may not be revisited by the practitioner who sees the client. Cf Recommendation 17 by Dimos (2008) which picks up on this issue:

Recommendation 17: It is recommended that the civil law program develop standards for data recording, to ensure that all services are consistently captured and accurately recorded.

for forensic patients arising from contact with the criminal justice system. Landlord / tenant matters and employment were areas where there were proportionately more applications by Aboriginal women than men. Generally speaking, the applications by Aboriginal women were spread more widely across the range of civil law matters than those by Aboriginal men.

### *2.1.3 Successful Grants of Legal Aid for Civil Law Matters*

Table 2.4 shows the number of grants of aid in 2007 to Aboriginal and non-Aboriginal clients. This means that the client has successfully applied for a grant of aid, having met the relevant eligibility tests.<sup>18</sup>

Table 2.4 shows that Aboriginal recipients of Legal Aid NSW grants accounted for 5.1 per cent of the total 2488 civil aid grants made in 2007. It also shows that the most common types of matters for which Legal Aid grants were made to Aboriginal clients were mental health, consumer, and personal injury/accidents matters. Together, these matter types constituted 54 per cent of all grants of civil law aid to Aboriginal clients. Although 'civil miscellaneous' was a major category for Aboriginal applications for aid (see 2.1.1), applications relating to consumer issues were more likely to be granted.

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<sup>18</sup> For civil law matters, these tests include:

- the types of matters for which legal aid is available, and
- the tests which must be applied before a grant of legal is made to an applicant including:
  - a means test
  - a merit test,
- the availability of funds test, and, where applicable,
- the special disadvantage test.

See [Legal Aid NSW Policy Online Section 6.2](#), accessed on 26 October 2008. Where a client is granted legal aid, this may be either an unlimited grant (extending for the entire legal proceedings), or a limited grant (up to a specified stage of the proceedings): see [Legal Aid NSW Policy Online Ch 13.1](#) accessed on 26 October 2008.

**Table 2.4**  
**Successful Grants for Civil Aid by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	<5*	<4.0	171	7.2
Civil Matters Arising From Crime	6	4.8	38	1.6
Civil Miscellaneous	11	8.7	121	5.1
Civil Obsolete	0	0.0	10	
Civil Other – state	<5	<4.0	<5	<0.2
Consumer	16	12.7	316	13.3
Debts (non-personal)	0	0.0	<5	<0.2
Discrimination & Harassment	11	8.7	73	3.1
Employment	<5	<4.0	19	0.8
Environment/Neighbours	0	0.0	<5	<0.2
Human Rights / Civil Liberty	0	0.0	28	1.2
Immigration	0	0.0	132	5.6
Landlord / Tenant	6	4.8	100	4.2
Matters Following Death	8	6.3	100	4.2
Mental Health	34	27.0	488	20.7
Personal Injury & Accidents	18	14.3	80	3.4
Phone/Counter enquiry general law	0	0.0	<5	<0.2
Professional Negligence	<5	<4.0	14	0.6
Public Interest	0	0.0	10	0.4
Real Property	5	4.0	116	4.9
Social Security	<5	<4.0	132	5.6
Veterans	0	0.0	399	16.9
Wills / Estates	0	0.0	<5	<0.2
<b>Total</b>	<b>126</b>	<b>100.0**</b>	<b>2362</b>	<b>100.0**</b>

\* Where the number <5 has been used the exact figure was not provided by Legal Aid New South Wales for reasons of confidentiality.

\*\*The percentage column will not add-up to 100 per cent because of the missing numbers <5. In these cases we have indicated that the relative percentage will be less than 4 per cent in the case of Aboriginal matters and less than 0.2 per cent in the respective non-Aboriginal matters.

While consumer and mental health issues also came in the top three most common civil law matters for which aid was granted for non-Aboriginal applicants (comprising 34 per cent of all grants of aid to that group), the second most common legal issue for which a grant of aid was made to non-Aboriginal clients was for veterans' affairs (16.9 per cent).<sup>19</sup> There were no grants of aid made to Aboriginal people for veterans' matters. Generally speaking, the grants of aid to non-Aboriginal clients were spread more widely across the range of civil law matters than those for Aboriginal clients.

The number of grants for civil aid in 2007 cannot be directly measured against the number of applications in 2007 because an application in 2007 might not be dealt with until 2008, while some of the grants made in 2007 will relate to applications made in 2006. However, we noted above in section 2.1.1 that Aboriginal *applications* for civil

<sup>19</sup> These matters were made up overwhelmingly of appeals against decisions pertaining to eligibility and entitlements (288 out of 399).

aid comprised 4.4 per cent of all applications in 2007. We noted here that Aboriginal grants for civil aid comprised 5.1 per cent of all grants made in 2007. This does suggest that Aboriginal applications for civil aid are more likely to be successful than non-Aboriginal applications.

Table 2.5 provides more detailed analysis of the major categories for Aboriginal grants: mental health, personal injury and accidents, and consumer.

**Table 2.5  
Grants for Civil Aid by Indigenous Status and Most Common Type of Matter.  
Legal Aid NSW 2007**

<b>Type of Matter</b>	<b>No</b>
<b>Mental Health</b>	
Forensic Patient	28
Guardianship	3
Financial Management	1
Mental Health Appeals	1
Civil Commitment	1
<b>Total</b>	<b>34</b>
<b>Personal injury and accidents</b>	
Victims Compensation	12
Personal Injury	1
Assault (Civil)	3
Other Personal Injury	1
Personal Injury - Motor Vehicle	1
<b>Total</b>	<b>18</b>
<b>Consumer</b>	
Consumer Debt	3
Money Owed By Applicant	2
Consumer Contracts, Sale Of Goods	5
Credit Act / Consumer Credit Code	1
Consumer Protection	3
Insurance Contracts	1
Money Owed To Applicant	1
<b>Total</b>	<b>16</b>

Although the numbers are small, Table 2.5 shows that the most common mental health matters relate to forensic patients, most consumer matters involved personal debt issues (at least 7 out of 16), and the most common personal injury matters arose out of assaults (15 out of 18). Again it is worth noting that the mental health and personal injury matters comprised largely criminal justice or crime related matters.

#### *2.1.4 Grants of Civil Aid by Gender*

Table 2.6 shows that of the 126 civil law grants of aid made to Aboriginal clients in 2007, the majority (59 per cent) were made to Aboriginal women. The gender

breakdown is the opposite for grants to non-Aboriginal people. In 2007, non-Aboriginal women received 38 per cent of grants (909 out of 2362). The fact that Aboriginal women comprised 57 per cent of applications in 2007 and 59 per cent of grants in 2007 also suggests that Aboriginal women are slightly more likely to be successful in their applications for civil aid than Aboriginal men.

**Table 2.6**  
**Aboriginal Grants for Civil Aid by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	1	1.9	2	2.7
Civil Matters Arising From Crime	2	3.8	4	5.4
Civil Miscellaneous	3	5.8	8	10.8
Civil Other - State	0	0.0	3	4.1
Consumer	6	11.5	10	13.5
Discrimination & Harassment	6	11.5	5	6.8
Employment	0	0.0	3	4.1
Landlord / Tenant	0	0.0	5	6.8
Matters Following Death	3	5.8	5	6.8
Mental Health	23	44.2	11	14.9
Personal Injury & Accidents	4	7.7	14	18.9
Professional Negligence	0	0.0	1	1.4
Real Property	3	5.8	2	2.7
Social Security	0	0.0	1	1.4
Total	51	100.0	74	100.0

N=125. 1 missing 'male' case

The matters for which grants of civil aid were made to Aboriginal clients differed by gender. The most common matter type for Aboriginal men was in the area of mental health (44.2 per cent; 19 of these 23 were for matters relating to forensic patients). Personal injury/accidents was the most common matter type for which Aboriginal women received grants of aid (10 of those 14 being in relation to victims compensation). Mental health was the next most common legally aided civil law issue for women (at 14.9 per cent). Similar to applications for civil aid, grants of aid for Aboriginal women tended to be spread more widely across the range of civil law matters than those by Aboriginal men.

## 2.2 The Provision of Minor Assistance for Civil Law Matters

Minor assistance is an extension of an advice service and usually involves a legal practitioner assisting a client with writing a letter or with filling out court documents. It is normally a 30-minute session and is at the discretion of the legal practitioner providing the minor assistance.<sup>20</sup>

<sup>20</sup> Legal Aid NSW Policy Online, 13: *Types of Grants: 13.6.3 Minor Assistance*  
<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=29&sectionid=1183>



Table 2.7 sets out the number of matters for which minor assistance was provided in 2007 by Indigenous status. The data shows that a total of 2230 people (130 Aboriginal and 2100 non-Aboriginal) received minor assistance from Legal Aid NSW in 2007. Aboriginal people comprised 5.8 per cent of the total number of clients receiving minor assistance. The rate for Aboriginal civil minor assistance was 87.7 per 100,000 of the respective population compared to a non-Aboriginal rate of 31.5 per 100,000.

**Table 2.7**  
**Civil Minor Assistance by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Administrative Law	6	4.6	188	9.0
Civil Matters Arising From Crime	3	2.3	5	0.2
Civil Miscellaneous	39	30.0	355	17
Consumer	24	18.5	254	12.1
Discrimination & Harassment	9	6.9	11	0.5
Employment	8	6.2	33	1.6
Environment / Neighbours	0	0.0	23	1.1
Landlord / Tenant	5	3.8	46	2.2
Matters Following Death	7	5.4	44	2.1
Mental Health	4	3.0	24	1.1
Personal Injury & Accidents	14	10.8	48	2.3
Phone/Counter Enquiry General Law	1	0.8	48	2.3
Professional Negligence	4	3.1	14	0.7
Public Interest	1	0.8	0	0.0
Real Property	3	2.3	35	1.7
Veterans	2	1.5	972	46.3
Total	130	100.0	2100	100.0

Table 2.7 shows that the most common matters for which Aboriginal clients received minor assistance were for miscellaneous civil matters, consumer issues and personal injury and accidents. Together, these areas comprised almost 60 per cent of matters for which minor assistance was provided. In contrast, veterans' affairs made up 46.3 per cent of minor assistance matters where the client was non-Aboriginal (and only 1.5 per cent where the client was Aboriginal).

These most common matter groups for civil minor assistance provided to Aboriginal clients are further broken down as follows:

**Table 2.8**  
**Civil Minor Assistance by Indigenous Status and Most Common Type of Matter.**  
**Legal Aid NSW 2007**

Type of Matter	No
<b>Civil Miscellaneous</b>	
Government Depts / Instrumentalities (Civil Law)	6
Motor Vehicle Property Damage	4
Other Civil Matter - State	12
Other Matters Miscellaneous – State	17
Total	39
<b>Consumer</b>	
Consumer Contracts, Sale Of Goods	3
Consumer Debt	6
Contract Dispute	3
Contracts Review Act	1
Credit Act / Consumer Credit Code	1
Insurance Contracts	2
Money Owed By Applicant	7
Money Owed To Applicant	1
Total	24
<b>Personal Injury &amp; Accidents</b>	
Assault (Civil)	3
Personal Injury	2
Personal Injury - Motor Vehicle	1
Public Liability Claim	1
Victims Compensation	7
Total	14

Twenty nine of the civil miscellaneous matters are unspecified in nature in the data provided (see 2.1.1 above).<sup>21</sup> Of the 24 consumer matters, 14 related to personal debt (58 per cent) and 10 of the 14 personal injury matters were assault related.

### *2.2.1 Provision of Civil Minor Assistance by Gender*

Table 2.9 shows that of the 130 Aboriginal clients who received civil law minor assistance from Legal Aid NSW in 2007, 62 per cent were women and 38 per cent were men. In contrast, the breakdown is the opposite for minor assistance rendered to non-Aboriginal people. In 2007, non-Aboriginal women accessed 33.5 per cent of minor assistance (703 out of 2,100) compared with 66.5 per cent provided to non-Aboriginal men (1,396).

<sup>21</sup> Note that there is a comparable percentage of such matters for non-Aboriginal clients.

Aboriginal women have a rate for civil minor assistance at 109.2 per 100,000 of their respective population, compared to an Aboriginal male rate of 66.2 per 100,000.

**Table 2.9**  
**Aboriginal Civil Minor Assistance Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Administrative Law	4	8.2	2	2.5
Civil Matters Arising From Crime	1	2.0	2	2.5
Civil Miscellaneous	19	38.8	20	24.7
Consumer	5	10.2	19	24.5
Discrimination & Harassment	2	4.1	7	8.6
Employment	2	4.1	6	7.4
Landlord / Tenant	1	2.0	4	4.9
Matters Following Death	5	10.2	2	2.5
Mental Health	1	2.0	3	3.7
Personal Injury & Accidents	4	8.2	10	12.3
Phone/Counter Enquiry General Law	1	2.0	0	0.0
Professional Negligence	0	0.0	4	4.9
Public Interest	0	0.0	1	1.2
Real Property	2	4.1	1	1.2
Veterans	2	4.1	0	0.0
Total	49	100.0	81	100.0

The 'civil miscellaneous' category was the largest proportion of minor assistance for both Aboriginal men and women. A quarter of all minor assistance for Aboriginal women were consumer matters compared to only 10.2 per cent for men. Similar to grants of aid for Aboriginal women, minor assistance for Aboriginal women tended to be spread more widely across the range of civil law matters than those by Aboriginal men.

### **2.3 Legal Aid for Family Law Matters**

The following discussion on legal aid for family law matters distinguishes between applications for aid, successful grants of aid and minor assistance. In the first section we discuss the applications by Aboriginal and non-Aboriginal people for 2007.

#### *2.3.1 Applications for Family Law Aid*

Table 2.10 shows that there were 3385 applications by Aboriginal people and 40721 for legal aid in family law matters in 2007. Aboriginal applications accounted for 7.7 per cent of the total number of applications. Aboriginal people have a rate of applications for family law aid at 2284.4 per 100,000 of their respective population, compared to a non-Indigenous rate of 610.6 per 100,000.

Table 2.10 shows that the vast majority of Aboriginal applications were for matters involving children (50.3 per cent) and care and protection issues (41.0 per cent). These represented 91.3 per cent of all Aboriginal applications – slightly higher than

applications in these areas by non-Aboriginal clients (89.7 per cent). It is also noteworthy that although care protection matters were the second largest group for both Aboriginal and non-Aboriginal applications, Aboriginal applications were 13.1 percentage points higher than non-Aboriginal applications.

**Table 2.10**  
**Applications for Family Aid by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	1391	41.0	11372	27.9
Child Representation	44	1.3	361	0.9
Child Support	69	2.0	755	1.9
Children	1701	50.3	25152	61.8
Contempt	9	0.3	201	0.5
Family Law Other	123	3.6	1727	4.2
Injunctions	0	0.0	18	0.0
Phone/Counter Enquiry	0	0.0	2	0.0
Property	6	0.2	85	0.2
Property & Maintenance	39	1.2	1013	2.5
Spouse Maintenance	3	0.1	35	0.1
Total	3385	100.0	40721	100.0

Table 2.11 provides more detailed analysis of the major categories for Aboriginal applications for family law aid: children and care and protection.

The ‘children’ category in Table 2.11 relates to matters under the Family Law Act. The majority of the applications involve the residence of children (64.6 per cent) now referred to as ‘live with’ under the Family Law Act amendments of 2006. The second major type of matter relates to contact with the child (23.9 per cent) now referred to as ‘spend time with’.

**Table 2.11**  
**Applications for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Contact	8	0.5
Hague Convention (Child Abduction)	2	0.1
Independent Children's Lawyer	17	1.0
Live With	1098	64.6
Location / Recovery Order	117	6.9
Parenting Plan	6	0.4
Relocation Application (Child)	4	0.2
Residence	7	0.4
Specific Issues	36	2.1
Spend Time With	406	23.9
Total	1701	100.0
<b>Care And Protection</b>		
Abuse	1	0.1
ADR For Care Proceedings	6	0.4
Alternative Parenting Plan (By Consent)	1	0.1
Appearances On Instructions	162	11.6
Application To Vary/Rescind	63	4.5
Assessment Order	24	1.7
Breach Of Undertaking / Supervision	5	0.4
Children's Independent Legal Representative	269	19.3
Consent Orders (Care Plan)	22	1.6
Emergency Care And Protection Order / Extend ECPO	76	5.5
Final Care Orders	275	19.8
Interim Care Application	113	8.1
No Adequate Provision	275	19.8
Variation / Rescission	99	7.1
Total	1391	100.0

In Table 2.11 the three major types of matters under care and protection are final care orders (19.8 per cent), no adequate provision (neglect) (19.8 per cent) and acting as the child's independent legal representative (19.3 per cent).

### *2.3.2 Applications for Family Law Aid by Gender*

Table 2.12 shows that 60 per cent of the total applications made by Aboriginal people for family legal aid in 2007 were made by women. There was a similar percentage of applications for family law aid made by non-Aboriginal women (62 per cent or 25141 of a total of 40721 non-Aboriginal applications).

**Table 2.12**  
**Aboriginal Family Aid Applications by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Care And Protection	566	42.2	825	40.5
Child Representation	25	1.9	17	0.8
Child Support	18	1.3	51	2.5
Children	660	49.3	1033	50.8
Contempt	2	0.1	7	0.3
Family Law Other	58	4.3	65	3.2
Property	0	0.0	6	0.3
Property & Maintenance	11	0.8	28	1.4
Spouse Maintenance	0	0.0	3	0.1
Total	1340	100	2035	100

N=3375. Missing Cases = 10.

There was little difference on the basis of gender across the various categories of matters for which aid was sought. Aboriginal men and women sought legal aid for similar issues: primarily children and care and protection.

### 2.3.3 Successful Grants for Family Law Aid

Table 2.13 shows the number of grants of family legal aid in 2007 to Aboriginal and non-Aboriginal clients, where the client has successfully applied for a grant of aid and met the relevant eligibility tests.<sup>22</sup>

**Table 2.13**  
**Successful Grants for Family Law Aid by Indigenous Status and Category of Matter. Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	1325	45.1	10750	31.5
Child Representation	43	1.5	351	1.0
Child Support	55	1.9	561	1.6
Children	1391	47.4	20621	60.4
Contempt	5	0.2	145	0.4
Family Law Other	91	3.1	1153	3.4
Injunctions	0	0.0	8	0.0
Property	4	0.1	46	0.1
Property and Maintenance	19	0.6	496	1.5
Spouse Maintenance	2	0.1	22	0.1
Total	2935	100.0	34153	100.0

<sup>22</sup> For Legal Aid policy on family law grants of aid see Legal Aid NSW Online Policy, 5.2.1 *Family law matters for which Legal Aid NSW will grant legal aid*, <<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=758&cid=993&policyid=1&chapterid=23&sectid=3727>>, accessed on 29 October 2008. Commonwealth family law matters have most stringent tests.

Table 2.13 shows that Aboriginal recipients of Legal Aid grants accounted for 7.9 per cent of total family law grants made in 2007. The most common categories of matters for which grants were made to Aboriginal clients were for care and protection and child related matters. Together, these matter types constituted 92.5 per cent of all grants of family aid to Aboriginal clients. The proportion was similar for non-Aboriginal clients (91.9 per cent). However, care and protection formed a greater proportion of Aboriginal successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and children matters under the Family Law Act were 13 percentage point lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).

As we noted with grants for civil aid in 2007, family law grants cannot be directly measured against the number of applications in 2007 because an application in 2007 might not be dealt with until 2008, while some of the grants made in 2007 will relate to applications made in 2006. However, we noted above in section 2.3.1 that Aboriginal *applications* for family law aid comprised 7.7 per cent of all applications in 2007. We noted here that Aboriginal *grants* for family law aid comprised 7.9 per cent of all grants made in 2007. This suggests that Aboriginal applications for family law aid are as successful, or perhaps slightly more successful, compared with non-Aboriginal applications.

The categories of matters most common in grants of family law aid to Aboriginal clients were children and care and protection matters. Table 2.14 shows these categories in more detail.

As we noted with applications for family aid, family law matters relating to residence and contact with children were the major matters for which legal aid was granted for Aboriginal clients (64.1 per cent and 23.2 per cent respectively). Legal aid for recovery orders comprised 7.5 per cent in the 'children' category. Under care and protection, final care orders, no adequate provision (neglect) and the child's independent legal representative comprised just on 60 per cent of the matters.

**Table 2.14**  
**Grants for Family Law Aid by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Live With	891	64.1
Spend Time With	323	23.2
Independent Children's Lawyer	17	1.2
Location / Recovery Order	105	7.5
Specific Issues	32	2.3
Contact	7	0.5
Residence	7	0.5
Parenting Plan	6	0.4
Relocation Application (Child)	3	0.2
Total	1391	100.0
<b>Care And Protection</b>		
Children's Independent Legal Representative	259	19.5
No Adequate Provision	264	19.9
Final Care Orders	270	20.4
Appearances On Instructions	157	11.8
Emergency Care And Protection Order / Extend ECPO	73	5.5
Interim Care Application	110	8.3
Variation / Rescission	95	7.2
Application To Vary/Rescind	44	3.3
Assessment Order	24	1.8
Consent Orders (Care Plan)	19	1.4
Breach Of Undertaking / Supervision	5	0.4
ADR For Care Proceedings	4	0.3
Alternative Parenting Plan (By Consent)	1	0.1
Total	1325	100.0

#### 2.3.4 Grants for Family Law Aid by Gender

Table 2.15 shows that 1760 successful applications by Aboriginal people for family legal aid in 2007 were made by women compared to 1167 for men. Aboriginal women had 60.1 per cent of successful Aboriginal applications. This was similar to the proportion of successful applications by non-Aboriginal women (61.5 per cent or 20,919 out of a total of 13,105 non-Aboriginal applications).



**Table 2.15**  
**Aboriginal Family Aid Grants by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal Male		Aboriginal Female	
	No	%	No	%
Care And Protection	532	45.6	793	45.1
Child Representation	25	2.1	16	0.5
Child Support	13	1.1	42	2.4
Children	548	47.0	837	47.6
Contempt	2	0.2	3	0.2
Family Law Other	41	3.5	50	2.8
Property	0	0.0	4	0.2
Property & Maintenance	6	0.5	13	0.7
Spouse Maintenance	0	0.0	2	0.1
Total	1167	100	1760	100.0

Table 2.15 shows that the categories of family law grants were similar for Aboriginal men and Aboriginal women.

#### **2.4 The Provision of Minor Assistance for Family Legal Aid Matters**

As noted previously, minor assistance is an extension of an advice service and usually involves a legal practitioner assisting a client with writing a letter or with filling out court documents. It is normally a 30-minute session.

Table 2.16 shows that minor assistance was provided to 180 Aboriginal people and 2819 non-Aboriginal people in 2007. Aboriginal recipients of minor assistance in family law accounted for 6 per cent of all clients. Aboriginal people have a rate of minor assistance for family law at 121.5 per 100,000 of their respective population, compared to a non-Indigenous rate of 42.3 per 100,000.

**Table 2.16**  
**Family Minor Assistance by Indigenous Status and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Aboriginal		Non-Aboriginal	
	No	%	No	%
Care And Protection	17	9.4	75	2.6
Child Representation	0	0.0	3	0.1
Child Support	51	28.0	739	26.2
Children	66	37.0	771	27.4
Contempt	0	0.0	3	0.1
Divorce	4	2.2	321	11.4
Family Law Other	34	19.0	493	17.5
Family Law Obsolete	2	1.1	99	3.5
Injunctions	0	0.0	6	0.2
Phone/Counter Enquiry	4	2.2	200	7.1
Property	2	1.1	106	3.8
Spouse Maintenance	0	0.0	3	0.1
Total	180	100.0	2819	100.0

Table 2.16 shows that the most common types of matters for which family law minor assistance was provided to Aboriginal clients concerned children, child support and 'other' family law matters. Together, these constituted 84 per cent of all minor assistance to Aboriginal clients.

These most common matter groups for family minor assistance provided to Aboriginal clients are further broken down as follows:

**Table 2.17**  
**Family Minor Assistance by Indigenous Status and Most Common Type of Matter. Legal Aid NSW 2007**

Type of Matter	No	%
<b>Children</b>		
Live With	22	33.3
Location / Recovery Order	4	6.1
Parenting Plan	1	1.5
Specific Issues	2	3.0
Spend Time With	37	56.1
Total	66	100.0
<b>Child Support</b>		
Appeal From SSAT Decision	3	5.9
Child Support Declaration	37	72.5
Child Support Forum	2	3.9
Child Support Kit	1	2.0
CSA Change Of Assessment	3	5.9
Parentage Testing	5	9.8
Total	51	100.0
<b>Family Law Other</b>		
Family Law Other - Commonwealth	34	100.0
Total	34	100.0

The matters involving children concerned overwhelmingly residence (33.3 per cent) and access issues (56.1 per cent). The majority of child support inquiries pertained to seeking a declaration of paternity for child support purposes (37 out of 51 or 72.5 per cent).

Table 2.18 shows that 128 of the total of 180 Aboriginal people receiving minor assistance from Legal Aid NSW in 2007 were women. Thus Aboriginal women were 71.1 per cent of all Aboriginal people receiving minor assistance. For family law aid by non-Aboriginal clients in 2007, non-Aboriginal women represented 65.6 per cent of minor assistance clients.

**Table 2.18**  
**Aboriginal Family Minor Assistance by Gender and Category of Matter.**  
**Legal Aid NSW 2007**

Category of Matter	Male		Female	
	No	%	No	%
Care And Protection	5	9.6	12	9.4
Child Support	8	15.4	43	33.6
Children	30	57.7	36	28.1
Divorce	2	3.8	2	1.6
Family Law Other	4	7.7	30	23.4
Family Law Obsolete	1	2.0	3	2.3
Property	1	2.0	1	0.8
Total	52	100	128	100

Table 2.18 shows that there were differences between Aboriginal men and women on the nature of the minor assistance which was sought. Men were more likely than women to seek assistance in relation to children under the Family Law Act – presumably mainly residence and access (57.7 per cent for men compared to 28.1 per cent for women). Aboriginal women were much more likely than men to seek assistance about child support (33.6 per cent compared to 15.4 per cent) and to seek advice on family law ‘other’ matters (23.4 per cent compared to 7.7 per cent).

## 2.5 Conclusion

The profile of Aboriginal civil law applications, grants and minor assistance differed in various ways from non-Aboriginal aid in this area. Two striking differences were the different gender profile with Aboriginal women being the majority among Aboriginal clients, while men were the majority among non-Aboriginal clients. A second difference was in the type of matters for which assistance was sought. For example, mental health matters were more pronounced among Aboriginal clients and veteran affairs among non-Indigenous clients.

The main findings from this section of the research in relation to civil law show that in 2007:

- Aboriginal people comprised 4.6 per cent of civil aid applications, 5.1 per cent of grants of civil aid and 5.8 per cent of clients receiving minor assistance for civil aid. The rate of Aboriginal applications for civil aid and minor assistance per 100,000 of population was more than twice the non-Aboriginal rate.
- The most common civil law applications for Aboriginal people were, in order, mental health (19.5 per cent), personal injury/accidents (16.6 per cent), miscellaneous civil matters (12.4 per cent) and consumer issues (10.7 per cent). The most common grants of civil legal aid were for mental health (27 per cent), personal injury/accident (14.3 per cent) and consumer (12.7 per cent).

- Many of the mental health (forensic patient) and personal injury matters (victim's compensation and civil assault) were generated through crime or contact with the criminal justice system.
- Aboriginal women were the majority of Aboriginal applicants for civil aid (57 per cent), for grants of civil aid (59 per cent) and of Aboriginal clients receiving minor assistance for civil aid (62 per cent).
- Mental health was a major category for Aboriginal male applications for civil aid (30 per cent) and for grants of civil aid (44.2 per cent). Aboriginal women's applications for civil aid and grants of civil aid were spread across a broader range of civil law areas. For Aboriginal women personal injury was the most frequent category for applications (17.7 per cent) and grants of civil aid (18.9 per cent).

The main findings from this section of the research in relation to family law show that in 2007:

- Aboriginal people comprised 7.7 per cent of family aid applications, 7.9 per cent of grants of family aid and 6 per cent of clients receiving minor assistance for family aid. The rate of Aboriginal applications for family aid and minor assistance per 100,000 of population was more than three times (applications) and twice (minor assistance) the non-Aboriginal rate.
- The most common family law categories of applications for Aboriginal people were, in order, 'children' (primarily, residence and contact) (50.3 per cent), and care and protection (41 per cent). The most common grants of family legal aid were for 'children' (47.4 per cent) and care and protection (45.1 per cent). The most common categories for minor assistance were for 'children' (37 per cent), child support (28 per cent) and family law 'other' (19 per cent).
- Care and protection matters and 'children' matters under the Family Law Act were the dominant categories in both Aboriginal and non-Aboriginal grants of family law aid. However, care and protection formed a greater proportion of Aboriginal successful grants than was the case with non-Aboriginal grants (45.1 per cent compared to 31.5 per cent) and 'children' matters under the Family Law Act were 13 percentage points lower for Aboriginal grants (47.4 per cent compared to 60.4 per cent).
- The categories of family law grants were similar for Aboriginal men and Aboriginal women clients. However, there were gender differences with minor assistance. Aboriginal women were much more likely than men to seek assistance about child support and Aboriginal men were more likely than women to seek assistance in relation to children under the Family Law Act.

## **CHAPTER THREE**

### **LEGAL NEEDS ANALYSIS : FAMILY, HOUSING, NEIGHBOURS AND EDUCATION**

In this chapter we discuss four areas of legal need: family, housing, neighbours and education. The analysis is based on the information collected from the survey and discussion in the focus groups, as well as through the interview material collected from various stakeholders.

#### **3.1 Family Law**

The following discussion is broadly divided between issues arising around children and issues about property which may have arisen after a divorce or separation. The major area of concern for Aboriginal people concerns children, either in terms of residence and contact arising from partner separation, or in relation to removal of children by DOCS.

Interviews with stakeholders confirmed that access to children, custody issues between partners and care and protection were major matters. A significant issue was the lack of knowledge and access to family law.

Some of the main issues I see particularly with family law is that we don't access it...which then gives not many of our people legal status in family law. Historically the legal system has never been in favour of women and children and Aboriginal people, so I think that's one of the main reasons, and I guess we mostly keep our family business internal as well... in family breakdowns, mum and dad just decide among themselves, which isn't appropriate, because dad may decide he'll just come and take the kids, or the old people step in if the parents aren't doing well, and then they've got no legal support, and basically the child has no legal status (*Aboriginal legal support workers 1, Dubbo*).

If we have a dispute [with family law] we try to work it out ourselves. We don't want to bring in lawyers because it costs money. Where are these blackfellas going to get money for lawyers? (*Tabulam Men's FG participant*).

##### *3.1.1 Children*

Focus group participants were asked whether over the last couple of years, they had any problems concerning residence (custody) or contact arrangements (access) in relation to their children or grandchildren. Overall 17.2 per cent of participants identified an issue relating to custody or access. Table 3.1 shows that Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

**Table 3.1**  
**Number and Percentage of Focus Group Participants Who Identified Family Law Issues Relating to Custody and Access to Children**

Family Law	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	10	13.5	16	20.8	26	17.2
No	64	86.5	61	79.2	125	82.8
<b>Total</b>	74	100.0	77	100.0	151	100.0

Excludes 2 missing cases

Focus group participants were also asked whether they had had any problems in relation to children being taken into care, or problems about fostering, adoption or guardianship. Overall 16.2 per cent of participants identified an issue relating to care matters. As shown in Table 3.2 Aboriginal women were more than twice as likely (22.5 per cent) to identify such an issue than men (9.9 per cent).

**Table 3.2**  
**Number and Percentage of Focus Group Participants Who Identified a DOCS Related Matters**

DOCS Matters	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	7	9.9	16	22.5	23	16.2
No	64	90.1	55	77.5	119	83.8
<b>Total</b>	71	100.0	71	100.0	142	100.0

Excludes 11 missing cases

Some 20 participants (15 women and 5 men) indicated the nature of the problem. As shown in Table 3.3, the most frequently mentioned issue related to custody matters, followed by assistance from DOCS and access issues. Matters related to the extended family were also evident (grandchildren, nephews and nieces and broader kinship).

**Table 3.3**  
**Nature of Family Law / DOCS Problems**

	No
Custody	6
Assistance from DOCS	4
Access	4
Custody of grandchildren	3
Nephews/ Nieces Placed in Care	2
Kinship Care	1

There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS:

I'll get a bomb and put it underneath them and blow them up (*Dubbo Women's FG participant*).

DOCS – you don't mess with them – they've got a lot of power. They don't tell you about the allegations. They just say they are coming to check (*Moree Men's FG participant*).

I think they forget who they give the kid to sometimes (*Dubbo Women's FG participant*).

Stakeholder interviews indicated that the removal of children by DOCS was a major concern in various communities.

Since I returned to Walgett, all I'm hearing is that DOCS are taking kids (*Aboriginal legal support workers 1 Walgett*).

DOCS remove the children far from the family, and family find it hard to get to the child by public transport – in remote places there is no direct route (*Aboriginal legal support worker 2 Bourke*).

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed.

DOCS sends a letter to a mother to come to court and she appears without representation, not realising that she is there to answer an application to take her kids. She has no legal support then in that proceeding (*Aboriginal legal support worker 2 Bourke*).

It would be good if there was an Aboriginal liaison officer here so the family could come and tell them 'there's an aunty who can take the kid', to avoid children being moved to a different town. Otherwise there is no alternative presented to the magistrate other than the recommendation by DOCS about what should happen (*Aboriginal legal support workers 1 Walgett*).

What we need is if we can get people aware of their rights and get some advice from a solicitor beforehand. Instead, what happens is that the kids are going into care with very little fight. There is no one there to stand up for the mother to say 'yes, I've made mistakes, but how about some support services to help me become a better mother?' (*Aboriginal legal support worker 2 Bourke*).

There was a view that parents do whatever DOCS tell them:

They accept what's going on, they are very much in the dark... We as Aboriginal people still regard DOCS as a power that we can't reckon with. We as a group of people are still scared of DOCS and we won't take them on...

When people are dealing with DOCS, because of the intimidation factor, a lot of people just don't know where they can go if they believe something went wrong there, because DOCS is an organisation that is like, 'well, this is the way it's going to go'. They are not aware that they have the right, if need be, to fight the decision that has been made. Regardless of the outcome, people should be aware that they have the right to question the decision (*Aboriginal legal support workers 1 Penrith/Mt Druitt*).

### 3.1.2 Accessing Legal Advice

Stakeholder interviews confirmed that there are difficulties accessing information about family law issues.

They come to us but we don't really know much about it. Because it is a touchy subject, isn't it? Criminal law stuff, we spin out a lot of that stuff because we do it all the time (*Aboriginal legal support workers 1 Walgett*).

Our clients find it difficult understanding the forms, difficult understanding the process (*Aboriginal legal support workers 1 Dubbo*).

I think Aboriginal people have lost a lot of our children to family law, because we just haven't gone to court, if it is against a non-Aboriginal person, they're more powerful, they've got more money, so we've lost our children, and then it appears that we didn't really want our children (*Aboriginal legal support workers 1 Dubbo*).

Analysis of the surveys indicated that very few people sought legal advice in relation to the issues around family law and DOCS associated matters (14.9 per cent). Although the numbers were small, Table 3.4 shows that Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

**Table 3.4**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	8.6	10	23.3	15	14.9
No	53	91.4	33	76.7	86	85.1
<b>Total</b>	58	100.0	43	100.0	101	100.0

Excludes 52 missing cases

Of the 15 individuals who indicated they sought legal advice, 13 specified who they had received the advice from:

- Aboriginal Legal Service (8)
- Legal Aid (3)
- Private solicitor (2)

Nine of the 14 who sought legal advice were satisfied with the advice. Although the numbers are very small, it is worth noting that two of the three people who sought advice from Legal Aid NSW were not satisfied with the advice they received. The particular issues that arise for Aboriginal people approaching Legal Aid for family law advice was outlined by one Aboriginal Legal Aid staff member:

With family law matters involving DOCS, that's a difficult one. Because it's a government department, and it does not seem, for a lot of Indigenous people, that you can go to one government department and say that another



government department did something. That idea is very much entrenched. They don't realise that just because one government department tells them one thing doesn't necessarily mean that Legal Aid Commission is going to back that other government department (*LAC Aboriginal staff member 5*).

A number of focus group participants expressed frustration at the lengthiness and outcomes of custody proceedings, although this did not necessarily translate into dissatisfaction with their legal representative:

I'm seeking custody of my five grandchildren through DOCS. They're slow...very slow. I've been to court five or six times, trying to get more visit rights at the moment (*Dubbo Women's FG participant*).

I got a court order. My son died and I had to fight my daughter in law for access to my grandkids, she's a white girl. And I got my court order that I have them every second weekend and part of school holidays. She took off 15 months ago and I've had no contact with the children...we've just found her and I went to court in January asking for a recovery order. They refused me, the magistrate. If that had been a black fella and they had breached an order they would be behind bars...two Christmases have come and gone and I still have gifts sitting there. It's very very slow (*Dubbo Women's FG participant*).

The case study below indicates some of the current difficulties in accessing appropriate legal advice and assistance.

#### **CASE STUDY**

[The case study involves] a family who had DOCS come in and tell them that they needed to get new furniture. But the family did not understand that this was a condition that, if not fulfilled, would lead to them losing their kids. They didn't understand the implications that a suggestion by DOCS to get some new furniture would turn up in an affidavit as a failure and a reason to take the children. Challenging the DOH to come and fix the premises could have been something that we [the service provider] could have done. They failed to tell Centrelink that they had taken one of the kids out of child care and put them into school, so money was going to the wrong place and was actually owed to the family.

At the moment, legal aid is only available once you hit the court process, what we need is a coordinated effort by community workers, social workers, legal workers to proactively address all the issues, where the client is actually advised what the risks of non-compliance with DOCS suggestions are. Waiting until DOCS has already formulated its affidavit of failures, where something is already in court, and this in an environment where intervention is coming in earlier and adoption out is an option earlier, without this holistic approach, we are going to have another stolen generation.

Implementing change involves being proactive, going out with families, to schools, agencies. Someone to do the negotiating and advocacy for them (*Legal practitioner 1 Redfern*).

### 3.1.3 Divorce and Separation

Focus group participants were asked whether they had been through a divorce or separation over the last couple of years, and as a result of separation whether they were involved in any dispute over property, money or superannuation.

**Table 3.5**  
**Number and Percentage of Focus Group Participants Divorced or Separated**

Divorced or Separated	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	6	8.6	8	11.8	14	10.1
No	64	91.4	60	88.2	124	89.9
<b>Total</b>	70	100.0	68	100.0	138	100.0

Excludes 15 missing cases

Table 3.5 shows that 14 participants (10.1 per cent) had been through a divorce or separation recently. There were slightly more women than men (11.8 per cent compared to 8.6 per cent). Of those that had separated or divorced, only four indicated that there had been a dispute over property, money or superannuation. Two of these four had sought legal advice: one from a private lawyer and one from Legal Aid NSW.

Property issues arising from a divorce or separation did not emerge as an issue in discussions with stakeholders.

## 3.2 Housing and Tenancy

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. While there were numerous complaints from participants about the conduct of the Department of Housing or Aboriginal housing bodies, in some places, like Goodooga, the issues were of an even more basic nature:

Our problem is that we don't know who to pay rent to. There is an Aboriginal housing organisation but at the moment it is just sitting there...we need to find some way of getting housing back under control...No one is paying rent right now, as of a couple of months ago. So if something happens to those houses, we would have to fix that ourselves...can you help us? Because we don't know how to go about doing these things (*Goodooga Women's FG participant*).

Focus group participants were asked three questions relating to various housing and tenancy issues. These covered disputes with landlords over matters such as rents, repairs, evictions, relocations etc; disputes involving supported accommodation, such as a hostel, nursing home or a retirement village and covering issues such as fees, services, standards; and whether legal advice has been required for other housing matters, such as buying and selling, seeking council approval for building applications, etc.

**Table 3.6**  
**Number and Percentage of Focus Group Participants Who Positively Identified Housing and Tenancy Related Issues**

Housing and Tenancy	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Disputes with Landlord	25	32.9	38	49.4	63	41.2
Disputes involving Supported Acc.*	3	5.0	6	10.5	9	7.7
Other legal needs**	4	5.6	3	4.2	7	4.9

N=153; \* excludes 36 missing cases; \*\* excludes 9 missing cases

Table 3.6 shows the results of the three questions which raised issues of potential legal need relating to housing and tenancy. Overall 41.2 per cent of participants identified disputes involving landlords, 7.7 per cent identified disputes involving supported accommodation, and 4.9 per cent identified other legal needs in relation to housing. The percentage of women who identified disputes with landlords was 16.5 percentage points higher than men, and constituted nearly half of all women who participated in the focus groups.

### 3.2.1 Disputes with Landlord

Some 50 participants provided information on the types of disputes they had with landlords. These are shown in Table 3.7. Some participants indicated more than one issue. The most frequently noted matter was the issue of repairs. Feelings of power inequality between landlord and tenant in the public housing context were strongly evident:

It's amazing – they owe you money, they don't want to give it to you. But you owe *them* money, 'we're going to terminate your rental here because you're a week behind in your rent' ... and they have the authority to go in and direct debit you, but we can't go and direct debit *them!* (*Redfern women's FG participants*).

They intimidate [me]. I'm the weakest link, see, they know where my weak point is. In any case, they're much stronger. (*Wagga women's FG participants*).

**Table 3.7**  
**The Reason for Tenant / Landlord Disputes**

	No
Repairs	26
Rent	19
Relocation	7
Eviction	6
Bond	4
Tenancy agreement	1
Water bill	1
Not able to have children housed where I like	1
Not being home when they came to change smoke alarm	1
Damage done after moving	1
Dispute over person residing in house	1
Aboriginal nepotism, and mainstream racism	1
Total	69

Failure of public housing authorities to carry out timely repairs was nominated as a major area of dispute, coupled with a sense of unfairness about the burden placed on tenants to bear costs at the end of their tenancies:

You move out and THEN they do it all up (*Dubbo Women's FG participant*.)

There's problems with both the Department of Housing and the Aboriginal Housing Corporation, getting repairs (*Moree Men's FG participant*).

I have thousands and thousands of dollars to repay because of damages to property, but every time I called DOH during the tenancy to have repairs done, I was told that priority repairs had to be done first. We asked for the carpet to be replaced, eventually we lifted the carpet up ourselves, now I've got to pay for new carpet to be put in through the house (*Dubbo Women's FG participant*).

My daughter moved out of a DOH house just before they decided to move everybody [off the Gordon Estate]. DOH put in a new stove and washing line just before she moved out, now they are charging her for it. She never even got to use it and when she was living there she was calling them and asking for a new stove to be put in. Now there isn't even a house on that land but she is still paying for it. (*Dubbo Women's FG participant*)

Myself and my defacto, we've been living in the house for thirteen years. We've only had one renovation done in thirteen years. It actually got condemned last year. They've got us another accommodation but we've already been waiting two months and we still haven't been able to move in. (*Dubbo Men's FG participant*)

In Dubbo, many of the issues raised related to the demolition of parts of the Gordon Estate – a largely Aboriginal housing estate in Dubbo's west - and the relocation of Department of Housing tenants elsewhere:

They've moved us off the Gordon Estate, 'relocation' they called it, we had to fill in these forms, 'transfer forms' they called it, so that 30 years down the track they can say 'you weren't moved from there'. It's the same shit that was going on here years ago, when they rounded up the darkies and moved them to the missions and that – same thing! Same shit, different smell (*Dubbo Women's FG participant*).

When they decided to demolish the Gordon Estate, there were 250 homes worth. The facilitator at the meeting had the audacity to say that the Federal Government was demolishing it because there was no money for maintenance. I said. "What maintenance? They never ever drove a nail into my home...when I moved into the new estate I was there 45 days and they wanted to come and do a home crime visit with me and I said 'piss off, for 23 years I lived over there, that's why the Gordon Estate got into the mess it was in, because you are too lazy to get out of your office' (*Dubbo Women's FG participant*).

Of the 63 Aboriginal people who identified a dispute with a landlord, some 25.4 per cent of participants indicated that they sought legal advice. Table 3.8 shows that Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent). Overall nearly seven in ten people (69.8 per cent) indicated that they did not seek legal advice for their housing and tenancy problem.

**Table 3.8**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
No	19	76.0	25	65.8	44	69.8
Yes	5	20.0	11	28.9	16	25.4
Unknown	1	4.0	2	5.3	3	4.8
<b>Total</b>	25	100.0	38	100.0	63	100.0

Of the 16 individuals who indicated that they sought advice, 12 provided details of who they contacted – which was most commonly a tenancy advisory service (including Aboriginal tenancy services). The results are shown in Table 3.9. Neither Aboriginal legal services nor Legal Aid NSW were among the agencies contacted.

**Table 3.9**  
**Agency Contacted for Assistance with**  
**Housing and Tenancy Issues**

Agency Contacted	No
Tenancy Advisory Service	6
Community Legal Centre	1
Private Solicitor	1
Department of Housing	1
Minister for Housing	1
Department of Fair Trading	1
Local Member	1

Of the 16 people who sought advice, 15 responded to the question of whether the advice was satisfactory. The majority (9) indicated that it was not satisfactory. In the words of one focus group participant,

I moved out on the Friday, handed the keys in on the Monday and over the weekend the house got damaged [by others]. I went to the tribunal to fight the fine, and lost. I was represented through the tenancy service – you’d have thought he worked for the housing commission, not for me; everything they said he agreed with them. I could have done a better job than they did (*Dubbo Women’s FG participant*).

Disputes with DOH emerged from the stakeholder interviews as a major problem, particularly concerning waiting lists for transfers; forced relocation resulting in people having to return to communities and situations that they had consciously left; evictions, rent arrears, repair waiting time and repayments that were made to DOH but did not show up in the system. In Moree it was estimated by an Aboriginal stakeholder that over half of the matters being heard by the Residential Tenancy Tribunal when it visited every fortnight involved Aboriginal people.

Failure to carry out repairs was often referred to:

They (DOH) don’t fix nothing. They haven’t fixed nothing for years in Moree, that’s a fact. People pay their rent all the time and if they get behind in their rent they chuck them out, but they’re not rushing to do their repairs. They haven’t done any repairs in ages (*Aboriginal legal support worker 2 Moree*).

We get a lot of people coming in to say their drains haven’t been emptied, repairs haven’t been made. I know about an old lady here, and it’s freezing cold here, and I know she’s been onto Department of Housing to get a fireplace put in because she’s got no heating in he house, she’s got one little heater (*Aboriginal legal support workers 1 Walgett*).

The lack of knowledge about rights and the ability to negotiate were also seen as problematic.

There are families that are moved in from different towns because it is resettlement town. It starts a feud. It’s a waste of time to go to the Housing

Department and there is no solicitor you can use. There is no one you can go to (*Wagga Men's FG participant*).

Housing comes up all the time. A lot of people don't have support; so a lot of families want to get transferred, they have a lot of trouble with that. They don't know their rights with housing (*Legal support worker 1 Wagga*).

Tenants cause property damage and owe arrears so that the next property they get, they have so much deducted from their pay. If they find that they cannot manage that... and they get into greater debt, and they have a lot of difficulty with negotiation (*Aboriginal legal support workers 1 Dubbo*).

### *3.2.2 Disputes Relating to Supported Accommodation*

As noted above in Table 3.6, nine individuals had disputes relating to supported accommodation. Only five of the nine identified the nature of the dispute. Three indicated multiple issues in relation to fees, services provided and standards of care. One indicated it was in relation to discrimination (bias) and the other noted 'the Protective Commission' – which could have meant that the dispute was with the Office of the Protective Commissioner.

Seven of the nine individuals indicated that they sought legal advice. Only one indicated who provided the advice, and in that case 'other family dealt with [the problem]' and it was satisfactorily resolved.

### *3.2.3 Other Legal Needs Relating to Housing*

As noted above in Table 3.6, seven individuals indicated other legal needs relating to housing. Five responded to the question of who provided the advice. Of those, two indicated private solicitors and one the Aboriginal Legal Service. The other two referred to council approval and development applications.

One focus group participant raised a concern that arises in situations of relationship breakdown between Aboriginal and non-Aboriginal partners. In some cases, the [Aboriginal] woman ends up without housing while "the [non-Aboriginal] partner has ended up with the house and that worries me because they only accessed it because of Aboriginality" (*Redfern Women's FG participant*).

The special needs of people coming out of prison were also raised. Options available for keeping housing during short term prison sentences are often not well understood, leading to homelessness:

They said hand your keys back in and when you get released we will rehouse you within three months. I'm still waiting (*Redfern Women's FG participant*).

## **3.3 Neighbours**

Focus group participants were asked whether they had any disputes with neighbours over such things as fences or boundaries, noise, privacy, animals, etc. Table 3.10 shows that 26.8 per cent of participants identified neighbourhood disputes as an issue.

**Table 3.10**  
**Number and Percentage of Focus Group Participants Who Positively Identified Neighbour Disputes as an Issue**

	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
<b>Neighbourhood Disputes</b>	16	21.3	24	32.4	40	26.8

Excludes 4 missing cases. N=149

Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent).

Table 3.11 below shows that of the 40 individuals who identified neighbourhood disputes 10 sought legal advice. Women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent). Overall however, the majority of individuals (67.5 per cent) did not seek advice.

**Table 3.11**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
<b>No</b>	10	62.6	17	70.8	27	67.5
<b>Yes</b>	3	18.7	7	29.2	10	25.0
<b>Unknown</b>	3	18.7			3	7.5
<b>Total</b>	16	100.0	24	100.0	63	100.0

Six of the ten who sought advice indicated who they contacted, as shown below in Table 3.12. In one case more than one agency was noted.

**Table 3.12**  
**Agency Contacted for Assistance with Neighbour Issues**

Agency Contacted	No
Police	2
Aboriginal Legal Service	1
Real Estate Agent	1
Department of Housing	1
WATAAS	1
Mediation	1
<b>Total</b>	<b>7</b>

Of the 10 individuals who indicated they sought advice, 9 responded to the question of whether the advice was satisfactory. The majority (5) indicated that it was not satisfactory.



Participants were also asked how the dispute was resolved. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

Discussion in focus groups confirmed that neighbourhood disputes were often resolved in the absence of legal advice:

We just talk it out, and argue and argue until its finished or the police get called in (*Tabulam Women's focus group*).

### 3.4 Education

Participants were asked whether they had been responsible for a young person attending school, TAFE or university over the last couple of years. Table 3.13 shows that more than a third of the participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than Aboriginal men (30.1 per cent).

**Table 3.13**  
**Number and Percentage of Focus Group Participants Who Were Responsible For a Young Person in Education**

Responsible for Young Person in Education	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	22	30.1	33	44.6	55	37.4
No	51	69.9	41	55.4	92	62.6
<b>Total</b>	73	100.0	74	100.0	147	100.0

Excludes 6 missing cases

Participants were asked whether they had encountered any problems with suspension or expulsion; bullying or harassment; HECS or other fees. Table 3.14 shows that half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per cent) who had responsibility for a young person in education.

**Table 3.14**  
**Number and Percentage of Focus Group Participants Who Reported Problems Relating to Expulsion, Fees, etc.**

Problems Relating to Educational Institution	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	8	36.4	19	61.3	27	50.9
No	14	63.6	12	38.7	26	49.1
<b>Total</b>	22	100.0	31	100.0	53	100.0

Excludes 2 missing cases

The main problems identified by participants are shown in Table 3.15. Suspension and expulsion are clearly the most pronounced problems:

There is racism up there at that school [that my sons attend]. Every time my boys go to school they always come back suspended for two, three weeks. So I just give up, stop sending them to school (*Tabulam Women's FG participant*).

**Table 3.15**  
**Education Issues**

Type	No
Suspension / Expulsion	11
Bullying	6
Harassment	4
HECS	2
Behavioural problems with child	2
General problems with school	2

For some participants, behavioural problems were linked to perceived discrimination or victimisation of the child within the classroom: one example raised was of a child who broke a ruler and spat at a teacher and was brought to court on three charges of assault:

They make him feel bad in the class, as if it is his fault when anything happens. Last year he didn't have a chance to go on any of his excursions. They would set him up and say 'you can go, you can go', but then when the time came he couldn't go. The mother tried to complain to the police but they were no help. She tried to complain via the education department but didn't get very far (*Goodooga Women's FG participant*).

Five of the 27 individuals who indicated a problem at school sought legal advice (four women and one male). Three of those who sought legal advice approached the police, the Education Department, and a local church which has a lawyer available.

Problems with suspension and expulsion were also identified by some stakeholders.

Huge amount of suspension, and Aboriginal children are much more likely to be suspended for the same behaviour. Also, the behaviour leading to the suspension may be the Aboriginal child responding to racism, direct or indirect (*Aboriginal legal support workers 1 Dubbo*).

I didn't even know there was anything you could do about suspension / expulsion. I thought you just had to cop it on the chin. It is a big problem around here (*Aboriginal legal support worker 1 Bourke*).

### 3.5 Conclusion

#### *Family law*

The evidence suggests that family law matters tend to be worked out by the parties without legal assistance. Disputes usually involve children. Overall 17.2 per cent of

focus group participants identified an issue relating to custody or access. Aboriginal women were more likely (20.8 per cent) to identify these issues than men (13.5 per cent).

Children being taken into care was identified as a significant problem, and Aboriginal women were more than twice as likely (22.5 per cent) to identify such as issue than men (9.9 per cent). There was wide-ranging dissatisfaction among focus group participants concerning their interactions with DOCS.

Many stakeholders commented on the apparent lack of legal advice or representation for parents in cases where their children are being removed. Focus group participants indicated that very few people (14.9 per cent) sought legal advice in relation to the issues around family law and DOCS associated matters. Although the numbers were small, Aboriginal women were more likely to seek legal assistance than men (23.3 per cent compared to 8.6 per cent).

### *Housing and Tenancy*

Housing problems emerged as a major issue in the focus groups discussions and interviews with stakeholders. Overall 41.2 per cent of focus group participants identified disputes involving landlords, primarily the conduct of the Department of Housing or Aboriginal housing bodies. The most frequently noted matter was the issue of repairs, followed by rent.

Of the 63 Aboriginal people who identified a dispute with a landlord, some 70 per cent of individuals indicated they did not seek legal advice. Aboriginal women were more likely to seek advice than Aboriginal men (28.9 per cent compared to 20 per cent).

### *Neighbours*

Some 26.8 per cent of focus group participants identified neighbourhood disputes as an issue that had affected them in recent years. Aboriginal women were more likely than men to identify a neighbourhood dispute as having been an issue for them (32.4 per cent compared to 21.3 per cent), and Aboriginal women were also more likely to seek advice (29.2 per cent compared to 18.7 per cent).

Overall however, the majority of individuals (67.5 per cent) did not seek legal advice. Those who had not sought advice generally had more negative outcomes including a criminal conviction, an apprehended violence order, and at least four cases where the participant had moved out of the residence.

### *Education*

More than a third of the focus group participants (37.4 per cent) were responsible for a young person in an educational institution. The proportion was higher for Aboriginal women (44.6 per cent) than Aboriginal men (30.1 per cent).

Half (50.9 per cent) of the 55 participants who were responsible for a young person reported problems. The percentage was particularly high among women (61.3 per

cent) who had responsibility for a young person in education. The main problem identified by participants was suspension and expulsion.

Five of the 27 individuals (or 18.5 per cent) who indicated a problem at school sought legal advice (four women and one male).

## CHAPTER FOUR LEGAL NEEDS ANALYSIS : EMPLOYMENT, STOLEN WAGES AND DISCRIMINATION

In this chapter we discuss three areas of legal need: employment, stolen wages and discrimination.

### 4.1 Employment

Employment related legal needs were identified by some stakeholders as a priority area for Aboriginal clients:

Employment is a huge issue. There are a lot of people who might enter into very casual work arrangements...and you've got very little redress in those sort of situations if the employment falls through, or if you get injured or something like that. People get discouraged from pursuing the issue or they don't know how to do it...and it is something that seems to fall through gaps in the system at the moment (*Aboriginal Legal Service staff member 3*).

Focus group participants were asked whether, over the last couple of years, they had any disputes in their work over things like pay, superannuation, unfair dismissal, working hours, award conditions, leave, union membership, bullying, harassment or other working conditions.

**Table 4.1  
Number and Percentage of Focus Group Participants With Identified  
Employment Disputes**

Employment Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	17	22.7	14	19.2	31	20.9
No	58	77.3	59	80.8	117	79.1
<b>Total</b>	75	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Table 4.1 shows that overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

In some areas like Tabulam and Goodooga, employment conditions under CDEP were a particular problem.

Most people are working on CDEP here. People don't know about leave, about annual leave (*Tabulam Men's FG participant*).

Table 4.2 shows the type of employment problems identified by the participants. Some participants indicated more than one employment problem. The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace.

**Table 4.2**  
**Employment Problems**

	No
Pay	7
Bullying, Harassment and Intimidation	5
Working Hours	4
Unfair Dismissal	4
Working Conditions	3
Superannuation	3
Long Service and Other Leave	2
Contract Dispute	1

Nine participants indicated that they sought legal advice for their employment issues, which comprised 29 per cent of the 31 individuals who indicated they had an employment-related problem. Although the numbers are small, the number of Aboriginal women who sought legal advice was slightly higher than the number of men (5 compared to 4), and this was despite the fact that fewer women indicated an employment-related dispute (see Table 4.1).

Eight of the nine participants who sought legal advice provided information on who they used for their advice: four used private solicitors, two used their union, and one each used Legal Aid NSW and the Department of Industrial Relations. Five of the nine participants indicated that the advice was satisfactory.

I had a compensation matter about employment. I didn't go to WALs because I knew they didn't handle it. I went to the community legal centre but it fell on deaf ears. It was like, who are you? I was better off going to see a private firm and they were willing to act for me (*Dubbo Men's FG participant*).

#### 4.2 Stolen Wages and Stolen Generations

Participants were asked whether they had been directly affected by government policies relating to Stolen Wages, Trust Funds or Stolen Generations. Table 4.3 shows that 15.6 per cent of participants indicated that they had been directly affected by these policies. The proportion of Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was partly influenced by the older age of Aboriginal women participants.

**Table 4.3**  
**Number and Percentage of Focus Group Participants Affected by Stolen Wages, Trust Funds or Stolen Generations.**

Stolen Wages, Stolen Generations	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	9	12.2	14	19.2	23	15.6
No	65	87.8	59	80.8	124	84.4
<b>Total</b>	74	100.0	73	100.0	147	100.0

Excludes 6 missing cases

Participants were asked whether they had received any advice relating to the Aboriginal Trust Funds Repayments Scheme (ATFRS). Some comments from focus group participants highlighted the lack of information and perceived lack of support in lodging claims in some communities:

Never heard of stolen wages (*Dubbo Women's FG participant*).

They came out here to let people know about the Stolen Wages. But they pick one organisation and that organisation doesn't let the community know that they are here. There was no-one there. Everyone missed it (*Moree Men's FG participant*).

They say they're going to have a big meeting and something is going to come out of that meeting, but it never does (*Dubbo Women's FG participant*).

I don't think many knew about it. Because no one came out here and talked about it. There was [only] something in Lismore (*Tabulam Women's FG participant*).

Men and women in the Goodooga focus groups had had no information about the scheme and wanted some, as several attendees felt that they may hold successful claims.

Table 4.4 shows that the vast majority of participants (92.9 per cent) had not received advice concerning the ATFRS.

**Table 4.4**  
**Number and Percentage of Focus Group Participants Who Had Advice Relating to ATFRS**

Advice on ATFRS	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	6.8	5	7.5	10	7.1
No	69	93.2	62	92.5	131	92.9
<b>Total</b>	74	100.0	67	100.0	141	100.0

Excludes 12 missing cases

Five of the ten people who had received information on the ATFRS indicated who they had received the information from. The providers of information were:

- Dubbo Local Aboriginal Lands Council
- Link-Up
- AFTRS
- Women's Legal Service
- Family members.

Eight people indicated on the questionnaires they were pursuing a claim under the scheme.

Stolen wages was not an issue addressed by many of the stakeholders, which probably reflected the similar lack of knowledge of remedies from focus group participants. One community-based service noted,

We have a few claims; we work pretty closely with PIAC. We did a session with the elders out here. People have either been to a session or they haven't – the roadshow has been through some places and not others (*Aboriginal legal support workers 2 Walgett*).

### 4.3 Discrimination

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. Many interviewees spoke of discrimination as a kind of 'fact of life' that Aboriginal people had come to expect:

The main problem is race discrimination. We are seen as a lower form of the community. They see us as people who are more likely to commit a crime, as not reliable. I see that a lot in the employment sector. And in the supermarkets (*Wagga Men's FG participant*).

The rednecks run this town...I've been discriminated in many places around here because of my colour. I just ignore them and think, "well that's your problem not mine" (*Dubbo Women's FG participants*).

Discrimination? I could take you over to the cemetery now and show you: the blackfellas this side, whitefellas that side. Whitefellas up the top, blackfellas down the bottom (*Tabulam Men's FG participant*).

As one group of Aboriginal women noted in a stakeholder meeting,

[There is] discrimination by Centrelink staff and real estate agents on the basis of Aboriginality and sexual preference [example provided of a gay couple with a child trying to access payments]... Supermarkets is another one where we face discrimination all the time...they follow you around. I've been to Coles on a Sunday afternoon in my weekend clothes...and the person in front of me never got their bag checked, but they've pulled every item out of my bag and cross-checked it with my docket... I never argue, I just think 'whatever'... but that sort of thing, or when you are in a shop and you are being served later... that discrimination is entrenched in the system, there is nothing you can do about it...

Focus group participants were asked whether over the last couple of years, they had had any problems with racial discrimination or other types of discrimination. Table 4.5 shows that more than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently.



**Table 4.5**  
**Number and Percentage of Focus Group Participants Who Identified Discrimination as an Issue**

Discrimination	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	20	27.4	21	28.8	41	28.1
No	53	72.6	52	71.2	105	71.9
<b>Total</b>	<b>73</b>	<b>100.0</b>	<b>73</b>	<b>100.0</b>	<b>146</b>	<b>100.0</b>

Excludes 7 missing cases

Some 32 of the 41 individuals who indicated discrimination was an issue also provided information on the nature and /or the location of the discrimination. Table 4.6 shows that racial discrimination was the main type of discrimination identified, and that pubs and clubs were the main problems, followed by real estate agents.

**Table 4.6**  
**Discrimination: type and location**

Type	No
Racism / Racial Discrimination	12
Marital status	2
Sexuality	1
Religion	1
<b>Location</b>	
Pubs and clubs	11
Real Estate agents	6
Shopping centres / Shops	5
Employment	5
Local Council	2
Medical centre	1
Police	1

#### Pubs, clubs and shops

Focus group participants spoke of discrimination in shops as commonplace:

Sometimes you think you are making a mountain out of a molehill. You get all steamed up and then you lose the momentum. I felt that I was being discriminated at. I was being a customer. I questioned the way people were treating me (*Mt Druitt Men's FG participant*).

You walk into a shop and you hear 'security to aisle one, or two'. I just turn around and walk out (*Dubbo Men's FG participant*).

There are problems with discrimination, especially with the clubs up here – the bowling club. The bowling club is the main one that is a problem. Whitefellas go straight in. It's the same with jobs around. The whitefellas get them. With the Shire, they employ their family (*Bourke Men's FG participant*).

In shops you watch white people go through the checkout with their handbags, and then a black fella walks through and you hear “excuse me, can I check your handbag?” (*Dubbo Women’s FG participant*).

### **CASE STUDY**

A focus group participant was approached by a white employee in a pub who said ‘I’ll have to ask you to leave; no offence but I think I can smell your B.O... maybe if you go home and have a shower and come back...’ The participant knew the manager, who apologised. Not satisfied with this, the participant has approached the CLC in Moree who are following it up for her. She went to Moree because the CLC was recommended to her by a friend. (*Dubbo Women’s FG*)

### Real Estate Agents

Discrimination in the private rental market was of great concern in some focus group locations:

Real estate agents are very bad...you go round and look at 50 or 100 houses, you won’t get one. Every time you go to have a look there are about 6 white families that go along and one little black one, me... you can spend five or six months looking for a place (*Dubbo Women’s FG participant*).

There is discrimination in the private rental market. As soon as they look at you, if you are a blackfella, they won’t accept three references (*Wagga Men’s FG participant*).

### Employment

A participant in the women’s focus group in Goodooga spoke of the frustration experienced in feeling that she was discriminated against when seeking employment as a teacher:

I’ve got my certificates, I’ve got my experience. I’ve been around children all my life; I’ve taught children with autism, children with severe cerebral palsy – why can’t I even get an interview to find out what experiences I’ve had? I’m the only person in town with a qualification and I can’t get a job! I feel like I’m being discriminated against but I can’t put my finger on how. To me, it is personally a great insult (*Goodooga Women’s FG participant*).

The experience is exacerbated by the dynamics of living in a small community:

Employment goes to the families. When they are in positions, they employ the rest of the family and take up all the jobs, and that’s why we can’t get a job. They don’t even interview other people (*Goodooga Women’s FG participant*).

Discrimination in employment was also raised in other focus groups:

Go round Dubbo and count how many Aboriginal people are employed. None!  
You can count them on your fingers (*Dubbo Women's FG participant*).

### Other discrimination contexts

Me and my partner are not allowed into the Western Plains medical centre because we're addicts (*Dubbo Women's FG participant*).

Participant went to get a prescription for her elderly mother from Western Plains Medical. Prescription was accidentally put through the wash that night, went back to the doctor the following day and an employee said "what are you doing with these, taking them over West side and selling them?"

The offender had been sacked by 10am the following morning when the participant returned to the centre (*Dubbo Women's FG*).

Participant often needs to defend her mentally ill cousin from hostile remarks from shop assistants, "and then they wanted to bar me because I was screaming my head off. And then the girl took two weeks off work because she was stressed out – I mean, what are you stressed out about? All I did was put you in your place and tell you you're not perfect...I didn't know I could get legal advice about that...now that I know, I'm going to see her manager" (*Redfern Women's FG*).

I used to get my money out and wave it at the cabs, so that the cabs would stop (*Redfern Women's FG participant*).

Shops, pubs and clubs, real estate and employment were also areas of discrimination that stakeholders identified:

You walk into a shop and all of a sudden you hear 'Security to section [whatever]', and you think to yourself, 'but who's here? I never noticed anyone, why have they noticed him, unless it's me...' That's young people right through to old people that cop that sort of discrimination (*Aboriginal legal support workers 1 Dubbo*).

Supermarkets – being tagged on walking into a shop and followed by the security guard. These are now private spaces – you can be banned from a shopping centre where the Medicare office is or the cheap supermarket or the chemist, because you were manifesting a level of anxiety due to your mental illness, and they decided you were likely to be shoplifting, and then it escalates (*Legal practitioner 1 Redfern*).

When seeking employment, if you have a dark skinned person and a light skinned person, the dark skinned person can have all the credentials, the *best* credentials, but chances are they are not going to get employed... or when it is an Aboriginal position that is being advertised, they ask that you have a good driving record – well, I've been asked you know, you must have a drivers' licence, but never a clean driving record. How can you verbalise that that is discrimination? (*Aboriginal legal support workers 1 Dubbo*).

Table 4.7 shows that of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.

**Table 4.7**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	2	10.0	5	23.8	7	17.1
No	18	90.0	16	76.2	34	82.9
<b>Total</b>	20	100.0	21	100.0	41	100.0

The seven individuals who sought legal advice identified the following organisations as their source:

Aboriginal Legal Service	2
Local police	2
Legal Aid	1
Private solicitor	1
Human Rights (HREOC)	1

Only one person indicated that she was satisfied with the advice received.

It seems like discrimination all over again. They don't listen to you (*Mt Druitt Women's FG participant*).

There have been discrimination complaints put in. I put one in. I used Legal Aid in Dubbo. I just rang them up (*Bourke Men's FG participant*).

A case study from one legal practitioner shows a successful outcome after legal advice.

#### **CASE STUDY**

The family bought a stroller from Kmart Bondi Junction and were walking with it in Kmart Broadway. The baby was about 8 days old, and the stroller was snatched away by staff, with the baby in it, and the only indicator that they were suspicious is that they were Aboriginal, and they have a new stroller. The family eventually got an apology and a store credit. (*Legal practitioner 1 Redfern*)

#### **4.4 Conclusion**

##### *Employment*

Overall, 20.9 per cent of participants indicated that they had employment issues. The proportion of men identifying employment issues was slightly higher than women (22.7 per cent compared to 19.2 per cent).

The most common problem related to disputes over pay, followed by bullying, harassment and intimidation in the workplace. Some 29 per cent of the 31 individuals

who indicated they had an employment- related problem also indicated they sought legal advice.

### *Stolen Wages and Stolen Generations*

Some 15.6 per cent of participants indicated that they had been directly affected by policies relating to Stolen Wages and Stolen Generations. The proportion of Aboriginal women affected was higher than Aboriginal men (19.2 per cent compared to 12.2 per cent), which was probably influenced by the older age of Aboriginal women participants.

The vast majority of participants (92.9 per cent) had not received advice concerning the AFTR scheme.

### *Discrimination*

Racial discrimination has emerged as a major issue in this study, especially in some of the research locations. More than one quarter (28.1 per cent) of both males and females identified discrimination as an issue they had faced recently. Racial discrimination was the main type of discrimination identified, and pubs and clubs were the main problems, followed by real estate agents.

Of the 41 individuals who indicated a problem with discrimination, only seven (17.1 per cent) sought legal advice. Although the numbers are small, Aboriginal women were more likely to seek advice than men.



## CHAPTER FIVE LEGAL NEEDS : SOCIAL SECURITY, CREDIT DEBT AND CONSUMER ISSUES

In this chapter we discuss three areas of legal need: social security, credit and debt and consumer issues. Again we draw on the focus group discussion and questionnaire results and interviews with stakeholders.

### 5.1 Social Security and Centrelink

[The] general approach seems to be to ignore it and hope it goes away or try to deal with it yourself with the relevant agency. There are very varying relationships with Centrelink from town to town – sometimes when there is an effective Aboriginal staff worker this makes a big difference to people’s ability to resolve issues (*Aboriginal legal support workers I Dubbo*).

This observation was borne out by comments from focus group participants.

I’ve always found them extremely helpful...you hear a lot of people complain about them, but I’ve never had any problems (*Wagga Women’s FG participant*).

This sentiment, however, was said to apply to the general staff, while there was some dissatisfaction with the ease of access to existing Aboriginal staff.

Focus group participants were asked whether they were receiving any type of allowance specifically for Indigenous people such as ABSTUDY, CDEP or the Indigenous Cadetship program. Participants were also asked whether they were receiving any other type of allowance through Centrelink such as Youth Allowance, Newstart Allowance, Austudy, sickness or disability allowances, age pension, widow pension, Veteran Affairs pension, parenting payment, child care payment, baby bonus, or carer payment.

**Table 5.1  
Number and Percentage of Focus Group Participants Who Were Receiving A  
Benefit or Allowance**

	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
<b>Aboriginal Specific Allowance</b>						
<b>Yes</b>	32	42.7	19	28.4	51	35.9
<b>No</b>	43	57.3	48	71.6	91	64.1
<b>Total*</b>	75	100.0	67	100.0	142	100.0
<b>General Allowance</b>						
<b>Yes</b>	50	66.7	63	85.1	113	75.8
<b>No</b>	25	33.3	11	14.9	36	24.2
<b>Total**</b>	75	100.0	74	100.0	149	100.0

\* Excludes 11 missing cases. \*\* Excludes 4 missing cases

Table 5.1 shows that nearly 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent). In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent).

Although many Aboriginal people surveyed were in receipt of payments, accessing specific payments can be difficult.

Big issue in Dubbo is accessing emergency/crisis payments – discrimination as a woman and an Aboriginal when you are trying to access that early payment, when you have to go for a funeral or other emergency. Very little sensitivity (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants were asked whether, over the last couple of years, they had any disputes with Centrelink. Table 5.2 shows that approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

**Table 5.2**  
**Number and Percentage of Focus Group Participants Who Identified a Dispute with Centrelink**

Centrelink Issues	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	24	32.9	20	26.3	44	29.5
No	49	67.1	56	73.7	105	70.5
<b>Total</b>	<b>73</b>	<b>100.0</b>	<b>76</b>	<b>100.0</b>	<b>149</b>	<b>100.0</b>

Excludes 4 missing cases

In some areas isolation and lack of transport is a cause of problems with Centrelink.

The problem with social security is getting into town. If you miss an interview they cut you off. We still have to go in for interviews even though we are on CDEP. People here don't have transport to get into town (*Tabulam Men's FG participant*).

Table 5.3 shows that of the 44 people who identified having a dispute with Centrelink, five sought legal advice. When asked who provided the advice one person indicated the Aboriginal Legal Service and two indicated Centrelink itself.

**Table 5.3**  
**Number and Percentage of Focus Group Participants Who Sought Legal Advice**

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	2	8.3	3	15.8	5	11.6
No	22	91.7	16	84.2	38	88.4
<b>Total</b>	<b>24</b>	<b>100.0</b>	<b>19</b>	<b>100.0</b>	<b>43</b>	<b>100.0</b>

Excludes 1 missing case



The survey results and focus group discussions indicate that few people seek legal advice.

Social security – it’s just like years ago when we used to get picked up and were told to plead guilty (*Dubbo Men’s FG participant*).

Stakeholders confirmed that often advice is sought from Centrelink itself.

People get pressured into saying that they are still living with someone to maintain that person’s payment (eg rental assistance), and then get into trouble with Centrelink. People go to Welfare Rights in Sydney or the CLC to get help. But often people go to Centrelink and are told that they have to pay a certain amount of dollars per week and they accept that (*Aboriginal legal support workers 1 Dubbo*).

## 5.2 Credit and Debt

Focus group participants were asked whether over the last couple of years they had any problems with paying a bill or loan or other debt where the lender had threatened or taken legal action. Table 5.4 shows that 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

**Table 5.4**  
**Number and Percentage of Focus Group Participants Who had Debt Problems**

Debt Problems	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	26	34.7	26	35.1	52	34.9
No	49	65.3	48	64.9	97	65.1
<b>Total</b>	75	100.0	74	100.0	149	100.0

Excludes 4 missing cases

Participants were also asked whether they had any problems or disputes over their Credit Reference Rating or as a guarantor for someone else’s loan, or in relation to possible bankruptcy.

They put a bad credit rating on me. I rang them up and asked them why they had put me on it when I had paid the debt off. You pay the loans off - when you pay it they don’t tell you about the last payment – they didn’t tell me about it (*Dubbo Men’s FG participant*).

Table 5.5 shows that 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

**Table 5.5**  
**Number and Percentage of Focus Group Participants Who had Credit Rating, Loan or Bankruptcy Problems**

Debt Problems	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	12	17.1	14	20.9	26	19.0
No	58	82.9	53	79.1	111	81.0
<b>Total</b>	70	100.0	67	100.0	137	100.0

Excludes 16 missing cases

Interviews with stakeholders confirmed that credit and debt problems were extensive and varied, covering matters such as:

- Personal debts
- Utilities
- Mobile phone contracts
- High pressure sales for items like computers
- Used cars and associated finance
- Funeral funds
- Bankruptcy
- Credit problems that have become insurmountable because of a failure to deal with them due to letters not being opened, changes of address and literacy issues
- Cars registered in the name of a person not driving it, who then incurs the fines in relation to it.

There was also a cultural dynamic associated with the accumulation of some debt.

The sharing of family properties and identities, and support for one another, and ‘what’s yours is mine’ and things of that nature, which means that people have fines arising for a vehicle they have never driven, they have never had a licence, but the vehicle is registered in their name, and so they’ll have this raft of fines that they could not possibly have incurred, but they have never responded, never sent in the documents saying I wasn’t the driver (*Legal practitioner I Redfern*).

Many of the debts are long standing:

A lot of the older fellas that got into debt when they were younger, they still can’t get their drivers’ licence because of their debts (*Aboriginal legal support workers I Walgett*).

Some of the fines occur over many years and some clients don’t understand that they can still be pursued for fines incurred a long time ago. People may not know what to do and given all the other issues in their lives, what we’ve observed is that debts and fines tend to be at the bottom of the pile. They’re just one more thing they just can’t deal with, it’s not the most immediate thing to deal with... Because of fluctuating addresses, or jail terms, fines lurk for years and people may not even know about them until years later (*Legal practitioner I Redfern*).

[There was an] Abstudy ‘scam’: if you went to TAFE you could get Abstudy and an additional \$250 loan per fortnight from the Commonwealth Bank, but no one explained that it was a loan and would have to be paid back after 5 years as a tax, but with interest accumulating month by month. It was a Centrelink initiative, and if you hadn’t got the loan you kept getting letters inviting you to apply until you took it (*Aboriginal legal support workers 1 Dubbo*).

There are also particular groups of Aboriginal people who have specific problems in relation to debt. Aboriginal prisoners are one distinct group:

One issue that comes up are problems with debt. We have had a quite few clients from Yetta Dhinnikal gaol [near Brewarrina] in relation to debt issues arising from personal loans. They can’t repay them while they are in gaol and interest may be building up. That is definitely one thing that has been popping up. I went out there for the open day and talked to the inmates. It is a recurring problem particularly for Aboriginal males. Most of the debts tend to be personal loans with banks or credit unions (*Legal Practitioner 1 Dubbo*).

The main problems identified by focus group participants in relation to credit and debt are shown in Table 5.6.

**Table 5.6**  
**Credit and Debt Issues**

Type	No
Telephone Bills	9
Credit Reference Rating	7
Late payment- Threatened with legal action	6
Credit Card Debt	3
Guarantor on loan	3
Bankruptcy	1
Debt recovery	1
Debt to Bank	1
Rental Arrears	1

One stakeholder noted that:

Because people may have bad credit ratings they can’t go to major retailers and get products, so they are vulnerable to ‘You Beaut’ offers where people pay exorbitant interest over a long period of time. TVs, washing machines, computers. Centrelink have cancelled a lot of direct debits and the Office of Fair Trading are taking an interest in it. Centrelink are being proactive in this because of an Aboriginal worker in Centrelink (*Aboriginal legal support worker 1 Moree*).

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem. Three indicated that the advice was sought from Legal Aid NSW, Aboriginal Legal Service and private solicitor.

A lot of people just let it go – they don't get legal advice. They get these loans and there's no way they pay it back (*Dubbo Men's FG participant*).

Dealing with the SDRO was also an issue mentioned by several stakeholders.

I [court worker] do a lot of state debt recovery stuff to put all the debts in one and I follow up with those people. And nine times out of ten they get their license back and get on with their lives...it's not part of my role, but it's become our role (*Aboriginal legal support workers 2 Dubbo*).

Lots of people only have mobiles so calling the SDRO to make arrangements can be too expensive. [We] let clients use their phones for these purposes (*Legal practitioner 1 Redfern*).

If there is a debt problem that arises, or any civil matter, we usually get onto legal aid, there is a brochure out the front, we get them to call the 1800 number on it. If it's criminal it goes to ALS, but if it's civil, to Legal Aid (*Aboriginal legal support workers 1 Bourke*).

It was also noted that there was an inequity with fines because of the general poverty in which Aboriginal people live:

If I get a parking fine, I pay it – that's the cost of parking in the city... it hurts, I don't want to do it, but hey, it's not going to cause me to not eat this week. On the other hand, if this group of clients get a fine, it *would* mean not eating, it *would* mean not being able to get medication, so the degree of penalty is so much harsher (*Legal practitioner 1 Redfern*).

There was some reference to Legal Aid in the context of credit and debt matters. However, this was rare.

If there is a debt problem that arises, or any civil matter, we usually get onto Legal Aid; there is a brochure out the front, we get them to call the 1800 number on it. If it's criminal it goes to ALS, but if it's civil, to Legal Aid (*Aboriginal legal support workers 1 Bourke*).

### **5.3 Consumer Issues**

Focus group participants were asked four separate questions relating to consumer issues which covered banks, financial institutions, insurance, scams and any other types of consumer problems. In the first question participants were asked whether over the last couple of years they had any problems accessing superannuation, or had any dispute with a bank or financial institution (for example, over account balances, bank fees or other matters). Table 5.7 shows that 19.9 per cent of participants indicated a dispute of this nature. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

**Table 5.7**  
**Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Superannuation or Bank Fees**

Bank or Super Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	13	17.1	17	22.7	30	19.9
No	63	82.9	58	77.3	121	80.1
<b>Total</b>	76	100.0	75	100.0	151	100.0

Excludes 2 missing cases

Participants were also asked whether over the last couple of years they had any problems with insurance (eg a dispute over a claim or premium, or not being able to get insurance in the first place). Table 5.8 shows that 6.1 per cent indicated a dispute relating to insurance. There was little difference between the male and female responses.

**Table 5.8**  
**Number and Percentage of Focus Group Participants Who had Issues Disputes Relating to Insurance**

Insurance Disputes	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	6.7	4	5.5	9	6.1
No	70	93.3	69	94.5	139	93.9
<b>Total</b>	75	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Participants were asked whether over the last couple of years they had any problems with any types of ‘scams’ involving activities such as funeral funds, door to door sales. Table 5.9 shows that 13.1 per cent of participants indicated a problem with a scam. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent).

**Table 5.9**  
**Number and Percentage of Focus Group Participants Who had Problems with a Commercial Scam**

Commercial Scams	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	12	16.2	7	9.9	19	13.1
No	62	83.6	64	90.1	126	86.9
<b>Total</b>	74	100.0	71	100.0	145	100.0

Excludes 8 missing cases

Many participants in the men’s focus groups identified problems with Aboriginal funeral funds.

Yeah I had a problem with the funeral fund. They sent me the letters and I had about \$15,000 in the fund. I missed a couple of payments and then they cut me off. I asked for the \$15,000 – where’s that gone? They won’t tell me where

that went. We got no rights about it. We know people that have passed away that have been paying in for years and years and they reckon they got no records of this. They couldn't give the family the money to cover the people who had passed on (*Tabulam Men's FG participant*).

I had a problem with the Aboriginal funeral fund. They wouldn't pay for my sister's husband. He was in it for 10 years and he died of cancer. They wouldn't pay for anything. They said he missed one payment (*Mt Druitt Men's FG participant*).

A lot of people in Moree have been in the funeral fund. If you get off the dole and then miss your payment – that's it. Doesn't matter if you have been in it for four or five years. That's it, you're gone (*Moree Men's FG participant*).

I had about \$2900 in the Aboriginal funeral fund and I asked for my money out of it. All I got was \$900. They kept \$2000. (*Bourke Men's FG participant*)

Funeral funds were also identified by legal stakeholders in Lismore.

The funeral benefits scheme is very active up here and a lot of people get into trouble with that. It specifically targets Aboriginal people. It is a rip off. It is exploiting Aboriginal people because of the cultural importance of burial. Payday lending is another one (*Legal Practitioner 1 Lismore*).

#### **CASE STUDY**

When asked about any consumer scams that they had come across, one focus group participant said, "There was some people going around selling vacuums. And that happened to a lot of people, that they came around and said that they only cost so much money, but they ended up having to pay more than they bargained for. And when they sent the vacuums back, they didn't want the vacuums. They let it go on their credit rating, and it made their credit rating bad. They would go round to the houses door to door." When asked what people did about the situation, the response was: "It just mucks their finance up" (*Tabulam Women's focus group participant*).

Participants were also asked whether they had any other type of problem where they paid for something and did not get what they paid for. Table 5.10 shows that 12.5 per cent of participants indicated they had other types of consumer issues.

**Table 5.10**  
**Number and Percentage of Focus Group Participants Who had Other Consumer Issues**

Other Consumer Issues	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	8	10.8	10	14.3	18	12.5
No	66	89.2	60	85.7	126	87.5
<b>Total</b>	74	100.0	70	100.0	144	100.0

Excludes 9 missing cases

In response to the previous four questions, participants were asked to briefly identify the nature of any problem. Some 21 participants responded. As shown in Table 5.11, the most common response was a reference to a faulty product or the wrong product being purchased or delivered. Disputes over bank fees were the next most frequent category.

**Table 5.11**  
**Other Consumer Issues**

Type	No
Faulty or Wrong Product	9
Bank fees (including dishonour fess)	4
Door to Door Sales	2
Pay TV dispute	2
Funeral Fund	1
Internet scam	1
Insurance repayments	1
Unlicensed vendor	1

Seven individuals (four males and three women) indicated they sought legal advice. Of these, two indicated they contacted Legal Aid, two the Department of Fair Trading and two indicated contacting a private solicitor. All six indicated that the advice provided was satisfactory.

## 5.4 Conclusion

### *Social Security and Centrelink*

Some 36 per cent of Aboriginal participants in the focus groups were receiving an Indigenous specific allowance. The proportion was higher among males (42.7 per cent) compared to females (28.4 per cent).

In addition three quarters of the focus group participants (75.8 per cent) stated they were receiving some other type of Centrelink benefit. The proportion was higher among females (85.1 per cent) compared to males (66.7 per cent)

Approximately one in three men (32.9 per cent) and one in four women (26.3 per cent) identified having dispute with Centrelink over the last couple of years.

Of the 44 people who identified having a dispute with Centrelink, five (11.6 per cent) sought legal advice.

### *Credit and Debt*

Some 34.9 per cent of the participants identified debt-related problems. The percentage was similar for both males and females, and was more than one in every three participants.

Some 19 per cent of participants identified problems relating to their Credit Reference rating, as a guarantor for a loan or in relation to possible bankruptcy.

Telephone bills and Credit Reference Rating were two frequently mentioned problems.

Only five focus group participants (three men and two women) indicated they sought legal advice for their problem.

### *Consumer Issues*

Some 19.9 per cent of participants indicated a dispute or problems accessing superannuation, or with a bank or financial institution. The percentage was higher for women (22.7 per cent) than men (17.1 per cent).

Some 6.1 per cent of participants indicated a dispute relating to insurance. There was little difference between the male and female responses.

Some 13.1 per cent of participants indicated a problem with a 'scam' such as a funeral fund or door to door sales. The percentage of Aboriginal men indicating this issue was higher than Aboriginal women (16.2 per cent compared to 9.9 per cent). Many participants in the men's focus groups identified problems with Aboriginal funeral funds.

Overall, seven individuals (four males and three women) indicated they sought legal advice.



**CHAPTER SIX:  
LEGAL NEEDS : VICTIMS COMPENSATION, ACCIDENTS, INJURIES  
AND WILLS AND ESTATES**

In this chapter we discuss three areas of legal need: victims compensation, accident and injury and wills and estates.

**6.1 Victims Compensation**

While victimisation for violent offences is relatively frequent, knowledge about victims compensation is not as widespread as might be expected. In some instances there is also informal and anecdotal knowledge-sharing between community members about victims compensation entitlements which is not always accurate:

When my son got shot I was told he can't get it. I was told I would have to sue the boy and his father to get compo. When my son got shot [the person who gave this information] was there for support... he was a community worker...he didn't go to a lawyer to check it out (*Tabulam Women's FG participant*).

Focus group participants were asked whether, over the last couple of years, they had been the victim of a violent crime. Table 6.1 shows that 28.9 per cent of participants reported being victimised. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

**Table 6.1  
Number and Percentage of Focus Group Participants Who Have Been the Victim of a Violent Crime**

Victimisation	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	20	27.0	23	30.7	43	28.9
No	54	73.0	52	69.3	106	71.1
<b>Total</b>	69	100.0	68	100.0	137	100.0

Excludes 4 missing cases.

Table 6.2 below shows that the majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victims compensation scheme. As one focus group participants stated:

A lot of people don't know how to go about it...they think they just leave it for the police, in the courts. But police don't give them that kind of information (*Goodooga Women's FG participant*).

None of us knows how to go about the compensation. Most people aren't aware of victims comp. I went to the courthouse (*Tabulam Men's FG participant*).

Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

**Table 6.2**  
**Number and Percentage of Victims Who Were Aware of the Victims Compensation Scheme**

Aware of Compensation Scheme	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	7	35.0	11	47.8	18	41.9
No	12	60.0	12	52.2	24	55.8
<b>Total</b>	19	100.0	23	100.0	42	100.0

Excludes 1 missing case.

Stakeholder interviews confirmed a lack of awareness of victims compensation.

There's not a lot of awareness of availability of the scheme, although the women's legal service in Bourke is now increasing awareness of it (*Aboriginal legal support workers 1 Bourke*).

The majority of people probably wouldn't know about the scheme. Only if you have been through the court system, otherwise you wouldn't know (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants who had been the victim of a violent crime were also asked whether they pursued victims compensation. Table 6.3 shows that only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

**Table 6.3**  
**Number and Percentage of Victims Who Pursued Victims Compensation**

Pursued Compensation	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	4	20.0	7	33.3	11	26.8
No	16	80.0	14	66.7	30	73.2
<b>Total</b>	20	100.0	21	100.0	41	100.0

Excludes 2 missing cases.

## 6.2 Accident and Injury

### 6.2.1 Motor Vehicle Accidents

Focus group participants were asked whether over the last couple of years, they had been involved in a car accident where there was damage to either their vehicle or the other vehicle. Table 6.4 shows that 14.2 per cent of the participants indicated they had been involved in an accident. It was a similar percentage for both males and females.

**Table 6.4**  
**Number and Percentage of Focus Group Participants Who Were Involved in a Car Accident Over the Last Couple of Years**

Motor Vehicle Accident	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	10	13.7	11	14.7	21	14.2
No	63	86.3	64	85.3	127	85.8
<b>Total</b>	73	100.0	75	100.0	148	100.0

Excludes 5 missing cases

Table 6.5 shows that of those were involved in an accident 12 were insured. Men were more likely to be insured than women.

**Table 6.5**  
**Number and Percentage of Participants Involved in an Accident Who were Insured**

Insured	Focus Group Participants		
	Male	Female	Total
	No	No	No
Yes	7	5	12
No	3	5	8
<b>Total</b>	10	10	20

Excludes 1 missing cases

Five individuals were required to pay for damage. Six reported being injured in the accident and four sought legal advice.

### 6.2.2 Work-Related and Other Injuries

Participants were asked whether they had suffered any work-related injury. Table 6.6 shows that 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent).

**Table 6.6**  
**Number and Percentage of Focus Group Participants Who Reported Work-Related Injuries**

Work-related Injuries	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	15	22.7	2	3.2	17	13.3
No	51	77.3	60	96.8	111	86.7
<b>Total</b>	66	100.0	62	100.0	128	100.0

Excludes 25 missing cases

Participants were also asked if they had been injured outside of the home, for example in a shopping centre, club or as a result of a medical treatment. Table 6.7 shows that 17.8 per cent of participants reported other injuries outside of the home.

**Table 6.7**  
**Number and Percentage of Focus Group Participants Who Reported Injuries Outside the Home**

Injuries Outside the Home	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	14	20.3	10	15.2	24	17.8
No	55	79.7	56	84.8	111	82.2
<b>Total</b>	69	100.0	66	100.0	135	100.0

Excludes 18 missing cases

Participants were asked whether any of these injuries required medical treatment. Table 6.8 shows that 23.1 per cent responded that the injuries did require treatment.

**Table 6.8**  
**Number and Percentage of Focus Group Participants Who Reported Injuries Requiring Medical Treatment**

Injuries Requiring Medical Treatment	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	14	23.7	11	22.4	25	23.1
No	45	76.3	38	77.6	83	76.9
<b>Total</b>	59	100.0	49	100.0	108	100.0

Excludes 45 missing cases

Participants were asked whether they sought legal advice in regard to compensation. Twelve individuals (seven men and five women) stated that they sought legal advice, and ten of these indicated who provided the advice:

Private solicitor	5
Police	1
Legal Aid Commission	1
Women's Legal Service	1
Court registrar	1
Trade Union	1

The majority (8) indicated that the advice was satisfactory.

### 6.3 Wills and Estates

Very few Aboriginal people have wills. It is one of those issues which is perhaps not prioritised but can result in considerable family and community tension. There was a perception among focus group participants that wills are only useful where there is significant amount of money or property to be distributed. The usefulness of a will for clarifying other posthumous wishes such as burial place or guardianship of children, was not generally understood:

I got nothing to leave anyway. I'm right (*Dubbo Women's FG participant*).

First in, first served! (*Dubbo Women's FG participant*).

Aboriginal people like us we really haven't got a lot. When someone in the family dies people more or less share. No need for a will I don't think (*Goodooga Women's FG participant*).

However, this was not a uniform view:

I've got no money to give them but there are certain things that I'd like some of my kids to have...then there's no arguments (*Redfern Women's FG participant*).

That was a big dispute with Uncle, went on for two or three weeks. He didn't have a will. He said he wanted to be buried here in Moree. His mum was buried here. He wanted to be buried with his mum. The community said he should be buried out there. It split a lot of the family here (*Moree Men's FG participant*).

Focus group participants were asked whether they had completed a will. Table 6.9 shows that only 6.1 per cent of the participants indicated they had completed a will. Thus 93.9 per cent of participants had not completed wills.

**Table 6.9**  
**Number and Percentage of Focus Group Participants Who Have Completed a Will**

Completed Will	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	3	4.0	6	8.2	9	6.1
No	72	96.0	67	91.8	139	93.9
<b>Total</b>	76	100.0	73	100.0	148	100.0

Excludes 5 missing cases

Twice the number of women compared to men had completed wills. The older age of the female women participants might have partly accounted for this difference (see Table 1.2). However, closer analysis of the data showed that only one of the 15 women aged 55 and over had completed a will. Thus women irrespective of age were more likely to have completed a will than men.

Stakeholder interviews confirmed that few wills were completed. "I've been here six years I haven't seen one" (*Aboriginal legal support workers 1 Walgett*).

Six of the nine focus group participants who had completed a will also indicated that they received advice. Five of the six indicated who provided the advice. Three cases involved private solicitors, one the Aboriginal Legal Service, and one, a solicitor who was a friend of the participant.

While most have not completed a will, there was a clearly identified legal need in this area.

People would fill out wills if they could do it for free. If they knew how to do it. That would be a good course to run in the community. If you could help

people fill it out, you'd probably get half the community to come and do it. With DOCS the way they are you are better off having it in your will where your kids should go (*Wagga Men's FG participant*).

You would get some interest in filling out a will if someone came out and helped. No one really understands all about the wills, or the legal way about it (*Tabulam Men's FG participant*).

I'm worried about that. It's a huge issue, a huge issue, and we know nothing about it. If people had information and assistance they would do one. It could be part of what happens when people sign up for a funeral fund. Especially if people have children from different marriages (*Aboriginal legal support workers 1 Dubbo*).

Focus group participants who had not completed a will were asked whether they would like legal advice to complete one. Table 6.10 shows that almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.

**Table 6.10**  
**Number and Percentage of Focus Group Participants Who Would Like Assistance Completing a Will.**

Assistance Required	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	34	47.9	39	69.6	73	57.5
No	37	52.1	17	30.4	54	42.5
<b>Total</b>	71	100.0	56	100.0	127	100.0

Excludes 12 missing cases.

Participants were asked who they would approach for advice on completing a will. Some 47 participants responded and the results are shown below in Table 6.11 Some participants indicated more than one source for assistance and advice.

**Table 6.11**  
**Who Would You Approach for Advice on Completing a Will?**

	No
Lawyer (non-specific)	18
Aboriginal Legal Service	10
Relatives	9
Legal Aid Commission	7
Friends	3
Community Legal Service	3
Court	1
Myself	1
Do not know	2

Stakeholders also identified the need for information to be provided about wills, but which was appropriate for the particular community.

There are fights over who gets what property and money, and people say it would be better if there was a will to sort it out. We want to set something up here but the courthouse isn't the right place, people don't feel comfortable here. We'd like a legal service to come out and do information sessions and provide help (*Aboriginal legal support workers 1 Bourke*).

There is a need to look at cultural criteria that may be important to Aboriginal people but that don't fit into the mainstream approach to wills. Births Deaths and Marriages did a birth certificates drive which was very successful -300 people in a couple of days (*Aboriginal legal support workers 2 Dubbo*).

Participants were also asked whether they had been an executor for a deceased estate. Table 6.12 shows that only 6.6 per cent of participants had been named as an executor in a will.

**Table 6.12**  
**Number and Percentage of Focus Group Participants Who Have Been an Executor for a Deceased Estate**

Named Executor	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	4	5.6	5	7.7	9	6.6
No	68	94.4	60	92.3	128	93.4
<b>Total</b>	72	100.0	65	100.0	137	100.0

Excludes 16 missing cases.

Participants were asked whether they had been involved in any disputes over a deceased estate. Table 6.13 shows that 9.5 per cent of participants had been involved in such a dispute. Aboriginal women were slightly more likely to be involved in a dispute than Aboriginal men (11.8 per cent compared to 7.2 per cent).

**Table 6.13**  
**Number and Percentage of Focus Group Participants Who Have Been Involved in a Dispute over a Deceased Estate**

Dispute over Estate	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Yes	5	7.2	8	11.8	13	9.5
No	64	92.8	60	88.2	124	90.5
<b>Total</b>	69	100.0	68	100.0	137	100.0

Excludes 16 missing cases.

## 6.4 Conclusion

### *Victims Compensation*

Some 28.9 per cent of participants reported being the victim of a violent crime. The proportion of women victimised was slightly higher than men (30.7 per cent compared to 27.0 per cent).

The majority (55.8 per cent) of those who reported being the victim of a violent crime did not know about the victims compensation scheme. Aboriginal women were more likely to be aware of the scheme than men (47.8 per cent compared to 35 per cent).

Only one in four victims (26.8 per cent) pursued compensation. Although the numbers are small, Aboriginal women were more likely to pursue compensation than Aboriginal men (33.3 per cent compared to 20 per cent).

#### *Accident and Injury*

Some 14.2 per cent of the participants indicated they had been involved in a motor vehicle accident over the last couple of years. Of this group, slightly more than half were insured and less 20 per cent sought legal advice.

Some 13.3 per cent reported work-related injuries. Men (22.7 per cent) reported much higher rates than women (3.2 per cent). 17.8 per cent of participants reported other injuries outside of the home.

#### *Wills and Estates*

Only 6.1 per cent of the participants indicated they had completed a will. Twice the number of women compared to men had completed wills.

Almost half the men and more than two thirds of the women who had not completed wills would like legal assistance to do so.



## **CHAPTER SEVEN**

### **ABORIGINAL EXPERIENCES OF LEGAL AID**

You'll actually get clients who call up and say, "do I have to come in to white man's world"? (*LAC Aboriginal staff member 5*).

This chapter identifies the priority areas of Aboriginal legal need as they emerged from the previous discussion and client experiences. The purpose of this discussion is to assist Legal Aid NSW in identifying what strategies might be useful in addressing the needs identified. The second part of the chapter discusses in some depth the experiences of Aboriginal clients of Legal Aid NSW service delivery, based on the interviews with stakeholders and the focus group discussions.

It is important to note that Aboriginal clients often present not only with a greater level of legal need, but also with a more complex set of needs than non-Indigenous clients. As stated by one legal service provider:

In addition to being Aboriginal and what marginalisation might occur from that, they also happen to have substance abuse, mental illness from post traumatic stress and whatever else might be going on, they are poor, and very often have a range of things like un-picked up learning disabilities, there might be levels of then self-fulfilling prophecies of foetal distress syndrome, all the sexual violence and family violence that has gone on, because of that soup of additional problems that go on that happen to be in the community that is Aboriginal, but which are not necessarily Aboriginal per se... we always feel like we have to work miracles to undo all the barrage of other issues that have gone unattended to, to even get to the legal issue they have come in with (*Legal Practitioner 1 Redfern*).

The complexity of legal need has been noted in many previous reports relating to the legal representation of Indigenous people (see Chapter 1, and Cunneen and Schwartz 2008).

#### **7.1 Aboriginal Legal Needs: The Priority Areas**

One of the most pressing issues to emerge from the research is the general lack of community knowledge about civil and family law.

I think there needs to be a lot more awareness in the Aboriginal community about family and civil law issues. I'm having difficulties myself learning here, trying to fit it in between doing my role; if anyone asks me about family law, I really don't know. Because, you don't have the proper training, and most people wouldn't have a clue what happens in those family law matters or the civil – or where they can go (*Aboriginal legal support workers 2 Dubbo*).

See, these are new things to me – education and consumer issues and stolen wages, and people could have those issues but not know that we can deal with them (*Aboriginal legal support workers 1 Bourke*).

Aboriginal people currently working in legal support or referral agencies do not necessarily know themselves what civil law covers or what redress may be available. Legal education is required at two levels: community legal education and basic legal advocacy education for Aboriginal service providers.

There needs to be more promotion of what civil law is, and what it can do for the community. ‘Civil’ – you might as well be talking in Chinese! I think a lot of the time, people find themselves in situations that, if they had known what to do about it in the first instance, they wouldn’t have found themselves in X, Y, Z situation (*LAC Aboriginal staff member 1*).

One of the ramifications of lack of community knowledge and of lack of availability of services is that unaddressed civil or family needs can become criminal in nature:

[Its] Sheer desperation, as far as family and civil law matters go. They have nowhere to go for any legal advice... [Family law matters] end up becoming criminal matters because they don’t know how to deal with those family law matters, the only way they know how to deal with it is to go out and have a big punch up... They don’t realise what their rights are in civil law; they don’t even know what that is. (*Legal support worker 1 Wagga*)

If the family and civil problems aren’t addressed they turn into a criminal problem. They always do. Especially when it comes to the family stuff, about the kids, then it turns into someone is going to flog someone else (*LAC Aboriginal staff member 3*).

### *7.1.1 Determining Priority Areas*

Various stakeholders and organisations identified what they saw to be the priority areas of legal need. There was a relationship between remoteness and unmet legal need; the high level of need for legal services in Goodooga was evidenced by the fact that participants viewed the focus group as a forum to obtain legal advice. The matters that participants sought advice about were often of a serious nature – fundamental housing questions, victims compensation and stolen wages.

While there were variations in identified need between different locations, we have identified the following matters as state-wide priorities on the basis of the focus group surveys and discussions and the interviews with stakeholders:

### *7.1.2 Housing*

I’m grateful I’ve got my house. I think maybe it’s just like a test, to see how much you want your house, and how long you’re going to live there for (*Mt Druitt Women’s FG participant*).

41.2 per cent of focus group participants said that they had had disputes involving their landlords in the last few years. Sixty five per cent of these disputes involved landlords not carrying out requested repairs or rent arrears.

My nanna had termites in her house and she tried to get someone at Housing Commission to help her for over a year, but they just didn't do anything. And she eventually just fell through the floor. It nearly killed her. And even then Housing Commission weren't doing anything. So we wrote a letter and sent it to a lot of politicians, MPs, and that's when things started to happen (*Mt Druitt Women's FG participant*).

There's Department of Housing and Aboriginal housing. Repairs to windows, doors, flyscreens. There are places that haven't been painted for 10 years. If you are single man you've got no hope of getting into Aboriginal Housing... There's no one to go to if you want legal advice (*Wagga Men's FG participant*).

I lived in West Dubbo 13 years, the only time DOH came to visit was to tell them not to park on the grass outside the house (*Dubbo Women's FG participant*).

Table 4.8 below shows that housing was identified as an issue in all focus group locations, although more so in metropolitan areas. This may reflect a greater readiness in city locations to identify problems that they are having as legal issues. It may follow that the better access to services a community has, the more understanding of legal issues they are able to have, and the more readily they can accurately diagnose issues as legal needs when they arise. For example, Goodooga focus groups reported among the lowest incidence of legal need in relation to housing, but it emerged through the discussion that there was in fact no organisation taking responsibility for public housing in Goodooga, which translated into a situation where no tenants were paying rent and the houses were not insured in case of damage. Despite this, 75 per cent of Goodooga respondents reported having no legal needs around housing. Hence it is likely that the level of legal need is actually higher than the figures below indicate, due to a level of unrecognised need within some communities.

**Table 7.1**  
**Geographic Location and Housing**

Location	Housing	
	Yes	No
Bourke	6	15
Dubbo	9	8
Goodooga	5	15
Moree	9	6
Mt Druitt	10	9
Redfern	12	9
Tabulam	4	16
Wagga	8	12
Total	63	90

Only a quarter of people who had experienced legal issues around housing sought legal advice. Overwhelmingly, tenants tried to solve these problems directly with the landlord, usually through Department of Housing complaint mechanisms. This is a problem because of the power imbalance between landlord and tenant in public housing, where the landlord has the capacity to influence eviction or future access to

housing. This power imbalance, and the frustration and sense of impotence that it engenders, was frequently commented upon in focus groups (see Chapter 3).

The degree of unmet need in this area is perhaps reflected in the data recording the usage by Aboriginal people of Legal Aid NSW services (although it may also reflect the preference of clients to access specialist tenancy services). Landlord/Tenancy matters represented only 5 (or 3.8 per cent) of 130 matters for which minor assistance was accessed at Legal Aid offices in 2007. Minor assistance for tenancy matters represented 2.2 per cent of minor assistance for non-Aboriginal clients in the same year.

### 7.1.3 Discrimination

Discrimination was nominated in every focus site as an entrenched reality for Aboriginal people.

There's no real avenue to seek legal advice on small things. So if you're in a shop and someone serves you last, it's not something you can really go, 'hey, I'm going to sue you' – there is no legal avenue, there's nothing you can do because it's so minute, but it is constantly there (*Mt Druitt Women's FG participant*).

Almost thirty per cent of focus group participants said that they had recently been subject to discrimination in some context.

[This is an area that Legal Aid should focus on] because discrimination is one of those things that *becomes* criminal stuff, because we react (*Aboriginal legal support workers 1 Dubbo*).

Table 7.2 shows that the reports of discrimination came from all the areas surveyed. However it is worth noting that the highest reporting of discrimination was in the city areas of Redfern and Mt Druitt, and the lowest reporting of discrimination was in the isolated communities of Goodooga and Tabulam.

**Table 7.2**  
**Geographic Location and Discrimination**

Location	Discrimination	
	Yes	No
Bourke	4	17
Dubbo	5	11
Goodooga	2	17
Moree	5	9
Mt Druitt	8	10
Redfern	10	10
Tabulam	3	16
Wagga	4	15
Total	41	105

Excludes 7 missing cases

Despite the high occurrence of discrimination, in many cases it is viewed more as a 'fact of life' than as an unlawful act that attracts a right of legal redress. In this

respect, because people may not identify incidents of discrimination as actionable, it may be an unrecognised legal need within communities.

I reckon discrimination is just an everyday event for every one of us women sitting here...and when you go and speak to someone about it they think you're just crying 'blackfella'. They tell you, "don't worry about it, it will be alright". Well it's not alright...you've still got to walk around every day with that in your head...some people are not as strong as others and they take it to heart, and then they do things to themselves...or others, and then they end up in jail (*Redfern Women's FG participants*).

You just leave it, just don't worry about it. Or get really upset about it and then just shrug it off later (*Mt Druitt Women's FG participants*).

Discrimination matters represented nine (or 6.9 per cent) of the 130 matters for which Aboriginal people approached Legal Aid NSW for minor assistance in 2007. Forty one people in the focus groups alone disclosed that they had problems with discrimination in the last couple of years.

Non-Aboriginal clients approached Legal Aid NSW for discrimination advice in 5.2 per cent of all minor assistance matters.

#### *7.1.4 Credit and Debt*

Issues of financial literacy and consumer debt were identified high priorities of legal need for Aboriginal people across New South Wales. 34.9 per cent of focus group participants identified recent debt-related problems.

The main thing is credit and debt, and discrimination. Financial literacy is a problem. People are targeting Aboriginal communities because they know there are problems of financial literacy (*Legal Practitioner 1 Lismore*).

Table 7.3 shows that all locations experienced problems being pursued for unpaid debts. Between thirty and forty-five per cent of respondents in all locations stated that they had had legal action taken or threatened against them for monies owed, except for the most remote community, Goodooga, where ten per cent of focus group participants identified this problem. Note that these figures only account for situations where debt had escalated to legal action being taken – there is likely to be a far higher number of people who face lower level debt problems that have not yet reached this level of seriousness. Therefore the level of legal need is likely to be even higher than is represented in Table 7.3.

**Table 7.3**  
**Geographic location and legal action faced on account of debt**

Location	Debt issue	
	Yes	No
Bourke	7	13
Dubbo	7	9
Goodooga	2	17
Moree	7	8
Mt Druitt	8	11
Redfern	6	15
Tabulam	6	13
Wagga	9	11
Total	52	97

Excludes 4 missing cases

Unaddressed debt issues have far reaching impact, influencing, among other things, credit reference ratings and the ability to maintain a driver's license. Many Aboriginal support workers offered informal assistance drafting letters to the State Debt Recovery Office to arrange payment plans.

Personal debt issues represented 14 out of a total 130 (or 10.8 per cent) of minor assistance provided to Aboriginal clients by Legal Aid in 2007. For non-Aboriginal clients in the same year, these matters represented 170 (or 8.1 per cent) of the 2100 minor assistance matters.

#### *7.1.5 Family law / Care and Protection*

DOCS matters were nominated across all focus sites as among the highest priority for Aboriginal people:

[Care and protection is] one of the highest priorities of representation needed and proactive assistance for clients, otherwise we are going to have another stolen generation, and another one after that, and another one after that. We do our best, but like all strapped services, we prioritise people already in crisis... what happens to them when they are out of crisis is that we roll them out the door and we move on... (*Legal practitioner 1 Redfern*).

Family law and DOCS are a big issue. We have been approached to do a CLE on DOCS particularly for the younger women. Some DOCS workers use scare tactics. So we have to inform the women, to empower them (*Legal Practitioner 1 Dubbo*).

I think care is a priority. It is a system that is very difficult for people to understand. People get swept into the system and there is very little respite. Sometimes a child goes into care and there aren't very good explanations, sometimes there isn't a lot of cultural sensitivity... (*Aboriginal Legal Service staff member 3*).

Apart from Goodooga, all focus group sites had at least one participant who had a recent custody or access issue (Table 7.4), or a recent care and protection matter

(Table 7.5). Metropolitan areas represented a spike in these types of matters, with the incidence of matters diminishing as locations became more remote.<sup>23</sup>

**Table 7.4**  
**Geographic location and Custody/Access**

Location	Custody/access issue	
	Yes	No
Bourke	1	20
Dubbo	5	12
Goodooga	0	18
Moree	2	13
Mt Druitt	6	13
Redfern	8	13
Tabulam	2	18
Wagga	2	18
Total	26	125

Excludes 2 missing cases

**Table 7.5**  
**Geographic location and Care/Protection**

Location	Debt	
	Yes	No
Bourke	2	17
Dubbo	5	12
Goodooga	0	16
Moree	1	12
Mt Druitt	4	15
Redfern	8	13
Tabulam	1	17
Wagga	2	17
Total	23	119

Excludes 11 missing cases

#### *7.1.6 Other unrecognised needs*

Apart from the categories of legal need outlined above, there are a number of other priority areas that do not necessarily present as such at first glance. This is because there are some issues that, like discrimination (discussed above), were unrecognised as legal needs, although the need might have been present. Three examples of this are matters concerning stolen wages, victims compensation and wills and estates: although there was no articulated urgency in relation to these areas, this was due to a lack of knowledge among participants of the advantages of entitlements that may accrue to them. Wills, for example, were not considered a priority where there was no substantial property to bequeath; but the benefits of wills for stipulating the care of dependants or burial wishes were not known. Similarly, low levels of knowledge about victims compensation or the ATFRS may result in a low level of articulated need, although the potential level of need may be much higher.

<sup>23</sup> Note, however, that there are 11 missing cases in Table 7.5, which is 7.2 per cent of the entire sample.

## 7.2 Observations on Legal Aid NSW Service Delivery

Along with a generally meagre understanding of civil law issues, Aboriginal interviewees sometimes had a lack of knowledge of the nature and extent – or existence in the first place - of Legal Aid services.

I didn't know they had another Legal Aid in Dubbo [other than ALS] (*Dubbo Women's FG participant*).

A lot of the blackfellas around here don't know what legal aid do (*Dubbo Men's FG participant*).

I don't know many people who think of legal services as anything other than for criminal matters, or even when they do, they would rather use a friend for advice rather than lawyers (*Aboriginal community organisation worker 1 Redfern*).

Issues around access to legal help were starkly illustrated by participants in the Goodooga, Tabulam and Redfern women's focus group, none of whom had ever seen a lawyer for any non-criminal matter aside from victims compensation:

No one comes out here. We've never had any lawyers out here (*Goodooga Women's FG participant*).

Only when they go to court; that's the only time they see [lawyers] (*Tabulam Women's FG participant*).

Because one, they cost money, which we don't have and two, they don't give a damn (*Redfern Women's FG participant*).

For those who had some exposure to Legal Aid, a number of issues were raised which impacted on the level of satisfaction they had as clients.

### 7.2.1 General observations on Legal Aid as a service to Aboriginal people

Some focus group participants emphasised the fact that Legal Aid is not an Aboriginal organisation and was not seen to cater to Aboriginal clients:

I had to go and get an Aboriginal Nationality Certificate when I went to see them [LAC]. I didn't worry about that; I went back to WALs. Why do I need to get a form to prove I'm Aboriginal? (*Dubbo Women's FG participant*).

I found that just walking into WALs and knowing that there were Aboriginal people on the front desk; talking to Aboriginal people before you got to see your solicitor. When I went into the Legal Aid office they all just sort of... look. I got real nervous... (*Dubbo Women's FG participant*).

You feel more at ease if you walk into an office and you see your own kind...black people feel more comfortable with other black people around (*Dubbo Women's FG participant*).



This sentiment was echoed by some stakeholders:

We've got the Aboriginal Legal Service so I guess I don't really think about Legal Aid (*Aboriginal legal support workers 1 Penrith/Mt Druiitt*).

They rely on the ALS ... because they believe that the ALS solicitors understand our culture and our language. It's very difficult for an Aboriginal person to have to go into a non-Aboriginal organisation especially to talk about personal issues. And that's male and female (*Legal support worker 1 Wagga*).

I just don't think Legal Aid is the most appropriate service provider. Aboriginal people have special needs...it's a different sort of culture, and that's what you need to get the people in. you've got to take it to the people...they're not going to come necessarily to you (*Aboriginal Legal Service staff members 2*).

This dynamic has ramifications for policy development concerning the relationship between Legal Aid NSW and ALS:

First point of call is always ALS, even for civil advice. People don't know that they can go to Legal Aid. So it is important to have very strong relationship with ALS (*LAC Aboriginal staff member 1*).

It is, however, important to note that stakeholders sometimes identified as an advantage the fact that Legal Aid was not an Aboriginal organisation:

[In Aboriginal organisations,] because everyone knows everyone, clients don't really want them to know their personal stuff. The main issue is that there is a lack of confidentiality in Aboriginal services (*Legal support worker 1 Wagga*).

There was widespread consensus that it was possible for Legal Aid to provide appropriate and effective services for Aboriginal clients with the right policies in place. An Aboriginal legal support worker who had also participated in the men's focus group, when asked about his relationship with Legal Aid, said:

Until now, non-existent. I didn't know they did family or civil matters. But if I were to look into the future, judging from the reaction we got from the men yesterday, I would say it is going to increase very rapidly...If Legal Aid were to go to our community centres once a fortnight or once a month, they would get a lot of people. A lot of people would see Legal Aid in a completely different light (*Aboriginal legal support worker 1 Wagga*).

### 7.2.2 Literacy issues, complexity of Legal Aid forms and lack of assistance

Difficulties in completing Legal Aid forms and lack of support or assistance in doing so were identified as a barrier to access by a number of interviewees. Similarly, a lack of appreciation of literacy issues or failure to tailor service delivery to accommodate

low levels of literacy was nominated as both alienating for clients and as contributing to miscommunication:

A lot of Kooris are not particularly literate. So asking them to write down their version of events, and please give us exact dates – terrible with dates! Koori people don't tend to have a calendar that they consult for dates, so there can be issues getting instructions. And this can be perceived by the solicitor as a failure to instruct, but it is more of a failure to understand what they are asking (*LAC Aboriginal staff member 5*).

Another thing we get inquiries for is simply stuff like filling out forms. Legal Aid documents are not the easiest to fill out, especially if you have literacy problems. You are asked to fill out a 10-15 page document. So they come to us to help them fill out the legal aid forms. [Why don't they go to legal aid?] Because they won't help them – I say that quite honestly. If you can't fill out the forms, bad luck (*Legal Practitioners 1 Dubbo*).

### 7.2.3 Issues involving conflict, referral and lack of assistance

Aboriginal clients may have particular needs when being referred from Legal Aid NSW to other legal service providers. As one Aboriginal Legal Aid NSW employee notes, these needs are not always recognised on the level of policy or practice:

Where there is a conflict that prevents clients from getting represented by Legal Aid, they are told that they can go to a private solicitor who can get legally aided to help them: “they're just handed this piece of paper... what if they can't read? How are they going to find the firms? How are they going to communicate when they walk in? If you go to the private firms and they're nice buildings, it's very daunting” (*LAC Aboriginal staff member 2*).

This sentiment was reflected in focus group comment:

You feel uncomfortable going to the private lawyers. I feel uncomfortable walking in the door. The way they look at you. Probably thinking ‘he's got no money, why's he coming in here for’? (*Dubbo Men's FG participant*).

The problem is compounded by the lack of private lawyers in country areas who will do legal aid work.

There is not a lot of private solicitors that will do legal aid grant work because there is not enough money in it for them. And the further you go out into the remote areas then the less likely are these people to get representation (*Legal Practitioner 1 Dubbo*).

A further problem is the lack of information when there are conflicted matters.

[This service] often gets Aboriginal clients who have been to LAC to be told, “we can't help you, go and see [another service]”. On further investigation it comes to light that what has happened is that there has been a conflict that has prevented LAC from acting for that individual, and really what that person

needs is a private solicitor who should then apply for a grant of legal aid. Sending them to us is just a waste of the client's time – it uses our resources and it confuses the client; Legal Aid need to come to the party and say to the client, 'we can't help you because we have a conflict of interest, however, we do have a grants program, you may or may not be eligible, here is a list of private solicitors and if you are eligible they will make an application for you'. I'm so sick of it, I've spent six years at this service having to explain this to distressed clients who come to the counter saying 'I've been refused Legal Aid' (*Legal Practitioner 1 Redfern*).

They won't even help clients find a solicitor. 'We've got a conflict of interest, go find your own solicitor and then we will give you a grant of aid'...

Quite often they don't tell them when they have a conflict of interest and that they can get another solicitor and a grant of legal aid. If Legal Aid don't tell them, then they don't know. It's a worry. They don't do anything to assist the client. There are four legal firms in town that do legal aid work. The client walks away thinking they can't get legal aid (*Legal Practitioners 1 Dubbo*).

There are also problems with Aboriginal people being told that the Legal Aid office is 'too busy' to deal with their matter.

We have had child recovery matters where clients have been to Legal Aid and been told that they are too busy to do it and shunted them down to us. We have done a lot of child recoveries in the last few months. In all honesty I think it is an easy convenience for [Legal Aid] (*Legal Practitioners 1 Dubbo*).

#### *7.2.4 Level of attention and friendliness given to clients*

A number of Aboriginal clients reported having alienating experiences at Legal Aid offices.

When I went into the white one the secretary said they were all in court and gave me a card and said they would ring me back. I didn't get no ring back (*Dubbo Women's FG participant*).

Train the white staff to be friendlier to Aboriginal people. Educate them (*Dubbo Women's FG participant*).

They're so sour when you walk in, they give you your piece of paper and on your way (*Dubbo Women's FG participant*).

They take their time... you don't get any results out of nothing no more. I'm real dissatisfied with everything (*Dubbo Women's FG participant*).

I've used legal aid. I found them slow. You felt like you are being brushed off all the time. 'Ring back next week'. I felt frustrated. Like I had the run around (*Mt Druitt Men's FG participant*).

You need one client service officer rather than being passed on and on and having to re-explain your situation over and over again. If you have someone take your case history at point A, they should be present at point B as well (*Aboriginal community organisation worker 1 Redfern*).

These issues were also raised by stakeholders:

There aren't enough Legal Aid people to service the community...and that silly answering machine – you never get to speak to anyone until the day of court and then it is just hello (*Aboriginal legal support workers 1 Dubbo*).

Many people who have been to Legal Aid once don't go back, they are unhappy with the service they get there. They treat people with no respect (*Aboriginal legal support worker 2 Bourke*).

I have had clients who have complained about the way they have been treated, the way they have been spoken too, spoken down to [in the legal aid office] (*Legal Practitioner 1 Dubbo*).

Quite often when a client goes to legal aid they are referred back to WALIS (*Aboriginal legal support workers 1 Dubbo*).

#### *7.2.5 Breakdowns in client-practitioner communication*

An enduring problem arises in relation to the level of client satisfaction with the quality of communication with their lawyers:

Clients come in and say: 'I don't know who's looking after my matter I haven't heard from them, I don't know what's going on'... we are white service providers, who are used to spreading a resource over a wide area and we hand things over to a rostered person because this is the only way that it can actually work. But for a community that works very much on relationships of trust, continuity of contact, hand overs, introductions, this doesn't work. This leaves people feeling like, 'I don't know, am I in court next week, or where am I?' ... You are looking at clients who require an established contact (*Legal practitioner 1 Redfern*).

They go to school and get their big education, their big law degrees and stuff, but a lot of them aren't educated in how to communicate with non-educated people, and they'll sit there and they'll talk to you in words that you've never heard of and you'll say to them, 'what does that mean?' and they'll look at you like you don't belong there. You can tell that they're standing there thinking, 'gee this is a dopey little thing here sitting'... we're not all solicitors, we don't know the law jargon (*Dubbo Women's FG participant*).

You have a hard time getting your point across to them, and when you do, it takes them so long to do anything about it, because they don't care (*Redfern Women's FG participant*).

Communication can be a problem. People don't understand what the legal jargon is. It's about training lawyers to be communicators, giving them communication skills (*Dubbo Men's FG participant*).

Stakeholders also recognised the detrimental effect of problems in effective communication. This was identified as a major obstacle for Aboriginal clients in accessing Legal Aid services, and it was also recognised that beyond the general problems that lawyers experience in conveying legal concepts to clients, there were cultural aspects to this dynamic which are often not appreciated:

They need to be able to tell their story...which I guess eats into my time in my practice, but if we as a service to Indigenous clients cut them off right at the word go, even if we don't deal with [that kind of matter] then they going to lump us with police and say 'well they were never any effing good, I'm not going to go to them again (*Aboriginal Legal Service staff member 4*).

One of the big things about Aboriginal people, we like to yarn. The talking, that's a big thing. And we're not particularly blunt people, in that we don't just come out with 'my other half stole the kids and I want them back'; there's going to be a story and it's going to be round about, and so the build up of the trust and rapport, that's so important (*LAC Aboriginal staff member 5*).

When they come in and tell you their story, there is a level at which they think if you really like them then you'll want to fix it now, and if you don't it fix it right this minute it means you haven't heard them and haven't trusted them, and they have no real experience of how much work...so there is this urgent flurry about things have to be done now, and you solve it on the strength of my story. And then as we work through it, people move back to Walgett or back to Adelaide or Western Australia, they disappear into prison, and we close the file for lack of contact. Two years later they come back and say, 'didn't you solve that?' So there is a practical issue there (*Legal practitioner 1 Redfern*).

There were specific practical issues that also arose out of communication/cultural misunderstanding:

Most Kooris will have a family member call up; they will have someone else drop in or go to drop something off or pick something up; and we won't allow that without an authority. But they don't quite understand what an authority is, or why they need it or why it is important (*LAC Aboriginal staff member 5*).

A lot people don't have phones. So asking them to please go through to voicemail and someone will get back to them doesn't work very well. A lot of the time even if they do have a phone they are not going to go through to voicemail. And we are a really busy organisation... but it can be perceived by the Aboriginal community, especially in civil or family law matters which can take years, if they don't hear from someone for a couple of weeks or a couple of months, and maybe their phone calls aren't getting returned simply because the information hasn't come in that we are waiting for, so we have nothing to tell them. But they feel like nobody cares, they have been forgotten, and it is a

perception rather than a reality, because non-Indigenous clients probably have the same issues coming up, but it is not perceived in the same way (*LAC Aboriginal staff member 5*).

#### 7.2.6 Issues concerning flexibility of service delivery

The absence of flexibility in seeing clients on a 'drop in' basis was put forward as a substantial obstacle to Aboriginal people accessing Legal Aid services. This is further discussed in Chapter Nine.

Areas of difficulty included the requirement of coming back to see a lawyer on an appointment basis:

You go over to Legal Aid and there is no one there to help you, you have to make an appointment and then there are difficulties keeping appointments, especially if you have young kids, or you are coming from west or east or north or south (*Aboriginal legal support workers 2 Dubbo*).

We need to see them right away. People won't come back for an appointment, lack of transport, lack of money, whatever. They won't come back (*Dubbo Men's FG participant*).

When the lawyer is unavailable, it goes to their voicemail, and that'd the person looking after their matter, no one else can tell them anything. Aboriginal clients are very oral, they have to hear it, that's how they relate...at least there should be some sort of support service so that the client can ring up and they can say 'yes, I've got the file', and there should be some notes on it saying when they are next in court, without giving legal advice. Then the client is informed - because that is part of their frustration (*Legal Practitioner 1 Redfern*).

Getting refused aid because they missed an appointment seems to them to be a ridiculous thing...so that is an issue as well that is not well understood. It is perceived as being irresponsible rather than simply not having the same idea of time (*LAC Aboriginal staff member 5*).

Legal Aid's guidelines are quite strict in that if they don't maintain contact or follow up on things or if they don't produce the paperwork that has been requested...they haven't bothered to go out and get in touch with the client, but because of their guidelines they are stricken off the books totally (*Aboriginal Legal Service staff members 1*).

You've got to have a different approach when working with Indigenous clients. To say to a client We've got an appointment at this time and this place and this date and be there or too bad. In reality you may have to jump in the car and go and find them (*Legal Practitioners 1 Dubbo*).

In some places the physical office space was identified as particularly unwelcoming for Aboriginal clients:

I know they need security here, for the safety of everyone, but the front counter has a glass screen and that's been an issue. They come to the counter and they can't tell you what they want because there is this little gap. They can't yell it – Aboriginal people are lucky if they come for help in the first place, let alone yell it - plus too you don't know who's going to walk in off the street, someone that you know; you don't want everyone to know you're having problems...now when they come in, I'll go out there from behind the counter (*LAC Aboriginal staff member 2*).

Of particular concern were policies or practices around the limited length of client interviews. While recognising the limitations of busy practices, the necessity of spending time listening to Aboriginal clients to establish trust relationships was a strong theme among stakeholders:

Legal aid solicitors need to be prepared to spend more time with their clients and explain to their clients... it relates to training, having people prepared to work with Aboriginal clients (*Legal Practitioners 1 Dubbo*).

Something that really bugs me is that – especially in family law matters – they say 'you've got 20 minutes to tell me what your problem is'. With Indigenous people, you have to build that rapport first. To say 'alright, let's go, 20 minutes, tick tick tick, the time is ticking by'; I find that really annoying and somewhat disrespectful of clients. To say, 'you've got to spill the beans, tell me what your family law issue is'... you may have a woman in there who has just been through a domestic violence issue, and she's got to tell you everything in 20 minutes... I know we have to allocate our resources very carefully but, things like that, I just find it very hard (*LAC Aboriginal staff member 1*).

I think the way we deliver our services, in really little ways, needs to be addressed. We're always pushed for time... we have a thousand people coming through the door, and not a lot of time to sit down and have a yarn. Well, that's how Koori people operate: you've got to talk about a whole lot of stuff before you get down to what the real issue is. We need to have a different protocol for the way we deal with our Aboriginal clients. We need to not be rushing them. I know that time doesn't permit, but maybe if we had a dedicated Aboriginal lawyer, their caseload could be different [expectation that fewer clients will be seen as more time is spent with each]. If we are going to really get serious about addressing the needs of Aboriginal people, let's have a look at how to deliver the services more effectively, which means having a yarn and spending more time...overcoming communication barriers requires more time...it's very tricky, and it's something you make slow progress with (*LAC Aboriginal staff member 3*).

### **CASE STUDY**

I can remember sitting in with a solicitor and we had a lady come in, and she was talking talking talking, and then suddenly she went really quiet. We talked to her some more and we found out that her teeth were really sore. So we got onto the Dept of Health, booked her in and got her teeth fixed, and she came back maybe four days later, and she was ok, she opened up. So you have to build that trust, and in that 20 minute timeframe...while policy and processes may seem fair, but when you apply it to certain groups, it's not that fair (*LAC Aboriginal staff member 1*).

### **7.3 Conclusion**

In discussing the legal needs of Aboriginal clients it is important to recognise that these needs are often more complex than those of other clients. Indigenous people are less likely to have the literacy and numeracy skills of the non-Indigenous population (ABS 2002: 28). Indigenous people are more likely to have a disability (disability rates are approximately 1.4 times higher for Indigenous people) (SCROGSP 2007: 8), and are twice as likely to have experienced high levels of psychological distress than non-Indigenous people (SCROGSP 2007: 9.41). In addition, higher rates of self harm, the effects of childhood removal and drug and alcohol issues are all likely to make Indigenous clients a particularly disadvantaged group to work with (see generally ABS 2002; SCROGSP 2007). Thus the legal needs of Aboriginal clients are complex, not only often involving several areas of law, but also a range of social and cultural issues.

In relation to the areas of civil and family law that were explored in this report, the areas of housing, discrimination, credit and debt and family/DOCS issues arose the most frequently in consultations as being the areas of highest priority for Aboriginal people across New South Wales. This is not to say that other areas of law were not considered urgent in some locations. Matters involving employment, neighbourhood disputes, social security and education emerged in some places as causing a lot of grief to individuals, largely without satisfactory resolution.

In addition, there were a number of legal areas where there may not have been a high recognised legal need, but where there was yet a substantial unrecognised need. The lack of identification of need spoke more of the absence of community legal education in the area rather than an absence of need. Three legal areas that we have identified as falling into this category are victims compensation, stolen wages and wills.

A substantial component of the research involved the exploration of Aboriginal clients' experiences of Legal Aid NSW and stakeholder reflections on that experience. The responses showed a number of areas where it was felt that obstacles to effective service delivery arose. Many reflected a feeling that Legal Aid NSW does not provide the level of assistance that Aboriginal clients require at all stages of the legal process,



from filling in application forms to apply for aid, to being referred to another services where Legal Aid cannot assist. The observations were grouped under the following headings:

- The issues arising from the fact that Legal Aid is not an Aboriginal service provider
- Literacy issues, complexity of Legal Aid forms and lack of assistance
- Issues involving conflict, referral and lack of assistance
- Levels of attention and friendliness given to clients
- Breakdowns in client-practitioner communication
- Issues around flexibility of service delivery

Despite the range of difficulties that were identified as impeding effective access of Aboriginal clients to Legal Aid services, there was widespread consensus among community members and stakeholders alike that it was possible for Legal Aid NSW to improve in large measure the effectiveness of their services to Aboriginal people. The limitation that Legal Aid NSW is a mainstream service provider can be mitigated by well constructed and carefully implemented policies and practices that are geared to meeting the particular needs of Aboriginal clients. Chapter Nine explores some recommendations aimed at addressing the limitations identified in this chapter.



## **CHAPTER EIGHT: CIVIL AND FAMILY LAW INITIATIVES IN OTHER JURISDICTIONS**

In this section of the Report we review legal aid initiatives for providing services to Indigenous people in other Australian jurisdictions, as well as considering developments in New Zealand and North America.

### **8.1 Legal Aid Queensland**

#### *8.1.1 Integrated Indigenous Strategy and Integrated Indigenous Strategy Unit*

Legal Aid Queensland (LAQ) has developed the Integrated Indigenous Strategy and Integrated Indigenous Strategy Unit (IISU), the objective of which is to improve access to justice for Indigenous Queenslanders, with a specific focus on the needs of Aboriginal and Torres Strait Islander women and children. IISU activities include:

- raising awareness of Legal Aid services within Aboriginal and Torres Strait Islander communities;
- increasing access to legal services for Aboriginal and Torres Strait Islander Queenslanders, in particular women and their families living in remote and regional communities;
- ensuring Legal Aid services are provided in a culturally appropriate way;
- conducting community legal education in the communities; and
- participating in law reform which reflects the experiences of Aboriginal and Torres Strait Islander people.

The Strategy has led to the employment of two Community Liaison Officers (CLOs), in the Cairns and in the Townsville offices of LAQ. To date, part of the CLO client liaison role has included providing cultural and court support services to clients, including some interpretation of Aboriginal English or Creole. However, the CLOs have no formal interpreter training. LAQ has also developed court support guidelines for CLOs, and they have received training in the provision of court support services to clients. In early 2008, LAQ commenced a trial of offering the services of the CLOs to preferred suppliers who act for Indigenous clients. Other duties of the CLOs have been, *inter alia*, to:

- promote LAQ's services in their respective regions, requiring CLOs to develop effective partnerships with representatives of relevant community organisations;
- deliver community legal education, and provide legal and referral information;
- liaise between LAQ's lawyers and Indigenous clients in regional offices and at monthly legal advice clinics in each of the targeted communities, as a vital point of contact between Indigenous communities and LAQ.

The Strategy underwent a complete review in April 2007. The review paper sets out information in relation to barriers to Indigenous women accessing LAQ services and to the legal needs of Indigenous Queenslanders. It also identified a number of issues affecting IISU performance. For instance, it appeared that the existence of a separate Indigenous unit meant that other LAQ staff did not need to actively address the needs

of Indigenous clients; that CLOs felt undervalued and unsupported; and that the focus of the IISU on crimes compensation meant that a number of other legal issues (such as child protection, family law, and domestic violence) remained unaddressed.

The review gave rise to a number of recommendations, including the following:

(i) that a pilot program be established (and if successful, expanded to other communities) involving outreach work by the two CLOs. The CLOs now travel with solicitors to four communities in each region on a monthly basis, to provide both face-to-face legal advice and community legal education in relation to a range of civil law issues.

As part of the pilot, LAQ now also employs part-time Indigenous Liaison Officers (ILO) on these communities to assist clients between monthly visits. The duties of the ILOs include advising the CLO about issues occurring within the communities which may impact upon visits and about legal issues in the community as they arise; assisting with organising and promoting LAQ visits to the communities; and providing legal information and referral assistance to Indigenous women;

(ii) that LAQ services ought to be culturally appropriate - to be achieved through, for instance, developing a cultural awareness training package for staff; preparing appropriate LAQ marketing materials for Indigenous people; ensuring effective use of CLOs during client interviews and at court; and updating staff about the work of CLOs, through various mechanisms;

(iii) that CLOs receive regular training on legal developments and services available at LAQ and in relation to legal issues and practice, as well as ongoing support (such as mentoring and meeting with Senior solicitors);

(iv) that a community legal education program be established which targets Indigenous people; and

(v) that LAQ address Indigenous access issues as a team, through, for example, ensuring that all solicitors in regional offices visit communities with CLOs, and that all new LAQ staff are provided with mandatory training in relation to CLO work.

The review led to the development of an Implementation Report (Ybarlucea 2007) addressing each of the recommendations, and this Report now guides IISU work.

### *8.1.2 Outreach*

LAQ also offers services at thirteen regional offices and in Brisbane to Indigenous people. Outreach services are provided in Cherbourg and Murgon to ensure that clients in remote areas are able to access free, face-to-face legal advice. Telephone and/or video-link up advice may be available on those days when the lawyer is not at the community, to be organised through relevant community agencies.

### *8.1.3 Legal Assistance Forums*

LAQ is also taking a lead role in fostering a cooperative service delivery approach to address issues of service duplication. LAQ is establishing Legal Assistance Forums (LAFs) in each region where it has an office, and for each area of law, to assist in ensuring that legal needs profiles are regularly updated, and in determining which service is best placed to meet legal needs. These forums will include representatives from community legal centres, Aboriginal and Torres Strait Islander Legal Services (ATSILS) and FVPLS units in each regional area. They may also include private legal practitioners who undertake legal aid work and other referral agencies where that would assist the forum. These forums will help reduce service duplication, engender partnering relationships between services, and will provide feedback to the Queensland LAF about disadvantaged people's legal needs.

### *8.1.4 MOUs with ATSILS and FVPLS*

In December 2006, LAQ, and the two ATSILS covering the State (Townsville-based ATSILS NQ and Brisbane-based ATSILS Qld South) signed a Memorandum of Understanding to clarify their working relationship. The objectives of the MOU are to provide support to the ATSILS to enhance, improve and expand the provision of legal services to ATSI people throughout Queensland and to establish a framework for an effective and sustainable partnership to advance this objective. The MOU outlines the organisations' commitment to:

- cross-referral arrangements between the organisations to ensure clients receive legal help from the organisation with the greatest level of expertise in a particular law area;
- working together on policy development and law reform issues;
- providing joint training opportunities for staff;
- sharing statistics and other information to support decision making about services and to identify areas of need; and
- holding regular meetings to discuss service delivery gaps, strategic direction and conduct operational planning.

Apart from initiatives with respect to criminal law, the MOU includes as one of its goals the objective of encouraging more referrals to LAQ of family law, domestic violence and child protection matters to allow the ATSILS to concentrate their limited resources on representing clients in criminal law matters. LAQ has also commenced discussions to establish an MOU with FVPLS units to improve delivery of legal services to Indigenous women and children in the relevant regions.

The MOU between LAQ and the ATILS has enabled LAQ to provide more support to the ATSILS, especially where they are having difficulties attracting and retaining staff. LAQ is working with the ATSILS to arrange secondments of LAQ staff to the ATSILS in regions where they are unable to find suitable candidates for positions. For example, in Mt Isa, LAQ will advertise and will employ a PO5 level legal officer who will be seconded to the ATSILS at Mt Isa for one year. LAQ is also funding the salary costs for one year of an ATSILS field officer to work on Mornington Island.

### 8.1.5 Family Law Conferencing Program

LAQ has operated a Family Law Conferencing Program since the mid 1980s. In response to the limited use of the program by Indigenous clients, Legal Aid developed the Indigenous Family Conferencing Program, funding the development and delivery of an Indigenous mediation training package by an Indigenous business specialising in Indigenous dispute resolution, conflict management, mediation and peace-building processes. The Yarrabah community agreed to be the first site for the operation of this program. The aim of the program is to enhance access to family law (mediation) conferences for Indigenous clients and to enable them to resolve their family law disputes, while avoiding litigation, escalation of disputes, and the subsequent involvement of other agencies in disputes. Training was provided in 2006, and four members of the Yarrabah community have been appointed as Indigenous conference chairpersons. An evaluation of the effectiveness of the mediation training delivered in Yarrabah found the training to be useful and was highly recommended by the participants. Key to the success of the training was the use of coaches, roleplays and consultations conducted prior to the training being delivered. The Yarrabah program involves a long-term commitment by LAQ to the concept of an Indigenous mediation model in partnership with the Yarrabah community. It is recognised that the success of the Indigenous Family Conferencing Program in Yarrabah relies upon LAQ maintaining its commitment to providing an ongoing support and training role for the trained mediators.

### 8.1.6 Other

LAQ has also employed a specialist Anti-discrimination Legal Officer to provide state-wide advice about racial discrimination. The Officer in question has developed extensive networks in Indigenous communities.

The LAQ Indigenous information line enables Aboriginal and Torres Strait Islander people to access legal and referral information for the cost of a local call from anywhere in Queensland (*Indigenous Information Line: 1300 650 143*). Staff members also attend major Indigenous local and state events.

## 8.2 Northern Territory Legal Aid Commission

The NT Legal Aid Commission (NTLAC) addresses civil needs of Indigenous people through the following initiatives.<sup>24</sup>

### 8.2.1 Access and Education

NTLAC has chosen to focus on access and education as crucial to providing more effective Indigenous service delivery, including through working with organisations such as the NAAJA (Northern Australian Aboriginal Justice Agency) and FVPLS services. Relevant initiatives are as follows:

*Cop This!* Booklet, DVD and Learning Sequence

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<sup>24</sup> Telephone conversation, Fiona Hussin, Legal Aid Commission (NT), 2 September 2008; See also NTLAC Submission to Review of Northern Territory Emergency Response, 15 August 2008

This material is aimed at teaching young people about their rights when dealing with police in the Northern Territory. The DVD features young people from Bagot Community in Darwin, and the artwork in the booklet and learning sequence is the winning entry in a youth-week art competition run throughout high schools. Cop This! has been widely distributed to schools, youth centres and other organisations throughout the NT and is an extremely popular education tool.

Three educational DVD's have been developed as part of the Commission's Indigenous Families Project to provide community members in regions of the NT with access to legal education about their rights and responsibilities under the Australian legal system in a language and context which they are able to understand. Each DVD was made using local Indigenous actors and responds to a specific area of legal education identified by the communities involved. The first DVD was made in conjunction with the Marthakal Homelands Resource Centre, and was filmed at Galiwinku, Elcho Island. The DVD is entirely recorded in Yolngu Matha with English subtitles and draws on existing knowledge of structures of Yolngu law and governance to explain foundational concepts about the Australian Legal System. The second DVD was made in Tennant Creek and is recorded in Walpiri and Warumungu languages with English subtitles. The Tennant Creek DVD provides education about two interrelated areas of law -domestic violence and child protection. The third DVD was made on the Tiwi Islands and is recorded in Tiwi with English subtitles. The Tiwi DVD tells the Tiwi creation story and describes how grog, gunja and gambling are leading to the breakdown of families and to increased family violence. The Tiwi DVD incorporates traditional skin group mediation and modern community court processes to explain how traditional systems can be used to resolve modern disputes.

### *8.2.2 Family Dispute Resolution*

NTLAC had attempted to develop and pilot a community-based model for family dispute resolution in conjunction with community, stakeholders and relevant service providers. The Commission was to trial an expansion of the existing Primary Dispute Resolution (PDR) model in at least two Indigenous Communities, which identified and built on existing dispute resolution processes. Existing PDR structures, however, in the first community where this initiative was to be introduced (Tennant Creek) were insufficiently developed to allow the initiative to progress. At Nguuu, Tiwi Islands, the Commission assisted with the completion of a Federal Court review of that community's skin group resolution mechanism. However, the Commission was not able to expand upon that current mechanism, as anticipated, for a number of reasons.

### *8.2.3 Outreach Project and Indigenous Community Liaison Officers*

NTLAC has commenced an outreach project from its Darwin and Alice Springs offices, which includes information sessions, education workshops, legal advice and minor assistance to people in prescribed communities (under the Northern Territory Emergency Response legislation). In this context, and in late 2007, the Commission employed two additional family lawyers in response to the Northern Territory Emergency Response, and in anticipation of an increase, for instance, in FACS matters (through advice and representation in Child in Need of Care matters).

Approximately 50 visits to prescribed communities have taken place to hold discussions with community members on legal education needs and to work with community members in deciding how best to meet those needs. Where possible, these activities are planned and delivered in conjunction with other legal and related services such as NAAJA and womens' legal services, Consumer Affairs and the Australian Securities and Investment Commission. So, for instance, culturally appropriate written materials are being developed in relation to child protection, in response to a perception by community members and organisations that such resources were required.

In addition to this, solicitors from NTLAC have attended these workshops and communities to provide extended advice and minor assistance on an individual basis where requested. Although it was anticipated that family lawyers would be required (as noted above) as a result of the NT Emergency Response, the increase in legal work has involved non-family law issues such as tenancy matters (including systemic breaches of residential tenancy legislation); credit and consumer debt (including inability to service (car) loans due to CDEP payments being quarantined); police harassment (roadblocks); and issues around lack of services (such as public transport).

As part of the outreach services (and more broadly), an Indigenous Community Liaison Officer has been employed at both Darwin and Alice Springs, and has worked very successfully to engage with, and provide information to, Aboriginal communities.

#### *8.2.4 MOU with NAAJA*

The Commission also has a protocol in place with NAAJA, and meets regularly with them to discuss how service delivery in the NT may be improved. This collaboration has led to a family lawyer being paid by the Commission to work in the NAAJA Katherine office for a one-year trial period. A further six-month trial has just commenced, involving Commission lawyers travelling to remote Boroloola for circuit court and working alongside NAAJA lawyers to provide criminal law assistance and a civil advice clinic (as does NAAJA).

#### *8.2.5 Other*

The Commission has also, for some time, serviced the circuit court at Nhulunbuy, providing duty lawyers to Indigenous and non-Indigenous clients. It has also opened an office at Tennant Creek, which is not permanently staffed by a solicitor, but has an Aboriginal administrative officer and paralegal working full time. The office serves as a liaison point for the Alice Springs office, including when staff from that office come to Tennant Creek to provide advice and outreach services.



### **8.3 Victorian Legal Aid**

Victorian Legal Aid (VLA) has a number of relevant initiatives in place, as follows.

#### *8.3.1 Statement of Cooperation with VALS*

VLA has drawn up a Statement of Cooperation (2001/02) with Victorian Aboriginal Legal Service (VALS), setting up relevant arrangements in relation to mutual support and training, exchange of information/data, and referral protocols, *inter alia*. This document serves as a high-level statement of commitment between the parties. It reflects the current effective, well-established and open working relationship that the two organisations operate within, and have operated within for some time. The two organisations meet quarterly, on an as-needs basis, to maintain this working relationship. Whilst the Statement may guide the relationship, it is designed to be relatively flexible to ensure that the two parties can work through any particular difficulties or issues as they arise in an informal manner.

#### *8.3.2 Secondment Arrangements*

In recognition of the need to address the needs of Indigenous women and children, VLA provides one full time permanent lawyer under a secondment arrangement to both VALS and to the Family Violence Prevention Legal Service (FVPLS), as well as directly funding a part time administrative support worker at FVPLS. With respect to VALS, this arrangement allows the legal service to undertake non-criminal, women and children-focused legal work which they might otherwise not have had the resources to undertake. The project has been operating since 2001/02 and has been 'wildly successful'. In fact, VALS has recently nominated to continue the secondment system, rather than to receive additional funding. Seconded lawyers are recruited externally, and specifically for the position. According to VLA, they are often of a particularly high quality, and tenure for the position is generally very good. VLA provides a level of supervision and assistance around human resources issues to the secondees (as employees of VLA). Thus, secondees may come to VLA for questions relating to casework conflicts, for training, and as part of the VLA's network of family lawyers.

#### *8.3.3 Legal Aid Offices*

VLA is also working on access and equity issues when undertaking refitting of their offices, with particular focus on those offices where there is a large Indigenous population. This involves considering Indigenous needs in relation to location and the service being delivered (for instance, making sure Indigenous clients have positive first contact with the service by telephone; running art competitions for the local Indigenous community, and displaying Indigenous art in VLA offices; and ensuring that copies of the Koori Mail are available at reception)

#### *8.3.4 Cross Cultural Training*

VLA does provide comprehensive staff cross-cultural training, but focuses on those staff members which have greater contact with Indigenous people.

## **8.4 Western Australian Legal Aid Commission**

### *8.4.1 Country Lawyers Program*

The Western Australian Legal Aid Commission's (Legal Aid WA) Country Lawyers Program is not an Indigenous – specific initiative. However, it seeks to improve legal services in rural, regional and remote Western Australia, and any legal aid work undertaken in such localities involves assisting Indigenous people, in particular, with criminal and civil matters due to the distribution of the Western Australian Indigenous population. As part of service provision to rural, regional and remote communities, Legal Aid WA has introduced a country lawyers programme, which involves placing lawyers in public sector organisations (ALS, FVPLS, CLC, and Legal Aid offices) in remote areas to provide legal services. Traditionally, such positions have been very difficult to fill, and the Program seeks to address this difficulty.

There are three streams of the Program, as follows:

- (i) law students complete their articles with Legal Aid in Perth for a year, and are then employed to work out bush for three additional years. Whilst on their regional placements, they will continue to receive comprehensive professional support from Legal Aid, which will be co-ordinated by the Country Lawyers Co-ordination Team based at Legal Aid in Perth;
- (ii) unrestricted lawyers work for a month at Legal Aid WA in Perth, where they will complete a tailored induction to assist them in their work in regional Western Australia, prior to being placed in regional organisations;
- (iii) private practitioners who already work regionally, rurally or remotely (not common) are provided with professional support (such as mentoring and training) and cross-cultural training (which is also localised).

### *8.4.2 Other initiatives*

- (a) Cross-cultural training is provided more broadly at Legal Aid WA by Aboriginal presenters and by ALS staff.
- (b) Legal Aid is also developing material in collaboration with Curtin University to assist with the training of pro-bono lawyers from commercial legal firms who travel with Legal Aid lawyers to remote communities. Those firms have also been helpful in providing legal advice required to establish the country lawyers programme (such as tax and employment advice).
- (c) In terms of representation, 30 (of 121) Legal Aid lawyers travel on the court circuit, and collaborate closely with ALS lawyers. So, for instance, on a particular month, the Legal Aid lawyers may represent all ALS clients if the ALS lawyer is ill or has to pick up a more complicated matter. Both the ALS and Legal Aid do civil work out bush.
- (d) This collaboration is continued on a broader level, as both agencies work under a Memorandum Of Understanding setting out relevant parameters of their working

partnership. Collaboration may involve, for instance, providing family law advocacy training to ALS staff and ALS staff providing cross-cultural training to Legal Aid staff. Legal Aid is currently assisting the ALS with the Redress Program, a Western Australian initiative through which Indigenous people in that state are lodging claims in relation to harm caused through institutionalisation. The ALS has been inundated with claims, and Legal Aid has seconded a lawyer to ensure that claims are lodged within relevant time limits.

(e) The Commission also provides legal assistance (civil?) to Aboriginal women and children who are disclosing abuse in large numbers as part of the Western Australian Kimberley taskforce.<sup>25</sup> The taskforce has been established to address issues of sexual abuse on Indigenous communities, and has involved a number of initiatives, including establishing multi-functional policing facilities in remote areas. The Commission has recently set up an office in Kununurra as part of this work.

## **8.5 Other Australian Legal Aid Commissions**

### *8.5.1 Tasmanian Legal Aid Commission*

Tasmanian Legal Aid Commission provides legal support to victims of violence as part of the Tasmanian *Safe at Home* family violence policy. This is not an Indigenous-specific initiative, and the Commission has no other Indigenous-specific programs

### *8.5.2 ACT Legal Aid Commission and South Australian Legal Services Commission*

The ACT Legal Aid Commission and the South Australian Legal Services Commission were contacted on numerous occasions over several months, and asked to provide information in relation to relevant Indigenous-specific initiatives. No information was provided by either organisation, to date.

## **8.6 Civil and Family Law Legal Aid to Aboriginal People in Canada**

The following provides an overview of legal aid initiatives directed towards addressing the civil and/or family law needs of Aboriginal people in jurisdictions outside Australia. The following information is collated from information available on legal aid and related websites, and may not, for this reason, represent *all* relevant initiatives in Canada.

Although a comparison between Canadian and Australian legal aid services is useful, there are also some notable differences which one might assume would affect the level and type of Aboriginal –specific initiatives which legal aid offices deliver to relevant communities.

Legal Aid Offices are located in each of the thirteen provinces or territories in Canada. Each Canadian legal aid office operates under its own legal aid plan, with no universal national standards, and there is therefore great variation between the respective offices in terms of services offered (including in relation to Aboriginal-

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<sup>25</sup> See Department of Indigenous Affairs (WA), (2007) *Safer Communities Safer Children*, Department of Indigenous Affairs, Perth

specific initiatives). Thus, whilst all legal aid offices provide assistance with respect to criminal law, and often in relation to family law, coverage of civil law issues varies. Services offered vary, and may include duty counsel assistance at court, legal advice and representation (sometimes exclusively through the ‘judicare’ model, (‘certificate program’), where private lawyers are paid to represent legal aid clients), law reform, or legal information provided through a telephone hotline, for instance.

Further, Canada does not have an established, formal network of government-funded Aboriginal legal services, as we do in Australia. Thus, legal aid offices in each Canadian province and territory would appear to be one of the main legal service providers to Aboriginal communities (although see below for list of other relevant service providers in Canada). Aboriginal populations vary significantly between localities. Generally, the Aboriginal population in any given province or territory constitutes somewhere between 1.3% – 5% of the total population. However, in some areas, up to 85% of the local community identifies as Aboriginal (as is the case in Nunavut).<sup>26</sup> It is notable that, with an Aboriginal population of 15% of the total Saskatchewan population, the Saskatchewan Legal Aid Commission, for instance, reports that 77% of its full service clients identified as Aboriginal in 2006.<sup>27</sup> As noted above, one might assume that services would be adjusted to accommodate larger Aboriginal populations, although this assumption is not necessarily borne out by the research we have conducted, as set out below.

#### *8.6.1 Civil and family law services in Canada*

A range of service providers assist lower income communities in Canada with civil and family law issues (often referred to as ‘poverty law’), some with a focus on Aboriginal populations,<sup>28</sup> as follows. Thus legal aid offices work alongside other well-established networks to provide relevant services.

(a) Community-based legal clinics offer a range of services (similar to those of community legal centres in Australia). They may operate out of law schools, for example, and are sometimes funded through legal aid offices (see below). Some clinics focus on Aboriginal communities (including in relation to civil and family law issues). So, for instance, the University of Ottawa Community Legal Clinic has an Aboriginal Legal Services Division, which provides civil law assistance through representation, community legal education and outreach for Aboriginal communities.<sup>29</sup>

(b) Community based, not-for-profit organisations sometimes operate as legal services, but mostly offer advocacy, information and advice provided by ‘lay’ advocates, and around specific issues such as housing or welfare. Collaboration between such services and legal aid offices is evident.<sup>30</sup>

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<sup>26</sup> Statistics Canada (2006 Census: Aboriginal identity population) <http://www12.statcan.ca/english/census06/data/highlights/Aboriginal/pages/Page.cfm?Lang=E&Geo=PR&Code=01&Table=3&Data=Count&Sex=1&StartRec=1&Sort=2&Display=Page>

<sup>27</sup> Saskatchewan Legal Aid Commission, *Annual Report 2007-2008*: [http://legalaid.sk.ca/assets/pdf/2007\\_2008%20Annual%20Report%20Final.pdf](http://legalaid.sk.ca/assets/pdf/2007_2008%20Annual%20Report%20Final.pdf)

<sup>28</sup> ‘Aboriginal’ in the Canadian context refers to North American Indian, Métis and Inuit persons.

<sup>29</sup> <http://www.uottawa.ca/associations/clinic/eng/divisions.htm>

<sup>30</sup> See for instance, PovNet, a British Columbian coalition of community groups, including the Legal Services Society (legal aid), Tenants’ Rights Action Coalition, B.C. Coalition of People with Disabilities; Public Interest Advocacy Centre, and Community Legal Assistance Scheme: <http://www.povnet.org/>

(b) A broad province and territory-based network of public legal education and information services operates throughout Canada.<sup>31</sup> Some services are directed towards assisting Aboriginal communities and addressing Aboriginal-specific legal issues. For instance, the Public Legal Education and Information Service (PLEIS) of New Brunswick has published an information booklet for Aboriginal women in relation to family violence, developed in collaboration with a local Aboriginal women's refuge;<sup>32</sup>

(d) A network of pro-bono legal services has been established in each province and territory, with some services assisting Aboriginal communities (such as the Aboriginal Family Service Centre Clinic in Regina, Saskatchewan).<sup>33</sup>

### 8.6.2 *Legal Aid Ontario*<sup>34</sup>

#### Current Services

Legal Aid Ontario (LAO) currently provides a duty counsel service in relation to tenancy, family, criminal and mental health law; legal aid certificates to clients under the *judicare* system in relation to serious criminal matters and immigration/refugee matters, family disputes, domestic abuse, and child protection, for instance; and LAO-funded community legal clinics, which provide advice, information, representation, and law reform services. These clinics cover a wide range of poverty law matters, assisting with tenancy law, disability support or social assistance, criminal injuries and worker's compensation, and enforcement of human rights under the *Human Rights Code*. LAO also provides funding to specialty clinics, including to the Aboriginal Legal Services of Toronto (ALST)<sup>35</sup> and the Nishnawbe-Aski Legal Services Corporation (NALSC).<sup>36</sup>

According to ALST, its services were created as the result of a study that showed that Aboriginal people were not seeking assistance from Ontario's legal aid clinics even though legal need existed amongst relevant communities. The ALST clinic provides legal representation and information in a variety of areas of civil law, ranging from tenancy, social assistance, Indian Act matters, Canada pension matters, employment insurance, criminal injuries compensation, and police complaints (focusing (but not exclusively) on urban populations). In addition, the clinic practices in the area of human rights, assisting clients with human rights complaints, both provincially and federally, and is involved in test case litigation concerning matters of particular importance to Aboriginal communities, on a national basis (again with an emphasis upon urban Aboriginal peoples).<sup>37</sup> ALST also delivers family, criminal and youth

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<sup>31</sup> For the Public Legal Education Network of Canada website, see <http://plena.org/new/index.asp?id=42>.

<sup>32</sup> <http://www.gnb.ca/cnb/news/ag/2005e1099ju.htm>; see also the Alberta Aboriginal Legal Education Centre (Ontario)

<sup>33</sup> See Pro Bono Law Saskatchewan Inc Clinic Program: <http://www.pblsask.ca/clinicprogram.shtml>

<sup>34</sup> <http://www.legalaid.on.ca/en/>

<sup>35</sup> <http://www.aboriginallegal.ca>

<sup>36</sup> <http://www.nanlegal.on.ca/article/welcome-1.asp>

<sup>37</sup> An example of a test case challenge occurred where the clinic intervened challenging the Canadian Government's position that an individual's Aboriginal rights were tied to residency on reserve, denying the mobility of the rights of Aboriginal Peoples: see Shadow Report Submitted by the NGO Aboriginal Legal Services of Toronto to the UN Committee on the Elimination of Racial Discrimination (2002) [https://www.aboriginallegal.ca/assets/un\\_cerd.pdf](https://www.aboriginallegal.ca/assets/un_cerd.pdf)

court worker programs in Toronto, where Aboriginal court workers work in the courts and explain legal rights and obligations to their clients. They assist Aboriginal people appearing before the courts by securing legal counsel, finding interpreters as needed, and assisting with pre-sentence reports, bail hearings, and referrals.

NALSC is owned by the First Nations of Nishnawbe Aski Nation. It provides legal education and legal advice (through duty counsel) to clients on a range of matters, including family law, and functions as an Area Office of LAO. NALSC is involved in the Talking Together program (see below), and also provides a victim /witness liaison service, including in relation to family law and child welfare cases.

LAO runs the 'Talking Together' program, designed to reduce numbers of children and youth being removed from their communities. This program involves dispute resolution practice based on traditional circles held in First Nation communities. Family members, community representatives, community elders and social service agencies come together with restorative justice workers to discuss the circumstances of a child at risk. Collectively, the circle decides on a Plan of Care that is then filed with the court and supported by the child's home community. The program is administered by NALSC, and is being used in six northern Ontario communities.

#### Aboriginal Justice Strategy <sup>38</sup>

LAO is currently developing a three–five year *Aboriginal Justice Strategy* (focusing on criminal and family law), designed to achieve measurable improvements in delivery of LAO services for Aboriginal people in Ontario (which has one of the largest number of Aboriginal persons of any province or territory in Canada). This initiative commenced after the LAO's Aboriginal Issues Advisory Committee recommended that a new plan be developed to address relevant concerns. By June 2008, a Development Paper had been approved, based on consultation with over 25 individuals (including First Nation, Metis and Inuit people, Aboriginal service agencies and political organisations, LAO staff, private lawyers, and federal and provincial governments). <sup>39</sup> To date (and in draft form only), the plan focuses on a range of matters, including criminal and family law services, legal aid certificates and duty counsel. <sup>40</sup>

The Paper sets out twelve immediate initiatives (not exclusively relating to civil or family law) including providing cultural competency training for LAO staff and lawyers; reviewing and improving legal resources for LAO service providers; increasing the accessibility of LAO written materials; and developing a recruitment policy aimed at hiring Aboriginal people. Participants in the consultation process identified a number of concerns, such as barriers to accessing justice (due to a lack of outreach services); lack of Aboriginal representation within LAO and LAO's advisory systems; lack of Aboriginal or culturally-appropriate legal representation; the need to improve service on Aboriginal-specific legal issues; and to address the role of the LAO in participating in, or supporting, Aboriginal-specific or driven processes (including through Aboriginal Legal Services Corporations).

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<sup>38</sup> [http://www.legalaid.on.ca/en/publications/aboriginal\\_strategy.asp](http://www.legalaid.on.ca/en/publications/aboriginal_strategy.asp)

<sup>39</sup> To view the letter inviting consultants to participate and providing information on project, go to

[http://www.legalaid.on.ca/en/news/aboriginal\\_strategy.asp](http://www.legalaid.on.ca/en/news/aboriginal_strategy.asp)

<sup>40</sup> <http://www.legalaid.on.ca/en/about/story/Apr17-2008a.asp>

### 8.6.3 Legal Services Society British Columbia <sup>41</sup>

#### Current Services

The Legal Services Society in British Columbia (LSS) provides legal advice in relation to criminal and family law through duty counsel at court and at family justice counsellors' offices; legal representation (for mental health issues, family and criminal law, child protection, and immigration); and legal information. Legal information is provided through the following initiatives:

- LawLINE (legal information, referrals, and advice)
- fieldworkers in the LSS Vancouver Regional Centre, who work closely with Aboriginal communities;
- LSS' LawLINK, an internet-based legal information service which contains Aboriginal-specific information;
- legal information outreach workers at regional centres, who help people to access available LSS legal information (including LawLINK information);
- a separate website dedicated to family law, which contains Aboriginal-specific information (including fact sheets); <sup>42</sup> and
- LSS-published Aboriginal-specific written guides relating to civil law issues, including *Aboriginal People and the Law in British Columbia* (2006), <sup>43</sup> *Benefits, Services and Resources for Aboriginal Peoples* (2007), <sup>44</sup> *How to Make a Will and Settle an Estate: A Guide for First Nations People Living on Reserve*, and *Speaking of Abuse: Violence Against Aboriginal Women in Relationships* (2004). <sup>45</sup>

The LSS is also collaborating with the Ministry of the Attorney General (BC) to establish 'civil justice hubs' in two communities. These 'justice access centres' will provide to the relevant communities:

- self help resources;
- family and civil client needs assessment and referrals to other agencies;
- family mediation and dispute resolution; and
- limited legal advice. <sup>46</sup>

#### Report on needs

LSS has recently commissioned an independent consultant to consider how the service might better assist Aboriginal peoples with their legal needs (including civil and family law needs); *Building Bridges: Improving Legal Services for Aboriginal Peoples* (2007). <sup>47</sup> It is not clear how or whether the relevant information has been

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<sup>41</sup> [www.lss.bc.ca](http://www.lss.bc.ca)

<sup>42</sup> [http://www.familylaw.lss.bc.ca/legal\\_issues/aboriginal\\_issues.aspx](http://www.familylaw.lss.bc.ca/legal_issues/aboriginal_issues.aspx)

<sup>43</sup> Legal Services Society, British Columbia, (2006) *Aboriginal People and the Law in British Columbia*, (Legal Services Society, BC) Vancouver BC

<sup>44</sup> [http://www.lss.bc.ca/publications/pub.aspx?p\\_id=99](http://www.lss.bc.ca/publications/pub.aspx?p_id=99)

<sup>45</sup> [www.lss.bc.ca/publications/pub.aspx?p\\_id=101](http://www.lss.bc.ca/publications/pub.aspx?p_id=101)

<sup>46</sup> <http://www.ag.gov.bc.ca/justice-reform-initiatives/civil-project/justice-access-pilots.htm>

<sup>47</sup> Walkem, A, (2007) *Building Bridges: Improving Legal Services for Aboriginal Peoples*, Legal Services Society, British Columbia, Vancouver BC [http://legalaid.bc.ca/assets/aboutUs/reports/legalAid/buildingBridges\\_en.pdf](http://legalaid.bc.ca/assets/aboutUs/reports/legalAid/buildingBridges_en.pdf).

implemented by the LSS. The relevant report indicated that the LSS was not doing enough in terms of providing appropriate services to Aboriginal peoples, which, in some areas, according to the report, constitute 25% of their client base. The report ultimately focuses on ensuring that Aboriginal peoples are able to respond to their own legal needs, by involving more Aboriginal peoples with the work of LSS, and by opening lines of communication between LSS and Aboriginal peoples. Key recommendations set out therein (relating to civil/family law needs) include the following:

- improve Aboriginal representation within LSS through increasing numbers of Aboriginal lawyers and through creation of an Aboriginal community legal worker position. The latter would advocate on a policy level on behalf of Aboriginal peoples; provide outreach services; and work with those in the legal system to foster a holistic approach towards Aboriginal communities and people;
- create a mentoring process to partner lawyers interested in developing an Aboriginal legal aid practice, and develop and deliver, in conjunction with local Aboriginal communities, a ‘providing legal aid services to Aboriginal clients boot camp’ to train lawyers about Aboriginal legal aid practice;
- improve knowledge and relationships between LSS and Aboriginal governments, communities and organisations, through targeted communications (media etc.) and better cross-cultural training for LSS staff;
- ensure that Aboriginal peoples participate in LSS policy and program development through establishing an Aboriginal Advisory Committee and engaging Aboriginal people in the planning and implementation of new family law and civil justice pilot hubs;
- improve current legal information and education services, with creation of an Aboriginal-specific, culturally relevant LawLINE, with designated phones in Native courtworkers offices etc.; and adaptation (with Aboriginal input) of current web-based services (LawLINE) and other material such as fact sheets to ensure cultural appropriateness;
- provide legal advocacy training to members of Aboriginal communities, so that they may be empowered to help community members in relation to legal needs;
- create an Expanded Aboriginal Duty Counsel Program that provides representation, advice and assistance to communities on a regular basis (including for family law); and
- acknowledging the importance of the maintenance of ties between Aboriginal children and their communities and Nations, and ensuring that services provided in relation to this issue are improved (through dedicating resources to restorative solutions, such as mediation in an Aboriginal context).

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The LSS has undertaken earlier studies in order to improve legal services for Aboriginal people, and similar studies have been undertaken in other jurisdictions. See Locke, L., (2005) *Struggle for Justice: Northern BC Aboriginal Needs Assessment Report*, Vancouver Legal Services Society; Buller, M., (1994) *A Review of Legal Services to Aboriginal People in British Columbia*, Vancouver: Legal Services Society. See also LSS’s review of public legal education, with some reference to needs of Aboriginal communities., McEown, C., & Reid, G., (2007) *PLE Review: Reflections and Recommendations on Public Legal Education Delivery in BC*, Legal Services Society British Columbia, Vancouver BC, [www.lss.bc.ca/assets/communityWorkers/pleReview\\_en.pdf](http://www.lss.bc.ca/assets/communityWorkers/pleReview_en.pdf)



#### 8.6.4 Legal Aid Society of Alberta <sup>48</sup>

The Legal Aid Society of Alberta (LAA) currently provides legal advice and representation in relation to administrative law, criminal and family law, immigration and child welfare (with the Central Alberta Law Office opened to deal specifically with civil law matters); duty counsel services for criminal, family and mental health legal issues; and legal information through a telephone service (the Alberta Law Line). Approximately 16% of all Legal Aid clients have identified as Aboriginal (constituting approximately 5% of the total Alberta population). <sup>49</sup> In 2006-07, LAA commenced work on establishing an Aboriginal advisory committee, but it is not clear what the progress of this committee has been. <sup>50</sup>

In 1999, the Siksika Nation partnered with LAA to establish a pilot project on the Siksika Nation reserve, the Siksika First Nation Legal Aid Program. This pilot employed a staff lawyer to be available every day to provide legal advice to residents and members of the Siksika Nation from a site on the reserve. Previously, the LAA had been providing duty counsel by hiring private bar lawyers to travel to the reserve, and lawyers were available only once per week. The pilot project has been very successful, and continues today, with a Legal Aid staff lawyer, assistant, and a Siksika court worker providing services to nation members. The program involves providing advice and limited representation to clients in relation to family, civil and criminal law matters, and also providing public legal information sessions, advice clinics and presentations to community groups. <sup>51</sup> According to the LAA, of more than 600 First Nations across Canada, the Siksika Nation is the only one who has partnered with a legal aid program to deliver services on their traditional territory for First Nations people in need. <sup>52</sup>

#### 8.6.5 Yukon Legal Services Society <sup>53</sup>

Yukon Legal Services Society (YLS) provides legal assistance through both private and salaried lawyers. YLS covers criminal matters, and some civil matters (including child protection, mental health and family law cases) through duty counsel services (largely at circuit courts (and thus to Aboriginal people), if outside Whitehorse). YSL also has a Neighbourhood Law Centre, which specialises in non-family civil law and is based in Whitehorse. The Centre is a community clinic, providing legal aid to individuals in non-family civil matters impacting their livelihood, physical or mental health, or ability to provide food, clothing, and shelter for themselves or their families. Representation and advice is provided in relation to employment insurance; pensions; social assistance benefits; tenancy; and disability issues.

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<sup>48</sup> <http://www.legalaid.ab.ca/>

<sup>49</sup> LAA Client Survey 2006, cited LAA, *Fact Sheet: Siksika First Nation Legal Aid Program* (April 2006); <http://www.legalaid.ab.ca/NR/rdonlyres/2DAFA808-EB70-4510-ACEE-D0C26589BE9A/0/SiksikaFactsApr06.pdf>

<sup>50</sup> LAA, (2007) *Annual Report 2006-07*

<sup>51</sup> Legal Aid Alberta, (2008) *Annual Report 2008*, (Legal Aid Alberta, Canada) 18

<sup>52</sup> See Siksika Nation Legal Aid Program Fact Sheet (2006), <http://www.legalaid.ab.ca/News+and+Media/>

<sup>53</sup> <http://www.legalaid.yk.ca/>

### 8.6.6 Saskatchewan Legal Aid Commission<sup>54</sup>

At the Saskatchewan Legal Aid Commission, 77% of full service clients have identified themselves as being of Aboriginal descent, as noted above. Whilst there is a strong focus on criminal and family law services at the Commission, however, it is not clear whether any Aboriginal-specific services are provided. However, Goal 1 of the Commission's Strategic Plan 2005-2008 referred to 'Community Connectedness/ Relationships/ Partnerships', and working with Aboriginal people to shape legal services and to set future directions.<sup>55</sup>

### 8.6.7 Legal Aid Manitoba<sup>56</sup>

Legal Aid Manitoba provides services in relation to criminal and family law, and also other civil cases such as workers compensation, pension and welfare matters. It runs a Public Interest Law Centre, which takes on test cases for public interest groups and low income individuals, focusing on consumer, poverty, environmental, Aboriginal and Charter Rights casework.<sup>57</sup> Legal Aid Manitoba has specialised civil law units (child protection and poverty law (income security and housing)).<sup>58</sup> The 2005-06 *Annual Report* refers to an Aboriginal Law Centre operated by Legal Aid Manitoba, which provides representation with respect to family and criminal law, and to other legal issues that are of particular concern to Aboriginal people or the Aboriginal community in general (such as human and civil rights; band governance; treaty status; child protection services and the provision of other services such as social allowances, health care, and policing). It offers non-adversarial, consensus building and restorative approaches to conflict resolution; works closely with Aboriginal community organisations; and is involved in advice, information, community outreach and public legal education activities.

### 8.6.8 Nova Scotia Legal Aid Commission<sup>59</sup>

Nova Scotia Legal Aid Commission provides legal services through its salaried lawyers located in community clinics (alongside some private lawyers), and the bulk of the office's work involves criminal and family law matters. It is connected to the Halifax/Dartmouth Community Law Clinic, and has also, on occasion, granted funds to the Dalhousie Legal Aid community law clinic located at the Dalhousie Law School, which offers poverty law services including in relation to Aboriginal-specific legal issues.<sup>60</sup>

### 8.6.9 Legal Services Board of the Northwest Territories<sup>61</sup>

The Legal Services Board of the Northwest Territories is responsible for providing legal aid, court worker services and public legal education and information services

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<sup>54</sup> [www.legalaid.sk.ca/](http://www.legalaid.sk.ca/)

<sup>55</sup> Saskatchewan Legal Aid Commission, *Strategic Plan 2005-2008*, <http://legalaid.sk.ca/assets/pdf/Action%20Plan%20r4%20Final.pdf>

<sup>56</sup> <http://www.legalaid.mb.ca/>

<sup>57</sup> See [www.publicinterestlawcentre.ca](http://www.publicinterestlawcentre.ca)

<sup>58</sup> Legal Aid Manitoba, *Annual Report 2005-06*, 5

<sup>59</sup> [http://www.gov.ns.ca/Just/legal\\_aid.asp](http://www.gov.ns.ca/Just/legal_aid.asp)

<sup>60</sup> <http://law.dal.ca/Institutes/Dalhousie%20Legal%20Aid%20Service/>

<sup>61</sup> [http://www.justice.gov.nt.ca/legalaid/LegalAid\\_explained.shtml](http://www.justice.gov.nt.ca/legalaid/LegalAid_explained.shtml)

throughout the Northwest Territories. The Board operates three legal aid clinics, and provides advice and representation for criminal and family law; and some civil law, on a discretionary basis (child welfare matters; some problems with government services). Wrongful dismissal cases may be covered in some instances. Their Board of Directors includes representatives from a number of Aboriginal communities, and no further information is provided on Aboriginal-specific initiatives, although 50% of the population in these Territories identify as Aboriginal.<sup>62</sup>

#### 8.6.10 Other Legal Aid Offices

The remainder of the legal aid offices (Legal Aid New Brunswick<sup>63</sup>; Prince Edward Island Legal Aid<sup>64</sup>; Newfoundland and Labrador Legal Aid Commission<sup>65</sup>; Legal Aid Quebec<sup>66</sup>; Nunavut Legal Services Board) offer their respective communities a combination of services (in relation to civil, family and criminal legal issues), but provide no information on their websites relating to Aboriginal-specific initiatives or service delivery (despite the large numbers of Aboriginal persons in some of these provinces/ territories).

### 8.7 New Zealand

New Zealand has a very different legal aid system in place to that of Australia. There is no network of legal aid offices, although there is a central agency which *administers* the community law centre and legal aid schemes, and undertakes a central policy role, in some respects, in relation to the provision of legal services.

#### 8.7.1 Legal Services Agency

The New Zealand Government entity - Legal Services Agency (LSA) (Pokapu Ratona Ture) - has a number of responsibilities, including administration of legal aid in New Zealand (see below). It operates as a central office, with district offices carrying out relevant responsibilities at the local level (see below).<sup>67</sup>

The LSA has a Treaty of Waitangi policy, which integrates Treaty principles into strategic operations. The three key aims of the policy are to develop meaningful partnerships with Maori; to deliver effective services for Maori; and to demonstrate responsiveness to Maori communities. The LSA also has a Responsiveness policy framework setting out how the Agency might develop partnerships with, and deliver responsive services to, key communities. The LSA has established a Public Advisory Committee to advise the Agency in relation to a range of matters (including unmet legal needs of communities, community law centre or legal aid schemes, and research and legal education/information provision). The Committee has a Maori representative, who identifies and advises on issues relating to Maori groups. It has developed a case-bank containing ideas and practical examples that might be used by

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<sup>62</sup> Legal Services Board of Northwest Territories, *2006-07 Annual Report*

<sup>63</sup> [http://www.sjfn.nb.ca/community\\_hall/L/lega6030.html](http://www.sjfn.nb.ca/community_hall/L/lega6030.html)

<sup>64</sup> <http://www.gov.pe.ca/infopei/oneListing.php3?number=46064>

<sup>65</sup> <http://www.justice.gov.nl.ca/just/protectedsite/Other/otherx/legalaid.htm>; although see Newfoundland and Labrador Legal Aid Commission *Three Year Activity Plan 2008-2011*, which refers to an Aboriginal Justice Project and to improving services to Aboriginal communities, with no further details provided.

<sup>66</sup> <http://www.csj.qc.ca/francais/commission/index.asp>

<sup>67</sup> <http://www.lsa.govt.nz/index.php>

community-based legal services to minimise barriers that some communities face in accessing legal services, with specific reference to Maori communities.

Recommendations relating to Maori groups include establishing strategic working relationships with relevant Maori organisations and strategies for effective consultation with Maoris in relation to legal needs.<sup>68</sup>

### 8.7.2 *Community Law Centres and Legal Aid*

The LSA administers the legal aid<sup>69</sup> and community law centre<sup>70</sup> schemes in New Zealand. Legal aid in New Zealand operates under the ‘judicare model’, referred to above within a Canadian context. Twelve regional LSA offices (‘Legal Aid Offices’) are responsible for granting aid by assessing applications, and, if approved, the LSA will fund a *private* lawyer to provide legal services to individuals. LSA legal aid funding covers criminal, as well as civil/family law advice and representation, and in relation to a range of legal issues, including Maori Land Court and Waitangi Tribunal matters. It is not clear how policy at the LSA central level (such as a Treaty of Waitangi policy) impacts upon or directs the work of private lawyers providing legal aid services, in terms of whether individual private practitioners are seeking to provide responsive services to community groups who may have found it traditionally difficult to access legal services, including Maori groups.

There are 27 community law centres operating in much the same way as the community legal centres in Australia, and whilst all centres provide services to Maori communities (where present in the relevant locality) there is at least one Maori-specific centre – ‘Maori Legal Services’ (Te Ratonga Ture Community Law Centre) - in Wellington. There does not appear to be a developed network of Maori-specific legal services comparable to Aboriginal Legal Services in Australia

### 8.7.3 *Research and Advice*

The LSA undertakes research and provides advice with respect to matters relating to the aforementioned schemes.<sup>71</sup> Thus, the LSA funded a national survey on unmet legal needs in 2005/06, with specific reference to Maori legal needs.<sup>72</sup> The LSA is due to undertake a joint review with the Ministry of Justice of services provided using legal aid funding.

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<sup>68</sup> PAC, (2007) *Sharing Ideas for Overcoming Barriers to Access*, <http://www.lsa.govt.nz/documents/Sharingideasforovercomingbarrierstoaccess.pdf>

<sup>69</sup> There is no separate legal aid website (other than the LSA website), and no information provided about Maori and legal aid – specific initiatives on the LSA website.

<sup>70</sup> <http://www.communitylaw.org.nz/>

<sup>71</sup> LSA also funds criminal law pilot schemes (public defence service pilot; police detention legal assistance scheme; and duty solicitor scheme)

<sup>72</sup> Ignite Research, (2007) *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services: Results for Maori*, Legal Services Agency, Wellington. There have been other locality-specific reports relating to unmet legal needs, with reference to Maori communities (see, for instance, ACNielsen NZ Ltd, (2004) *Unmet Legal Need in Canterbury*, <http://www.lsa.govt.nz/documents/2004CanterburyNeedsAssessment.pdf>)

#### 8.7.4 Provision of legal education and information

LawAccess is an online catalogue of law-related information and services, used by the public and community workers.<sup>73</sup> It provides links to relevant agencies and information sheets on legal topics, *inter alia*. LSA information sheets on Maori-specific legal issues are provided (such as claims before the Waitangi Tribunal; succession to Maori Land in the Maori Land Court; establishing a Maori marae (or reservation)); or a Maori perspective on general issues is provided (such as in relation to the issue of care and protection).<sup>74</sup>

### 8.8 United States

Although there are numerous family/civil legal services and initiatives provided in the United States to Native American communities by ‘legal aid’ type services, the legal aid system, and the legal system which applies to Native Americans, in particular, makes any direct comparison between Australia and the United States with respect to such services and initiatives problematic. The following discussion outlines some of the relevant differences between the two jurisdictions, and a brief overview of the range of Native American civil legal services available.

#### 8.8.1 Native American Nationhood

Native American nations, where federally recognised, may have their own justice departments, laws, tribal courts and law enforcement agencies as part of an historical right to self-government and self-determination for Native American tribes in the United States.<sup>75</sup> The relevant legal jurisdiction of self-governing nations generally covers an array of legal issues, and encompasses many aspects of family and civil law. Nations may rely upon traditional law and dispute resolution in combination with, or in preference to, Native American tribal courts and legislation closely modelled on the Anglo-American justice system.<sup>76</sup> However, not all Native Americans are members of, or residing on, such nations, and federal or state law may still apply to Native Americans who *are* members of or residing on such nations. These factors give rise to distinctive civil legal needs and legal issues (forming a component of ‘Indian Law’) for Native Americans which are not readily comparable to those of Indigenous Australians.

#### 8.8.2 ‘Legal aid’ services in the US

The complexity of the provision of ‘legal aid’ services in the United States results in divergence between and within localities in terms of civil and family law assistance for relevant communities.<sup>77</sup> ‘Legal aid’ in this context refers to any form of civil legal assistance to low-income persons, rather than to a specific network of funded legal (aid) service providers, as it does in Australia. Criminal legal services in the United

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<sup>73</sup> <http://www.lawaccess.lsa.govt.nz/>

<sup>74</sup> <http://www.lawaccess.lsa.govt.nz/infosheets.aspx>

<sup>75</sup> See website of Mille Lacs Band of Ojibwe for example: <http://www.millelacsojibwe.org/>.

<sup>76</sup> For a discussion, see Melton, A., (1995) ‘Indigenous Justice Systems and Tribal Society’, *JUDICATURE* 79(3): <http://www.tribal-institute.org/articles/melton1.htm>

<sup>77</sup> For discussion of system, see Houseman, A., (2007) *Civil Legal Aid in the United States*, CLASP: <https://www.clasp.org/publications/report/brief/securing-equal-justice-all-brief-history-civil-legal-assistance-united-states>

States are provided, in general, by separately funded ‘public defender’ legal services.<sup>78</sup>

### 8.8.3 Legal Services Corporation<sup>79</sup>

The Legal Services Corporation (LSC) is a private, non-profit corporation established in 1974 by the United States Congress, focussing on equal access to civil justice and to the provision of high quality civil legal assistance to low-income Americans. It is but one organisation, although a significant one, working to provide civil and family ‘legal aid’ services in the United States. LSC is one of the major sources of funding for civil legal aid in the United States, with 138 independent local programs funded by the Corporation in 2007 (covering over 900 offices nationwide), including Native-American specific programs (see below). It does not *solely* fund providers which offer full legal services, with salaried lawyers, as legal aid offices do in Australia. Thus, some LSC-funded advocacy services may only offer a hotline to the public, for instance, or may focus on a particular legal issue (such as domestic violence). Moreover, LSC generally only provides approximately half the funds required to operate the relevant programs, and encourages them to then partner and collaborate with other supporters of civil legal aid for further funding (such as state and local government, the private bar, philanthropic organisations, and the business community).

LSC, in some respects, does operate as a central portal for those providing legal aid. It manages a virtual library dedicated to sharing of resources, and directed towards increasing public awareness and support, as well as quality of, civil legal services programs (LSC and non-LSC funded).<sup>80</sup> Notably, the LRI website includes publications relating to unmet legal needs, including those of Native American populations where relevant,<sup>81</sup> and information relating to the issue of diversity and service delivery, with a specific section on Native American projects.<sup>82</sup>

### 8.8.4 Other Services

Large pro bono programs also generally operate throughout the United States, managed by civil legal aid providers, law firms, bar associations, or independently. There is heavy reliance upon such programs, as government funding for the salaried (legal aid) lawyer model of service provision is usually inadequate to meet the communities’ needs. There are also numerous non-LSC funded advocacy (rather than legal) and other services, *inter alia*.

The legal aid system may involve a number of different service types working together to address the legal needs of lower income communities. California, for instance, has eleven non-profit, non-affiliated ‘law firms’ (with each firm having a number of different offices) providing civil law assistance for low income persons in

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<sup>78</sup> Although Dakota Plains Legal Service, for example, provides assistance with criminal matters in tribal court where there is no public defenders office. <http://www.dpls.org>

<sup>79</sup> <http://www.lsc.gov/>

<sup>80</sup> <http://www.lri.lsc.gov/about.asp>

<sup>81</sup> see for instance, Legal Aid of Nebraska’s State Needs Assessment, with brief reference to Native American population: [http://www.lri.lsc.gov/needsassessment/needsassessment\\_detail\\_1293\\_R12.asp](http://www.lri.lsc.gov/needsassessment/needsassessment_detail_1293_R12.asp)

<sup>82</sup> <http://www.lri.lsc.gov/access/nativeamericans.asp>

that state.<sup>83</sup> In Utah, LSC contributes to funding of the ‘And Justice For All’ program, a conglomeration of legal services housed together as the ‘Community Legal Center’ and dedicated to providing equal access to civil justice (including through a specialist service for Native American communities). This program also operates its own grants initiative to provide funding for other civil legal assistance agencies in Utah, including the Navajo Nation Legal Services Inc., which provides legal services to residents on or near the Navajo Nation reservation in Utah.<sup>84</sup> Iowa Legal Aid has 2,700 volunteer advocates working as part of the Iowa’s Volunteer Lawyers Project, a program established in collaboration with local bar associations.<sup>85</sup> These examples illustrate the complexity of the civil justice system in the United States.

#### 8.8.5 National Legal Aid and Defender Association

The National Legal Aid and Defender Association (NLADA) is a coordinating body for legal aid services in the United States.<sup>86</sup> This is a nationwide body representing attorneys and other ‘equal justice professionals’ (working in legal aid and defender programs, social service organisations, law school clinics or private firms, *inter alia*) or individuals who support NLADA’s mission (such as bar association leaders or private practice attorneys). NLADA has a Native American Section within its Civil Policy Group, which works closely with the National Association of Indian Legal Services to develop appropriate service delivery to Native Americans on off reservations, and provides technical assistance to offices that deliver legal services to Native Americans.

#### 8.8.6 Legal aid services working with Native American communities

Legal assistance for Native Americans may be offered by any number of different service providers, and as part of mainstream or Native American-specific services. Providers range from community laypersons trained in advocacy (on nations);<sup>87</sup> university law clinics;<sup>88</sup> government-funded legal services;<sup>89</sup> or through collaborative efforts such as the Tribal Partnership Program set up by the National Native American Bar Association and others, encouraging law firms to offer pro bono assistance to Native American nations with respect to issues such as economic and/or legislative development.<sup>90</sup>

LSC funds programs which provide legal assistance to Native Americans, some serving as ‘stand alone’ Indian Law services (covering legal issues which are specific to Native American persons), others as ‘component programs’ (covering the same areas of law, but within a larger legal aid service), or offering broader legal assistance

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<sup>83</sup> [http://www.lsc.gov/map/state\\_T32\\_R6.php](http://www.lsc.gov/map/state_T32_R6.php)

<sup>84</sup> [andjusticeforall](http://www.andjusticeforall.org)

<sup>85</sup> <http://www.iowalegalaid.org/about/>

<sup>86</sup> [http://www.nlada.org/About/About\\_Home](http://www.nlada.org/About/About_Home)

<sup>87</sup> See, for instance, Stockbridge-Munsee Community Band of Mohican Indians Tribal Court, Wisconsin: <http://www.mohican-nsn.gov/TribalOffices/tribalcourt1.htm>

<sup>88</sup> See for instance, University of North Dakota Native American Law Project, which operates a clinical program providing legal assistance to the Spirit Lake Tribal Court: <http://www.law.und.nodak.edu/npilc/nalp/>. See list at <http://www.ntjrc.org/resources/resourcelinks.asp?71>

<sup>89</sup> See, for instance, Dakota Plains Legal Services: <http://www.helpsouthdakota.com/Home/DPLS>

<sup>90</sup> See <http://www.nativeamericanbar.org/tribalpartnershipprogram.html>

to Native American clients (both on an off reservation).<sup>91</sup> The National Association of Indian Legal Services<sup>92</sup> is a conglomeration of LSC-funded programs. Its services include the DNA People's Legal Services, which assists those on or near the Navajo Nation in a number of states, including through the provision of self-help legal kiosks in different locations;<sup>93</sup> the state-wide Native American Program of Legal Aid Services of Oregon (dealing with such issues as protection of treaty rights and tribal sovereignty, and Indian Child Welfare Act compliance);<sup>94</sup> and the Oklahoma Indian Legal Services (undertaking Indian Law case work that has a significant impact on the rights of the general Indian population).<sup>95</sup>

However, non-LSC funded providers of civil legal assistance to Native Americans also exist in each state, and may rely solely on private donations, Interest on Lawyer Trust Accounts, and/or state and local government funds. The Alaska Native Justice Center is an example of such a service, providing civil and family law assistance through pro-se (self-represented) clinics, in house and legal outreach clinics,<sup>96</sup> as is the Native American Disability Law Center.<sup>97</sup> Pine Tree Legal Assistance is a legal organisation with a Native American Unit, which was formed by a group of private attorneys in Maine.<sup>98</sup>

On a national level, the Native American Rights Fund (NARF), located in Colorado, but with offices in Washington DC and Alaska, provides legal representation through its fifteen staff attorneys as well as technical assistance to Indian tribes, organisations and individuals nationwide. NARF uses its expertise in relation to Indian Law to focus on five specific areas (including protection of tribal natural resources; promotion of Native American human rights; and accountability of governments to Native Americans) and on cases which are considered to be of national importance. NARF has also established the National Indian Law Library to provide access to relevant, Native-American specific resources, as well as publishing resources such as the booklet *A Practical Guide to the Indian Child Welfare Act*.<sup>99</sup>

## 8.9 Conclusion

Several Australian legal aid commissions are attempting to improve their service delivery to Aboriginal and Torres Strait Islander communities. Outreach services are provided by the Northern Territory and Queensland LACs. In particular the NTLAC has a large outreach project from its two offices in Darwin and Alice Springs.

Some of the LACs have specific cross cultural training for their staff – see for example Victoria and Western Australia. VLA has also concentrated on access and equity issues in their offices, including considering location; trying to ensure positive first contact with the service by telephone; running art competitions; and ensuring that

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<sup>91</sup> Such as Montana Legal Services Association: <http://www.mtlsa.org/>; Legal Services of North Dakota: [http://www.legalassist.org/tree/about\\_lsnd.html](http://www.legalassist.org/tree/about_lsnd.html); Dakota Plains Legal Services: <http://www.dpls.org/>; Alaska Legal Services Corporation <http://www.alsc-law.org/>; South Arizona Legal Aid <http://www.sazlegalaid.org/>

<sup>92</sup> <http://www.judicare.org/nails.html>

<sup>93</sup> <http://www.dnalegalservices.org/about>; and native legal net: <http://www.nativelegalnet.org/>

<sup>94</sup> <http://www.oregonlawhelp.org/Program/784/index.cfm>

<sup>95</sup> <http://thorpe.ou.edu/OILS/index.html>

<sup>96</sup> <http://www.anjc.org/index.shtml>

<sup>97</sup> <http://www.nativedisabilitylaw.org/home>

<sup>98</sup> <http://www.ptla.org/ptlasite/about/about.htm>

<sup>99</sup> <http://www.narf.org/icwa/index.htm>



copies of the Koori Mail are available at reception. The LAQ also has an Indigenous information hotline line that enables Aboriginal and Torres Strait Islander people to access legal and referral information for the cost of a local call.

There are some innovative developments, particularly in Queensland involving the use of community liaison officers and Indigenous liaison officers. The CLOs provide court support, promote LAQ services, deliver CLE and provide referral information. They also work with solicitors providing outreach services. In addition there are a number of Indigenous liaison officers employed part-time in communities. They provide advice and referral to the community, and inform the CLOs and solicitors of community issues.

International comparisons need to be treated with care because of the substantial differences in the provision of legal aid services to Indigenous and non-Indigenous people. The Canadian system has Legal Aid Offices in each of the thirteen provinces or territories. However there are variations in coverage of family and civil law. Some offices only operate a 'judicare' model where private lawyers are paid to represent legal aid clients. In addition, Canada does not have an established, formal network of government-funded Aboriginal legal services, as we do in Australia.

New Zealand also operates under the judicare model with 12 regional Legal Aid Offices responsible for granting aid and funding a *private* lawyer to provide legal services to individuals. There are also 27 community law centres (one of which is Maori-specific) but no equivalent to the Aboriginal legal services.

In the US, legal assistance for Native Americans may be offered by any number of different service providers, and as part of mainstream or Native American-specific services. The Legal Services Corporation (LSC) funds 138 independent local programs covering over 900 offices, including Native-American specific programs. The LSC funds programs which provide legal assistance to Native Americans, some serving as 'stand alone' Indian Law services (covering legal issues which are specific to Native American persons), others as 'component programs' (covering the same areas of law, but within a larger legal aid service), or offering broader legal assistance to Native American clients (both on and off reservation). The US situation is made more complex by the recognition of Indigenous jurisdiction in Indian nations.



## **CHAPTER NINE PROPOSALS FOR REFORM**

When asked how Legal Aid NSW could improve their service to the Aboriginal community, this excerpt is representative of the type of response from focus group participants:

Employ an Aboriginal person and go to community...get involved in our community and our culture and the things that we do...come into the community centre and talk about what you do...get an understanding of who we are and what kind of people we are...show us a bit of initiative and a bit of oomph mate, and show us that you *do* give a damn, rather than just sitting behind the office and answering the phone. Get out there, get amongst it.  
(*Redfern Women's FG participant*)

These themes and other suggestions for improvement of Legal Aid services are discussed in this chapter. We have divided the discussion into several sections:

- Better equipping existing staff and improving existing services;
- Improving Legal Aid NSW service delivery by creating better connections to the community through outreach
- The employment of field officers and greater use of AVL
- Better community legal education and the establishment of Aboriginal reference groups

### **9.1 Existing Staff and Services**

This section is primarily concerned with how existing legal aid services can be improved.

#### *9.1.1 Current Employment of Aboriginal people in Legal Aid NSW Offices*

It was widely agreed that the level of comfort that Aboriginal clients have in Legal Aid offices increases exponentially when Aboriginal staff are employed.

Aboriginal people open up better when they're talking to their own...that makes a big difference...all of a sudden you're a sister (*LAC Aboriginal staff member 3*).

I've found since I've been here that it is useful having an Aboriginal face in the office. Clients come to reception and look past and happen to see me, and say 'come over here' (*LAC Aboriginal staff member 2*).

There is generally an accurate common knowledge in communities as to which organisations have Aboriginal staff.

When we refer someone to a service the first thing they ask is 'do they have a Koori worker?' It makes a big difference to know that there will be another Aboriginal person there...someone that can translate all the legal

terminology...someone that can explain things in layman's terms of what just happened to you, this is what it means. We're not legal people here at the courts, but because we are Aboriginal we have people coming up to us asking us what happened [to them in the courtroom] (*Aboriginal legal support workers 1 Penrith/Mt Druitt*).

I just really see them there at their little desk and that's it. There's no Koori staff around there. (*Aboriginal legal support workers 2 Dubbo*)

It is clear from the interviews that the employment of Aboriginal people in Legal Support Officer positions has provided a worthwhile start to opening Legal Aid offices to Aboriginal clients.

It is important that there are systems in place to support Aboriginal staff – both existing staff and the proposed field officer positions (see below). This would include:

- Clearly defined roles so that staff do not end up working across several roles (eg LSOs working as de facto Aboriginal liaison staff);
- Further training with culturally appropriate and workplace relevant study such as the National Indigenous Legal Advocacy course at Tranby (successful completion should be a minimum requirement for ongoing employment of field officers);
- Appointment of a Legal Aid mentor with formal periodic meeting time to discuss progress and concerns;
- Periodic meeting with immediate supervisor and mentor to discuss performance and opportunities for career development;
- Participation in already established Legal Aid Aboriginal staff network groups;
- Opportunities for Aboriginal staff members to provide briefings on their work to general Legal Aid staff to ensure Indigenous issues are well understood and integrated into Legal Aid policies and practices.

The importance of proper supportive structures was reiterated by one of the interviewees.

It's really important when having Aboriginal staff to try and do things that don't set them up to fail...we have an Aboriginal consultation network which have representative women who are key women in their communities from around the state...and that meets quarterly to discuss issues arising for Aboriginal women around the state and to guide [our organisation] in what they are doing for Aboriginal women, the priorities, and that sort of thing. It is also so that women who are employed within the service have support there as well for them... it is important that they are not sent out there on their own without a proper Aboriginal support structure set up within Legal Aid. (*Aboriginal legal support worker 2 Walgett*)

### *9.1.2 Cultural awareness training for non-Indigenous staff*

We are aware that Aboriginal Services in Legal Aid NSW is currently developing cultural awareness training for staff. The interviews conducted for this research

overwhelmingly support the need for such training, and in an ongoing manner. As one stakeholder working in the legal system noted from her own experience, the lack of sensitivity and stereotyping can be insulting. She received advice from a lawyer that she could not leave town with her children unless she went back to the court, “but he referred to ‘you can’t move to Redfern’ – we wouldn’t want to live in Redfern! There was no deliberate intention to be insulting but it was very insulting” (*Aboriginal legal support workers 1 Dubbo*).

There was a widespread view that cultural awareness workshops should be mandatory for every staff member in Legal Aid NSW, that is, for both legal and non-legal Legal Aid NSW staff.

I think that would be priceless. I think that would generate such a huge assistance for the Legal Aid Commission because it can be so easy to make a judgement that is based on your belief system instead of the belief system that the person is coming from (*LAC Aboriginal staff member 5*).

On a very basic level of belief system, in every Aboriginal community I am aware of, it goes: mother Earth, then your community, then your family, then yourself. And so if any of those other three things come up when you are supposed to be doing a ‘yourself’ thing, they’re not going to do it. Like, aunty died and I have to look after my cousin, or whatever might have happened, and so they’ll feel that this a very good reason why they did not show up, or even show up for court. But the Legal Aid Commission doesn’t take that view. And it may be extended family, which may not seem that urgent from a non-Indigenous perspective, but from an Indigenous perspective it will be very important. So there are culture clashes in that way (*LAC Aboriginal staff member 5*).

There is a need for regular training rather than a one off workshops.

#### **RECOMMENDATION 1**

##### **Cultural Awareness Training**

It is recommended that current initiatives for cultural awareness training for all Legal Aid NSW staff be supported and that training be ongoing.

#### *9.1.3 Special disadvantage test*

In conducting the research it was requested that consideration be given to whether the special disadvantage test needed to be amended to be able to better reflect the needs of Aboriginal people.

The majority of lawyers interviewed (both Legal Aid and non Legal Aid) were not aware of any particular problems that the special disadvantage test posed in relation to potential Aboriginal clients.

I think it depends a bit on the skill of the practitioner, how you put in the application as to whether it goes through or not. I think that in many ways you can get around that stuff (*LAC Aboriginal staff member 3*).

The general view was that the test (or interpretation of the test) already contained considerable room for discretion and that there was not necessarily any need to widen the scope.

If the scope of the test was to be broadened then the general view was that any changes should not refer specifically to Aboriginality. The test could be widened to include significant language or cultural barriers, and significant difficulty accessing legal service due to remoteness.

I think it should have something about remoteness and access to other service providers, and that's not just Indigenous. (*Aboriginal Legal Service staff members 2*)

**RECOMMENDATION 2**  
**Special Disadvantage Test**

It is recommended that any changes to the Special Disadvantage Test not specifically refer to Aboriginal people but refer to barriers arising from language, culture or lack of access to services due to remoteness.

*9.1.4 CLSD*

Here in Dubbo? We don't even know about it (*Aboriginal legal support workers 2 Dubbo*).

There was support for the Cooperative Legal Service Delivery (CLSD) program by those legal practitioners and stakeholders who knew of the program and the meetings.

The CLSD is a good way for a new person coming into the region becoming acquainted with other service providers. We do joint CLEs. It has had some focus on Aboriginal issues. The wills project came out of the CLSD initiative. There is definitely scope to target Aboriginal issues more (*Legal Practitioner 1 Dubbo*).

It was clear there were practical outcomes that had emerged from the CLSD process such as the wills project run in Walgett, and in providing support for funding outreach initiatives by the community legal centre referred to below.

The CLSD has been useful in arguing for additional funding to run outreaches. I am very supportive of the CLSD. It has morphed over time. It is very active. It has the court staff, community legal centre, Legal Aid, financial counselling service etc. It focuses on where the legal needs are and where the gaps are (*Legal practitioner 1 Lismore*).

It's good to find out what's going on. It is good for us to be involved in it so we know who to refer people to...it is a good network generally (*Aboriginal Legal Service staff members 1*).

However, while legal practitioners were supportive of CLSD, it was also clear that there was a lack of knowledge about the CLSD by Aboriginal organisations and a lack

of attendance at CLSD meetings by Aboriginal legal services and other organisations (at least in the areas focused upon in this research).

While we recognise the potential problems of getting representatives from Aboriginal organisations to attend CLSD meetings, there is a need for better inclusion of Aboriginal organisations in the CLSD process. Perhaps one process for better inclusion would be specific invitations to, and dedicating specific times for, relevant Aboriginal organisations to attend CLSD meetings to discuss particular needs in the community, with an outcome aimed at developing initiatives to service identified needs.

### **RECOMMENDATION 3**

#### **Cooperative Legal Service Delivery (CLSD) program**

While recognising that the CSLD program has led to some improvements in access to legal services by Aboriginal people, it is recommended that CLSD undertake initiatives to better include Aboriginal organisations in the CLSD process.

#### *9.1.5 Improving Legal Aid NSW Offices*

Many Aboriginal people, both in the focus groups and stakeholder interviews, indicated that they are not comfortable going to Legal Aid offices (see Chapter Seven). Staff in Legal Aid recognised how unfriendly their offices were:

It's the way physically our reception rooms look. There's no plants, there's nothing red, yellow or black, there's no Koori Mail... (*LAC Aboriginal staff member 5*).

We have to make our whole office space more friendly and user-friendly and welcoming, rather than just having a specific designated Aboriginal service that's like a pimple on our organisation (*Legal Aid practitioner 2*).

Legal Aid needs to consider what could be done to make their offices more friendly for Aboriginal clients. These need not be particularly resource intensive - such as having copies of the *Koori Mail* or the *National Indigenous Times* in waiting rooms. As we indicated in Chapter Eight, LAC VIC has developed initiatives for increasing community involvement with the organisation and improving their offices such as holding art competitions, the winner of which is hung in the waiting room.

### **RECOMMENDATION 4**

#### **Improving Office Space**

It is recommended that Legal Aid New South Wales office managers, in consultation with the Director, Aboriginal Services, develop strategies to improve office space through, for example, art exhibitions/competitions, copies of the *Koori Mail*, etc.

#### *9.1.6 Flexibility in service delivery*

If it is serious about addressing Aboriginal legal needs, then perhaps one of the greatest challenges for Legal Aid NSW is to develop more flexible procedures for service delivery.

So many Aboriginal services have drop in clinics. We have drop in medical clinics, we have drop in drug and alcohol clinics, we have drop in clinics because of the fact that Koori people don't tend to make appointments and they don't tend to keep them when they do (*LAC Aboriginal staff member 5*).

It's imperative to recognise that keeping appointments may be an issue and to be flexible i.e. have a drop in service for Aboriginal clients, however inconvenient, in recognition of the fact that if you don't see them then, they may never come back... Things start with a bang, anxiety that things have to be dealt with immediately, and then things peter out (*Legal practitioner 1 Redfern*).

Aboriginal clients do get referred from ALS but often they want to see a lawyer straight away and that might be impossible; they have to make appointments. But if they can't see someone straight away that might turn them off coming back to us, but there is nothing we can do. We just don't have enough lawyers for someone to be available every time someone needs to see someone straight away. The only answer is more staff (*LAC staff member 2*).

While we recognise the problems associated with staffing, it seems feasible that protocols could be developed for making a solicitor available to Aboriginal clients on a drop in basis rather than a strict appointment system. This may be through a roster system whereby one solicitor is designated 'drop in solicitor' on a particular day.

There are communication problems, both interpersonal and in maintaining ongoing contact with clients.

Sometimes we are willing to offer some assistance and follow up assistance, but when we need them to sign some authority to get contact with other parties, sometimes we don't get any reply from them, so we have to forget about it, it's very hard for us to follow up ...sometimes they don't have phone contact numbers so we have to write letters...maybe we should work with the ALS in the future to make sure that when they book the appointment they get some sort of contact details, even if it is a friend or family. *Do you use the staff at ALS to help you get in contact with the client?* No, once the clinic is over I come back here and work from here (*LAC practitioner 1*).

Part of the problem with ongoing contact with clients could be resolved through the use of field officers (see below) and part of the problems with interpersonal communication can be alleviated with good cross cultural training. However, beyond this there is also the need for flexibility in the amount of time solicitors spend with Aboriginal clients.

It is the sympathy and respect and understanding that is shown to the client that makes them feel that their matter's heard - and if they lose, they feel that they have lost for a good reason. This is universal across all cultures. If you have heard and sympathised, heard it from their point of view... and then say 'I hear all of that and that is really sad, but the law is XYZ'...that takes a little bit of time, and you have to allocate human time and human compassion to do that. But we have found in terms of our clients being satisfied with the



outcome, even if the outcome is a resounding ‘no, you’re going to lose hands down’, they are more comfortable with their sense of inclusion (*Legal practitioner 1 Redfern*).

We have also indicated in Chapter Seven that Aboriginal people require assistance with the completion of forms.

Again with the literacy problems...the family and civil law forms, they’re big, they’re complicated and they ask for a lot of information...you finally get up the nerve, you find the transport, you get yourself in here and there is all this glass and white people, and you finally get served at the counter and you say ‘yeah DOCS took me kids off me’, and you’re feeling like crap and you’re hoping that the whole frickin office didn’t hear you, but you’ve got this glass thing you’ve got to talk through, and they say ‘here, fill out this’, and you go, ok, how many pages is this? And they want my bank account details, like my account number, you’re kidding me, right? I got an ATM card, I stick that in there, my aunty does all that. And how many kids do I have? Well I got these two with that man... and so this form becomes a big issue, and a lot of them say ‘well, I’ll fill it out later’ and they take it away...but they’re less likely to fill it out (*LAC Aboriginal staff member 5*).

#### **RECOMMENDATION 5**

##### **Greater Flexibility in Service Delivery**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for ensuring greater flexibility in service delivery. These strategies should include flexibility in the system for appointments with a trial ‘drop in’ initiative at one or more offices, an allowance for extra time when meeting with Aboriginal clients, and greater assistance for Aboriginal clients in the completion of legal aid forms.

## **9.2 Improving Service Delivery through Connecting to the Community: Outreach**

This section of the chapter is primarily concerned with developing new services by better reaching into Aboriginal communities.

### *9.2.1 Outreach services in community locations*

Outreach is strongly supported by the community. The community was very supportive of the outreaches. The outreaches picked up the significant legal needs (*Legal Practitioner 1 Lismore*).

It is one of the central findings of the research that Legal Aid NSW needs a more extensive outreach program targeted at Aboriginal clients. A more focussed outreach program is needed both in locations where there is an existing Legal Aid office, and in more remote communities where there are fewer services and no current Legal Aid presence:

This is the dilemma: the communities that are the most dysfunctional, the most difficult to reach, are the ones that most desperately need our services (*LAC Aboriginal staff member 3*).

The need for a more effective outreach service was identified by community members, Aboriginal support workers, practitioners and Legal Aid staff. Reflecting on the current approach, Aboriginal Legal Aid NSW staff members stated:

That's where Legal Aid falls down a bit. They need to get out in the community and let people know that they're here... it's going to be a long term things, you're not going to build that rapport in three months, six months, it's probably going to take a couple of years, three or four years, to build that rapport with community. [People are] very suspicious of lawyers, especially the older people...so to build that up again, that's going to take a little while. That's not going to be easy (*LAC Aboriginal staff member 1*).

You need to look at everything that you trial over a really long period of time, because it takes a long time to establish the network and also to be a part of the community (*LAC Aboriginal staff member 3*).

I think there is a lot of commitment but in some ways it is a little bit ad hoc...you need to go out and find out the community's perceptions of Legal Aid, whether they feel that they can take their problems there. Then get key people on board, people who have influence in the community. [Outreach programs] should be centralised, a policy should come out, they should think about how they are going to do it and who should be involved...the current delivery model should be thought out more carefully, it has to be closely monitored and there should be some way of measuring outcomes. If they could tie in with key stakeholders in the community, that would be an improvement (*LAC Aboriginal staff member 1*).

The need to tie outreach into key stakeholders in the community is a point we return to below in the discussion of the need for local Legal Aid NSW offices to have an Aboriginal reference group.

Interviews yielded a lot of discussion about the type of outreach model that should be pursued. Some of the options put forward were as follows:

If Legal Aid want to come out here and do family matters and civil, they need to actually get a worker out here and an office out here full time... Even though you have the visiting solicitor coming in for matters, the community will talk real good to you to your face, but you'll always be that outsider, and you'll never be that first port of call, if you've got no one here. So you haven't got that trust within the community, you haven't got that rapport within the community, it's like 'you know them fellas, they're from Sydney, or they're from down Dubbo', which is outside their area. You've got people here in Bourke that have never been to Brewarrina, let alone Dubbo (*Aboriginal legal support worker 2 Bourke*).

The difficult thing with Indigenous communities is that there are many different communities and there are many different factions within those communities. It's ok to say 'we'll get the community reps in that area...' but you need to access the smaller communities as well. I think a good starting point would be the Land Councils and the Housing Cooperatives, you might also link in with the school, which have Aboriginal Liaison Officers, the universities, and do CLEs there (*LAC Aboriginal staff member 1*).

Workshops would be a good way; it would be best if it were done on Aboriginal ground – at an Aboriginal organization or the CDEP. Not the courthouse (*Aboriginal legal support worker 1 Bourke*).

This latter observation, of the necessity of locating services in Aboriginal organisations, was reiterated time and again:

Services, including CLE, have to be delivered from community organisations, not rely on services run out of Legal Aid offices or relying on posters (*Aboriginal legal support workers 1 Dubbo*).

A lot of Aboriginal people will not come to the courthouse for appointments, so we have most of the (outreach) appointments (*Legal Practitioner 1 Dubbo*).

Continuity of staffing was stressed as key to successful outreach services:

You have to keep in mind that staffing changes also have a big impact – you can go out and do all the outreach and networking within a community, and then you have to go out and do it all again (*Legal practitioner 1 Redfern*).

We know from ALAP work – there was a very low level of community understanding that Legal Aid provided any kind of outreach services at all. We know that it is hard to get branding out there - I get the impression that there is a [Legal Aid] outreach project but it is not operating fully and people are not aware of it. There has to be continuity or the community takes that as a message (*Legal Practitioner 1 Lismore*).

It is also the case that outreach CLE-type services can combine with legal advice and assistance.

One thing that continually keeps popping up is problems associated with wills and powers of attorney and guardianship...as part of the CLSD [several services] did a trip up to Walgett for the elders group where we did a session on wills and then took instructions on wills so Blakes could take them back to Sydney to prepare them. That was very successful – it worked really well (*Legal Practitioner 1 Dubbo*).

A similar point was made in the Dimos (2008) report regarding the capacity to combine CLE with direct advice and legal assistance.

### 9.2.2 Existing Legal Aid Outreach Models

At present there are two types of outreach programs run by Legal Aid NSW: one has involved providing civil and/or family law advice at certain times from an Aboriginal legal service office; the other has involved running advice sessions within particular communities.

The Dimos report (2008) reviews the provision of outreach services by Legal Aid NSW from Aboriginal legal service offices. We do not revisit the issue here. However we do note the same point made in the Dimos report that there is a need for improved communication between ALS and Legal Aid. Typically ALS book the clients into the clinic, but there is no follow up between LAC and ALS about what has occurred with that client.

It's difficult because we don't get any kind of feedback from Legal Aid about how the outreach is going. We don't know whether or not it's actually out there in the community (*Aboriginal Legal Service staff members 1*).

It would be good to get some feedback about whether we were referring people appropriately and they were able to be helped by that service, or did they have to refer them on; did they give them advice and send them on their way or were they taking the matters on for them? ...maybe I'm being a bit negative in my comments about the service because it's hard to know if it is effective. I think that is quite an important point, especially since our clients are coming here for the civil appointments, they have this whole perspective that we are looking after their needs as well...there may be MOUs at a higher level, but there is no set protocol between the offices I don't think (*Aboriginal Legal Service staff members 1*).

We also note that the ALS office may not be the best or only place to provide the service. The Dimos (2008) report also refers to the desirability of considering a range of suitable locations in the community. For example, in Redfern it is likely that a 'drop in' clinic with a solicitor for civil and/or family matters held in the Redfern Community Centre would yield as many clients and minor assistance matters, as an appointment system at the Redfern ALS office.

The outreach program from the Penrith Legal Aid office uses a different model of providing a service in the community at Mt Druitt.

There is a massive need for family law services in the Aboriginal community, but it's just not being accessed by the community for a whole host of reasons. We then thought that we have to take that next step to engage in a more proactive way to provide that service (*LAC practitioners 2*).

The process of establishing the outreach was important and involved community members through the Aboriginal Community Justice Group. There was consultation with community organisations over a three month period. The Community Justice Group are in place as a kind of reference group that the service can report back to.

### 9.2.3 Indigenous Family Violence Prevention and Legal Service Outreach Models

The Bourke and Walgett FVPLS services provide one model for possible outreach services. The Walgett office is staffed by a coordinator, family support worker, receptionist and court worker. There is a local full time coordinator in Bourke. The Bourke and Walgett FVPLS has fly in solicitors for court week, and offers a phone advice service between clients in Bourke and solicitors in Sydney between those times. There are two solicitors based in Sydney who auspice the Walgett and Bourke offices. The program is run through the Women's Legal Services NSW.

The main advantage of the model is seen to be its longer term sustainability.

It's a relatively sustainable model, in terms of funding but also in terms of staffing. A lot of the other legal services don't have a lawyer – they have been recruiting for ages but haven't found anyone, or they have someone relatively inexperienced who is only going to stay a year...

The other advantage is related to position in the community. I frequently have clients say to me 'I wouldn't tell anyone in town, everyone talks'. I think being an outsider inside the community has its advantages. And having the same solicitors for a significant period in the community means that you do have opportunity to build relationships (*Aboriginal legal support workers 2 Walgett*).

If a client wants to speak to a solicitor when one is not available in the Bourke or Walgett offices, they can call a 1800 number and access those lawyers in Sydney. Staff in the Bourke and Walgett offices facilitate this communication, or make an appointment for them for when a solicitor is available face to face, if the client prefers. According to the Walgett office manager, there is not a significant drop off rate when people come in and there is no lawyer immediately available.

When it [advice] takes place over the phone, if there is any clarification that needs to be done, then I do it or my staff members do it – just in terms of bringing things down to a level that the client can understand. Because we assess clients when they come in – just common-sense assessing, whether the client is going to understand what the solicitor is going to say – because the solicitor usually gives us a bit of a run down of what they want to talk to the client about – so we tell them 'this is what they are going to talk to you about', and then we say 'do you want us to sit in with you?', and if they do we do a speakerphone, do a conferencing type of phone call. But if they say 'no, that's ok', then we make the phone call, we talk to the solicitor beforehand, then we hand the telephone to the client, the client will talk to them and then usually the solicitor will talk to us again and say 'I don't know if they understood this part of it, could you go over that with them' and that's what we usually do (*Aboriginal legal support worker 2 Bourke*).

Local staff members are involved in picking up clients for appointments on their appointment day, and if the lawyer is working on the case in Sydney and needs information from the client, the local staff will also access information from the client on the solicitor's behalf.

Having the office [in Walgett] staffed by Aboriginal women, that's what makes the difference... before you can start really helping Aboriginal clients you have to gain their trust, and they're not going to do that just by seeing a white person turn up to talk to them about something, so when we do community education we're always working together with our Aboriginal colleagues in our service (*Aboriginal legal support workers 2 Walgett*).

#### 9.2.4 Court Registrar Outreach Service in Wagga

Another example of an outreach for legal service delivery is the one being developed by the court registrar in Wagga Wagga. The important point in this case is that the outreach is taking place within the same city as the service provider, but in a location that Aboriginal people are likely to access rather than the courthouse.

Every second Thursday morning the court registrar is doing an outreach service at the [Ashmont] community centre from 11-1pm. State debt, births deaths and marriages and legal advice. One of the Legal Aid solicitors could be part of that. If we could get someone from legal aid here regularly then people would get to know that they are available. At least we would have someone here we could talk to about problems... There are two community centres: one at Ashmont and one at Tolland. We are doing the outreach alternative weeks (*Wagga Men's FG participant*).

#### 9.2.5 Developing Legal Aid Outreach Models

Essentially there is a need to consider outreach in those areas where there is a Legal Aid NSW office and those rural and remote areas where there is no office.

For places where there is already a Legal Aid office, in consultation with the proposed Aboriginal reference group (see below), Legal Aid should identify the best place to hold outreach services in that community, and a regular clinic should be held. That clinic should have the following practice principles and cornerstones:

- Ensure the choice of venue does not alienate any sectors of the community. Like the Mt Druitt Legal Aid model, explore the possibility of two venues if necessary.
- Wherever possible provide continuity of service delivery by the same practitioner(s) and field officers
- Provide CLE to community members or community workers on topics of need identified by the community.
- Attend community events for the purposes of raising Legal Aid NSW profile in the community and developing relationships with key community workers.

For places where there is no LAC office, best practice appears to be the FVPLS model in Bourke and Walgett:

- Employment of a local person in a field officer-type role to work (part-time or fulltime depending on location) in the outreach communities, either in a Legal Aid outpost office created for this purpose, or, assuming that this is not resource-viable, co-locating in an existing organisation, depending on the particular community.

- Local field officer will be important in ensuring that clients attend appointments, in explaining matters to clients (acting as an intermediary between client and lawyer) and relaying information/documents for Legal Aid solicitors when the solicitors are not on site.
- Legal Aid solicitors travel in periodically to have client meetings/attend court. The bulk of client meetings however, would be done over the telephone or by AVL.

## **RECOMMENDATION 6**

### **Improving Outreach**

It is recommended that Legal Aid NSW, through the Director, Aboriginal Services, develop strategies for improving outreach both in areas where there are already existing Legal Aid offices and in rural and remote areas where there is at present no Legal Aid service. It is recommended that those strategies adopt the principles and cornerstones for services delivery outlined in this report.

### **9.3 Employing Aboriginal field officers**

Stakeholders and focus group participants expressly identified a preference for Aboriginal employees in Legal Aid to be actively engaged with Aboriginal clients. It was seen that the obstacles faced by Aboriginal people in accessing Legal Aid services would only be overcome through the appointment of specialist Aboriginal workers similar in nature to the roles taken by ALS field officers.

There definitely should be a field officer role, there are definitely benefits there in terms of being a bridge between solicitors and clients...they can link in with the client, get a little bit of a briefing, a little bit of background knowledge, and give that to the solicitor so when you've got the client coming through, you're not fishing as you go along (*LAC Aboriginal staff member 1*).

There definitely needs to be an Aboriginal worker situated in the Legal Aid office [to] support clients by going with them to the Legal Aid office for their meeting there. There needs to be someone trained...a non-Aboriginal woman cannot sit down and really give advice and information to an Aboriginal woman (*Legal support worker 1 Wagga*).

In my view it is a necessity that legal aid have field officers that are Aboriginal that can go out and talk and write down reports in the community (*Redfern Men's FG participant*).

What we need field officers to do is develop that link with the clients and give them that feeling of connection to the service that we just can't do, that is difficult for us to achieve (*LAC practitioners 3*).

Lawyers have to be sure that their client understands what's going on. Sometimes legal professionals are not best placed to do that, and it's better to have an intermediary to translate: someone to reach out to the client and be with the client and to guide them through. People come out of appointments

with lawyers saying, ‘I don’t understand a bloody thing they’re saying’. It’s about communication, it always has been (*Aboriginal community organisation worker 1 Redfern*).

The desirability of employing someone in a field officer type role was further highlighted by the fact that some Legal Aid officers are currently calling upon ALS field officers to carry out field officer duties for Legal Aid clients:

People come here and want to swap to Legal Aid from the ALS because they have a problem with the solicitor. I ask them if they would feel more comfortable with the field officer there and they say ‘oh yes’, so I go back and get the field officer. And they’ll do that over and over; the field officer comes from wherever she is to sit there with them (*LAC Aboriginal staff member 4*).

I think there would be a benefit but we have been covered by ALS so far who do have field officers. We call on them from time to time, because many of our clients are referred by them; if we have difficulty contacting clients we will contact the ALS and they’ll go out and find them for us (*LAC staff member 3*).

At present, there is a level of frustration among some Aboriginal Legal Aid NSW staff who feel constrained by their limited job description from filling the gaps that a field officer role would fill:

I asked ‘have you either looked at our position description or looked at creating new positions, because we’re the Aboriginal face of the office, yet you can’t go out and do what you need to’ (*LAC Aboriginal staff member 2*).

I know that [field officers] seems like a large expense ...but it would be invaluable. There is no way an Aboriginal LSO is going to have the time, energy or emotional capacity to be both a field officer and do a fulltime LSO role (*LAC Aboriginal staff member 5*).

### *9.3.1 Aboriginal Field Officer in Community Legal Centres and Other Legal Aid Offices*

It is important to recognise that Indigenous field officers have been employed by the LAQ (Indigenous liaison officers – see Chapter Eight) and within community legal centres in New South Wales.

We have had a field officer here for twelve months. As a general rule when working with Aboriginal clients and communities it is important to establish rapport and relationship, even before you have clients. Certainly having the Indigenous field officers to assist with both meetings with clients and arranging in advance meetings with different groups such as elders in the community or service providers in the community. They are worth their weight in gold. There are issues here in trying to find clients. To have the field officer assist with that and with cultural appropriateness - that is how you should do things in that community. It is important. And this isn’t factored into the Legal Aid policies or practices... (*Legal Practitioner 1 Dubbo*).



Some Aboriginal people can't read or write and they are very reluctant to tell you that they can't read or write, very reluctant. You've got to ask them other questions like whether they went to school, how long they went to school, and get an idea that way. Some times they will say, "I haven't got my glasses can't you read that?" They don't want to appear downgraded in front of a white person. Having the field officer with me meant that I was able to learn a lot. Without a field officer you've got no way of knowing (*Legal Practitioner 1 Dubbo*).

Similarly the experience in another community legal centre also focused on the necessity of Aboriginal staff.

If you have got field officers they can go out and provide continuity even if you don't have a solicitor there. The field officers can have paralegal skills.

It's not negotiable that we have Aboriginal workers with solicitors - Aboriginal legal access workers. Its not analogous to a field officer position because it is more of a liaison position, it not really a 'gofer' position in terms of grabbing clients or organising meetings, and that is because we only had one year of funding. If we had recurrent funding we would have a field officer - that is the preferred position. (*Legal Practitioner 1 Lismore*)

The experience of the community legal centres use of field officers is that they should not be located away from the office from which the solicitors practice.

Field officers shouldn't be living in the town. They should be travelling with the solicitors (*Legal Practitioner 1 Dubbo*).

There are thirteen communities around here that we have identified - so they are not going to be living in the community. As well as the problem of people being on duty 24 hours a day, the stress levels, the need for security... (*Legal Practitioner 1 Lismore*).

However, from the experience of other services like the ALS, FVPLS, and LAQ, it is possible to have at least some part-time field officers placed in strategic locations where they might service a number of small communities.

### 9.3.2 *The Role of Field Officers*

There is scope for discussion in identifying exactly what the role of the field officer would be: for example, whether it would be a dedicated client-facing role or whether it would also involve some duties in the nature of a paralegal:

Field officer would be great. It would be really really good. Just to have somebody else there; or if I need to see someone and I can't get to them that they could go and pick them up and bring them here. But I would see it as more than that. I would also want them to be able to do legal support work - typing, preparing documents and all that stuff. Because they have to know that back end and the front end (*LAC practitioners 3*).

Whatever the type of role decided upon, the necessity of having clearly defined job descriptions if field officers were employed was noted, “otherwise people have a job description that is about reception duties but end up being a de facto advocate, and so doing two jobs” (*Aboriginal legal support workers 1 Dubbo*). Legal Aid employees similarly noted:

If there was a position as a field officer it would definitely have to have a different statement of duties to the other support staff here; it would have to be kept separate. Because there will be conflict – with who’s doing what and ‘why aren’t you responsible for this when we all are’. So that’s going to be important... if they have different descriptions then everyone knows what their job is and there are no shady parts (*LAC staff members 1*).

Proper selection of the field officers is crucial.

The issue with Indigenous community is that there are different factions in the community...so in terms of selecting that person, a lot of thought would have to go into selecting the right person. I do know that some members in the community feel a bit awkward coming to some of the Aboriginal court workers because there is a history of family conflict – I know you’re never going to get around that, but certainly I think that the integrity and background of the person that you select, you have to really look into that. Especially in relation to family issues, like if there is a break up in the family or allegations of abuse, their reputation has to be really good. I think the concept is good, I think if you’ve got the right person there who is committed to the role, then the benefits are there (*LAC Aboriginal staff member 1*).

The proposed Aboriginal reference group would also have a role in the selection process in employing Aboriginal people as field officers.

The role of a field officer could be implemented in various contexts:

In places where there is a LAC office:

- To act as support person in solicitor/client meetings if the client requested;
- As a key person establishing and assisting outreach work and CLE;
- As a point of contact for Aboriginal clients wanting information about their file (to address the concerns of lack of responsiveness/contact from solicitors).

In places where there is no LAC office:

- If local community people were employed in these sites as suggested above, there would be no need for an additional field officer in those places;
- If an outreach model was established to some communities where there was no ongoing presence in the community, but rather a periodic visit from a LAC solicitor, a field officer would travel with that solicitor to assist in the ways described above.

## **RECOMMENDATION 7**

### **Employing Field Officers**

It is recommended that Legal Aid NSW recruit and employ Aboriginal people to work in a role of field officer; the statement of duties for the position to be developed in consultation with the Director of Aboriginal Services. It is recommended that minimum training for the position be the National Indigenous Legal Advocacy Course (or equivalent).

## **9.4 Expand the use of Audio Visual Links (AVL) for advice**

Generally the view was that greater use could be made of AVL to improve access to civil family law advice. Because of the greater use of AVL in the criminal justice system, many Aboriginal people have had some experience in this form of communication. For example, most Aboriginal legal service offices have AVL capability.

Those who had had experience in using AVL found it a good option without significant drawbacks – as long as the facilities could be found:

We've done that with DOCS matters, have had legal aid over AVL, it's not a problem, only just a matter of where and when – can't be when court is running, since they use the courthouse one, which is the only one in Bourke... People would feel comfortable, as long as the person on the other end was explaining to them really well what was happening and what they had to do, or an Aboriginal court worker could sit in and explain things afterwards (*Aboriginal legal support worker 1 Bourke*).

If you don't make a connection with the Aboriginal person, you won't get nowhere. Once you've made the connection and you've got a rapport, sure, you can use the video. If you have your field officer there and it's all you've got, then I think it's ok (*LAC practitioners 2*).

There was an AVL in the courts, it was being used until recently for client appointments [has now been disallowed by the court] and it was working really well...it's much easier – otherwise they've got to jump in a car and drive all the way to Wellington, or Bathurst, or Goulburn, or wherever they have their clients, just to get instructions... Clients seem happy when they are using it (*Aboriginal legal support worker 1 Walgett*).

Some services already utilise phone conferences or advice sessions with solicitors, and the use of AVL was seen as another option for clients:

I reckon that would be better for [people] round here; compared with the phone, instead of just looking at the desk; so actually seeing the solicitor would probably be better for them...Face to face would be better than AVL, but AVL would be better than just the phone (*Aboriginal legal support worker 2 Walgett*).

Not all stakeholders were supportive of AVL.

Aboriginal people prefer face – to –face. There are communicative problems, we can't get Aboriginal people to come not mainstream offices now, how are we going to do it over the AVL? They have to have field officers with them.  
*(Legal Practitioner 1 Lismore)*

As a minimum requirement the use of AVL will require consideration of the following issues:

- The possibility of using already existing AVL facilities where they are available. We would caution against the use of AVL facilities if they are only available in the courthouse. The location needs to be acceptable to Aboriginal people.
- Practical questions of who will operate the AVL. There are questions of confidentiality. We envisage that the use of AVL will be dependent on the implementation of the outreach recommendation where there is a Legal Aid field officer in attendance who could operate the AVL and also assist with face-to-face explanations at the time of the AVL consultation.
- As a principle clients should not be compelled to use AVL. For some, telephone may be preferable. Clients may not want to be seen and prefer the use of telephone.

It just depends. Some people like to be visualised. But a lot of the after effects of family violence and sexual assault is where they don't want other people looking at them; that also stems from cultural differences as well... so they don't want to be on camera; they think that it's going to hold their image and they don't have any control. So quite often they will prefer to do them over the phone...because no ones' looking at them, and the clients aren't sitting there thinking that they are being judged. *(Aboriginal legal support worker 2 Walgett)*

- It is important that there is an initial face-to-face meeting prior to utilising AVL, if not with the solicitor then with the field officer (depending on the client).

#### **RECOMMENDATION 8**

##### **Increased Use of Audio Visual Links for Legal Advice**

It is recommended that Legal Aid NSW develop the use of AVLs as part of their improvements in outreach services to Aboriginal communities. The use of AVLs should be adopted only when the concerns identified in this report have been satisfied.

## 9.5 Ensuring better understanding by Aboriginal people of civil and family law

As we have indicated in the chapters throughout this report, there is a very poor understanding of civil and family law by Aboriginal people. We recommend a number of strategies to improve this situation.

There is a need to skill and resource Aboriginal staff who work in justice agencies in civil and family law. As we noted previously in this report, Aboriginal people who work in various agencies often do not have the knowledge base to provide assistance on civil and family law matters. In this context we reiterate the recommendation already made in the Dimos (2008) report (Recommendation 29) concerning the need for Legal Aid NSW to directly assist in the provision of these skills and resources, possibly in cooperation with the Attorney-General's Department.

### **RECOMMENDATION 9**

#### **Skills and Resources**

Following Recommendation 29 from the Dimos (2008) report to Legal Aid NSW, we recommend that Legal Aid NSW take a lead role in skilling and resourcing Aboriginal people working in justice agencies on civil and family law.

#### *9.5.1 Civil and family law community legal education*

The need for development of civil and family law community legal education that is targeted to the needs of Aboriginal people has been identified in several sections of this report. Legal Aid NSW has appointed three people responsible for community legal education in the areas of civil, family and criminal law. However, it is noted that they are employed in Head Office. It may be worth considering a CLE regional position/s, or one that is specifically designed to improve Aboriginal community legal education.

If they did a lot more community education awareness programs with Aboriginal workers, ALS and other Aboriginal organisations like court workers, that's going to spread a lot wider than 'this belongs to ALS, this belongs to Legal Aid' – work together to have a much more holistic approach between those services (*Aboriginal legal support workers 2 Dubbo*).

A lot of the NSW government agencies have great schemes operating for civil law issues, but people don't know about it. A lot of civil law issues can be referred to those agencies, if there was someone in Legal Aid, say in head office, who could liaise with all the government agencies so that when they have all these assistance schemes for Indigenous people and communities, people in Legal Aid know how to access that information. We do have a bit of that on the intranet, but I think if there was an Indigenous focus, or more of a thought on how you could bring all those services for Indigenous people together, it would be a good way to do it (*LAC Aboriginal staff member 1*).

There's not enough pamphlets or workshops or information given out there to let people know what they can do in this society. Our people need education on these things. Education is the starting point. You've got to get out into the

communities and tell people what their rights are (*Redfern Men's FG participant*).

Literature and pamphlets have to be culturally appropriate to certain areas – if you write something in this area and take it out to another one, it could be different out there. If you get community involvement in writing up those pamphlets, that would be good too (*LAC Aboriginal staff member 1*).

Equally important is the need to provide targeted education to Aboriginal communities about the Legal Commission itself, and in particular the services which it provides. The proposed field officer position could play an important role assisting with CLEs and promoting the work of Legal Aid NSW.

#### **RECOMMENDATION 10**

##### **Community Legal Education**

It is recommended that targeted community-based promotion strategies on civil and family law services provided by Legal Aid NSW be developed for Aboriginal people. It is also recommended that targeted community legal education on civil and family law be developed for Aboriginal people. Targeted CLE strategies are best developed at the regional level and in response to identified local issues.

#### *9.5.2 Indigenous Telephone Advice line*

One final issue in improving access which is worth further exploration is the use of an Indigenous telephone advice line. As noted in Chapter Eight, LAQ has a designated Indigenous legal advice line.

We are aware that there are various available advice lines in New South Wales in relation to young people (the Legal Aid Youth Hotline), for Aboriginal people in custody (the 24 hour telephone custody notification service operated by the ALS), and LawAccess NSW. As noted previously we were unable to access any data on Indigenous use of the LawAccess service.

It is clear, however, that none of the advice lines are specifically covering civil and family law matters for Aboriginal people. It is an avenue worth further exploration, particularly the possibility of developing with the Aboriginal Legal Services a joint telephone advice line covering criminal, civil and family law.

#### **RECOMMENDATION 11**

##### **Telephone Advice Line**

It is recommended that Legal Aid NSW discuss with the Aboriginal Legal Services (New South Wales/ACT) the desirability and feasibility of establishing a telephone advice line for Aboriginal people which covers criminal, civil and family law issues.

#### **9.6 Aboriginal Reference Group**

It appears that one of the core problems facing Legal Aid NSW offices is that there is no process in place through which they can engage local Aboriginal communities. This makes community engagement for service delivery a difficult task.

Other justice agencies have faced similar issues. Police have established local community consultative groups. Department of Juvenile Justice established reference groups or elders group to provide advice to local detention centres. The Penrith Legal Aid office has done something similar through the use of the local Aboriginal Community Justice Group.

Before there can be improved engagement with Aboriginal communities, there needs to be a process in place. The establishment of a local Aboriginal reference group is an important first step in this direction. The reference group could provide advice on better service delivery, on particular legal needs in the area, and other matters as they arise. It is envisaged that the reference group would involve membership from community justice groups, Aboriginal court staff, circle sentencing coordinators, ALS and FVPLS staff, and other local Aboriginal services as appropriate (for example, the AMS, tenancy services, etc).

We are conscious of the problems that arise with demands on Indigenous workers to attend to various meetings and be part of various groups. There may well be a local interagency Aboriginal group or other suitable reference group already in place in a particular location which could be utilised to avoid duplication. The Aboriginal Services Unit and existing Aboriginal staff could provide advice to local managers and senior solicitors on establishing reference groups.

**RECOMMENDATION 12**

**Aboriginal Reference Group**

It is recommended that Legal Aid NSW offices, in consultation with the Director, Aboriginal Services, establish Aboriginal Reference Groups to provide advice on matters relating to improved service delivery to Aboriginal communities and legal needs in local Aboriginal communities.





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[http://www.lces.ca/documents/Research/Voices\\_from\\_the\\_Field\\_Final\\_July\\_2\\_2008.pdf](http://www.lces.ca/documents/Research/Voices_from_the_Field_Final_July_2_2008.pdf)

Stratton, M., (2006) *Balancing the Scales: Understanding Aboriginal Perspectives on Civil Justice*, Canadian Forum on Civil Justice, Edmonton Alberta  
<http://cfcj-fcjc.org/docs/2006/stratton-balancing-en.pdf>

Zalik, Y., (2006) *Aboriginal Peoples and Access to Legal Information*, Community Legal Education Ontario  
<http://www.cleo.on.ca/english/pub/onpub/PDF/aaexecsum.pdf>

### **Useful websites (USA)**

Tribal Law and Policy Institute <http://www.tribal-institute.org/lists/tlpi.htm>

Tribal Court Clearinghouse: <http://www.tribal-institute.org>

National Native American Bar Association: <http://www.nativeamericanbar.org/>

Indian Law Resource Center: <http://www.indianlaw.org/>

National American Indian Court Judges Association: <http://www.naicja.org/>

National Congress of American Indians: <http://www.ncai.org/>

## APPENDIX A

### Civil and Family Law Needs – Questionnaire

This questionnaire is anonymous - we don't need your name on this form. We will collect them after the focus group meeting. Please  the answers as required.

Age 18-24  25-34  35-44  45-54  55 and over

WHEN YOU ANSWER these questions we would like you to think back over the last couple of years...

#### 1. HOUSING AND TENANCY

Have you had any disputes involving your landlord over housing issues (this might involve the Housing Commission or a private landlord)?

YES  NO

Briefly, what was the dispute about? (eg rent, repairs, eviction, relocation, bond)

---

Did you seek legal advice or representation? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

Have you had any disputes involving supported accommodation (this might involve a hostel, nursing home or a retirement village)? This might involve yourself or someone you care for.

YES  NO

Briefly, what was the dispute about? (eg fees, the service provided, standards, etc)

---

Did you seek legal advice or representation? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

Over the last couple of years, has there any other time you have used legal advice in relation to housing (eg buying and selling a home or unit, seeking council approval for building applications, etc)

YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

## **2. NEIGHBOURS**

Have you had any disputes with neighbours over such things as fences or boundaries, noise, privacy, animals?

YES  NO

Did you seek legal advice?

YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

How did you resolve this dispute?

---

## **3. WILLS and ESTATES**

Have you completed a will? YES  NO

If yes, did you get any advice from anyone? YES  NO

Can you remember who it was? (Was it a lawyer? at a legal centre? Was it a friend or a relative?)

---

If you haven't completed a will, would you like to get legal advice on completing one?

YES  NO

Who would you approach for that advice?

---

Have you been the executor for a deceased estate? YES  NO

Have you been involved in any disputes over a deceased estate?  
YES  NO

#### **4. VICTIMS COMPENSATION**

Over the last couple of years, have you been the victim of a violent crime?  
YES  NO

Did you know about the victim's compensation scheme? YES  NO

Did you seek victim's compensation? YES  NO

#### **5. STOLEN WAGES, STOLEN GENERATIONS**

Were you directly affected by government policies relating to Stolen Wages/ Trust Funds or Stolen Generations?  
YES  NO

Have you had any advice relating to the Aboriginal Trust Funds Repayments Scheme?  
YES  NO

Who provided the advice? \_\_\_\_\_

Are you pursuing a claim under this scheme?  
YES  NO

#### **6. EMPLOYMENT**

Over the last couple of years, have you had any disputes in your job over things like pay, superannuation, unfair dismissal, working hours, award conditions, leave, union membership, bullying, harassment or other working conditions?  
YES  NO

Briefly, what was the problem? \_\_\_\_\_

Did you seek legal advice? YES  NO

Who provided the advice or representation?  
\_\_\_\_\_

Was the advice satisfactory? YES  NO

### **7. SOCIAL SECURITY AND CENTRELINK**

Are you receiving any type of allowance specifically for Aboriginal people? This might include payments made through ABSTUDY, CDEP or the Indigenous Cadetship program.

YES  NO

Are you receiving any other type of allowance through Centrelink, such as Youth Allowance, Newstart Allowance, Austudy, sickness or disability allowances, age pension, widow pension, Veteran Affairs pension, parenting payment, child care payment, baby bonus, carer payment?

YES  NO

Have you had any problems or disputes over payments with Centrelink over the last couple of years?

YES  NO

Did you seek legal advice?

YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

### **8. FAMILY MATTERS**

Over the last couple of years, have you had any problems about residence or contact arrangements, such as custody or access, in relation to your children or grandchildren?

YES  NO

Have you had any problems in relation to children being taken into care, or problems about fostering, adoption or guardianship?

YES  NO

Briefly, what was the problem? \_\_\_\_\_

Did you seek legal advice?

YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO



Have you been through a divorce or separation over the last couple of years?

YES  NO

As a result of separation were you involved in any dispute over property, money or superannuation?

YES  NO

Did you seek legal advice?

YES  NO

Who provided the advice or representation?

---

### **9. DISCRIMINATION**

Over the last couple of years, have you had any problems with racial discrimination or other types of discrimination (such as because of your age, your marital status, your gender or sexuality, religion, or because of a disability)?

YES  NO

Briefly what type of discrimination was it and where did it occur (eg bank, real estate agent, your job, government service, club, etc)

---

Did you seek legal advice?

YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory?

YES  NO

### **10 ACCIDENT AND INJURY**

Over the last couple of years, have you been involved in a car accident where there was damage to either your vehicle or the other vehicle?

YES  NO

Were you insured?

YES  NO

Were you required to pay for damage?

YES  NO

Did you seek legal advice?

YES  NO

If you were involved in a car accident were you injured?

YES  NO

Over the last couple of years...

Have you suffered any work – related injury? YES  NO

Or injury outside the home (eg accident in shopping mall, or as a result of medical treatment)? YES  NO

Did any of these injuries require medical treatment? YES  NO

Did you seek legal advice (eg in regard to compensation)? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

### **11. EDUCATION**

Over the last couple of years, have you been responsible for a young person attending school, TAFE or university?

YES  NO

During this time have you encountered any problems with any of the following: suspension or expulsion? Bullying or harassment? HECS or other fees?

YES  NO

Briefly, what was the problem? \_\_\_\_\_

Did you seek legal advice? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

### **12 CREDIT AND DEBT**

Over the last couple of years, have you had any problems with paying a bill or loan or other debt where the lender has threatened or taken out legal action against you?

YES  NO

Have you had any problems or disputes over your Credit Reference Rating or as a guarantor for someone else's loan, or in relation to possible bankruptcy?

YES  NO

Briefly, what was the problem? \_\_\_\_\_

Did you seek legal advice for any of these matters? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

### **13 CONSUMER**

Over the last couple of years, have you any problems accessing superannuation? Or any dispute with a bank or financial institution (eg over your account balance, bank fees or other matters)?

YES  NO

Over the last couple of years, have you any problems with insurance (eg a dispute over a claim or premium, or not being able to get insurance in the first place)?

YES  NO

Over the last couple of years, have you any problems with any types of 'scams' involving activities such as funeral funds, door to door sales.

YES  NO

Have you had any other type of problem where you paid for something and didn't get what you paid for?

YES  NO

Briefly, what was the problem? \_\_\_\_\_

Did you seek legal advice? YES  NO

Who provided the advice or representation?

---

Was the advice satisfactory? YES  NO

## APPENDIX B

### Record of Interview Dubbo

NAME OF SERVICE	INTERVIEWEE(S)	DATE OF INTERVIEW
Legal Aid	Patrick Latham Civil Lawyer	27/2/2008
Legal Aid	Michelle Kelly Family Lawyer	27/2/2008
Legal Aid	Chelsea Stewart Legal support officer	27/2/2008
WALS	Hemal Perera Solicitor	26/2/2008
WALS	Elizabeth Shirlaw Solicitor	26/2/2008
WALS	Cliff Baker Care and Protection Solicitor	26/2/2008
Centacare	Kaye Anderson	27/2/2008
Centacare	Maree Simpson	27/2/2008
Thubbo AMS	Tony Peachey	27/2/2008
Thubbo AMS	Dean Peachey	27/2/2008
Thubbo AMS	Elizabeth Wright	27/2/2008
Women's Domestic Violence Court Assistance Scheme	Kathryn Walford	27/2/2008
Women's Domestic Violence Court Assistance Scheme	Denise Carney	27/2/2008
ACSS	Roslyn Barker	25/2/2008
ACCS/Circle Sentencing	Ken Clarke	25/2/2008
Community Justice Group	Barry Coe	25/2/2008
Western Aboriginal Tenant Advice and Advocacy Service	Alisha Ondrovik Coordinator	27/2/2008
Western Aboriginal Tenant Advice and Advocacy Service	Allan Brown Advocate	27/2/2008
Western Aboriginal Tenant Advice and Advocacy Service	Ray Parton Advocate	27/2/2008
Violence Against Women (VAW) Strategy	Teena Bonham	27/2/2008
Regional Strategy Communities Division DoCS	Gargi Ganguly	27/2/2008
Community Representative	Christine Ohrin	27/2/2008
Dubbo Family Support	Joanne Phillips	27/2/2008

Dubbo Emergency Accommodation & Dubbo Women's Housing Programme	Maureen Clarke	27/2/2008
Dubbo Women's Housing Program & Aboriginal Family Health Service	Elsie Gordon	27/2/2008
Dubbo Neighbourhood Centre	Jackie Wright Senior Manager	25/2/2008
Dubbo Neighbourhood Centre	Leanne Greenaway Program coordinator Indigenous programs	25/2/2008
Dubbo Court Deputy Registrar	Jeni Zabeth	25/2/2008
Dubbo Court Registrar	Mark Harris	25/2/2008
Dubbo CLC	Helen Pigram Administrative coordinator	25/2/2008
Dubbo CLC	Maureen Imrie Women's outreach solicitor	25/2/2008
Dubbo CLC	Patrick O'Gallaghan Principal Solicitor	25/2/2008
Regional Solicitors Program	Ronald Frankham	26/2/2008
Dubbo Aboriginal Working Party	Darren Toomey Chair	23/6/2008

### Record of Interview Wagga Wagga

NAME OF SERVICE	INTERVIEWEE(S)	DATE OF INTERVIEW
Legal Aid	Margaret Poulter Acting Office Manager	25/3/2008
Legal Aid	Nicole Gai Dwyer Solicitor-in-charge Family law solicitor	26/3/2008
Legal Aid	Melissa McKenzie Legal Support Officer	25/3/2008
Legal Aid	Ifran Yusef Civil law solicitor	25/3/2008
ALS	Shannon Pennicott-Finch Care and Protection Lawyer	26/03/2008
Family Support Program	Chris Selvey Financial Counsellor	26/03/2008
ACSS	Lloyd Atkinson	26/3/2008
Riverina AM+DS	Tangerene Ingram	26/3/2008
Riverina AM+DS	Sarah Jane Williams Youth Worker	26/3/2008

Women's Domestic Violence Court Assistance Scheme	Daphne Munro, Coordinator	25/3/2008
Domestic and Family Intervention Service	Alana Hughes	25/3/2008
Disability Advocacy Service	Swie Madden Coordinator	27/3/2008
Disability Advocacy Service	Brett Chalker Consumer Advocate	27/3/2008
South West Tenants Advice Service	Joan Haddon, Coordinator	27/3/2008
Family Relationship Centre	Chris Turner, Coordinator	27/3/2008
Family Relationship Centre	Fiona Budgen Practitioner	27/3/2008
Family Relationship Centre	Keryn Foley Practitioner	27/3/2008
Family Relationship Centre	Keith Roberts Practitioner	27/3/2008
Family Relationship Centre	Anthony Feldon Practitioner	27/3/2008
Family Relationship Centre	Althea Brunskill Practitioner	27/3/2008

#### Record of interview Moree

NAME OF SERVICE	INTERVIEWEE(S)	DATE OF INTERVIEW
Thiyama-li Legal Service	Terrence Duff Principal solicitor	21/4/2008
Thiyama-li Legal Service	Kathleen Wells Solicitor	21/4/2008
Newell Advocacy	Linda Maidens	21/4/2008
ALS	Leanne Mellor	22/4/2008
ALS	Kate Biffin	22/4/2008
Aboriginal Client Specialist Services	Linden McGrady	22/4/2008
Women's Domestic Violence Court Assistance Scheme	Margaret Sampson	22/4/2008
Stuart Percy & Associates (Regional Solicitors Program)	Stuart Percy	22/4/2008

#### Record of Interview Tabulam

NAME OF SERVICE	INTERVIEWEE(S)	DATE OF INTERVIEW
Legal Aid Lismore	Wendy Kilroy	10/6/2008

	Office Manager	
Legal Aid Lismore	Alisha Holman Legal Support Officer	10/6/2008
Legal Aid Lismore	Lurline Dillon-Smith Senior solicitor, civil law	10/6/2008
Legal Aid Lismore	David Pheeney Professional Legal Placement	10/6/2008
Legal Aid Lismore	Hugh Van Dugteren Solicitor-in-charge/ Regional program coordinator, criminal law	10/6/2008
Legal Aid Lismore	Hazel Manson Family law solicitor	12/6/2008
ALS	Kylie Anderson Clarke Senior solicitor	10/6/2008
ALS	Willam Bonn Field Officer	10/6/2008
Lismore and District Financial Counselling Service	Steven Snellgrove Manager	10/6/2008
AMS Casino	Jeff Richardson CEO	11/6/2008
AMS Casino	John Breckenridge	11/6/2008
AMS Casino	Wayne Ritchie	11/6/2008
AMS Casino	Annette Olive	11/6/2008
AMS Casino	Denise Marsh	11/6/2008
AMS Casino	Deriyk Walker	11/6/2008
Lismore Court	Michael Knock	12/6/2008
Northern Rivers Community Legal Centre	Angela Pollard Manager	12/6/2008
Northern Rivers Community Legal Centre	Cathy Kerr Principal Solicitor	12/6/2008
Northern Rivers Community Legal Centre	Nancy Walke Miring Ngu Wanjarri Project Worker	12/6/2008
Northern Rivers Tenants Advice and Advocacy Service	Kate Chapman Coordinator	12/6/2008
Northern Rivers Women's Domestic Violence Court Assistance Scheme	Keiryn Deutrom Regional Coordinator	12/6/2008

### Record of Interview Bourke

NAME OF SERVICE	INTERVIEWEE	DATE OF INTERVIEW
Dunbi Place	George Orcher Manager	24/6/2008

Bourke/Brewarrina Family Violence Prevention Legal Service	Audrey Gibbs Coordinator	24/6/2008
Bourke/Brewarrina Women's Domestic Violence Court Assistance Scheme	Doreen Orcher Coordinator	24/6/2008
Aboriginal Legal Service	Will Tuckey Senior Solicitor	24/6/2008
Bourke Aboriginal Medical Service	Rosie Gordon Practice Manager	24/6/2008
Circle Sentencing Coordinator	Narelle Orcher	24/6/2008
Tehla Weatherall	Aboriginal Client Service Specialist Officer	24/6/2008
Melissa Kendel	Acting Registrar Bourke Local Court	24/6/2008

#### **Record of Interview Goodooga**

<b>NAME OF SERVICE</b>	<b>INTERVIEWEE</b>	<b>DATE OF INTERVIEW</b>
ALS Walgett	Gary Trindall Field Officer	26/6/2008
Walgett Courthouse	Vince Kennedy ACCS	26/6/2008
Walgett Courthouse	Cheryl Suey Circle Sentencing project officer	26/6/2008
Walgett Family Violence Prevention Legal Service	Natasha Rohr Solicitor	26/6/2008
Walgett Family Violence Prevention Legal Service	Dianne Hamey Solicitor	26/6/2008
Walgett Family Violence Prevention Legal Service	Sandra Howse	26/6/2008

#### **Record of Interview Redfern/Waterloo**

<b>NAME OF SERVICE</b>	<b>INTERVIEWEE</b>	<b>DATE OF INTERVIEW</b>
Intellectual Disability Rights Service	Ben Fogarty Principal Solicitor	14/8/2008
Redfern Legal Centre	Elizabeth Morley Principal Solicitor	14/8/2008
Redfern Legal Centre	Nicki Petrou Solicitor	14/8/2008
Inner Sydney Tenants' Advice and Advocacy Service	Jacqui Swinburne Coordinator	14/8/2008



Babana men's group	Don Clark Treasurer	14/8/2008
Aboriginal Legal Service	Sheri Misagi Senior Office Administrator	04/09/2008
Aboriginal Legal Service	Paul Patten Field Officer	04/09/2008
Aboriginal Tenancy Service	Stacey Broadbent Coordinator	04/09/2008
Lily Shearer Redfern Community Centre	Cultural Development officer	04/09/2008
Legal Aid Commission	Kai Wu Solicitor	25/09/2008
Legal Aid Commission	Kylie Beckhouse Senior Solicitor – Family Litigation	25/09/2008

#### **Record of Interview Penrith/Mt Druit**

<b>NAME OF SERVICE</b>	<b>INTERVIEWEE</b>	<b>DATE OF INTERVIEW</b>
Legal Aid	Louise Coady Aboriginal Outreach Solicitor	21/8/2008
Legal Aid	Mary Gleeson Family Law Solicitor	21/8/2008
Legal Aid	Michelle Kyle Office Manager	21/8/2008
Legal Aid	Nikki Pattinson Administrative Support Officer	21/8/2008
Legal Aid	Matthew Greenaway Senior Solicitor	5/9/2008
Cawarra Women's Refuge	Maisy Cavanagh Secretary, Management Committee	21/8/2008
Cawarra Women's Refuge	Cheryl Grovenor	21/8/2008
Aboriginal Catholic Ministry	Jenny Ebsworth	21/8/2008
Aboriginal Catholic Ministry	Daisy Barker	21/8/2008
Domestic Violence Court Assistance Scheme	Cheryl Alexander Coordinator	21/8/2008
Aboriginal Medical Service	Elaine Gordon Clinic Manager	21/8/2008

Mt Druitt		
Aboriginal Legal Service	Kim Ritchie	21/8/2008
Aboriginal Legal Service	Raymond Brazil	21/8/2008
Aboriginal Legal Service	Bronwyn Gaylard	21/8/2008
Aboriginal Legal Service	Shawn Stubbings Zone Manager	21/8/2008
Aboriginal Legal Service	Wayne Wallace Aboriginal Field Officer	21/8/2008
Aboriginal Legal Service	Lucinda Clark	21/8/2008
Aboriginal Client Service Specialist	Annette Hennessy	05/09/2008
Community Justice Group	Lois Newman Coordinator	05/09/2008
Mirang Din Aboriginal Women's Resource and Development Centre	Barbara Fitzsimmons Coordinator	05/09/2008
Mt Druitt Legal Centre	Robert Stoyef Principal Solicitor	05/09/2008

### Statewide stakeholders

Legal Aid Commission (Head Office)	Scott Hawkins Director, Aboriginal Services Unit	25/09/2008
Legal Aid Commission (Head Office)	Janelle Clark Senior Aboriginal Project Officer	25/09/2008
Legal Aid Commission (Head Office)	Charmaine Smith Community Legal Education Officer (Civil)	25/09/2008
Legal Aid Commission (Head Office)	Kylie Beckhouse Acting Solicitor in charge of Family Law Practice	25/09/2008
Wirringa Baiya	Madeleine Heath Solicitor	02/10/2008
Women's Legal Resources Centre	Donna Henson, Coordinator, Indigenous Women's Project	02/10/2008
Women's Legal Resources Centre	Natalie Newman Solicitor	02/10/2008
Combined Community Legal Centres Group NSW	Renee Williamson Aboriginal Legal Access Program Coordinator	02/10/2008

## APPENDIX C

### Aboriginal Legal Access Program Funded Projects

CLC	Program/ Project
<b>GRANT SCHEME A - Long-Term Ongoing Programs</b>	<b>GRANT SCHEME A - Long-Term Ongoing Programs</b>
Hawkesbury Nepean CLC	Aboriginal Legal Access Service
Northern Rivers CLC	Mirrung Ngu Wanjarri
Wirringa Baiya Aboriginal Women's Legal Centre Inc	Creating Spaces
<b>GRANT SCHEME B - Large Project Grant: Existing Project</b>	<b>GRANT SCHEME B - Large Project Grant: Existing Project</b>
Environmental Defenders Office Ltd (NSW)	Caring for Country: Improving Delivery of Environmental Law Services to Aboriginal Clients in NSW
<b>GRANT SCHEME B - Large Project Grant: New Project</b>	<b>GRANT SCHEME B - Large Project Grant: New Project</b>
Illawarra Legal Centre Inc	Aboriginal Legal Access Worker
Macarthur Legal Centre Inc	Indigenous Legal Outreach Project
Shoalcoast CLC	Indigenous Legal Access and Violence Prevention
<b>GRANT SCHEME B - Small Project Grant: Existing Project</b>	<b>GRANT SCHEME B - Small Project Grant: Existing Project</b>
Kingsford Legal Centre	La Perouse Outreach Service
Arts Law Centre of Australia	Evaluation of Artists in the Black Education Program
Macquarie Legal Centre	Identifying the Broken Bridges
<b>GRANT SCHEME B - Small Project Grant: New Project</b>	<b>GRANT SCHEME B - Small Project Grant: New Project</b>
Disability Discrimination Legal Centre	Scoping Project of Northern Rivers Indigenous Disability*

Redfern Legal Centre	Helping Women Through: a community education program on the court process for women dealing with domestic violence

## APPENDIX D

### CCLCG's (NSW)

#### Overview of Existing Services for Aboriginal Clients and Communities in NSW CLCs

<b>Centres with Aboriginal Staff</b>	
Hawkesbury Nepean CLC	<ul style="list-style-type: none"> <li>○ Aboriginal Legal Access Service Coordinator; 3 days/week, permanent; provide casework, Community Legal Education (CLE) and community development</li> </ul>
Shoalcoast CLC	<ul style="list-style-type: none"> <li>○ Indigenous solicitor</li> </ul>
Northern Rivers CLC	<ul style="list-style-type: none"> <li>○ - Mirrung Ngu Wanjarri Project Worker</li> <li>○ Assistant Coordinator DVCAS (part-time, permanent), Aboriginal Legal Access Program Worker (part time)</li> </ul>
Redfern LC	<ul style="list-style-type: none"> <li>○ ATSI Coordinator, WDV CAS (part time, permanent);</li> </ul>
Macquarie Legal Centre	<ul style="list-style-type: none"> <li>○ Aboriginal Liaison Officer, CCAS (part time)</li> </ul>
Western NSW CLC	<ul style="list-style-type: none"> <li>○ Female Aboriginal Field Officer (12 hours/week)</li> </ul>
Arts Law	<ul style="list-style-type: none"> <li>○ Indigenous Solicitor (full-time)</li> <li>○ Indigenous Information and Liaison Officer (Part time – Currently vacant)</li> </ul>
Wirringa Baiya	<ul style="list-style-type: none"> <li>○ Coordinator (35 hours/week);</li> <li>○ Administrator (28 hrs/week)</li> </ul>
Hunter CLC	<ul style="list-style-type: none"> <li>○ Coordinator (F/T),</li> <li>○ Information and referral officer (F/T)</li> </ul>
Environmental Defenders Office	<ul style="list-style-type: none"> <li>○ Aboriginal Liaison Officer</li> </ul>
Far West CLC	<ul style="list-style-type: none"> <li>○ Administrator; part-time</li> </ul>
Illawarra CLC	<ul style="list-style-type: none"> <li>○ Aboriginal Legal Access Worker (ALAW)</li> </ul>
Macarthur CLC	<ul style="list-style-type: none"> <li>○ Aboriginal Community Liaison Officer (from Jan 08)</li> <li>○ 2 x Victims Advocates</li> </ul>
Tenants Union of NSW	<ul style="list-style-type: none"> <li>○ Aboriginal Paralegal</li> </ul>
Women's Legal Services NSW	<ul style="list-style-type: none"> <li>○ Coordinator &amp; Project Officer – Both recently vacant</li> </ul>
<b>Aboriginal Volunteers</b>	
Central Coast CLC	<ul style="list-style-type: none"> <li>○ Management Committee member</li> </ul>
Hawkesbury Nepean	<ul style="list-style-type: none"> <li>○ Advisory Committee; and in other capacities</li> </ul>
Shoalcoast	<ul style="list-style-type: none"> <li>○ Management committee member</li> <li>○ Informal Advisory committee (6)</li> </ul>
Northern Rivers	<ul style="list-style-type: none"> <li>○ 2 Indigenous identified positions on management committee</li> <li>○ Ad hoc advisory committee,</li> <li>○ Aboriginal volunteers in volunteer advice</li> </ul>

	services/administration
Redfern	<ul style="list-style-type: none"> <li>○ ATSI volunteer court support workers for WDVCAS;</li> <li>○ ATSI reps on Advisory Council;</li> <li>○ ATSI members on DV Committee</li> </ul>
Arts Law	<ul style="list-style-type: none"> <li>○ –Indigenous reference group for the Indigenous staff and service;</li> <li>○ Reference group member sits on the Arts Law Board.</li> </ul>
Wirringa Baiya	<ul style="list-style-type: none"> <li>○ Board is made up of 7 Aboriginal members;</li> <li>○ Occasional volunteers in the office</li> </ul>
EDO	<ul style="list-style-type: none"> <li>○ Indigenous Engagement Project – Aboriginal Advisory Group</li> </ul>
Kingsford	<ul style="list-style-type: none"> <li>○ The Aboriginal Community Project Officer with Randwick City Council has agreed to participate in the KLC Consultative Committee.</li> </ul>
Women's Legal Services NSW	<ul style="list-style-type: none"> <li>○ Aboriginal Advisory Group</li> </ul>
Tenants Union of NSW	<ul style="list-style-type: none"> <li>○ Recently established Aboriginal Legal Officer Steering Committee</li> </ul>
Macarthur	<ul style="list-style-type: none"> <li>○ Currently in the process of trying to form a Consultative Group</li> </ul>
<b>Drop in service for Aboriginal Clients</b>	
Hawkesbury	<ul style="list-style-type: none"> <li>○ Prioritises Aboriginal clients;</li> </ul>
Shoalcoast	<ul style="list-style-type: none"> <li>○ Prioritises Aboriginal women</li> </ul>
University of Newcastle	<ul style="list-style-type: none"> <li>○ Refers clients to ALS</li> </ul>
DDLS	<ul style="list-style-type: none"> <li>○ Does not do drop in as Redfern Legal Centre is in the area</li> </ul>
Western NSW CLCs	<ul style="list-style-type: none"> <li>○ General outreach to Dubbo, Burke, Brewarrina, Cobar, Lightning ridge, Walgett.</li> </ul>
Macarthur	<ul style="list-style-type: none"> <li>○ Outreach service at Tharawal Aboriginal organisation</li> </ul>
<b>Specific Service for Aboriginal Clients</b>	
Hawkesbury	<ul style="list-style-type: none"> <li>○ Aboriginal Legal Access Service (in-house and outreach)</li> </ul>
Northern Rivers	<ul style="list-style-type: none"> <li>○ Mirrung Ngu Wanjarri Project – provides CLE on family violence (running for 7 years); outreach</li> </ul>
Disability Discrimination LC	<ul style="list-style-type: none"> <li>○ One-off events (Legal Aid tent, Aboriginal Footy knockout)</li> </ul>
Macquarie	<ul style="list-style-type: none"> <li>○ Children Court Assistance Scheme – Aboriginal Liaison officer (at court; dedicated position);</li> <li>○ One off events – NAIDOC (outreach; staff volunteer time)</li> </ul>
Western NSW	<ul style="list-style-type: none"> <li>○ Aboriginal Corporate Governance workshops</li> </ul>
Arts law	<ul style="list-style-type: none"> <li>○ Artists in the Black (AITB) – 5 days a week; 9-5pm;</li> </ul>
Wirringa Biaya.	<ul style="list-style-type: none"> <li>○ Blackout Violence campaign; Aboriginal Women's Corroboree: Creating Spaces (focus on sexual</li> </ul>

	assault/violence)
EDO	<ul style="list-style-type: none"> <li>○ Caring for Country: Improving Delivery of Environmental Law Services to Aboriginal Clients in NSW (outreach, consultation and liaison with key stakeholders, including service provider organisations; promotional and information resources tailored to Aboriginal clients; delivery of professional training and community education for Aboriginal organisations and communities, production of plain language resource on environmental law tailored to Aboriginal clients).</li> </ul>
Albury	<ul style="list-style-type: none"> <li>○ Free legal advice sessions. Outreach at Mungabareena Aboriginal Corporation.</li> </ul>
Illawarra	<ul style="list-style-type: none"> <li>○ New Project - To increase the ILC's ability to meet the needs of Aboriginal clients, with a specific credit and debt focus. Building on consultations and planning already completed. Employment of ALAW.</li> </ul>
Shoalcoast	<ul style="list-style-type: none"> <li>○ Indigenous Legal Access and Violence Prevention Project - seeks to increase local Indigenous access to legal services and justice by providing education about legal issues that specifically affect the stolen generation. Emphasis will be on violence prevention and assisting victims of abuse to pursue their rights.</li> </ul>
PIAC	<ul style="list-style-type: none"> <li>○ Indigenous Justice Project</li> </ul>
Macarthur	<ul style="list-style-type: none"> <li>○ New project - To facilitate a consultation process to develop appropriate legal service delivery model for local Indigenous People, concurrently with the provision of legal advice and/or community legal education in collaboration with the MLC outreach service</li> <li>○ Outreach service at Tharawal Aboriginal organisation</li> </ul>
Women's Legal Service	<ul style="list-style-type: none"> <li>○ Indigenous Women's Program</li> </ul>
Tenants Union of NSW	<ul style="list-style-type: none"> <li>○ Aboriginal Legal Officer and Paralegal</li> </ul>