



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

INQUIRY INTO ACCESS TO JUSTICE

DR W. MUNDY, Presiding Commissioner
MS A. MacRAE, Commissioner

TRANSCRIPT OF PROCEEDINGS

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DR MUNDY: Good morning, ladies and gentlemen. Welcome to the series of the Productivity Commission's Access to Justice Inquiry. Before we go any further, we would like to pay our respects to elders past and the present of the Larrakia people whose lands we meet on today and the elders past and present of other indigenous nations who have inhabited this continent continuously for over 40,000 years.

As you'd be aware, the Commission released a draft report in April of this year. My name is Dr Warren Mundy and I am the presiding Commissioner of this Inquiry. With me is Commissioner Angela MacRae. Together, we discharge the Commission's capacity in regards to this matter.

The purposes of these hearings is to facilitate public scrutiny and comment of the draft report, to collect further information and feedback and particularly to gather that information on the public record so we may subsequently rely upon it. It's our intention to provide a final report to the government in September. Then the government will have 25 parliamentary sitting days to publicly release that report by way of tabling it in both houses of federal parliament.

Whilst we like to conduct these hearings in a reasonably informal manner, we should remind you that under Part 7 of the Productivity Commission Act the Commission has certain powers to act in the case of false information or a refusal to provide information. To our knowledge, those powers haven't been used since the Act was passed in 1998. As I said, we want to conduct these hearings informally, but we do take full transcript of the hearings and that transcript will be placed on our website to facilitate both our research efforts but also for scrutiny and transparency of our processes.

As such, we do not take comments from the floor, but we will provide a brief period at the end of today's hearings for anyone who wishes to make comment. Participants are not required to take an oath but should, of course, be truthful. We welcome comments from participants on submissions from others to this Inquiry.

Normally at this stage I have a piece of paper which I read about occupational health and safety requirements. In the event of an alarm going off, I suggest we go out that door, turn right and go straight down to the car park and out into the street. But we'll take (indistinct) to advise us of that so I cannot commit an offence under the Act.

They're the formalities completed. Could I ask each of you who intend speaking stating your name, the capacity in which you appear and then someone make that brief in that sort of five minutes or so opening statement.

MS COX: Suzan Cox, Director of Legal Aid.

MS HUSSIN: Fiona Hussin, Deputy Director NT Legal Aid Commission.

5 **MS PALARVA:** Jacqui Palarva, Managing Solicitor of the Family Law Section.

MS COX: We also have other participants here who may speak.

10 **DR MUNDY:** They can introduce themselves if and when they need to. Suzan, would you like perhaps to make a brief opening statement?

15 **MS COX:** Yes. First of all, I'd like to thank the Commission for coming to Darwin and giving us the opportunity to appear today to give evidence. We made a submission in November last year and also commented on the draft report of the Commission in April this year. We've also contributed to the national Legal Aid submission and the further comments that were in relation to your draft report.

20 There are a few matters I'd like to highlight. Firstly, the NT demographics. We're the smallest commission of all the legal aid commissions in Australia and we operate in the most disadvantaged jurisdiction. A sizeable proportion of our population live in areas of very high disadvantage and we have a greater population of people who are young and indigenous. The legal Australia-wide survey on legal needs in the
25 Northern Territory found that age was one of the strongest predictors of the prevalence of legal problems; that is, the older people are the less legal problems they have. In the Northern Territory in a sense 18 to 24 year olds have the highest level of legal problems.

30 Although survey results for the Territory showed that legal problems are widespread with some people experiencing multiple severe problems with substantial impacts on many life circumstances, disadvantaged groups were found to be particularly vulnerable to legal problems.

35 In our geographic context and demographic profile, many services have their own limitations in terms of providing accessible service. Here national services have limited presence, and this is even more so outside of the Darwin area. Clients with limited or no English – and I'm talking about those particularly in our remote communities – with disabilities and of course
40 living remotely require assistance to access those services.

45 There are constant pressures specific to the Legal Aid Commission at the present time and have been for a number of years. The bulk of our criminal law work on the bush court circuits is serviced by the Aboriginal and Torres Strait Islander services here, NAAJA in Darwin, CAALAS in Alice Springs. We're continually finding and increasingly finding that the rules of conflict require the Aboriginal and Torres Strait Island Legal Services to refer matters

to us where they determine there is a conflict of interest. As a result, the Legal Aid Commission is required to attend remote court sittings where we may have one or two clients only and where it may very well only involve a brief appearance.

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The cost associated with getting to and from those courts, often by plane, and taking moneys away from the otherwise busy metropolitan courts places additional pressures on both our funding and ability to meet our statutory obligations. One of those obligations is to ensure that legal assistance is provided in the most effective, efficient and economic manner.

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Further, the federal government did have an expensive case fund for expensive criminal cases, which NAAJA and CAALAS were accessing. We're informed this is no longer available and that the expensive cases will be referred to the Legal Aid Commission to fund. We view this as both cost shifting and short-sighted as the ATSILS are best positioned to represent their client base if adequately funded. Of course the pressure on us meeting this need means that we have an increased workload on our staff and it also means that we're limited in doing otherwise civil work which we could be possibly have done.

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I just want to briefly say something in relation to our means test. In order to qualify for a grant of legal aid, a client must satisfy both merits and means of course. An under-investment in the legal assistance sector over the last decade has produced highly constrained eligibility guidelines for us to grant aid. Due to the constraints of funding, we've not been able to adjust our means test since 2008.

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Accordingly, our means test is well out of step with the economy of the Northern Territory. This results in many people being refused aid and those people unable to afford their own legal representation. Here in the Northern Territory the working poor with significant expenses are not eligible for legal aid, whereas Centrelink recipients do fall within our means test. We're very concerned about those people who are missing out. The reality is we can't adjust our means test unless we get more funding. So it all comes back to that.

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The other pressure we are feeling which I want to highlight is the juniorisation of legal aid panel lawyers and quality assurance. We're very concerned that our legal aid rates are inadequate and we have continual feedback from the private profession in the Northern Territory that this is the case. And without the ability to appropriately remunerate suitably qualified professionals, there's a real risk that, for example, our family law panel will be reduced to inexperienced solicitors who are not able to provide the level of service which is required, particularly in relation to complex matters which receive grants of aid.

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5 This poses a real threat to the sustainability of our operations under the mixed model service delivery. We depend on that in family law. Particularly, we have a very strong in-house practice. But of course in family law matters there's always a conflict with half the money to be referred out. We haven't increased our rates of pay to private lawyers for a number of years due to funding constraints.

10 The other aspect in relation to that is that you're asking people to do this work for little money or less than market rate and our clients are very difficult often, due to severe disadvantage and often mental health issues. They take longer to service. So the hours just aren't enough to adequately compensate the work put in.

15 We found the mixed model of delivery to be the best around. We looked internationally, National Legal Aid have. But we feel that here in the Territory it's in danger of collapse because we've got fewer and fewer experienced lawyers who are willing to do our business for the amount that we're able to pay.

20 We have had to prioritise those matters and class of matters which we'll aid due to funding constraints. We continually review our guidelines to meet the growing demand and to ensure that our services are placed where they're most needed. Under our legislation section 8J requires we determine priorities in the provision of legal assistance as between different classes of people and also different classes of matters. For example, our guideline in relation to traffic cases was amended a few years ago. I'll read it out:

30 *Legal aid is not normally granted in relation to prosecutions under the Traffic Act NT even where there is a likelihood of a penalty of imprisonment unless one or more of the following applies: (a) there are more serious charges pending on the same prosecution file; (b) the applicant is under 18 years of age and/or there are particular circumstances relating to the applicant and/or the matter.*

35 That was a hard decision to make, to deny legal aid to someone who's facing the likelihood of imprisonment. The sad truth is that we felt compelled to amend our guidelines to enable us to fund those cases where there is a likelihood of even a longer period of imprisonment. So they're the sort of choices we are making.

40 Similarly, our guideline in relation to family law property disputes states as follows:

45 *A grant of legal assistance for litigation for a dispute about property may only be made if the applicant for assistance is also seeking the resolution of another related family law matter by the Court or the Commission decides that it is appropriate to make a grant of legal*

assistance to the applicant for assistance because of his or her personal circumstances.

5 So we're constantly reviewing our priorities to put the money where it's best placed and where we can do the most good.

10 Finally, I want to just highlight our civil law needs and the Legal Aid Commission and how we've dealt with it over the years. We've got a long history of seeking to address meeting the civil needs in the NT. But when the Commonwealth government reduced Legal Aid Commission's funding in '97/'98 by 15.6 per cent we, quite frankly, have been battling ever since.

15 Since this time we've not had an in-house civil practice other than family law. Instead, we provide small grants of aid to private firms on behalf of clients who satisfy our means test to investigate a potential claim. In this way, if the private firm forms the view that there is merit in pursuing the claim, they do the case on a professional cost speculative basis.

20 The Legal Aid Commission has further assisted the impecunious litigants by way of the continuous legal aid fund which was set up so that private practitioners doing these sorts of cases could apply the disbursement costs only. We set that up with a ceiling fund from the Legal Aid Commission which has since been repaid and also a contribution from the Law Society.

25 So now it's self-funding and self-sustaining. We do make funds available and an independent committee decides if they should be given to a particular party. At the conclusion of the matter, the client must repay the amount, plus interest. We've been running that for the last 20 years and it's been very successful.

30 We also provide several advice clinics which are not means tested. So the small business person can come in and get some free advice for about 40 minutes. We operate those clinics in all our offices across the Territory. We staff those clinics by both our in-house lawyers and private practitioners who are contracted to provide the service. For example, our Darwin office, we've two practitioners. One is a private in his own firm, the other is a practising barrister. And they provide to our clinics each week.

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40 In this context, the provision by the federal government last year of the legal aid collaboration fund to establish a minor system civil service was most welcome and, let me say, not before time. The funding enabled us to set up the service to provide minor assistance to vulnerable people, to identify their civil legal issues, enable them to progress resolution of those issues and help them access other services and organisations that could help them.

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Minor assistance is legal help from a lawyer to a person to help them

5 take the steps to solve their own legal problem. It's not a grant of legal aid. It's limited to three hours per case and doesn't involve legal representation. To be eligible, the person must have two or more vulnerabilities, such as low income, mental illness, youth, elderly, domestic violence issues, disability, indigenous, non-English speaking background, culturally and linguistically diverse, literacy issues, remote location.

10 It was determined that minor assistance would be provided in the following priority civil law areas: consumer issues, employment matters, discrimination and other civil matters if it's reasonably appropriate in the circumstances and there was no other service provider that could help. Examples of where we didn't go to assist were with wills and estate matters, welfare rights, immigration advice, immigration applications, those sorts of things.

15 We believe the service is extremely valuable in preventing problems from escalating. That strategy was supported by the law survey and the indigenous legal needs project research for the NT. Unfortunately, the funding for service was cut, finishing during this month, 30 June, and we're going to have to stop the service next month.

20 The cutting of the funding has been extremely difficult as a lot of time and energy was invested by our very small commission and the few people that we have determining the target service most needed and how best to provide it. Premises were leased until June next year and staff employed. If funding had not been cut we would have been in a very good position to be able to assess the success of such a service over the pilot period, which was two years.

25 As it is, time and resources have been largely wasted, although a significant number – and I believe it's a round figure of about 200-odd – people have been assisted during the operational period. I have the manager of that service here, Ms Alison Hanley, should the Commission wish to ask any questions in relation to that service. Those are the matters, thank you, that I wish to highlight.

30 **DR MUNDY:** Thank you for that. Can we perhaps start on the most recent funding reductions? So the principal impact of the budget announcement – so the announcements of late last year taken together as being the (indistinct) determination (indistinct) assistance.

35 **MS COX:** Yes. In fact, it was only last night that we met with our staff and told them that we've tried and tried, we just don't have the money. We have to stop the service.

45 **DR MUNDY:** Will there be other service reductions or is that it?

MS COX: That's it, yes.

5 **DR MUNDY:** Were you consulted by Attorney-General's Department Commonwealth or any other Commonwealth or Territory offices about the impacts of these cuts before?

MS COX: No.

10 **DR MUNDY:** How were you made aware of that?

15 **MS COX:** We were told that we would have no funding – after the budget came out we'd have no funding after 30 June this year. It was for two years. We'd just set up the service, it was operational. We'd leased till June next year. We don't know whether we can get out of that lease yet. We have given notice to the landlord that we will be vacating. And we're trying to relocate staff into positions that have become vacant and that sort of thing. But it's been very difficult.

20 **MS MacRAE:** How much money was involved?

MS COX: Not a great deal, actually. It was only 400,000 each year. But we only got the 400,000 for the first year and of course the second year it was due at the end of this financial year.

25 **MS MacRAE:** For those people you said in your opening statement that you were careful to ensure these people were coming to you because there was nowhere else to go. So having to shut this down, those people will now have nowhere to go.

30 **MS COX:** Well, they can go to our civil advice clinics, which are much more restrictive and are only being delivered on a much limited basis. It was up and running and doing very well and it was obviously servicing a real need in the community, something that we haven't been able to do without extra funding since '97/'98.

35 **DR MUNDY:** And you said that what, about 200 people?

MS COX: Yes. If you'd like Ms Hanley to talk about that.

40 **DR MUNDY:** I'm just mindful of time. Perhaps if you could just let us know by way of email the nature of the matters that were dealt with and some sense of the characteristics of the client – the demographics of the client basis, that would be most helpful to us.

45 **MS HANDLEY:** At present it's approximately 200 matters. Some people often present with more than one civil matter.

DR MUNDY: That's fine. If you could just give us that data, we'll see if we can - - -

MS COX: I stand corrected on that. Two hundred matters.

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DR MUNDY: Whilst I just raise a funding question, we've heard from Legal Aid Tasmania, I think, or certainly one of the other Legal Aid Commissions, that in circumstances in a property matter in family law that goes to trial and there are no issues, there are no unresolved issues other than the property – so there are no children and no unreserved violence matters – in circumstances where the man has perpetrated violence against the woman, Legal Aid in that jurisdiction – I think it was Victoria also – Legal Aid would not provide assistance for the woman in that case unless the man was represented. So she's exposed to the circumstance of being cross-examined by someone who may have committed a violent act against her. In those circumstances in the Northern Territory, would she get representation from yourselves?

MS HUSSIN: I think the other thing to point out is we also have our family dispute resolution program and property law matters, which has a relaxed means test. So that actually enables a lot more people to access our service than in other jurisdictions. A lot of other jurisdictions don't have that. But in this situation that would be an exceptional circumstance that we would take into account and we would grant aid.

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DR MUNDY: So that would be one of those circumstances the director outlined (indistinct). Okay, thank you. The mixed model, I think you made an observation that you've got some challenges with the mixed model because of your size.

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MS HUSSIN: The juniorisation of our practitioners.

DR MUNDY: We put a similar question to your colleagues in Tasmania who also suffer from size challenges. They indicated to us it wasn't an issue for them. Is that because there may well just be relatively greater numbers (indistinct) for capturing particularly I suspect Hobart than would be the case here?

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MS COX: I would suspect that is the case.

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MS HUSSIN: We don't have a great deal of influx into the profession of family lawyers anyway in the NT. What tends to happen is practitioners come in as juniors, they get a certain level of experience and then they don't do legal aid work after that point or they're very selective in the legal aid work that they do. So in our submission Ms Eileen Terrill wrote a letter saying that she does legal aid work representing children in Independent Children Lawyer's matters, but she doesn't represent parties on legal aid

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rates, for example. So they may be selective.

5 I mean, juniorisation is probably one way to categorise it. But really, it's about solicitors with a particular level of skill and experience where there's a market demand for their work saying, "Well, I actually don't need legal aid work any more. So off I go and I can charge a much higher rate," and those who may be more junior or may not have particular skills and experience at that level are left for legal aid.

10 **DR MUNDY:** Is there a resident Family Court judge here or is there a circuit?

MS HUSSIN: There's a circuit court judge.

15 **DR MUNDY:** So most of this stuff gets done – does the Family Court come on circuit to Darwin?

20 **MS PALARVA:** It does. They circuit quarterly, but it really depends on what's listed. The circuit court judge now only travels down to Alice Springs, for example, when necessary. She doesn't travel down on regular circuits any more. So it's really just depends on what matters there are to hear.

25 **MS MacRAE:** You talked about conflict of interest and effectively what a drain it becomes on your resources. Is there any solutions to that? I mean, it seems like it's kind of a – it's an intangible really, isn't it?

30 **MS HUSSIN:** You mean in terms of us having the NAAJA and CAALAS referrals?

MS MacRAE: Yes.

35 **MS COX:** I don't think there is an answer to it, other than people need to be represented and if you can't do it with one organisation because they're conflicted, someone has to do it. But it's a cost shift.

40 **MS HUSSIN:** We've raised it with all of the agencies that we can think of, including the Law Society, looked at the complex rules, talked to our funders. But it is an incredibly inefficient way to represent a small number of people. But we recognise they need representation, so we provide that.

MS MacRAE: And there's nothing you could do remotely as in using technology or something rather than find people - - -

45 **MS HUSSIN:** The courts are looking at a model where they are hearing matters remotely. The difficulty is with the client base that they really need face-to-face solicitors there. In terms of access to justice, they need physical

access to a lawyer, usually an interpreter. It's much more complex.

MS COX: Because of the clientele base.

5 **DR MUNDY:** Is the conflict real or is it perceived? Because it's been put to
us by others that with a bit of work people got realistic about – perhaps in
large legal aid commissions, that some sensible decisions could be made,
whilst not eliminating the conflict (indistinct) to see and mitigate it. Is that
10 your view or is it the family nature of a lot of these disputes that you see and
the kinship ties between various parties that cause a greater problem here
than elsewhere?

MS COX: I think there is a greater problem here than elsewhere because of
15 the size of the communities and the closeness of the communities and family.
But if NAAJA or CAALAS say they're conflicted, then it's not for us to look
behind. We have questioned the conflicts on occasions and usually we end
up doing the conflicted matter.

MS HUSSIN: So we have an MOU with NAAJA and CAALAS in relation
20 to referrals where there's a conflict. There's an agreed process that we go
through. It includes that if we believe after taking a client that the conflict
has been alleviated – so, for example, if the parties decide to plead guilty who
were essentially alleging that each other committed the offence – then they
can take the client back. So, where possible, that will happen.

25 It's something that yes, we do continuously review and say, "Is this" – you
know, but to an extent we don't question. It's their professional decision that
they know.

30 **DR MUNDY:** And there's no funding travelling to the client.

MS COX: Absolutely not.

DR MUNDY: You mentioned a law survey. It's been suggested to us that
35 because of the manner in which it was conducted (indistinct) that it probably
understates what - - -

MS COX: I think that's very true.

40 **DR MUNDY:** I can understand the difficulties they would have doing –
tapping those people who don't have access – I get their statistical and survey
problem. So your view would be that the law survey would understate
people living in the Northern Territory and probably more so than it would
perhaps in somewhere like Victoria.

45 **MS COX:** Yes, because of the access to telephones and various difficulties.

DR MUNDY: What do you think they could do to correct that? Would it involve expensive firm work out in remote communities?

MS COX: We could probably tap into the Stronger Futures people.

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MS HUSSIN: So the indigenous legal needs projects, we worked very closely with them in assisting them to gather data and also engage with people in terms of receiving input about the concerns. So we have a Stronger Futures funded program that goes to indigenous communities. So we were able to facilitate a lot of that contact and information being provided. So that's one way that we could assist.

DR MUNDY: Other than getting more information, which will presumably raise the estimate of legal aid, do you think much would come of it that would be useful for public policy purposes, whether you believe our number is 70 per cent or if you believe the number is 25 if it's done properly with some clusters? Would it actually give us information that could help us with public policy, given we're probably so far behind expenditure rate already? I'm just wondering (indistinct) recommendations to spend money to improve the quality of the survey or is the money better spent elsewhere?

MS HUSSIN: That's the interesting thing is even though we had our reservations about the survey, we agreed with the results of the survey.

MS COX: I think we put in funding to it too.

DR MUNDY: I wouldn't disagree. I don't think anyone doesn't think it's robust. But it's limited in obvious ways.

MS HUSSIN: So, yes, the findings, they resonated with us in terms of our understanding of the legal need.

MS MacRAE: Just in relation to there's the access to the courts question, but obviously we're interested in lower level dispute resolution mechanisms. I'm wondering if you could elaborate a bit on the sort of particular issues that you might find in terms of barriers. And perhaps it's not your particular field. But, for example, does it impact on the extent of demand on your service that you don't have a general civil and administrative tribunal here or are there particular difficulties with accessing ombudsmen if problems escalate and they come to you that you feel might be able to be addressed lower down? I'm just wondering if there's any way we could think about the spread of resources to do more to try and get issues addressed earlier and pre-court, whether you had views on that.

MS HUSSIN: I think that's something Alison might want to address. Essentially the experience that the (indistinct) has been drawing out.

MS HANLEY: As the manager of the minor assistance civil service, that was what a fair bit of our minor assistance was targeted towards is that low-level dispute resolution even before it needs to go anywhere formal in helping the person to think about what are existing dispute resolution options before this problem becomes bigger than it is. Obviously a lot of the effective dispute resolution work in civil matters is someone who presents with the vulnerabilities that we were saying were eligible had more than one civil problem and it was all rolled up.

10 There were financial issues, there were health issues. So it was about finding out what is the true legal problem that's currently causing this person angst, distress, anxiety, and getting a resolution of that, either in the short term or putting them on a path of resolving it themselves. So that does include existing dispute resolution bodies, Ombudsman Northern Territory, 15 also the Commonwealth Ombudsman, Health Complaints Commission. So those structures that exist that have that dispute resolution process but assisting people to identify that that's where they needed to go or assist them to know what the primary civil problem was that was keeping them up at night.

20 **MS MacRAE:** So really, from your point of view, the best mechanism to address that would be to have the kind of service that you're now going to have cut.

25 **MS HANLEY:** Yes. Because it's certainly not a service that's provided by private lawyers in civil matters. It's usually people don't even get through the door, necessarily, into a private law firm, although they may need to end up there, but they just haven't made it yet. But also where I guess people are not knowing where to go and it may be that they just don't know where to 30 start in resolving a dispute themselves and helping them to take charge of that issue and work out where to go with it.

UNIDENTIFIED SPEAKER: Maybe that a private lawyer whose focus is on a particular area might not know that either. So a specialised service 35 that's expertise is in knowing how to appropriately refer people adds to that even further.

MS HANLEY: And also particularly people who are in contact with government departments who are making decisions about the insurance companies, insurance offices, statutory schemes that cover personal injury and things in the Northern Territory where people just simply – the vulnerability, mental health disability, age, youth is just preventing them from being able to access the very services that are funded or are supposed to be giving them the help that they need. So it's certainly – obviously the 40 service was up and running. So I think the numbers don't fully reflect demand because it was about fitting the service within the existing services that do provide some assistance, making sure there was no double-up in 45

service and making sure we caught those people that were falling through the cracks.

5 Particularly with civil matters, which has always been my passion, I think increasingly in the Darwin population there is the working poor that are suffering civil legal problems that are severely – although they’re not sitting at the family law courts or at the Magistrates Court, it’s definitely something that’s impacting on their whole lives and their families that they really need that - - -

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DR MUNDY: Something like Melbourne or Sydney consumer action CLC they can go to.

15 **MS HANLEY:** Yes, where there’s more – I guess there’s certainly more – normally it’s not legal aid services but other community legal organisations that would perhaps catch them or be able to provide them with the minor assistance aspect of the assistance, not just the legal advice, but, “Okay, you now know what your legal problem is. But how are we just going to help you along to resolving it yourself?”

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There are certainly community legal services in the Northern Territory. Obviously Darwin has the highest concentration and so a lot of our service was targeting let’s make sure that remote areas can access some of those services. Let’s get the referral pathways happening like they should for civil law matters and then identifying those gaps where the service is simply just not provided. So it was all going really well. Put that on the record. Certainly those costs that have been expended, it’s not very productive to have cut them because it’s expensive to start that service, to begin with.

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30 **DR MUNDY:** So you start with a lot of capital which you probably won’t be able to recover.

MS HANLEY: Even capital too.

35 **DR MUNDY:** You mentioned briefly CLCs and part of what we’re trying to explore are these more efficient models of organising community legal aid (indistinct) broadly. One model that’s been – the model they have in Victoria is effectively your equivalent distributes the money to the CLCs. I guess my question is in two parts. What is the model in the Northern Territory with respect to the centre as a whole; and (b) would you see a particular conflict of interest if you became the body that distributed the money to the CLCs?

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45 **MS HANLEY:** So the model depends on the CLC. So like Darwin Community Legal Service – generally they are all directly funded by government; that’s the starting point. Darwin Community Legal Service receive a combination because they have a (indistinct) service; so NT matters and then they have an Asian disability service. So it does vary. There’s the

Family Violence Prevention Legal Service, Women's Legal Services but generally directly government. I think our sense in the NT is that we work very well collaboratively with those services. I know that that's a difference to a lot of other jurisdictions. I think a big part of the reason is that we don't

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DR MUNDY: No-one's told us that they're at each other's throats.

MS HANLEY: Yes. Well, we say we work especially collaboratively in the NT. Look, there's always that sense that who's getting the dollar and if you get that dollar over there, is that one less dollar for us? Everyone has that sense and that's something that you definitely have to develop and build relationships to combat that so that you can all work well together. But I would imagine, especially in a small jurisdiction, that us holding the purse strings would cause problems with our relationships and with making appropriate referrals and working collaboratively.

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DR MUNDY: So at this point you'd also say is that we work hard to ensure that there's no duplication.

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MS HANLEY: Absolutely, definitely, that's a big focus.

MS MacRAE: That does then come through Attorney-Generals? Is that how it works? When they get the money from the government, does it all come through - - -

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MS HANLEY: Both Attorney-General federal and Attorney-General state.

MS COX: And also now with indigenous funding there's Prime Minister and Cabinet as well.

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DR MUNDY: Do you see any of that money from PM&C?

MS HANLEY: We have had funding through Stronger Futures and now we'll receive funding for the next year through the soon-to-be-announced Indigenous Advancement Strategy funding.

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MS COX: Without any indexation from our last year's funding.

DR MUNDY: Just on the expensive cases fund, would you say that its evolution places a disproportionate burden on you relative to the other CLCs?

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MS COX: Absolutely. CLCs?

DR MUNDY: Sorry, LACs.

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MS COX: Well, the expensive case fund for the ATSILs was put forward by

5 National Legal Aid to start with because of that very pressure that we were feeling, particularly in WA, particularly in South Australia and particularly in the Northern Territory. I believe it worked very well. It also means that there's a clear path for their lawyers. They're better at handling their client base. They've got the support of field officers and contacts in the communities and the staff relationships. It's a completely different way of operating to the LACs. And they were able to access that expensive case fund.

10 Without that, we're now expecting those cases to come to us. That places an extraordinary burden on us. First of all, we don't know how many, if any, but we presume some. We don't know how complicated. I know there's a murder in Alice Springs which has got a number of co-accused. That means we would probably take one in-house and have to refer the others out at great expense to us.

15 We'll have to notify the NT Department Attorney-General and say that we've got these expensive cases and keep them on notice because we can't go into deficit. And we'll need to – what's happened last time, last year, was we got an advance from Treasury to cover our expensive cases. But that's all from year to year.

20 **MS HANLEY:** The other part of it is that proportionately that's all much bigger compared to legal aid commissions in the NT than in other jurisdictions. So there's going to be a - - -

DR MUNDY: You'd be relatively closer in size here - - -

25 **MS HANLEY:** Much so.

30 **MS COX:** And the ATSILS have greater funding than us.

35 **DR MUNDY:** Just before closing, this decision to be made with respect to traffic matters, which I think the Victorians have made a similar, has there been any pushback from the Bench as to why aren't these people being - - -

MS COX: We've had criticism from the Bench, yes.

40 **DR MUNDY:** But they've proceeded to hear the matters nevertheless?

MS COX: Yes, I understand so.

DR MUNDY: So Dietrich didn't - - -

45 **MS COX:** Dietrich only advised indictable matters. These are summary court matters.

DR MUNDY: Thanks very much for your time and your submissions.

MS COX: I understand we'll supply more detail about the sort of matters, was it?

5

DR MUNDY: Yes, sort of matters, the number of them, types of matters - -
-

MS COX: (indistinct) service. Thank you again for coming to Darwin.

10

DR MUNDY: Our pleasure.

DR MUNDY: Just before we commence, I'm advised that in the event of emergency we should proceed to the assembly area located across the road now, to leave by the main exit. I have now discharged my duty under the
5 Occupational Health and Safety Laws. When you have settled already, could you please state your name, the capacity in which you appear and perhaps make a brief – and by that we mean less than five minute – introduction. The record is currently held by the Australian Bar Association at three minutes.

10 **MR WYVILL:** Three minutes as in the longest?

DR MUNDY: No, shortest.

15 **MR WYVILL:** That's impressive. My name is Alistair Wyvill. I'm the Vice-President of the Northern Territory Bar Association and their representative for the purpose of making submissions on behalf of that organisation to this Commission.

20 You should have our outline of submissions, I think. I wasn't going to talk at length about 1. It's because it seems that there's certainly a degree of common view between us and the Commission about that. It's certainly, we think, a good opportunity to take advantage of the quality and value of the junior Bar in providing those kinds of low-level services, particularly in the smaller cases; I think there's a real opportunity there.

25 It's got to be linked with 2 which is the better education. We would respectfully suggest that as access to justice is so critical for maintaining the rule of law, that legal studies really shouldn't be an elective at school, it should be something that's far closer to the curricula and, really, people need
30 to understand how to use court services and to be able to exercise their rights far more effectively.

35 We would also encourage the courts taking on a far greater responsibility and recognising the reality of unrepresented litigants and facing up to it and embracing it and trying to make them better. Unbundling can coordinate with that. There's not much point unbundling if we don't help people how to use them.

40 Pre-action conduct is the one we would really like to talk about. Before I get to that, which really covers 3, 4, and 5, I did want to just briefly mention number 6, which arises out of the Priestley 11. I don't know whether you wanted us to deal with this at any great length. But there is an issue in the Territory about us getting the benefit of highly qualified, highly competent
45 practitioners and experienced practitioners from other Commonwealth jurisdictions who, because of the current economic climate in the world, find it desirable to immigrate to Australia, particularly the Northern Territory, with a lot of opportunities. There's a real shortage of the supply of good-

quality legal services in this town. They get here, they get the right to work and they don't get the right to practice.

DR MUNDY: (indistinct)

5

MR WYVILL: This is a big one.

DR MUNDY: (indistinct) one that we've torn down.

10 **MR WYVILL:** It would be great if you tear this one down. I've got a fabulous example I can just entertain you with at the moment.

DR MUNDY: Please do.

15 **MR WYVILL:** Felicity Gerry QC from the English Bar, she arrived – she sent me an email in the middle of 2012 to say that she was emigrating here with her husband who got a job with IMPEX. Thirteen years experience at the English Bar, over 300 jury trials. And this is a jurisdiction where, as you probably heard, crime is our developing area, with regret.

20

Great, we were delighted to have her. We're short of two things in my chambers and two things at the Bar generally; high-quality legal practitioners in crime and senior women. So she ticked both the boxes just superbly. That was mid-2012. She sent her application to various admission boards in early 25 2013 or late 2012. She got assessed on 14 March 2013 – it's a very poor copy, but I'll hand it to you – by – I can't even really recognise their letterhead. But it's from the team leader professional services and it's the crowd in New South Wales who assess this.

30 It required her to undertake further study in professional responsibility, trust and office accounting, commercial and corporate practice, proper law practice and in one of the following four: consumer law practice; impairment of industrial relations; planning on environmental law; or wills and estate. Perhaps if I can hand up a copy of that.

35

DR MUNDY: We're able to place this on the public record, I trust?

MR WYVILL: Absolutely.

40 **DR MUNDY:** Thank you.

MR WYVILL: She then spent the next year in Britain negotiating with them. She's finally got them down to just requiring her to study constitutional law. She's in the process of completing that at the moment. In 45 the meantime, because she can't practice, she's now lecturing at the Charles Darwin University in evidence and criminal practice and procedure. We'd dearly love to have her in chambers, but we can't.

DR MUNDY: You'd have no objection if I raise her case with the Law Council Australia tomorrow, would you?

5 **MR WYVILL:** No, not at all.

DR MUNDY: Thank you.

10 **MR WYVILL:** She is very grumpy about this, understandably. She has all the burdens – because in the meantime she's been made a QC in the UK. So she's here as an English QC. She has all the burdens of being senior counsel. So when the judges come to a conference up here to visit she has to entertain them as part of responsibilities as senior counsel but none of the benefits in court; she can't practice.

15
20 Anyway, there's no doubt as a person who has practised in the UK, who's qualified over there and come back and practised here, there is no doubt there's a need for people to undertake some sort of apprenticeship, some sort of training period. But the best thing in my experience is for them to get into legal practice and then to be supervised over a period of time, which I think enables them to - - -

25 **DR MUNDY:** But a barrister of her (indistinct) standing that period would presumably be measured in a few months or number of trials rather than years, surely.

30 **MR WYVILL:** Six months at the outside, absolutely. By six months she would be well and truly above the standard of what you're getting from people.

DR MUNDY: Some supervision could be provided by any senior counsel.

MR WYVILL: It'd be a normal pupillage, yes.

35 **DR MUNDY:** Perhaps even the director of Legal Aid.

MR WYVILL: I think she's offered, actually.

40 **DR MUNDY:** Sorry to divert you on that, but we are always on the watch for barriers.

45 **MR WYVILL:** She's not on her own. There are several other senior – not senior but sort of people in their mid-30s, established practitioners from the United Kingdom and Wales who have come here and have been put through an agonising process of getting the right to practice. I can get you those names as well, if it would help.

DR MUNDY: You mentioned that you've gone the other way. My general understanding is it's relatively easy for Australian qualified lawyers to practise in the United Kingdom.

5 **MR WYVILL:** Absolutely. I had to spend a period of three months non-practising but after that I was allowed to practice, supervised for three months and then I had my full certificate after that. I had some significant further study requirements, which weren't a problem, I was happy to undertake.

10 **DR MUNDY:** At what stage in your career were you?

MR WYVILL: I was 12 years as a barrister. So I moved across to the UK after 12 years experience.

15 **DR MUNDY:** So you were relatively experienced.

MS MacRAE: Just to finish up on that, is there a timeline now for this?

20 **MR WYVILL:** We hope to get her admitted as a legal practitioner so she can start that period of training that we're talking about early next year.

MS MacRAE: So it will have been more than two years since she - - -

25 **MR WYVILL:** She made her application at the end of 2012 and yes, it will certainly be - it'll pass its second-year anniversary.

DR MUNDY: This body who's making this decision appears to be a functionary of the Attorney-General's Department New South Wales?

30 **MR WYVILL:** I'm not sure. What I can do is I can track them down and get you better details.

DR MUNDY: That would be helpful. Mr Raine will give you an email address.

MR WYVILL: Certainly if you want to speak to Felicity Gerry, you've got a spare hour, she'd be delighted to talk to you about it. Suzan reminds me she's doing a murder trial at the moment in the UK but will be back shortly.

40 **DR MUNDY:** I'm unable to help with certain murder trials (indistinct)

MR WYVILL: And she'd rather be here with her family and children of course.

45 **DR MUNDY:** We'll investigate (indistinct)

MR WYVILL: Now, pre-action conduct, just to give you some of my background in that so you can see why it's a bit of a bugbear of mine. I, as I said, moved to practise in the UK at the end of 1998, which was just before the Woolf Reforms came into effect. They came into effect in 1999 in the UK. So I was able to see a little bit of a system prior to the Woolf Reforms coming into effect and then practised with them for about nine years.

I then came back here and it was like going back to the 1850s to be practising in the jurisdiction where you just went straight to court and you found out the issues the week before the trial. So I got myself with the support of the Bar Association under the rules committee and then drafted the PD6, which is that practice direction you may have seen, submitted that to the rules committee. The judges were very keen on it from the beginning and it's been put in place pretty well about a year after I got here.

Then it's been part of the legal landscape here now for five years. It's been in our view largely a great success. I'll come to the qualification shortly. It's a great success particularly in settling matters before they get to court for the obvious reasons; you would have heard about that. Having practised here for 10 years in the bad old days and then coming back here now, I would think the ratio has gone from less than 10 per cent that settled before proceedings were commenced to 80 per cent which are now settling before proceedings are commenced.

I can say that there's just no issue of any substance within the community, judicial and professional, about these principles staying in place in the Territory. They're supported across the board. You'll see them referred to in the most recent report from the Supreme Court at page 16, 2012/2013 report, and the proposals there about building on those reforms, enshrine them into the rules and then working on the area where there is an issue; that is, where the matter doesn't settle pre-action, making sure there's a real dividend from the procedures that have occurred pre-action so that the litigation is very focused and efficient when it gets to court.

That's the weak spot at the moment which we need to work on. That's what we're aiming to work on. So, as I said, it's going to be part of the landscape here forever. It's just a question of fine-tuning it to make it work more efficiently. The direct result of that is of course that you've probably over the last couple of years taken out – we've probably taken out well over a million dollars worth of fees out of the legal market.

That's fine in a jurisdiction where there's an excess of demand over supply for legal services and so lawyers can still survive. Indeed, they feel better about the practice because it's more efficient. Only the disputes that don't settle are litigated and everyone's happier. It's a very different kettle of fish where that isn't the case. That's one of the reasons why we believe that there are some pretty powerful vested interests lined up against these kind of

reforms down south. There is no equivalent experience to the Northern Territory's experience about pre-action conduct and it's really strongly supported here.

5 **DR MUNDY:** Martin CJ in the Supreme Court of Western Australia when we saw him talked about the processes in his court. I think he said that only 6 per cent of matters that are filed ultimately go to trial in Western Australia. But again it may well be down south might be different.

10 **MR WYVILL:** Our object here is to almost make that figure a hundred per cent. So if you actually commence – you got to the point where you've exhausted the options, you already know what the answer is and you go bang, bang, bang, and get an outcome.

15 **DR MUNDY:** And you'd get some benefit out of what you invested in the pre-action activity.

MR WYVILL: That's right. I'll come to an example of why the culture down south just hasn't got to grips with this shortly. But our aim here is to
20 make sure there aren't any discovery issues outstanding when we commence proceedings. You've shown the documents to each other, that's it. So we don't need an order for discovery. The pleadings can be much more focused. We'd probably like to rename them statements of case, whatever you want to call them. Often we won't even need those because you'll say, "Look,
25 there's just a point of law in issue here. It doesn't need a set of pleadings. That's the point of law. What's your decision?" So that's how the pre-action conduct ought to be used to focus litigation, so that it happens quickly and if it does happen, it does happen.

30 The example I wanted to raise was this: when the Federal Court introduced this new set of practice rules in about 2011, I think, that was shortly after the pre-action reform was brought under the Commonwealth Civil Procedure Act I think. I listened to the video of one of the senior judges describing all the benefits of these new rules. He was talking about
35 the case when at a first case management conference and he said, "Well, of course at the first case management conference the defendant is not going to know very much about the case."

I'm going, "Hang on. Isn't the whole point of complying with that
40 legislation to make sure the defendant does?" So when you come to that first case management conference you try and make it the last one and so you can say, "This is the case, it's set up, that's the issue, let's have a dispute on that, let's have an argument about that." That was, to me, a striking example of how the judge was in a completely different headspace to where he should
45 have been if there was a proper embracing of the pre-action conduct requirements.

5 The issue I have, if I may say, with respect, about the way it's drafted in
your report at the moment is the lack of the connection between the different
ideas, all of which are good, with the central notion of cards on the table
litigation before you start proceedings. So you talk about the early disclosure
documents. But that of course is what pre-action conduct is all about. You
talk about it being – and to use your expression, “targeted” I think was the
expression you used in your draft findings – “targeted pre-action conduct”.

10 Looking at the (indistinct) and there are three there, these fundamental
principles are basically about consent, about being informed sufficiently to
express a judgement. These are fundamental rights before a citizen gets
taken to court or chooses to go to court. That, we don't think, is something
which you should target. That should be something which is inherent in the
system to give litigants that choice.

15 **DR MUNDY:** Do you think there are any categories of matters – it's been
suggested to us that these sorts of – well, some (indistinct) reasonably well
qualified you would have thought, have suggested to us that these sorts of
protocols aren't necessary or in fact may in cases be dangerous. Are there
20 any sorts of matters which you could conceive of which you think they
wouldn't be appropriate?

25 **MR WYVILL:** Once one accepts, as I believe one should, that running an
efficient litigation system requires the cards to be on the table and that one
should only litigate what one needs to litigate, it's difficult to see why those
principles don't apply across the board. There is a risk with any system of
incompetent lawyers or malicious lawyers taking advantage of whatever
system you devise. One of the interesting things about the pre-action conduct
that I saw in the UK was in Birmingham where the marketplace was not
30 dissimilar to Darwin. There wasn't an oversupply of legal services.

DR MUNDY: (indistinct) or any similar (indistinct) in Darwin?

35 **MR WYVILL:** Look, it's surprising, I know. I think people in both places
would be surprised. But the legal services market wasn't dissimilar because
it was smallish because it was dominated by London, dominated by south,
smallish and also that because of that and because of the massive industry in
the area there tended to be an excess of demand over supply for good quality
services.

40 The pre-action conduct system operated really efficiently. It reduced
commencements extraordinarily and it meant that when they hit the court
trial times went from four years down to less than a year. So you were
getting trials heard and determined within a year. You go to London the
45 marketplace is different and suddenly you see people taking forever to go
through their pre-action conduct and taking all these (indistinct) about what
further documents they need. Then you see the cost going through the roof

before – and of course then they can't agree on the day of the week. So the whole process has been wasted. That's a vulnerability which the system has across the board and pre-action conduct isn't on its own.

5 **DR MUNDY:** Is there any material – if you can give us the references of any analysis of what's been happening in the UK with pre-action conduct.

10 **MR WYVILL:** I have looked high and low. It's the same problem here. Nobody has got to the critical facts. No-one's got the market data. It would be great if you people could do that because this needs an economist to get the market data.

15 **DR MUNDY:** We've tried. The date (indistinct) I think ultimately rests in a systematic longitudinal study with the cooperation of both the judicial authorities and civil authorities. It has to be set up, then they capture the data as it goes into court and it comes out of court.

20 **MR WYVILL:** I know that the judge effectively look at – and I think you've got it in my – in Prof Sourdin's report on pre-action conduct she refers to a comment by the Chief Justice expressing some concern about a lack of cooperation from the Law Society forgetting logistics. That didn't get to the right place. If it had come to me I would have made sure that that would have happened. So that cooperation can happen up here. So if you're looking for a place to get the information, I'd be delighted to offer.

25 **DR MUNDY:** (indistinct) move on from this matter in the not-too-distant future. I suspect Prof Sourdin could assist.

30 **MR WYVILL:** I hope so.

35 **MS MacRAE:** Just on that issue about the success of the pre-action protocols in jurisdictions where there's basically said to be very strong support for them, but, as you mentioned, in London people can sort of pervert what's supposed to be a – what mechanisms are in place or what could be done to try and reduce the extent to which the rules can be gained? Is there anything there?

40 **MR WYVILL:** The English – the (indistinct) was onto this and he put it forward, but the forces against him never saw it prevail and not prevail successfully because judges are always resistant about dealing with money. They hate money. They'll put it in a judgment but they hate talking about legal cost or managing legal cost. You just need to deal with this like you would need to deal with any economic function; with budgeting and then accounting to a budget.

45 So if you were in every case simply to say that, "Sorry, you might have an interest in the confidentiality of your solicitor's legal bills but the access to

justice principles override that confidentiality and we make it a requirement that if you come to court you have to disclose at the end of the day what your total legal bill was,” if you did that, it would enable the policing of the system so much more efficiently.

5

DR MUNDY: I guess following on from that, your view would be that the Woolf Reforms around litigation budgeting and those sorts of issues would not be an inappropriate reform (indistinct) certainly substantial cases, perhaps commercial cases.

10

MR WYVILL: In every case, because the – I mean, obviously not the small scale ones, but any case of significance because it’s required under the legal professional rules anyway; you’ve got to do that for your client. The difficulty is that when the court comes to policing practitioner behaviour it’s not given that information. And that’s the critical information, critical information for seeing how the behaviour of the solicitor has impacted on the client, critical information for seeing how the court’s behaviour has impacted on the client.

15

20

So a judge who’s a bit case management conference happy can see the fact that he or she by their 10 case management conferences has seen the cost go from here to here. Next time they’ll think long and hard about doing that. So that’s the critical information. How can we manage things like the success of whether the ultimate outcome of the litigation delivers a practical outcome without knowing and publishing the legal costs?

25

DR MUNDY: Some would have to believe it’s about justice, not cost.

30

MR WYVILL: I have never met a client who thought that. I’d like to meet him.

DR MUNDY: Talking about clients, how well informed do you think people are about the costs of litigation?

35

MR WYVILL: I think there – I do a lot of mediation work and one of the things as a mediator that I do is what every mediator normally does, is go through the alternative futures if you don’t settle. That means that I’ll go through and say, “Right, what’s going to happen in court.” In fact my note that I send out to parties before a mediation suggests that they ask their solicitors to give a budget for what the litigation will be if the matter is not settled.

40

45

So from that point of view, people through that process can be – and when that occurs – are much better informed about the future, the financial future. The difficulty is that when we have a court system which is operating without reference to budgets and financial impact you cannot be as precise as you’d like to be because you get into court, you get the judge who’s likely to

take their time or do more case management conferences and suddenly your estimates blow out.

5 **DR MUNDY:** Perhaps just on costs of the courts, we've created a bit of
notoriety for ourselves suggesting that perhaps more could be recovered from
litigants from the use of the courts. Martin CJ mentioned the Bell case to us
which cost his court \$15 million. He thinks they got back somewhere in the
order of \$700,000, but in any event, 14 million-odd of the taxpayers' money
10 in Western Australia has gone to facilitate a case between bankers and
insurers which, from my reading of it, didn't resolve any particularly
fundamental issues.

15 Do you have a view on what would be an appropriate policy for the
establishment of court fees, particularly in matters which are primarily
commercial?

20 **MR WYVILL:** I think the question has got to be put back to the court to say
that, "If you're going to charge for the provision of a service," which, in
effect, is what it's doing, "you need to give certain commitments in return for
that." The commitments are the kind we've been talking about. So I think
the principle of recovering those costs is fine if the court is doing its job
properly and administering a system which sees parties come to court with
only the real issues in dispute and then managed as efficiently as possible.

25 Once that theory is in place, the court's entitled, I think, to say, "Well,
here are our outlays for that in an ordinary commercial case." You ought to
recover them in the same way you'd have to pay them for an arbitrator.

30 **DR MUNDY:** That may actually be a useful point of reference for what a
day in court should cost. It probably should cost you no less than an
arbitrator.

35 **MR WYVILL:** I don't have any difficulty as a matter of principle – and I
may be speaking purely personally here because the Bar Association could
well have different views within them about this.

40 **DR MUNDY:** The Australian Bar has got an open mind. The Queensland
Bar submission to us has indicated that (indistinct) are essentially wrong. I
don't think many people share that view.

MR WYVILL: Yes. I just would connect them with the services provided.
If you provide that service sufficiently, then – but if you don't, it's just a
monopoly power.

45 **DR MUNDY:** Thank you very much for your time.

MR WYVILL: Not at all.

DR MUNDY: We'll adjourn until 10 to 11.

5 **ADJOURNED**

[10.35 am]

5 **DR MUNDY:** Could you please state your name and the capacity in which you appear, for the transcript, please?

MS COLLINS: Priscilla Collins, CEO at NAAJA and also Deputy Chair of the National ATSILS.

10 **MR HUNYOR:** Jonathan Hunyor, Principal Legal Officer at NAAJA, the North Australian Aboriginal Justice Agency.

15 **MR SHARP:** Jared Sharp; I'm the Manager of Law & Justice Projects, also at NAAJA.

DR MUNDY: Would you like to make a brief - and by that we mean five minutes or so - opening statement? Then we can move on?

20 **MS COLLINS:** Yes. Thank you for giving us the opportunity to give evidence to this inquiry on behalf of the North Australian Aboriginal Justice Agency and thank you for coming to Darwin, Larrakia Country, to hear our evidence. NAAJA has over 40 years' collective experience in providing legal advice and representation for Aboriginal people in the Top End, in criminal law, civil and family law, advocacy, community legal education, 25 tenancy, welfare rights and indigenous prisoner Throughcare.

In our supplementary submission and our brief comments today, we'd like to touch on some of the particular features of the NT legal landscape and NAAJA's work to highlight the critical role we play in providing access to 30 justice for Aboriginal people in the Northern Territory. As we note in our submission, our work is much broader than many of our counterparts. Our legal practice comprises of approximately 40 per cent civil, and that also includes family law, and 60 per cent criminal law. This commitment to civil law has been a deliberate approach.

35 Unmet civil legal needs for Aboriginal people is vast. We know the impact that issues like housing, child protection and welfare rights have on people's daily lives. There are no other services that can meet this need for remote Aboriginal communities in the Top End. NAAJA is the only legal 40 service that comes to their community and provides general civil law services. However, our civil law work is significantly reliant on funding beyond our core operational contract.

45 Eleven positions in our civil law practice, including our entire family law and welfare rights practices, are reliant on additional funding. At this stage we are unsure of whether this funding will continue beyond June 2015 and expect that we may have to cease all services in family law, as well as

reduce civil law services, as a result of funding not continuing. This will be disastrous in terms of the ability of Aboriginal people in the Top End to access justice. There is nobody else who can fill this gap.

5 Our supplementary submission gives some examples of the way
NAAJA's coverage of civil and criminal law, community legal education and
advocacy allows us to deal with a person's cluster of legal needs. One of the
concerns we have the proposed cuts to services like NAAJA's is that it will
seriously undermine our ability to provide holistic services. This is one of
10 the reasons we urge the Commission to engage directly with the question of
funding.

MR HUNYOR: Commissioners, our submission also gives examples of the
complexity of the social legislative and policy environment in which we
15 work. Obviously, this is a challenge that faces a lot of legal services but
particularly in the NT context, and, in the last 10 or so years, we've seen
really big changes that are very challenging. For example, we set it out in
our submission the 14 significant changes in law and policy over the last
seven years that a team like our welfare rights team have had to grapple with.
20 The demands of dealing with that sort of change really limit the ability of
services to engage in proactive early intervention work to assist people to
avoid and resolve their legal problems, which is something we recognise is
best practice and we strive to do but only specific program funding or a
serious boost to our core funding can give us the capacity to take on that sort
25 of work, and we recognise the significant efficiencies that we could achieve if
we were funded to do that.

We also recognise that there is significant scope for improvement in
the way government engages with service providers, and we very strongly
30 support moves to bring greater consistency to data collection and to
streamline reporting requirements but we stress that the chronic and structural
underfunding of legal assistant services to Aboriginal people remains a
pressing issue.

35 It's critical, in our view, that the Commission appreciates that, for an
organisation like NAAJA, in a jurisdiction like the NT, where we are
stretched simply to breaking point every day, significant improvements in
providing access to justice will not be achieved through internally allocating
resources more effectively or better coordinating with other service
40 providers. Of course, we'll always strive to do these things and, frankly,
we've been doing more with less for as long as we've been around but the
best evidence available - and we recognise that there are problems with the
quality and the depth of the evidence but the best evidence we've got
supports a clear finding that Aboriginal and Torres Strait Islander legal
45 services are not adequately funded. To meet the recognised widespread and
serious unmet legal needs of Aboriginal in the Northern Territory, a
significant increase in funding is required and, in our respectful submission,

this is an issue that can't be dodged.

5 The draft report suggests - just to pick up one specific point - that there's generally a problem with duplication and lack of coordination amongst legal information providers. This isn't an issue in the NT. The problem we face is a significant gap in the services provided, not any overlap. In our small but geographically vast jurisdiction, there's a high level of coordination and collaboration, we meet regularly with other service providers and we all know what each other is doing, and I think it's something we're very proud of that we do well.

10 The draft report proposes the law access model as a signal referral point for legal information services and we understand that that works well in New South Wales but our view is that it won't work in the Northern Territory. For a start, ATSILS aren't a minor player, ATSILS are the major legal service providers in the territory; NAAJA alone is bigger than the whole of the NT Legal Aid Commission, covering Alice as well as Darwin, but NAAJA just covers the Top End and we are a bigger service because of the demand for services by Aboriginal people. NAAJA and CAALAS also provide comprehensive services across civil and criminal law, and we're the first port of call for Aboriginal people, so it would be, with respect, inefficient and confusing for Aboriginal people to have to first call another service for assistance and referral, particularly where those other services won't be able to do the substantive work if it's required; they'll have to refer them to us anyway.

20 We also urge the Commission to be mindful of the limitations on telephone and Web-based information in meeting the legal needs of Aboriginal people. We still have many, many of our clients who don't have access to a reliable telephone, they don't have access to online, and the problems raised by language and communication, including high levels of deafness and hearing impairment amongst Aboriginal people, need to be taken into account.

30 We also touch in our submission on the role of the Ombudsman. I won't take you to that this morning but we note that one of our concerns is that their effectiveness depends on having real teeth. We have a case study in our supplementary submission of where the effectiveness of an ombudsman is limited by the extent to which government is prepared to listen to what they have to say and the extent to which the Ombudsman can actually engage with the community. In the Northern Territory, the Ombudsman doesn't travel, so, if you've got a problem in a remote community, you need to go to the Ombudsman, the Ombudsman won't come to you. Jared is going to have some things to say about community legal education.

45 **MR SHARP:** Thank you. We welcome the Commission's draft findings on the importance and effectiveness of advocacy and community legal education

in meeting and responding to legal needs in a cost-effective way. Our submission sets out examples of the value of NAAJA's work in improving and developing legislation and policy. We also note the importance of our role as a regular contributor to public debates on important issues that impact upon access to justice for Aboriginal people. In the NT, NAAJA is one of the few organisations that can provide a voice on these issues and ensure a balanced and informed debate.

Commissioners, I have brought with us today a visual representation - it's a shield which has been developed by some women's safe-house workers in the remote community of Nooka, which is some 300 kilometres southeast of Katherine. We brought this in really just to highlight some of the challenges that are faced in respect to community legal education and particularly the conceptual challenges for remote Aboriginal people in understanding concepts like domestic violence orders. This is an example of - when intensive community legal education work is done, then it's empowered those women's safe-house workers to develop resources such as this shield to break down some of the misconceptions, such as, if you get a domestic violence order, your husband will go to gaol. It's to really make sure that something like a domestic violence order is fully understood by remote Aboriginal people. We're really proud to be part of this project, which has just started in the community of Nooka but we're hopeful that it can expand to other communities and really empower Aboriginal people to understand the law.

MS COLLINS: Just following on, as the Deputy Chairperson of the National Aboriginal and Torres Strait Islander Legal Service, I'd like to just make a few comments on their behalf.

The NATSILS welcome the finding of significant unmet need. The exact level is difficult to quantify but, in ATSIILS' experience, it is high amongst Aboriginal communities, particularly when you consider the amount of people who have a similar issue but don't have access to the service. The law survey had its weaknesses in capturing the need amongst Aboriginal communities, as it was largely phone-based and, as we know, Aboriginal people have limited access to telephones, especially in the remote communities.

The NATSILS want to be able to provide more civil services to meet that level of need but would not be able to grow their civil law practices unless they are provided with specific additional funding. They cannot deliver the civil service under the current funding. The demand for criminal services is consistently high and we have no capacity to divert those resources from criminal services to the civil services. The draft report recognises the importance of CLE law reform and advocacy but it doesn't make it the subject of a specific recommendation.

5 I have a letter here that has been sent to you by the Commissioner of
Correctional Services in the Northern Territory, which is a letter of support
for the NAAJA advocacy and law reform activities, which we'll give to you.
What we would like is a specific recommendation, especially in light of the
10 funding cuts to this area for the NATSILS. We're also best placed to deliver
these to Aboriginal people, as we've built up the necessary relationships of
trust and have the necessary communication skills. ATSILS also support an
NPA on the condition that ATSILS are at a party to it at this time and are
involved in the development and negotiation process. NATSILS support
15 state and territory governments being required under the NPA to provide
funding to ATSILS, and this (indistinct)10.58.57 to the reality that their
policies and laws have an impact upon the level of demand of legal assistant
services amongst Aboriginal people.

15 In regards to a role for state and territory governments in influencing
service delivery and reporting requirements, it is our view that, given the
historical relationship, knowledge and experience gained over time, the
Commonwealth Attorney-General's Department remain the key agency with
whom decisions regarding service delivery should rest - any transfer of funds
20 as part of the new NPA on legal assistant services between the state and
territory governments be tied, so that all the money goes to the services; so
the ATSILS funding is not reduced as a result of new arrangements. We
don't want the funding to be absorbed by the territory's treasury for the
administration costs. Further, it is crucial that the Commonwealth does not
25 take away their responsibilities to Aboriginal people under the Australian
Constitution.

We would also not support any duplication of reporting requirements.
The NATSILS supports robust reporting requirements for ATSILS and,
30 indeed, the entire legal sector. Additional resources will be required to
implement any significant change to data collection and reporting systems,
both in terms of start-up costs and the ongoing collection and reporting
requirements. These resources cannot be found in existing operational
budgets. Thank you once again for the opportunity to provide evidence
35 today.

DR MUNDY: I was going to ask about one question. How much money do
you want? It's a serious question because we have spent a long time and
considerable effort in trying to, first, understand how much services cost to
40 produce, secondly, what's the nature and the need and how much it would
cost to meet that need. We're reasonably good at this and we're really
struggling, in part because, despite what people say about all the data that is
collected, it's not fit for purpose or, at least, the purpose which your
organisations and a whole pile of others are saying we must make specific
45 recommendations about funding. How long is a piece of a string and how we
will know that, if we were to recommend that amount, the benefits would
exceed the costs?

MR HUNYOR: I think the difficulty in us telling you how much is that the extent of the need - all we know is that it is vast.

5 **DR MUNDY:** We can see that and we can see it in many, many areas of legal services.

MR HUNYOR: What we've never really done over the 40 years is say, "This is how much you're offering and this is what we can do for that."
10 What we've always done, and one of reasons Aboriginal Legal Services do this is because they've got skin in the game because our board is Aboriginal, our staff is almost 50 per cent Aboriginal - so we get an amount of money and we try to do everything with it. It would be very tempting to say to the government, middle of June next year, when we get told how much is on the
15 table, "Okay. Here's what you'll get for this" and actually make a realistic calculation of what they can expect. I'd be reasonably confident it would be about half what they're currently getting.

DR MUNDY: I'd really like to be in a position where we could say, "If you
20 spend" - and this is in relation to ATSILS, it's in relation to CLCs, who I'm sure you understand are experiencing very similar fiscal conditions. We would dearly love to be in a position to say, "Spend X dollars and you can be reasonably assured" - certainly within a public-policy context, "you can be assured that you will get these outcomes" or, at least, "these outcomes are
25 likely to flow". That's what we need to be in the position to do - right across the assistance - and whether it be ATSILS or legal assistance, legal aid commissions or CLCs, it's the problem, again, that we face.

MR HUNYOR: I think, within the - we could certainly come up with
30 certain figures, for example, I think we could probably come up with a reasonably accurate estimation of how much more money we would need to pay our staff the same as what they would get at a mainstream legal aid service or at the DPP, our counterparts there. We could do that. I could also come up with an estimate of how much more money we would need to be
35 able to have our staff within the criminal section having a similar caseload to that which we expect our counterparts, again, at a legal aid service to have because we can try to roughly work with the figures that we've got.

The difficulty within the civil sphere is, to some extent (indistinct) so
40 we go out to what Wadeye, the biggest Aboriginal community in the territory, we go there once a month for one or two days, and we get a certain number of clients. One of the things that we've really worked on over the last four years, and it has been a great success, is making sure that we commit to being in communities on the times that we don't cancel trips and we don't
45 - when we're short of staff, we don't stop servicing a community and, as a result, we've seen the demand in those communities increase, we've built up trust, we've built up reputation, we've built up awareness of what we do, and

someone comes to us for their motor accident's matter and then they realise they've got a medical negligence claim and we go from there.

5 The trouble with the "How long is a piece of string?" question there is that it's the unknown unknown. If we went to Wadeye every week, we would be busy.

10 **DR MUNDY:** I guess the answer is that there is so little similar assistance provided that whatever you provide is almost guaranteed to be successful in some sense - - -

MR HUNYOR: Yes.

15 **DR MUNDY:** - - - but nowhere near the margin. We heard about the (indistinct) service and we heard any number of great programs around the country, both indigenous and non-indigenous legal assistance based. And I guess that's the real challenge, that everything almost seems to work because there's virtually nothing there.

20 **MR HUNYOR:** One of the challenges we've also got is establishing a critical mass. To provide an effective service, you need a critical mass be you need to make sure, when someone's - when you've got three people on leave, two people on circuit and four people sick because the flu's come to town, that you can still provide a credible service. You need to make sure
25 that you've got enough of a corpus knowledge within your organisation. One of the reasons we stopped providing a family law service 18 months or two years ago, for a period of - for about a year, I think, we stopped providing it - was that we weren't able to attract, with the money we pay a sufficiently senior family lawyer, and we didn't think that we were able to do a
30 competent-enough job, and we didn't have enough lawyers; we only had one or two. We just said, "If that's too great a risk, you should go to NT Legal Aid," where they have a great family service, albeit limitations of not having the access to the communities and all those other things.

35 So, to some extent, there is a matter of getting a critical mass and we think we've sort of reached that but we've got these parts of our funding that we think are going to drop off, and we'll be back to try to sort of paper over the cracks, which is why, for us, funding is an issue. I think I once heard
40 someone say "A library is an expensive thing to run but a cheap library is a complete waste of money because" - and I feel like that about a legal service; to have something that is just a fig leaf and we pretend we're providing a service is really just greasing the wheels and doing a disservice. I feel that we're approaching a critical mass but we are constantly trying to hang onto all these little bits of funding, to sticky-tape it together; it's deeply frustrating.

45 **DR MUNDY:** Are you able to describe to us what the dollar amount of the recent budgetary decisions have been - on your organisation as yet?

MS COLLINS: What we know at the moment is that there's a \$30-million cut that's coming across the ATSILS. Six million of that will be cut in the 15-16 financial year and, based on previous calculations - I mean, we haven't
5 been told this by the Attorney-General's Department, they're not in a position to do that, but, based on previous calculations, we're probably looking at \$1 million, and that's just in our operational contract. So, in addition to that, we'll get funding under the Stronger Futures for welfare rights and also to employ a number of civil solicitors and criminal solicitors under Stronger
10 Futures, and we don't even know what's going to happen to that funding. That could possibly be another \$900,000 as well, on top of the one million that we're looking at.

That's looking at being cut. I know that you're saying "What sort of
15 figure?" Our sort of thing at the moment is that we have to maintain the funding that we've currently got, we cannot lose any funding at all, and you need to at least have a minimum of a 3 per cent increase every year. At the moment we're getting, like, .5 or 1 per cent. I mean, we have to pay our staff a 3 per cent CPI and everything goes up 3 per cent, so we're already behind
20 the eight ball every time, let alone the increase in workload.

DR MUNDY: (indistinct) nothing.

MS COLLINS: That's the thing, we can't even keep up with the basic CPIs,
25 let alone the workload that comes our way; so, for us, we have to maintain that funding. We cannot lose that funding.

MS MacRAE: Does the expensive cases fund, does that impact on what
30 you're doing?

MR HUNYOR: It's more of an impact for our criminal work than it is for
our civil work but it is an impact there as well. It means that we will have to send a large number of very expensive significant cases to NT Legal Aid or we will need to withdraw from the record once matters are set for trial and
35 assist people to apply for NT Legal Aid, and it will be a matter of time before they're not able to take on those cases as well. It's a game where we have to pass the costs on to Legal Aid and Legal Aid has to run out of money and pass - have people go to Court with no representation. The Court has to then make a big deal and, finally, government will do something about it. It's
40 grossly inefficient.

DR MUNDY: Have you made representations to the Commonwealth
Attorney about this?

45 **MR HUNYOR:** Yes, we have, over years.

MS MacRAE: Just on the family matters, you talked about not being able to

provide family services for a period. Would you say that, for your client base, there's a tendency where potential clients are more comfortable in coming to you, given the aboriginality of your board and your staff, compared to, say, a legal aid commission, or is that not - - -

5

MR HUNYOR: Very strongly. There's a number of features behind it. One is that we're known. If you're from Wadeye, really, NAAJA is legal assistance; that's it. We're the organisation that goes there regularly, so there's a familiarity with the work that we do, there's a recognition that NAAJA provides its services in a qualitatively different way, so we have the role of client service officers, who will travel to remote communities and will go and find people and we're able to track people down. I have countless stories of the remarkable ways in which we've been able to actually find someone to get the piece of information because we've got those community networks. All of those things are very, very important. Obviously our lawyers are experienced with communicating with people in a cross-cultural environment, working with interpreters and all of those sorts of things. We think it's something that - we applaud the Commission for recognising the role of a distinct Aboriginal legal service but we think there's a qualitative difference that really matters.

MS MacRAE: And, I guess, in family law you've got all those emotional sort of connections on those issues that make it particularly difficult if you're dealing in an environment that's less sort of culturally accommodating.

25

MR HUNYOR: That's right, and often there are really complicated issues around family relationships and kinship, and those can make family matters particularly complicated.

MS MacRAE: We heard from the Legal Aid Commission about the problems that you have with conflict-of-interest issues and only representing one side, and it seems to be an uncrackable nut in terms of the problem. Is there anything there that you think could be done that hasn't been done, or is it just one of those issues that you've got accept - - -

35

MR HUNYOR: There was a proposal, and, I'm sorry, I'll struggle to remember the exact details - there was a proposal we actually - with the other ATSILS - looked at around making the conflict rules more flexible in circumstances where someone is remote, they don't have access to other legal services, and the only service they have access to is a legal aid agency, where the conflict relationship does work slightly different. I think people in Wadeye or Maningrida understand that we represent all Aboriginal people and that, if we represented someone three years ago, they wouldn't consider that there's an ongoing duty of loyalty such that we couldn't cross-examine them about their memory of an incident where they were a victim, whereas that might not be the same in a commercial setting in a city.

45

I think we did put something in - I can't remember the details but there are things that you could do around that, but, in the end, there will be conflicts that are just conflicts and we strongly support Legal Aid having the capacity to go to communities to pick up that load.

5

DR MUNDY: It's been suggested to us elsewhere in the country that some of these conflict issues are more informal than they are actually truly in substance and that a very narrow or expansive, depending on how you want to look at it, view of conflict is being drawn and, with suitable clarification, perhaps even by way of legislation of some of these issues, could be certainly dealt away with. Now, it hasn't been mentioned to us in an indigenous context, I must stress, where I suspect the conflict issues, culturally, may actually become realer than they may well be between people who are not indigenous. Is there anything that governments could do to assist in resolution of these conflicts to make it somewhat easier to - is there anything in the law that needs clarifying, which, if it was clarified, could deal with these - - -

MR HUNYOR: I think probably the notion of constructive knowledge creates a particular issue for us. The assumption is that, if you were represented by NAAJA five years ago, I have access, as the principal lawyer, to that file and, if I'm representing a new client, I should go and dig out the old file for someone else and have a look through it, which is, of course, not how it works, particularly for a legal aid agency, where there should be an assumption that we sort of have - there's a public interest in the sort of service we provide, and we provide a different type of service. I think, to have rules that make it quite clear that, when people come to us, they should know I am not going to go and dig out the victim's file to find out if she's got an alcohol problem, and I've got an ethical obligation not to do that, and that's a clear expectation. I think being able to draw a line under someone's matter and say, "Well, as long as - - -"

DR MUNDY: That's the sort of issue that - I mean, I think it's come up in family law matters where there's violence and - in indigenous - and Legal Aid might have represented the bloke on some other matter five years ago and, therefore, they feel they can't - or three years ago, a totally unrelated - I think what's being suggested to us is very much that perhaps if the same person did the representing - - -

MR HUNYOR: Precisely. That's right.

DR MUNDY: But it seems to us that - it's been suggested that a little bit of legislative clarification might actually help, and it's not a particular issue with indigenous parties.

45

MR HUNYOR: It's not especially an issue for us. One of the things we've done deliberately, in the way that NAAJA is structured, is to have a Chinese

5 wall or an information barrier between our criminal and civil. That works,
really, very well but we can't sort of erect those information barriers within
our civil or criminal teams from time to time, in ways that would ordinarily
be pretty sensible. I would have thought, if you've got - for example, dealing
with co-offenders or dealing with mum and dad to a - if you deal with mum
and dad in a child protection issue, where they may not have the same
interests or typically only represent one, I would be fairly comfortable with
having two lawyers who don't speak to each other, who, you know, are
professional and maintain contact, in those situations particularly, where
10 there's not a real hammer-and-tongs dispute where they're going to be having
to bark at each other at the Bar table.

15 **DR MUNDY:** In circumstances where the conflict may arise within a period
of time, this probably could be, helpfully cleaned up?

20 **MR HUNYOR:** Absolutely. I mean, the approach we take, which is similar
to - based on the sort of New South Wales legal aid guidelines, is - we
consider that our duty of loyalty generally expires after about 12 months. So,
if we represented someone, say, six months ago, we might think that that
creates a bit of a bad flavour, if we're then there cross-examining them, for
example, but if more than 12 months has passed, generally, we would
consider that - provided the same lawyer's involved - so we've always taken
a very, very robust approach to conflicts. We don't cease to act on the basis
of potential conflict; we'll only cease to act if there's a real conflict.
25 Co-offenders is a classic example, there's always a potential conflict if you
take on co-offenders, but we do that because otherwise it would be
unworkable.

30 **MS MacRAE:** Just coming to this issue about how much funding you might
need, and one of the things that we're tasked with is trying to look at costs
and benefits of providing additional assistance, and one of the things that we
hear a lot anecdotally is that issues that start out as small civil matters can be
escalated to bigger things and might even spiral into criminal matters. Would
you have any sense of the scale to which that might occur here in the
territory? Is that a relatively common thing? I know it's very hard here - it's
35 one of those other imponderables that we're sort of trying to get a handle on
and would you have any guidance for us on the extent that that occurs?

40 **MR HUNYOR:** No, I'm not sure that we can. I think my view would be
that we - I don't think we could reasonably expect that the Commission is
going to come up with a number and say, "This is how much more you need
to give" but I think a clear recollection that there is not enough and that we
can't do more with less and that there needs to be more - we're very much -
we very much accept that the inconsistencies in data collection and those
45 sorts of things make it very hard to quantify that but the concern for us is that
government seems to be on the track to saying, "You're going to have to do
more with less because everyone's going to have to do more with less." We

5 want to make it really clear that not only are we not able to do that but, from an Aboriginal Legal Services perspective, if we pull out, the costs are going to be much greater than what the government cuts to replace because we do things way too cheaply, to our detriment. If we were to transfer any of our criminal work, for example, to mainstream legal aid, we know it would cost them much more to service because that's the nature of the models we work on.

10 **DR MUNDY:** Just on that, when these cuts come along, which they periodically seem to, is there any discussion between yourselves and the Attorney-General's Department of the Commonwealth of what are going to be the frontline service implications with these cuts, or you do find out about attendance after the treasurer has been on his feet on budget night?

15 **MS COLLINS:** It's a little bit of a last-minute thing. I mean, we always lobby leading up to that time and then we just get told, "This is what your figure is going to be" and you kind have to revise your budget to fit within that. What we're aiming to do, now that we know that there is a
20 13-million-dollar cut coming, is to sit down and - we don't know what the cut to our organisation is but we're just going to have an estimate so that - we want to actually backtrack and say, "Well, if this is the cut, this is what we're going to lose and this is what the impact is going to be". We're aiming to meet with the Attorney-General when he comes to Darwin in August.

25 **MR HUNYOR:** We'll try and do that work now but, again, it's not that the government has got to come to us and said, "We need to cut something. What would this look like?" They've said, "We're going to cut this much" and we're now going to be able to take it to them and say, "Well, these are the implications." It's very frustrating because, I think, certainly the way it's
30 been communicated is that there are meant to be cuts to advocacy. The idea that we spend - - -

MS COLLINS: That much.

35 **MR HUNYOR:** It's not based on reality.

DR MUNDY: Given that you raise advocacy, and we've raised this with a large number of other community legal groups and we understand that probably some of the EDOs would simply close, particularly in smaller
40 jurisdictions, do you have a sense of the extent to which advocacy actually leads to the avoidance of disputes, which are costly in themselves?

MR HUNYOR: Can I give you one example? Section 104A of the Sentencing Act up here used to contain particular provisions that related to
45 the way evidence of Aboriginal custom and culture was to be led in a criminal proceeding. We took the view that they were racially discriminatory and we engaged in advocacy. I thought that we had a pretty good case, if we

were going to take it as a case to the Federal Court and, probably, ultimately the High Court, to challenge the law a being contrary to the RDA but, instead, we lobbied the former Attorney and then the Attorney changed, we lobbied the new Attorney and I met with the Solicitor-General and we talked
5 through the issues and ultimately they changed the law and they've made it much better than I could have hoped to have done if I'd spent tens or hundreds of thousands of dollars litigating the matter; it would have been enormously expensive. We got that done through advocacy. That's exactly the sort of work that we think is really important for us to do and that we
10 could do really, really well.

The letter that the Department of Correctional Services has provided also speaks to the sort of relationships that we were able to build up. We're constantly being asked to be on consultative panels and steering groups and
15 those sorts of things because, frankly, we're one of the few organisations that can and that really knows the issues around child protection or the issues around youth justice. They're issues where we have significant expertise and, for indigenous people, we are the only organisation, with CAALAS, that can talk about that in the territory.

MR SHARP: The other aspect of that is, when we are involved in law reform initiatives, our role is often crucial to avoiding unintended consequences of legislation, where, with the best of intentions, policy officers
20 will put in provisions which will disproportionately impact Aboriginal people. We have that role of (a) providing the voice of Aboriginal people, our clients, and also to assist in avoiding those unintended consequences.

DR MUNDY: You act in effectively ensuring that the unavowed consequences are avoided.
30

MR SHARP: That's right.

MR HUNYOR: And there are various pieces of legislation here where I've been to the Court of Criminal Appeal and won appeals against changes to the
35 law and, if they'd come and asked me in the first place, I could have told them "Those words mean this, not that". They didn't ask, so we litigate and we cost everyone a whole lot of money in doing it. That sort of work, we think, is just an obvious way to do things efficiently.

DR MUNDY: Clearly, the people who don't have day-to-day contact with the clients involved in this space aren't going to have that knowledge.

MR HUNYOR: That's right.

DR MUNDY: And that's no criticism; it's just a statement of the reality.

MR HUNYOR: That's the reality.

MS MacRAE: Is that true both for Commonwealth and territory matters, I'm assuming?

5 **MR HUNYOR:** Yes. We do much less in Commonwealth matters but, for example, around things like welfare rights and changes to social security and things like that, our welfare rights lawyers are amongst the best in the country and they really know their marbles, so, when they're consulted, frequently the feedback we get is "Thank you. That was really helpful" and we see
10 changes. In all sorts of legislation we see the changes that come about through our advocacy. Obviously, the government is going to achieve what they want to achieve and isn't going to have us then litigating them down the track.

15 **DR MUNDY:** Saves time for everyone.

MS MacRAE: One of the things that is talked about in the national submission, that I think you support, is the possible development of a culturally-tailored ADR service for indigenous people. I'm assuming this
20 isn't really on the wish list because it would cost money and you clearly don't have very much of it but what would you see as the benefits of that? It seems to be something kind of on the top of your list of things you'd like to see. Can you just give us a bit more detail about what - - -

25 **MR HUNYOR:** I might throw to Jared. One of the things I would note is that, in a jurisdiction like the territory, that would look differently in almost every community because there are different groups of elders, with different law systems and different capacities, some communities are very much ready for it, but it's actually work that we are already doing through our Northern
30 Justice Project.

MR SHARP: Yes, that's right. A community like the Tiwi Islands is a good example, where Tiwi Island mediators are bridging that divide between traditional Tiwi Islander conceptions of dispute resolution and mainstream
35 mediation models, and a lot of work's been done by NAAJA, as well as the Community Justice Centre here, to develop the skills set of those mediators, and it's enabling them to resolve disputes at a very early stage but also at a later stage, so that they can be called upon by the Courts to support a particular process at that Court stage as well. That's a good example of the
40 type of model that could be developed more widely across the territory but, as Jonathon said, it is very much a community-by-community approach that would need to be had. I think a national model would have grave difficulties, unless it had that flexibility to adapt to be locally responsive.

45 Some of the other work that our community legal educators are doing is just phenomenal in terms of supporting elders in remote communities, to train them up in mediation and it was a fantastic example, where the elders in

that community are also having an active role in the Court process to again help to resolve disputes and to provide information to the Courts about particular defendants. So, there are certainly examples of where it's been happening really effectively; it's just the resources that are not there to support those types of initiatives because they are extremely resource-intensive, they require ongoing work with those elders, whose, often, level of knowledge of western concepts of mediation and the law are quite low. To bridge that gulf requires a huge amount of work but it can be done and there are successful models in place.

10

MS MacRAE: Would you have any idea what sort of resources would be required if you wanted to roll it out across the territory?

MR SHARP: It's a really difficult one. Again, just looking at case-by-case scenarios - we're doing some work in the community of Gunbalanya at the moment, which is really intensive between now and November, doing monthly visits. Just as an example there, I think you'd really - with a core group of, say, three workers, you could support maybe four or five or six communities to develop those types of initiatives from the ground up. I'm conscious of examples, like in the Mornington Island Restorative Justice Project, which seems to be a best-practice example, and that was extremely resource-intensive, to grow that service, and it's now starting to bear the fruits of that investment.

MR HUNYOR: And I think you'd need to be really careful about trying to roll anything out in a big way. I think, the truth is, these things really need to work organically, community-by-community, with real leadership from those communities, and work up from there. I'd be concerned that, if you tried to say "This is the thing that's going to work for the whole of it, and you'd be much better to pick a couple of communities, pick a couple of organisations that you know can deliver that and then see what works in that community and see what you can learn. I think that's one of the things that we see is effective, that one particular community will find something that works for them. Unfortunately, often you're not going to know what that is until you're actually in there doing it. The paradox for me with a lot of indigenous initiatives is that, the bigger they are, the less likely they are actually to work, and it's the things that start small and build and that you're learning from and

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MS MacRAE: Start at the grass roots and build on that competency with the people that are there and then grow with the them.

MR HUNYOR: Exactly. That's right.

MS MacRAE: And, I guess, just to make the final point about that, although they're very resource-intensive, I'm assuming, in those places where you've got them operating, you would say that it's very cost-effective. Sure,

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resource-intensive but cost-effective in a good way in dealing with the problems that those communities are facing.

5 **MR SHARP:** I think that's right. I think it's really the forward-thinking model because you can see, in some of those communities, tangible examples of dispute that could so easily have escalated and ended up in the criminal justice system which those elders are resolving at the earlier stage. The community legal education example of that shield is a really good example, as well, of, when elders do have that knowledge of the legal system, they will then organically develop the ways in which they think they can transmit that knowledge and show their leadership to improve community safety in their communities.

15 **MR HUNYOR:** Another hard to quantify is the spinoffs of supporting a community to, for example, engage in a law and justice project or in a mediation project, but the capacity that develops within that community for those individuals who then have the confidence to engage in the legal systems - and it leads on to all sorts of other things they can do but quantifying that - I can't.

20 **DR MUNDY:** Did you get a sense, I guess, that, down the track, it's leading to less disputes? Presumably what you end up with is a realisation of rights, which leads to, probably, a recognition. It's a bit like, you know, we find a new way of diagnosing cancers and, therefore, the rates of cancer go up but, over time, we see them come back down again. Is that the sort of behaviour you tend to see - you see a bit of peaking and then, over time, disputes and offending rates - - -

30 **MR SHARP:** It's hard; a lot of these projects are still quite new, so, to see those longer-term changes - but what you do see is examples of the opposite occurring, where you could have predicted that a conflict with the law would have occurred in the future but for that intervention, so that person would have reoffended in some kind of way but hasn't.

35 **DR MUNDY:** These projects that you're involved with in these communities, have you actively got monitoring frameworks in place so that we can see how things are going 12, 18 months, two years down the track?

40 **MS COLLINS:** Not that far down the track.

MR SHARP: No, and, again, it's all funding-dependent. Some projects don't have external evaluation funding built into them. Internally, we're certainly doing that and - - -

45 **DR MUNDY:** To the extent you can.

MR SHARP: To the extent we can. We have one project, a Throughcare

project, and Prime Minister & Cabinet have been extremely forward in thinking to the longer-term evaluation of that project. That's a really exciting development because it's - - -

5 **DR MUNDY:** Sorry, what project was that?

10 **MR SHARP:** That's a Throughcare project, which NAAJA has been running since 2009. Prime Minister & Cabinet have just commissioned external evaluators from Harvard University to do a long-term analysis of the effectiveness of that program. It's a really positive development, not just for Throughcare but around in evidence-based - to a lot of these initiatives.

15 **MR HUNYOR:** Throughcare is working with prisons before and after their release, so we - intensive case management to try to stop people reoffending. The results we've got are fantastic but it's a matter of trying to get that longitudinal study.

20 **DR MUNDY:** As part of that - I mean, prisoners often manifestly - have got what I call civil problems and minor debts, that sort of - are you monitoring for those sort of civil disputes as well as they come in?

25 **MR SHARP:** Absolutely, and that's one of the key advantages of this service being located within NAAJA, that, as an integrated service, we can very quickly diagnose those particular issues and make those instant referrals, which, for our clients, frequently wouldn't happen otherwise.

30 **MR HUNYOR:** I've got a client, for example, who is currently being detained on a custodial supervision order because he is someone who's got a mental impairment and isn't fit to be tried. I represented him in his criminal case. One part of that was that he didn't at the time have a guardian, so I didn't have, actually, anyone to instruct me, so I needed to get the civil team involved to assist him in relation to guardianship procedures. A guardian was appointed. He's now got issues within the prison about his classification, so I've got the Throughcare team involved, they're assisting him with those issues, and we're also looking to get welfare rights involved because, now that he's under this order, he should be entitled to get Centrelink payments. So, I've got all arms of the organisation working for this man's complex cluster of needs, and that's an absolute classic example, and I've had a number of clients in exactly that position. The next thing is, what happens with housing when they get out, what options are there available? I can again get Throughcare then to assist.

45 **DR MUNDY:** We're probably about out of time. Again, thanks very much for your submission and time to come and speak to us today.

MR HUNYOR: Pleasure. Thank you.

DR MUNDY: Can we ask you to state your names and the capacity in which you appear here today, for the benefit of the poor souls known as the transcribers?

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MS LAWTON: Megan Lawton; I'm the CEO of the Law Society Northern Territory. This is my colleague.

MS WILSON: Marion Wilson, and I'm senior policy officer.

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DR MUNDY: Would you like to make a brief, and by that we mean no more than five minutes, opening statement?

MS LAWTON: Yes. I can read that brief opening statement. First of all, there's an apology for not filing with you a submission other than contributing to the Law Council of Australia submission. I guess I found the reporting, the concepts and everything hugely overwhelming and this is the entire team, apart from our voluntary members, who assist on committees.

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DR MUNDY: We do appreciate the challenges of small under-resourced organisations.

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MS LAWTON: I have taken the time to put some dot points together. The top priority, I guess, for me is the concept, which I think the Law Council does clarify - the focus on justice and what is justice. Unfortunately, there's a couple of focuses in the report that I don't think are heading in the right direction. There's a focus on alternative dispute resolution and I have some concerns about that. We've got some comments to make about the uniform law of the legal profession.

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Currently in the Northern Territory, we are proudly self-funded and self-regulated; so the legal profession is regulated by the Law Society Northern Territory. Funding for that comes from the fidelity fund, which is the interests on solicitors' trust accounts, which the funds management committee invests, and, thankfully, it's well invested in the previous 12 months, and out of that fund is the regulatory functions of the Law Society, as well as - community legal centres get a small payment; there is facility for other things to be paid from that.

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My concern about the uniform law - the society is generally in favour of a national profession. Our concern about it is the cost, the cost for very, very little advantage to the majority of our members, which, as you'll see in the demographic, apart from the government firms, who would see very little benefit at all, the private profession would simply see an increase in cost. We say that in that it separates out - it invents a whole new genre, which - at the moment the Law Society covers that genre of complaints, which is consumer complaints, and we already track information about consumer complaints, we

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deal with consumer complaints, and we do it with staff member, who's the manager of regulatory services, and a volunteer council, which is unpaid - the only position on that council that is paid is the president - and volunteer ethics committee, who volunteer their time to consider complaints. The majority of consumer complaints are handled by a staff member, to separate that out from the society, as required under the (indistinct) it's kind of an overarching thing - would require an additional staff member, roughly \$100,000, which, in the scheme of our budget, is a significant cost.

10 The other thing that I'm concerned - that the society is concerned - about is the loss of the ability to manage the functions locally to investigate complaints locally and to respond locally to local matters. The way most of our consumer complaints are dealt with at the moment are a phone call from (indistinct) regulatory services to the practitioner or the firm involved and, 15 overwhelmingly - that was an attitude that's kind of modelled on Mr McGarvey's rapid-response approach to investigations but it's about an experienced lawyer ringing a firm and saying, "We've got this person here who's not happy with your bill" and - or - often not that, a failure to communicate or you won't hand over the file - they're trying to brief 20 someone else - and the response that we get overwhelmingly is "Thank you for the call. That now gives me a chance to repair my relationship with that client". I'm increasingly getting that response and I'm very happy with that. I guess our concern is that anything national - I can't see - I understand Mr McGarvey needs 30 or 40 extra staff to handle the new uniform law and 25 my concern would be that, if we had to add one more staff member, it's a significant increase in our budget - or someone else's budget, because we couldn't do it.

30 The other thing is, of course, trusts accounts - the interest in trust accounts are what fund the regulatory regime. Under the uniform law, that's all preserved, our fidelity fund is preserved, but the lack of local knowledge is a big concern, and the increased costs.

35 We're happy with the concept, we'll sit back, wait and see as it rolls out in this jurisdiction and, hopefully - my game plan is to adopt those parts of the uniform law that benefit the profession and the consumer, such as the short-form costs agreement. We can probably do that with very little regulatory change at all.

40 Here is, on my left-hand side, our Legal Profession Act and our regulations. It's based on the model law, which is now - I think, they've only just adopted in South Australia. We have a statutory supervisor who's also the Solicitor-General. Here's the uniform law that we would be required to administer - that doesn't include the regulations; that's the New South Wales 45 one - concerned about the size.

The other aspect that's in your report is that - you address proposing

deregulating the PAI. At the moment, the society coordinates a scheme for professional indemnity insurance. We have recently been to the market. Myself and the president and our broker travelled to Sydney and we spoke with a number of insurers, got their best offers, negotiated better deals,
5 discussed what they would deliver back to the Northern Territory because frequently they don't have a presence here.

By offering that scheme, we are able to provide to our members some of the best terms in Australia, in comparison with other terms, and I know the
10 specific aspects of that that are better, including one-off cover and including Defence costs - not only that, we insure on an individual-practitioner basis, which - whilst it ends up being expensive for the larger firms, such as the ATSI
15 SILS, who are under the scheme - it has, until recently, been very expensive for them because they have the largest number of practitioners - it means, for the majority of the members, that it is reasonable. At the moment, say, worst-case scenario, it's about \$6000. If we were insuring on a per-firm basis, which is common in other jurisdictions, it would be \$30,000 now - for a local practitioner or a small firm, that would be a huge imposition, which, of course, as you know, would go on to the client.

We think that our scheme has significant exposure to the market forces constantly driving a better deal, particularly for those less-attractive insureds. We also have a fantastic claims history in this jurisdiction, which meant that we did get a significant discount this year, although we continued with the
25 same insurer and - lucky with - after lengthy negotiations, most of that discount was passed on to the ATSI SILS, in the form of a special ATSI SIL rate for PIR insurance. They say they could get PIR insurance cheaper in the market. It would not be on the same terms as our scheme has offered. That was one proposal we considered.

The other aspect I wanted to cover was billing, complains, professional conduct, court-resourcing. A key concern, I think, that - I appreciate the work of the courts. I guess a concern that is emerging is the under-resourcing of courts, in courts infrastructure and the call for courts to gather more
35 information. I think courts are best-placed to determine their procedures and to be flexible to the local jurisdictions. They're also best-placed to collect data on outcomes of matters and time, if that's one thing - or other issues. They're best-placed to - I don't think they are resourced to do so and I'm sure NAAJA spoke to you at length about bush courts, which don't even have
40 running water or toilets, so I don't need to go into any length there.

I think there's a reason behind the under-resourcing of courts, which is basically that they are the poor third arm of government that has a role in keeping an eye on executive power, so there's a bit of a disincentive to
45 adequately resource them. I think that there needs to be recognition of that in any of this work going forward, that courts are painfully under-resourced.

DR MUNDY: Thanks for that. Can we start on the - our inquiry is concerned with civil justice, not criminal justice, that the primary role of the courts in the civil-justice system is not to act as a break or an executive power, really, is it? The vast bulk of matters in civil courts, in the civil jurisdiction, is, in fact, not the state versus a citizen; it's actually citizens resolving each other's disputes, isn't it?

MS LAWTON: That's some of the work. We would class, in civil, anything outside of criminal, so that would be the care and protection jurisdiction. That would also be - one of the areas that the legal need - identified as being the biggest area of legal need in the Northern Territory was housing, which is government - and I'm sure NAAJA went on at length about - I think it's fantastic - - -

DR MUNDY: I think my question more relates in the broad, which may be different in other jurisdictions to the Northern Territory, so we - - -

MS LAWTON: Yes. We've got two courts here and, yes, the government spends a bit of time in the court.

DR MUNDY: You were talking about professional indemnity insurance and - negotiated this arrangement.

MS LAWTON: Yes.

DR MUNDY: Why wouldn't you still be able to have negotiated that arrangement if other people could just provide services to solicitors?

MS LAWTON: Market share. At the moment - - -

DR MUNDY: If your product is the best product, then, presumably, you would dominate the market - - -

MS LAWTON: No. I don't think insurers would offer insurance to most of our members if it wasn't compulsory under a scheme. At the moment, we have a policy, we take that policy along to the insurers and say, "How much would you give us if we're insuring this many people on these terms?" and they give us their best rate. I think you would find that there would be a lot of people in this jurisdiction unable to - particularly in the sort of small area, unable to obtain insurance if it wasn't compulsory under a scheme. My concern is that - when we have looked at - we have looked at shifting to the other policies in other jurisdictions, so joining, say, with LawCover or whatever, and the method of calculation there - whilst there might be a \$70,000 saving for a larger firm, the majority of members would have seen a significant 30 to 40-thousand-dollar increase in their premiums, which, of course, would either blast them out of the market, they would be unable to continue to work, or it would be passed on to customers and be, again, not - -

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5 **DR MUNDY:** I'm at a disadvantage. I'm a micro economist and I understand markets, it's a burden that I struggle with every day, but my general understanding is that, when you allow multiple providers in a market, there's innovation and prices go down. What you're identifying, essentially, is a market which is highly peculiar and it's highly peculiar not only in normal markets - it's highly peculiar in insurance markets. I've had a bit to do with (indistinct) insurance in the aviation industry over a very long period of time and I heard exactly the same arguments being advanced around about 10 September 11, 2001, and I now see an active and vibrant insurance market, so I - - -

15 **MS LAWTON:** I think the experience, yes, in the UK is what we would have here, particularly in the territory. I just don't think that we're an attractive market for many things, particularly - and telecommunications is one that is an example where - there are some telecommunications providers that are available on the East Coast, cherry-picking, as we anticipated, and not available here. I cannot sign up for VOIP in the same way my sister in 20 Victoria can. I believe the same would occur here. We are not attractive. Most government agencies don't even want to provide services here, so why would insurers want to insure the peculiar risks of this jurisdiction, which - as we know, each jurisdiction has its own laws - and I just am a bit concerned that, in the grand scheme of things, the territory - and particularly our small 25 firms would be lost and no one would want to offer that - I mean, no, they may - insurance is there to protect the client as much as the legal practitioner.

30 **DR MUNDY:** That's our concern precisely. There is a very broad sweep of history where arguments such as the ones you have advanced have been to the detriment to consumers.

35 **MS LAWTON:** But, if we're offering a \$6000 policy in comparison to a \$30,000 policy, that \$6000 is being passed on to consumers and they've got the benefit of some of the better terms in the country.

DR MUNDY: Why is it that that's happening?

40 **MS LAWTON:** Because we have interfered in - by pooling our resources, pooling the practitioners together, we say - - -

45 **DR MUNDY:** Insurance is about pooling. That's one of the fundamental natures of insurance. It's not quite clear to me why you would, with a smaller pool than, say, you would have if you were to pool with South Australia or New South Wales or Queensland, any of the other jurisdictions, any of them - why, absent - you've pooled your resources. Yet, if you were to pool your resources with someone else - - -

5 **MS LAWTON:** Because of our risk-claims history at the present time. At the moment we have a really good claims history, which saw a 25 per cent reduction in the insurance rate this year. If that had not almost entirely been passed on to the ATSILS, our firms would have seen a significant reduction in premiums, which we elected - the council determined to pass that on to the ATSILS, in the form of a reduced insurance - on a public-policy basis, really.

10 **DR MUNDY:** We'll do a bit more investigation on this because I just can't quite see how these sums work.

MS LAWTON: Yes. I agree with you but I - if you think you can do it cheaper and better, I'm happy to hand over - - -

15 **DR MUNDY:** As I say, there have been many arguments over a long period of time of this nature and very few of them have been borne out. We're short of time, so - can I ask you about your complaints in relation to this? Are there any people on your - you said you had a voluntary council?

20 **MS LAWTON:** Yes.

DR MUNDY: Are any of those people on that voluntary council not lawyers?

25 **MS LAWTON:** Not on our council. On our ethics committee, we have a layperson. On our council, because it forms all the functions - which has the determinative power, no, we don't have anyone other than lawyers on our council.

30 **DR MUNDY:** We've heard evidence from other jurisdictions where there are statutory schemes and the complaint about those statutory schemes is it's lawyers judging - even the statutory schemes, the complaint that is made is it's lawyers judging lawyers. A number of jurisdictions moved away from the model that you have, I understand, for scale reasons, because I'm a resident of the ACT and I think there's a similar challenge in the ACT because of its size - - -

MS LAWTON: But, more so - the problem is, I can't increase the regulation without increasing the expenses.

40 **DR MUNDY:** Yes, but, my question is, how can consumers be assured that it isn't just lawyers judging lawyers because complaints have been made to us on the record of precisely that with statutory schemes?

45 **MS LAWTON:** Yes. I would take into account the concern throughout the centuries, it's Caesar judging Caesar. I came to the Law Society a few years ago wondering about that, from a health professional regulation point of view. I am now happy to say proudly self-regulating. Part of that is looking

complainants in the eye and being confident that the process is rigorous. Part of that is the cost of it and - it's very efficient. Part of that is that sometimes the lawyers get into trouble. I think our complaints statistics speak for themselves in that regard. Most people who have complaints are dissatisfied with the outcome of the complaint, but, as long as lawyers and complainants are dissatisfied, as long as we're commencing own-motion complaints, I think that's suggesting that it's a system that's working and - I hear that comment, I have to face it, particularly in those jurisdictions, but I look at the unmitigated expense of losing that - it's extremely costly. The fact that I get hours of volunteer time from people who are prepared to go and research cases and to spend time thinking about what the fair and just outcome could be, I think, it is working.

DR MUNDY: You said you had a capacity to undertake own-motion investigations.

MS LAWTON: Yes, certainly.

DR MUNDY: Some of the statutory schemes don't think - - -

MS LAWTON: I don't know who can't do own-motion. I'm very interested in that. We are in a bit of a place at the moment - - -

DR MUNDY: (indistinct) the South Australians (indistinct)

MS LAWTON: Yes, they were a bit hamstrung. We can always commence an own-motion complaint and we might do that on the basis of a court - if the court were to send something to us, that would end up being an own-motion complaint. If there's something the newspaper - you know, when I say it would - we have certain policies and procedures around how and when we arrive at the decision to commence an own-motion complaint, in a state of constant improvement - - -

DR MUNDY: It's a public nature. You don't have to have someone bring it?

MS LAWTON: No.

DR MUNDY: So, notoriety would be sufficient for that sort of - - -

MS LAWTON: Yes.

MS MacRAE: If someone wasn't happy with the outcome of a complaint, can they go to an ombudsman or - - -

MS LAWTON: Yes. You go on to the Tribunal. We have had a complainant - when I say a complainant, it was a lay-representative of an

unhappy client. He represented his client, whether for fear or what, I don't know - in Family Court proceedings and, as is common in complaints about Family Court matters, it's a complaint about the other side's lawyer, so "The other side's lawyer was terrible for these reasons", and that person elected to go down the path of taking the matter to the Tribunal and we were very gravely concerned that his client was unaware of the implications of that, that there was absolutely no merit in that. We have had - once we asked him to bring his client on before the Tribunal to confirm he had these instructions, the matter just disappeared. People do go on to the Tribunal and then on to the Court, we have had matters that do that, so, yes, it's not - - -

DR MUNDY: It's not the end - - -

MS LAWTON: No.

DR MUNDY: I'm just mindful of the time but you mentioned Tribunals; we understand there's no general civil administrative Tribunal in the Northern Territory, although there are Tribunals that deal with lands matters and mental health. Do you think that absence of a general administrative Tribunal creates an access to civil justice issues for the territory (indistinct)

MS LAWTON: Yes. You may have heard - - -

DR MUNDY: - - - and, if so, how?

MS LAWTON: Yes. I think it's poor government decision-making, in essence. I think that there's no - that's my concern about alternative dispute resolution. If it's transparent and published that a decision of that nature would be overturned or that you'll go down, or whatever, you can inform your practice, whereas alternative dispute resolution, who knows what goes on? Poor government decision-making in the Northern territory; I believe that you don't have to necessarily give reasons, or have reasons, at times - no publication of government policy. These things are changing but we've just had our NT CAT legislation come into force and there'll be a few low-hanging bits of fruit that will attribute jurisdiction to that. I can only see an improvement in the quality of government decision-making and the accountability of government decision-making as a result of that. Yes, I think it's a huge access-to-justice issue, particularly when sometimes your only avenue is the Supreme Court, inherent jurisdiction, and that's over a \$1000 filing fee. Who's got that when they're complaining about not having a house?

DR MUNDY: Yes. You've mentioned your concern about ADR. Does that extend to things like industry ombudsman - like the telecommunications - - -

MS LAWTON: I think the telecommunications Ombudsman - nothing works because people have to put their hand in their pocket if they want to go

to the next level, not the poor complainant but the industry. I'm not sure with that - - -

5 **DR MUNDY:** There's a lot of complaints which are essentially of the same nature, and we don't learn very much from them.

MS LAWTON: Yes.

10 **DR MUNDY:** What we probably learn is from the aggregation of those complaints, and that's what the Ombudsman actually does.

MS LAWTON: Yes.

15 **DR MUNDY:** On individual administrative matters, it might be a different story.

20 **MS LAWTON:** I'm not convinced here in the territory that we are getting a good service from our government Ombudsman but part of that goes back to "Let's prevent the problems in the first place". At the moment, we're - I'm sure NAAJA spoke about the remote tenancy legal advice service, how that just gets handballed between agencies and they can't see that it's an opportunity to prevent bad things happening. I guess that's the only other aspect - we've talked about the national partnership agreement, how that's really borne fruit for us here in the territory. I thought we were a
25 well-connected and well-working sort of team, most of the legal services are on our social justice committee but the legal assistance forum and the jurisdictional forum have actually helped us come together and work even more collaboratively.

30 My biggest concern is about the advocacy. It's a really unicameral parliament here and we have volunteer committees within the society to help us without submissions on law reform and we are often talking about "Hey, that appeal mechanism is illusory because you've only got three days and you don't even give them a decision in writing. Come on." That's the kind of
35 stuff we advocate on. We're immensely supported by the advocacy and the coalface experience of the legal services out there and I do think it's an alarming - and it's potentially going to be a huge negative impact on access to justice.

40 **DR MUNDY:** The proposed reductions in funding for advocacy, in your view, will - - -

45 **MS LAWTON:** I think it's alarming and concerning because it's about trying to prevent the systemic problems emerging and then, when, suddenly, three months down the track we're going, "Why is this happening?" we're going "I told you so". There's a need to hold government to account before it passes tough-on-crime legislation or even - we had the advanced personal

planning or the Crown protection jurisdiction stuff, yes - I'm very concerned about that, and that's an issue that I'm quite strong about. I'm very - just been Marian and I making all the submissions, advocating on all aspects of the law - - -

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DR MUNDY: I think we've already observed the desirability of advocacy.

MS LAWTON: Good.

10 **DR MUNDY:** We'll have to draw it to a close there but thanks very much for your time.

MS LAWTON: Thank you so much. There was one other thing. You wanted local rates for lawyers. Did you want - - -

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DR MUNDY: Yes, please.

20 **MS LAWTON:** That's the survey of practitioners. That's not confidential but I just needed to - I put a call out to the profession about the rates and \$350 an hour is about the standard rate for a partner.

MS WILSON: As opposed to 600 or whatever was in - - -

25 **MS LAWTON:** 600 in your report.

DR MUNDY: Okay.

MS LAWTON: I'll send you a written confirmation.

DR MUNDY: Can you please state your names and the capacity in which you appear?

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MS BRAYBROOK: Importantly, before I begin I would like to acknowledge the traditional custodians of the land, the Larrakia people, and pay my respects to their elders, past and present. My name is Antoinette Braybrook. I'm an Aboriginal woman, born in Victoria, on Wurundjeri country, but my family are from Kuku Yulanji in Far North Queensland. I am here today in my capacity as National Convenor for the National Aboriginal Family Violence Prevention and Legal Service Program. I've been the CEO of the Victorian Family Violence Prevention Legal Service for 12 years.

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MS DOVE: I am Nadu Dove. I am here as the support to the secretariat for the national forum.

DR MUNDY: Thank you. Will you please, if you'd like to, you don't have to, make a brief opening statement? "Brief" means about five minutes, not 15.

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MS BRAYBROOK: It will not be 15; we've tried to make it five - - -

DR MUNDY: If it's six and a half or seven, that's all right too.

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MS BRAYBROOK: - - - but there's some really important stuff. We're happy for you to start giving us the signal.

DR MUNDY: Off you go.

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MS BRAYBROOK: Firstly what I should say is, given the diversity across our national program, it may be that we have to take some of your questions on notice.

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DR MUNDY: That's fair enough.

MS BRAYBROOK: Family Violence Prevention Legal Services were established in recognition of the gap in access to legal services for Aboriginal victims of family violence and sexual assault, and that's most particularly Aboriginal women and children. They were also established in recognition of the high number of conflicts within the Aboriginal legal services and also in recognition of the high rates of family violence within our communities.

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Aboriginal people are significantly over-represented as victim survivors of family violence, and Aboriginal women are 31 times more likely to be hospitalised for family violence than non-Aboriginal women. In 2008-

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2009, family violence cost the Australian economy in excess of \$13.6 billion.

5 In recent years, the Family Violence Prevention Legal Service Program has been subjected to numerous reviews. However, little progress has been made towards developing a secure funding model or an appropriate evaluation framework. Constant uncertainty and short-term program arrangements continue to have a detrimental impact on our services.

10 The Family Violence Prevention Legal Service Program services 31 northern remote communities. Since the inception of the program, service regions have been identified and imposed by the Commonwealth government. Family Violence Prevention Legal Services provide specialist, culturally safe, legal services to approximately 5000 clients annually.

15 Commonwealth government policy prevents Aboriginal people who experience family violence and are living outside of the FVPLS regions from accessing our services. Most importantly, Aboriginal people who live in urban Australia do not have any access to a Family Violence Prevention Legal Service because that is prevented by that policy.

20 **DR MUNDY:** Certainly be outside those regions that you mentioned.

MS BRAYBROOK: Those regions which the Commonwealth identified and imposed.

25 **DR MUNDY:** Yes. Thank you.

MS BRAYBROOK: FVPLSes provide a broad range of high-quality, holistic legal service models, recognising the complex nature of the socio-legal service requirements of our clients. In direct response to the Commission's draft report, our concerns are as follows.

30 We do not support an amalgamation of Aboriginal Legal Services and Family Violence Prevention Legal Services. The reason for the creation of the Family Violence Prevention Legal Service Program in the first place was because of the high number of conflicts within ATSILS, because of their major criminal focus. Family Violence Prevention Legal Services have built client and community trust and confidence. Clients do know that they will not find perpetrators at our services. The delivery of Family Violence Prevention Legal Services is an essentially specialised, unique and valuable skill set.

45 In relation to alternative and family dispute resolution, it may not be appropriate service delivery model for cases involving family violence. In many cases, victims, most particularly women, come to our services after experiencing extreme violence for many years. It is at that point that they just want to be safe, believed and want legal intervention and other important

support and it's not appropriate at that point to talk to the women about mediation or dispute resolution.

5 Our experience has shown that Aboriginal women are not always
informed of their rights to bypass dispute resolution processes where family
violence is involved. It also requires a disclosure of family violence, and the
many barriers to Aboriginal victims disclosing violence in a mainstream
setting are well-documented. We also have experience of inappropriate use
of FDR for our clients. Any increased use of FDR or ADR should be
10 approached with caution in consideration of these concerns.

MS DOVE: In response to eligibility tests, we'd like to reiterate that
eligibility tests must reflect the priority groups around access to justice and
ensure service access for Aboriginal victims and survivors of family violence
15 are not restricted in any way. Concerns around single-point access, as
reiterated in our submission, web-based and telephone legal access points
will not increase access to justice for Aboriginal communities and
specifically to Aboriginal survivors of family violence, and they'll continue
to require community engagement and outreach activities in order to ensure
20 access to justice.

MS BRAYBROOK: We do support these services and that they should be
developed in consultation with Aboriginal communities and delivered
through Aboriginal-community-controlled organisations to ensure the
25 development of culturally-safe practices. With further investment into
Aboriginal interpreter services, many of our member services use those
interpreter services and it is recommended that further consultation with
those communities and services take place.

30 With respect to state and territory investment in the Family Violence
Prevention and Legal Service Program, firstly we'd like to say that family
violence is a national concern in our country and there should be additional
funding from the state and territory for our services, and there needs to be
careful consideration of Commonwealth and state and territory
35 accountabilities. Some of our member organisations have been supported
through individual service agreements by the states to fill geographic gaps for
legal service delivery, and that model has enhanced the security of those
services and stability of those services. In both instances, it is important to
note that the state funding that both of those member services have secured is
40 on a three-year funding cycle and it is also important to note that our
Commonwealth funding is only for a 12-month period at this stage.

DR MUNDY: Thank you for that .

45 **MS BRAYBROOK:** We've just got very short - very, very, very short - - -

MS DOVE: In terms of the establishment of appropriate funding models,

following on from Antoinette, we would recommend three-to-five-year funding models to enable organisational sustainability. We've been - a barrage of continuous insecure, unstable, short-term, three-to-six to 12-month agreements don't allow us to attract, retain staff, let alone deliver appropriate services. On the development of an effective evaluation framework, recognising the unique services of family violence prevention, we would welcome that; we would encourage the government to consult with us and collaborate with us on that development, so that you have appropriate benchmarks.

10 **MS BRAYBROOK:** We see clients every day experiencing physical, emotional, verbal, financial, system and institutional abuse. These clients experience chronic disadvantage, alcohol and drug issues, the effects of child removal, inter-generational trauma, high rates of disability, self-harm and homelessness - than the general population, and lower rates of numeracy and literacy, health and wellbeing, and personal safety. Our services have worked really hard to build and maintain trust and confidence, and that is a really critical component of delivering effective services to our community.

20 Our concluding comments are that, with the responsibility of the Family Violence Prevention Legal Service Program shifting in December 2013 from the Commonwealth Attorney-General's Department to the Prime Minister & Cabinet, and the recently-announced \$500 million rationalisation of indigenous programs incorporates the Family Violence Prevention Legal Service Program, and that creates further uncertainty for the future of our services and for our communities, and we feel that the rationalisation process may have impacts on Aboriginal victims' access to justice and we believe that the government should be looking at reinvestment into frontline culturally-safe legal services, rather than withdrawing it. Thank you.

30 **DR MUNDY:** Thank you. We might start on the last point first. Money is always a good place to start. Have you experienced any particular challenges for the movement of the responsibility for the program from the Attorney's department to the Prime Minister's department?

35 **MS BRAYBROOK:** The challenges have been about the uncertainty. In December 2013, we were unclear about how long our funding was going to go for and we were told that it would be for a further six months, which took is up to December 2014, and then, on budget night, that was even in question - appeared to be in question - and also I had attended meetings with the ATSILS, other CLCs, and their funding cycle was - they had been given funding for a further 12 months, so we were questioning why our organisations had not been given funding for a further 12 months, but now we find that we do have funding for a further 12 months, until June 2015.

45 **MS DOVE:** Part of the concern that separating us out from the other three legal assistant services means there's a disconnect around the - - -

5 **DR MUNDY:** That was, I guess, what was partially (indistinct) was explained to us that, whilst the services you provide are quite distinct, they're not un-associated with funding issues and issues about overlap and so on, particularly in the Northern Territory and Western Australia perhaps. It just struck us as a bit odd. Has the national body had the opportunity to discuss these issues with Mr Mundine?

10 **MS DOVE:** Kind of.

MS BRAYBROOK: I've had a couple of conversations with Mr Mundine but I've also had some conversations with Minister Scullion's office, when we first shifted over, and they saw it as a really positive move for our organisation. Our concern was, as Nadu said, around us being separated from the other legal service providers.

20 **DR MUNDY:** I guess it's a question of, do you locate the program with other indigenous policy programs or do you locate it with other legal assistance programs?

MS DOVE: Part of our concern was whether or not the perception is, because we are a holistic wrap-around service, that we are a legal service that offers a range of services, as opposed to a health and safety wellbeing service.

25 **DR MUNDY:** That does a bit of law on the side.

MS DOVE: That does a bit of law on the side and has a lawyer, yes.

30 **MS BRAYBROOK:** Yes.

DR MUNDY: Thank you for that.

35 **MS MacRAE:** Just in relation to your comments about where you're situated, in relation to those 31 communities that you service, were you consulted about where that would go or was that just, apparently, sort of an independent decision of the Commonwealth?

40 **MS BRAYBROOK:** The program has been in existence since 1998 and there has been massive expansion of the program, from one to six units, to 26 units, to 31 units, servicing 31 rural and remote locations, and then there was a time when the program was regionalised, so small units were brought under one unit. Perth, for example, has six units under it and there are eight units in total in WA; there are Albany and Fitzroy Crossing and six units under the Perth unit. Those service regions, getting back to your question, were imposed by the government; they were not chosen by our organisations at all.

DR MUNDY: How does the government - we know a little bit about Western Australia. I'm curious that, on a priorities basis, you don't locate a service in Albany but you don't appear to have one in the Pilbara or - - -

5

MS BRAYBROOK: Yes. It's the same for Victoria, for example, where I'm from; we don't have a service in Shepparton or Swan Hill, which we've identified as really high-need.

10 **DR MUNDY:** Where is the service?

MS BRAYBROOK: In Victoria we have a service that looks after Mildura and Robinvale and parts of - just a bit over the border, with Wentworth and Dareton in New South Wales. We've also got an office in Warrnambool, which services the Barwon southwest region, and one in Bairnsdale, which services the Gippsland region. We know that there is really high need in the Swan Hill area but we cannot service that from our Mildura service, which is only a couple of hours away; we have to do that from our Melbourne head office, from our state funding, not from our Commonwealth funding, because Swan Hill falls outside of the Commonwealth service region.

15

20

DR MUNDY: So the Victorian government provides you with funding to cover the bits, effectively, the Commonwealth doesn't - - -

25 **MS BRAYBROOK:** It's not restricted funding in that sense.

DR MUNDY: So, a sensible allocation of resources on your part would (indistinct) resources?

30 **MS BRAYBROOK:** Yes. We identify major and minor-presence areas within our state.

DR MUNDY: Do all states provide resources or - sometimes I ask questions and I know what the answer will be. My next question is, which states provide funding and which don't? Just tell us which ones - - -

35

MS BRAYBROOK: To our knowledge, Queensland has provided funding to QIFVLs, and also, in Victoria, the state government has provided funding to the Victorian service.

40

DR MUNDY: So there are significant areas of indigenous in Western Australia, New South Wales and South Australia, I guess, and also in this jurisdiction who go without services?

45 **MS BRAYBROOK:** Some time ago, the Western Australian Attorney-General's Department allocated some funding for a family violence prevention legal service and put it out through a tender process and our

program expressed some concern about that funding going to a mainstream service.

5 **MS MacRAE:** Just in relation to, then, to the way - you said you're not able to service women who might approach your service that are outside of the catchment area. In relation to those states that have state funding, you can service them through those sorts of avenues, through state funding, but, in those areas, just to be clear, where there's no state money available, or very limited, where would those women go in those instances?

10 **MS BRAYBROOK:** I think it's different for every state and every area. Some of our member organisations show extreme frustration when you've got communities side by side but you can only service one community and not the other, and there's movement between communities as well. I think, 15 for our services, it's just about trying to find somewhere that will support those women that fall outside of our catchment areas because, the reality is, we are contacted by people, or clients, outside of our catchment areas.

20 **DR MUNDY:** The reality for those women in accessing the services of ATSILS - the issues which you describe are no different, depending on which side of the line drawn on the map they reside.

MS DOVE: Absolutely none.

25 **MS MacRAE:** You talked a bit about the problems with the - maybe I can call it filtering, it's probably not the right word but in relation to the use of family dispute resolution services. Are there specific things that should happen at that point that the streaming to ensure that people that - where it's not appropriate - you said that there are rights there but people aren't aware 30 of them. Is that a matter of education for the courts and the registrars and other people, is that the prime way to sort of tackle that problem, or are there other groups that need to be better informed about that so that women are more aware of their rights?

35 **MS BRAYBROOK:** Other member organisations might like to contribute to this and we could bring you some information back but, for Victoria, we did a little bit of work in that area and surveyed some women and what we've been advocating for for many years is that staff in those dispute resolution centres under ongoing cultural-awareness training, understand the barriers 40 that Aboriginal victims face, or Aboriginal women, and to also have Aboriginal workers available; and, as soon as an Aboriginal person comes into one of those places, give them the option of being referred to an Aboriginal service.

45 **MS MacRAE:** Would the resources currently be available to allow for that or would you have to fund something separate - or would you need more funding - to be able to refer them in that way, is there a service you could

currently refer them to or is that - - -

MS BRAYBROOK: There's the Family Violence Prevention Legal Services.

5

MS MacRAE: Yes. You'd have that (indistinct) where you'd still have, potentially, difficulty in referring them because they're not in the right (indistinct) or the right (indistinct)

10 **MS BRAYBROOK:** It would be a good starting point to have that conversation with the Family Violence Prevention Legal Service and then they could identify what other appropriate services there are to refer that woman to, if they can't service that woman.

15 **MS DOVE:** And increased training within the courts around family violence, so that people aren't referred inappropriately to dispute resolution.

20 **DR MUNDY:** We made some observations about which I think the national forum has formed a view that we perhaps were suggesting that ATSIILS and your organisation should be amalgamated. If that's the way it was read, we'll go back and - that wasn't what we were trying to get at. What we were trying to find were ways, given that we know that, across the legal assistance sector are organisations typically small and they have reporting requirements and that - I guess what we were looking for was, rather than what you might call
25 the co-location of services or the amalgamation of shopfronts, however you want to describe it, but rather, were there any administrative-type things that could be done that could lead to reduction of costs, not only between - would it be possible for women's legal service to auspice one of the members' services just to provide to small organisations with essentially - they need to
30 run a payroll and this and that and find some savings (indistinct) that's more what we were trying to explore because we know it's a problem across the legal assistance sector; it wasn't so much amalgamation of shopfronts.

35 **MS DOVE:** More back-room processes?

DR MUNDY: Yes, more back-office stuff, or is it too difficult?

MS BRAYBROOK: I think that it's too difficult and this needs to stay in Aboriginal community control.

40

DR MUNDY: Okay.

45 **MS MacRAE:** What would the - and I apologise - you probably know this from the submissions we had but what would the size of a - we call them (indistinct) pools but I notice you have a different way of describing it but what would the average size of one of those be and do you feel they've got sufficient scale to function well? One of the concerns we had around CLCs

was that some of them are - you know, they're very small and they might have only one and a half staff in a centre. Do you feel you've got sufficient scale to make good use of the resources you've got?

5 **MS BRAYBROOK:** I think, since the regionalisation of the program, that's positioned us very well, whereas, I said before, Perth, for example, has six of the Family Violence Prevention Legal Services units under that now, so it's one service in - - -

10 **DR MUNDY:** So it's effectively done the amalgamation (indistinct)

MS BRAYBROOK: It's an amalgamation internally. In Victoria, there was funding allocated for two Family Violence Prevention Legal Services and they all sit under the Victorian-based service. Our head office - we've
15 always been based in the CBD, and that has allowed us to be able to build relationships with state government. I sit on a number of key state-wide committees and that's how we've been so successful in securing funding from not only the state but the legal aid service as well.

20 **DR MUNDY:** Indigenous women in Melbourne who have needed your services can come into your office, perhaps not in the same way as indigenous women (indistinct)

MS BRAYBROOK: That's right. We're not saying that we're
25 over-resourced or have enough resources to do that but - - -

DR MUNDY: No, but you're there.

MS BRAYBROOK: We're there.
30

MS DOVE: We can't just turn Melbourne women away. We have the state support to be able to - - -

MS BRAYBROOK: But other states don't have - - -
35

DR MUNDY: That view.

MS BRAYBROOK: Not that view but that capacity.

40 **MS DOVE:** Capacity or the funding arrangements - - -

MS BRAYBROOK: State governments don't have that view.

45 **DR MUNDY:** State governments have alternative fiscal priorities, is probably the way it could be described - - -

MS DOVE: Interesting way to describe it.

DR MUNDY: - - - at least, apparently - no alternative apparent fiscal priorities.

5 **MS MacRAE:** We are nearly out of time. There was a concern that our draft report didn't reflect enough of the work that you do in the community education area. Could you just give us a little snapshot of how much of your services fall into that area and what the costs and benefits of that sort of work you said you do?

10 **MS BRAYBROOK:** We may have to get some information back from our member organisations because we all do it in different ways but, just from our experience in Victoria, that has been a really critical part of the work that we do and the early-intervention prevention work that we do, for which we do not receive any funding because that was taken away under the former federal government - one of our really successful programs in Victoria is Sisters Day Out, which has a community legal education focus to it, as well as an early-intervention prevention focus, and that is us going to the women because we know that Aboriginal women who experience family violence will not just come to our door and knock on the door; we have to do really hard yards in the community, take programs to communities. That talks about - it breaks down barriers because you're building confidence in other mainstream in Aboriginal services through those programs and also informing people of their rights.

25 We do really basic presentations at our community legal education events and the other events that we hold and it's just amazing to see that women say, "I did not know that I could get an order to exclude him from my home. I did not know that I could get an order for us to live under the same roof. I didn't know that I could get legal advice in relation to child protection; I thought that I just had to sign those documents when Child Protection became involved".

30 **MS MacRAE:** Have you had any formal evaluation of any of those programs?

35 **MS BRAYBROOK:** We, in Victoria, did an evaluation some time ago in our Sister Stay Out program and we're doing one again now, which should be - I think it should be almost finalised.

40 **DR MUNDY:** Is that something you could share with us?

MS BRAYBROOK: Yes, we can.

45 **DR MUNDY:** We'd prefer it publicly but, if you want to give it to us on a confidential basis, that - - -

MS BRAYBROOK: We will share that with you and we can also ask our other member organisations what they might have to share.

5 **DR MUNDY:** One of the problems we have in this whole inquiry is how can we satisfy ourselves that these programs - what's our evidence base for making - they, on face, look like they do but some evidence of evaluation is really very helpful for us.

10 **MS BRAYBROOK:** We have been talking about evaluation stuff just recently, how we can capture that.

DR MUNDY: Yes. It's very difficult and it's best thought about before you start, so you've got to go, "If we'd only asked ourselves - - -"

15 **MS BRAYBROOK:** Yes.

MS DOVE: We do individual evaluations for the women to evaluate sessions and things but in terms of actually evaluating impact longitudinally or - - -

20 **DR MUNDY:** Yes. If you could get us something on that program, that'd be great.

25 **MS MacRAE:** Any evaluation work that any of your organisations have done would be enormously helpful to us, anything you could provide us with - - -

MS BRAYBROOK: Okay.

30 **DR MUNDY:** If you're concerned about it being released, we're happy to take material confidentially and keep it to ourselves, and it's very hard for people to get it off us.

35 **MS DOVE:** We trust you.

DR MUNDY: We've never been (indistinct) confidential material. We are out of time. I hope you haven't come all the way from Melbourne just for us.

40 **MS BRAYBROOK:** Yes and no. I had major conflicts with every other area that you're hearing in.

DR MUNDY: We do appreciate your time and we do appreciate the submissions you've made to us and we look forward to (indistinct) get that material to us.

45 **MS BRAYBROOK:** Thank you.

DR MUNDY: These proceedings are adjourned until 1.15.

ADJOURNED

[12.35 pm]

5

RESUMED

[1.03 pm]

5 **DR MUNDY:** We'll reconvene this hearing. For the record, could you state your name and the capacity in which you appear.

MR LANE: Tony Lane, Chief Executive Officer of the North Australian Aboriginal Family Violence Legal Service Aboriginal Corporation.

10 **DR MUNDY:** Mr Lane, we're in your hands.

MR LANE: Thank you. I just thought, Commissioners, that I'd just do a quick presentation on some aspects of NAAFVLS, being the North Australian Aboriginal Family Violence Legal Service. So what I've put together for you at this particular point in time is just a small document which provides NAAFVLS' vision statement which is to become the national leader for the culturally appropriate and holistic service delivery of the Family Violence Prevention Legal Service Outreach Program to remote communities.

NAAFVLS' mission statement. NAAFVLS will continue to provide holistic and culturally appropriate legal services and support to indigenous victims of family violence living in remote indigenous communities in the Top End of the Northern Territory. We will attract and retain well-qualified and skilled staff who are passionate in achieving our vision. We will provide community legal education to reduce violence and advocate for justice for our indigenous clients.

25 **DR MUNDY:** Can I just interrupt, Mr Lane. How many staff do you have?

MR LANE: Sixteen staff.

DR MUNDY: Of which, other than yourself, are lawyers?

35 **MR LANE:** There are a total of seven solicitors, one being the principal legal officer, and the rest are support staff to the legal team.

DR MUNDY: So paralegals, social workers?

40 **MR LANE:** No, mainly a finance manager, receptionist, four client support officers and a finance person and admin person.

DR MUNDY: Okay, thank you.

45 **MR LANE:** So moving on to our purpose. I won't read to you our purpose. But this is the purpose that is on our rule book or constitution. So if we move

on two pages, we move on to the latest Northern Territory yearly assault statistics. For the Northern Territory, this indicates that in the last 12 months to the period ending March of 2014, that there's been a total DV – domestic violence – assaults of 4586 in the Northern Territory.

5

When I break those particular numbers down to our service delivery area, it comes out at just over 1500 domestic violence matters per annum in NAAFVLS' service delivery area in remote communities. Sixty-six per cent of domestic violence in the Northern Territory is alcohol-related. So I think there are some sort of fairly alarming statistics. Just one I'll read out to the Commissioners. In Tennant Creek in the last 12 months, 13 per cent of the population were issued with DVOs.

10

MS MacRAE: Sorry, how much?

15

MR LANE: Thirteen per cent in a 12-month period. Moving on to the next page, Commissioners, this is a map of the Northern Territory showing indigenous remote communities across the whole of the Northern Territory. NAAFVLS look after the top half of the Northern Territory. So you can see that there are a great number of communities that we service.

20

DR MUNDY: So that Tennant Creek - - -

MR LANE: From the north of Tennant Creek, yes. So from Lajamanu, which is out to the left of Tennant Creek at the top of the Tanami Desert.

25

DR MUNDY: That's the first one.

MR LANE: That's the first one. And up from there. The following two pages for the Commissioners are the current court circuits for the bush courts. NAAFVLS do both the Darwin northern circuit and the Katherine circuit courts. In total, we do about 150 bush court visits annually.

30

Moving on to indigenous languages. Within our service area, as you can see, there are many indigenous language groups. The majority of those indigenous language groups do speak in the majority one of six different language groups. Obviously that sort of points out the essential need for us to be able to use the Aboriginal Interpreter Service to take instructions from clients.

35

40

DR MUNDY: Is there an extent to which the language groups are – how can I express this? I want to say “funded”, but if I speak Dutch, I can have a fair crack at at least understanding someone speaking German. Is it about character, is it someone speaking and they're trying to understand someone speaking Chinese?

45

MR LANE: I think a lot of the languages I've listed there are probably

going out. As I've mentioned, there are sort of six main language groups that the indigenous clients of ours do speak.

5

DR MUNDY: Is there a fair chance I could at least get by in another way?

10

MR LANE: No. There is a sort of more generic language, which is Creole. The following page shows nine communities in total. There's only eight circles there, but one does encompass two communities. Nine communities where NAAFVLS is not funded under its current contract with the Commonwealth to provide services. Estimated population on those nine communities in total is just over 4000 people. The domestic violence rate as indicated on the police statistics, being the NT balance, being remote communities, is 2 per cent. So 2 per cent of the 4000 population is about 80 client per year who do not get any services provided to them in relation to family violence.

15

DR MUNDY: Not provided by NAAJA.

20

MR LANE: No.

DR MUNDY: Roughly how much – and you might want to get back to us on this, Mr Lane. But roughly, how much would it cost you to service those nine communities that are currently not within your contract?

25

MR LANE: Probably in the order of 150,000.

DR MUNDY: A year?

30

MR LANE: A year to service them reasonably well.

DR MUNDY: Thank you, Mr Lane.

35

MR LANE: The next page, Commissioners, is an initiative that NAAFVLS undertook in partnership with the AFL of the Northern Territory, AFLNT. We're provided with a grant of rights in relation to that particular sponsorship agreement, partnership agreement. I'd particularly like to draw the Commissioners' attention to 2.5 under grant of rights. This was a stipulation and it falls in partnering with AFLNT: that all players participating in the All Stars team were to undertake a police check to screen for domestic violence orders. Those found to have domestic violence convictions will not be able to participate in the program. I would just like to inform the Commissioners that we identified three players who had current DVOs in the initial list of players. We informed AFLNT of those three players and those three players were immediately removed from the Remote All Stars team. So we are of the opinion that that sends a very strong message out to the communities and out to the young men that having a domestic violence order can have certain ramifications on your sporting career life.

45

DR MUNDY: And the AFLNT were not resistant in fulfilling their obligations?

5 **MR LANE:** No, they immediately fulfilled their obligation. On the next
page – two pages forward, Commissioners, just a quick story on Two Dollar
Creek. As part of the operational guidelines of the FVPLS program, service
providers are not supposed to do home visits. NAAFVLS do not have offices
10 in communities, so therefore we are required in most instances to undertake
home visits to locate our clients, to check on their wellbeing and to check on
their legal needs. These directions were given to one of my solicitors. And
I'll just read them out, if that's okay:

15 *Two Dollar Creek. It's only about 2 kilometres from town. Drive
down that road next to that shop. You will see the cemetery and the
dump. When you get to that main road, don't turn right onto that
bitumen, (indistinct). turn left onto that dirt road. Go along that dirt
road and you will see a little dirt road going left. Don't take that
20 one. It goes back into the loop of Mara Camp where you are. Keep
going. You will see some old cars and demountables. That's where
we are.*

Photos are provided for the Commissioners. That first photo, it took us
actually three attempts to locate Two Dollar Creek. It was actually a 10
25 kilometre drive on the roads but which ended up actually being 2 kilometres
from where we were if we'd gone directly through the bush. Subsequently,
at a hundred kilometres an hour we were told to look for a tyre and a sign
saying "Two Dollar Creek". As you can see, they do have a very well
worded sign on the following page indicating it is Two Dollar Creek. The
30 last photo is their accommodation at Two Dollar Creek.

DR MUNDY: Thank you for that.

35 **MS MacRAE:** That's your vehicle, is it?

MR LANE: No, that's one of theirs, actually.

MS MacRAE: One of theirs?

40 **MR LANE:** Yes.

MS MacRAE: It's just the car looks out of proportion with the (indistinct)
rather more salubrious.

45 **MR LANE:** Now, I was going to play our TV advertisement for the
Commission, but I won't do that. I was also going to play some radio
advertisements. One of the initiatives that NAAFVLS has undertaken

recently to try and let our indigenous clients know who we are on the remote communities is we have put six radio advertisements in six indigenous languages. We will now negotiate with the community radio stations to have our advertisements played on those communities in their language so that, hopefully, more indigenous clients can understand who NAAFVLS are and what NAAFVLS can do in relation to supporting victims of family violence on those remote communities.

5
10 **MS MacRAE:** Are you going to get 30 seconds for your advert?

MR LANE: We've made them 30-second adverts, yes.

MS MacRAE: So you have to be pretty direct about what you do and where to come.

15
20 **MR LANE:** That was actually one of the difficulties that we discovered. We wanted to keep consistency on the wording for our radio advertisements with our TV advertisement. At the end of our TV advertisement we inform clients in English that they should phone NAAFVLS' office on one of two phone numbers. Subsequently, we realised that if we did that in language and somebody actually phoned us in the office, that nobody in the office would actually be able to speak that particular language. So if you have a distressed client who is going to reach out and all of a sudden can't communicate with anybody on the other end of the phone, we realise that that'd be a distressing situation. So we now ask clients to contact their night patrol service or their local safe house for a referral so that we can communicate with somebody in English or another language that my staff might understand. Then subsequently we can contact the Aboriginal Interpreter Service and get them involved to get further instructions.

25
30
35 Now, on top of all of that, if I can just throw a couple of other things to the attention of the Commissioners. There is a great lack of infrastructure on remote communities. A number of communities where the bush court sits don't have courtrooms. So therefore, there's no single justice on those particular communities. There are no offices for services like ourselves and NAAJA to operate over. That means that there are no interview facilities to provide confidentiality when interviewing clients.

40
45 In response to that, NAAFVLS will seek approval in the next 12 months to use an operating surplus that has been generated in the last two years to purchase a mobile office, which will be a dual-purpose vehicle, all-terrain, off-road vehicle, which will double as both an office and accommodation facility for staff. So that my staff will have an office when on community in the Katherine district. Thank you.

DR MUNDY: Thank you. I know we had this discussion when I was last in Darwin. In your submission you note that the Commonwealth should give

consideration to the differences between cash acquittals and financial reporting requirements of corporation. We understand that since the time of that submission this issue has been resolved. I guess my question is, has it been resolved to your satisfaction?

5

MR LANE: Yes, this issue has been resolved to my satisfaction and also the satisfaction of our auditors with the Department of Prime Minister and Cabinet.

10 **DR MUNDY:** So that's only since late last year.

MR LANE: That's correct, yes.

15 **DR MUNDY:** Do you think it was the change of administering agency or would it have fallen over the line if the matters had have been still in the province of the Attorney's department?

20 **MR LANE:** I think that across the program there was some inconsistency that the Attorney-General's Department when they had the portfolio had in relation to the accounting standards and how a certain organisation should be adopting those standards. I'm not sure with the Department of Prime Minister and Cabinet whether that is now a consistent approach across the program for all service providers around the country. But it certainly is now a satisfactory outcome for NAAFVLS.

25

DR MUNDY: So you don't actually know as a matter of fact whether it's been solved across the - - -

MR LANE: No.

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35 **DR MUNDY:** I'm sure we can ask that question of the Prime Minister's department. The Commission noted in its draft report that your services are incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 and hence regulated by the Office of the Registrar of Indigenous Corporations, or ORIC. Whereas we note that there are some other services that are incorporated under the Corporations Act 2001 and therefore presumably subject to the rigorous supervision of ASIC. Do you have any sense of the pros and cons of these two separate arrangements?

40 **MR LANE:** I think on the positive side ORIC does provide governance training free of charge to Aboriginal corporations. It does provide job-seeking support and supporting in other areas of operations. So I see that as being a positive. The major negative that I see operating under ORIC as opposed to operating under ASIC relates to governance issues and specifically relates to the membership of the corporation. So under ORIC, 45 especially with NAAFVLS – if I can just sort of use NAAFVLS as our example, thanks.

5 Our membership base are all indigenous and from remote communities. The
main issues occur when you call an annual general meeting, that you have
difficulty in actually getting a quorum to attend an AGM. So as an
organisation, we're not funded to actually bring our members in to an annual
general meeting and they obviously don't have the funding themselves or
resources themselves to actually be able to come into Darwin or Katherine to
attend an annual general meeting. So we find that extremely difficult to get a
quorum to actually hold an annual general meeting. Last year we were
10 unable to get a quorum together. We still conducted the meeting as it should
have been held and subsequently advised ORIC or the registrar of ORIC that
we were unable to get a quorum but we continued to proceed. One of the
functions at that annual general meeting was to remove a large percentage of
the members on the basis that our organisation had not been able to make
15 contact with those members for a period in excess of two years.

DR MUNDY: So these members, how do they become members?

20 **MR LANE:** Any indigenous person from our service delivery area who's
over the age of 18 years of age can become a member.

DR MUNDY: But it's inactive. They have to opt in to be a member?

25 **MR LANE:** Yes.

MS MacRAE: Has there been any fallout from that? Has someone that was
removed get back in touch and say this is a problem?

30 **MR LANE:** No, we've had no feedback from any members at this particular
point in time. The reason certainly why we informed ORIC was for
transparency and in case in the future there were difficulties that might arise.
My discussions with the registrar and deputy registrar of ORIC is that they, at
this particular point in time, have no concerns and that a member would need
to take legal action through the courts to actually challenge what occurred.

35 **MS MacRAE:** So will that make it easier for you to get a quorum next time?

40 **MR LANE:** It will make it easier because a quorum is based on a
percentage of members and that's certainly one of the reasons why we
reviewed our membership base. I know of some members who were listed
with ORIC and had an address which was, for example, Jabiru, when I know
that that particular person is an elder Angurugu on Groote Eylandt and has
never left Groote Eylandt. So I think there's – when I look at certain
membership bases on Aboriginal corporations on the ORIC website certain
45 organisations I look at all of their members will live virtually at the office of
the corporation. So I think there really needs to be a lot of work done in
cleaning up ORIC's membership base of Aboriginal corporations.

DR MUNDY: Is there any – so there’s training and support in that regard. You’re comfortable being subject to the regulation of ORIC as opposed to ASIC?

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MR LANE: I have always, prior to this appointment with NAAFVLS, operated under ASIC. I really don’t see a great deal of differences between ORIC and ASIC. That may well be because with my previous skillsets in operating under ASIC I tend to operate the organisation under that model anyway, under those regulations.

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DR MUNDY: Can I just ask. It was in the documents you provided us and you identified some communities which you weren’t able to provide services to. I notice that neither Darwin and Katherine are so circled. Are there services provided to people in Darwin and Katherine or is this just an area the Commonwealth doesn’t provide services to?

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MR LANE: No, there are services that do provide family violence services in both Darwin and Katherine besides ourselves. In Katherine you have the Katherine Women’s Information Legal Service. In Darwin you have the Top End Women’s Legal Service and also Domestic Violence Legal Service.

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DR MUNDY: So they effectively would – we heard from a previous witness that, for example, there are no such indigenous family violence services provided in metropolitan Sydney but they are in metropolitan Melbourne.

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MR LANE: So there’s no specific indigenous service provider in Darwin.

DR MUNDY: Is it your view that that’s a service gap that should be filled or do you think it’s - - -

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MR LANE: I think from an indigenous client’s perspective it would be more appropriate if a service like ours was operating in Darwin. I would think at this particular point in time that services would be provided to them by other service providers.

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DR MUNDY: What happens if an indigenous – I mean, the intricacies of Commonwealth service provision are not well understood by most citizens of the Commonwealth. What would happen if a woman who would otherwise be eligible for assistance by yourselves but happens to live in Darwin and happens to know that you’re around the corner comes and bangs on the door?

40

MR LANE: Our job would be to refer her to another service provider.

DR MUNDY: What if that service provider was conflicted in some sense?

45

MR LANE: We would then give due consideration to taking her on, yes.

DR MUNDY: You have some accepting capacity.

MR LANE: Certainly, yes.

5

MS MacRAE: You talked before about the necessity for you to do home visits and your guidelines currently say you're not supposed to do them. Do you have other problems of that sort? How important would it be that those guidelines should change or effectively do you just have to get on and do what you have to do?

10

MR LANE: I think for most service providers of the FVPLS program that those guidelines are probably appropriate. There is a risk that if my staff, for example, were doing a home visit that the perpetrator may be in the vicinity or actually on location and may take offence at our service and therefore take offence at my staff who are attending that particular residence. So I certainly see that there is a need from a national perspective that those home visits don't occur. However, most other service providers do have offices in sort of regional locations where the client can actually access the office.

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In our situation there are no offices on the remote communities. A victim of family violence on a remote community is likely to move in to residence with another person who's going to provide some safety to them whilst they're on that particular community. Our difficulty is that when we get to the community to be able to provide any service to that particular client we need to locate that client.

25

DR MUNDY: I know we've spoken about this before and given your background you're probably uniquely placed to assist the Commission in this regard. But do you have any views you'd like to share with us about unnecessary regulatory burdens that the administration of the program places upon your organisation, organisations like yours, and what's probably an appropriate framework for the Commonwealth to satisfy its getting value for money without destroying (indistinct) unnecessary paperwork?

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MR LANE: I certainly think that certain processes could be streamlined. Reporting has always been onerous. I think now I've been reporting to the Commonwealth for about eight or nine years on various programs and the reporting has always been fairly onerous. I guess it's fairly difficult for me to comment too much as the CEO of NAAFVLS which is an organisation that came out of special administration and, whilst placed under special administration for a period of about 18 months after coming out of administration, we were actually required to double our reporting requirements. So our reporting became twice as onerous as other organisations, which really does sort of distract you from other operational issues that you should be focusing on during that period of time to get an organisation back to solvency.

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DR MUNDY: Such would be the circumstance of any organisation who goes through some form of administration.

5 **MR LANE:** Certainly, yes.

DR MUNDY: Is there any guidance that you can provide us with how we might – any recommendations we might be able to make to get rid of a sense of what's unnecessary compliance burdens or policies?

10

MR LANE: I'd certainly like to try and assist the Commission in the future in relation to it, yes.

15

DR MUNDY: If you'd like to think about that and perhaps come back to us in writing.

MR LANE: Yes, certainly.

20

DR MUNDY: We'd like to get it on the public record if we could.

MR LANE: Yes.

DR MUNDY: That would be very helpful.

25

MS MacRAE: Just in relation to the funding that you do receive, can you just perhaps inform us about how secure your funding base is and whether you operate sort of month to month, year to year, in a three-year cycle? How do you manage your budgets and how difficult is it for you, given the sort of sources of funding and security of those sources?

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MR LANE: The initial contract that we're operating under at the moment was a three-year contract which was due to expire on 30 June last year. That was extended for a period of 12 months and has just been extended once again for another 12-month period ending 30 June next year. Depending on where the Commonwealth sort of see the program going, I'd certainly like to think that there could be longer term funding agreements in place, perhaps out to five years, certainly to provide further security to the organisation and to the organisation's staff.

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I think sort of short-term contracts and those sorts of things do imply a level of uncertainty and if you're looking to retain good staff when you're not guaranteed that your funding source will continue, more than likely you're going to start to lose those good staff to other organisations.

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MS MacRAE: Can I just ask, in your presentation you've got a fairly innovative sort of communication strategy around the deal that you have with the AFL. Prior to signing up to that, was there funding put aside to do an

evaluation of that program or are you looking to try and evaluate the outcomes from that? Because I'm assuming it's a fairly new thing, is it?

5 **MR LANE:** Certainly, this is the first time that we've ever entered into a sponsorship agreement with AFLNT. One of the main objectives of partnering with AFLNT is that they have a permanent presence on the indigenous remote communities through playing AFL. Our objective was to try and establish a more permanent look, I suppose, on those particular communities that we provide services to. So we saw this as an opportunity
10 for AFLNT to sort of advocate our services on communities.

MS MacRAE: And we've certainly had a lot of evidence that it's really hard to engage with some of these groups. I can appreciate that you'd see this as a great opportunity because it is something that the communities are typically
15 strongly engaging in. So I'm just wondering whether there's scope or whether you're proposing to do an evaluation of it to see how successful it might have been.

MR LANE: I think it has been extremely successful. I think the exposure that we've got has been good to date and will continue. For example, I've
20 been out to a couple of communities to follow the bush courts and I've actually seen the guernsey being worn around the streets, which is a good sign because our logo is on that particular guernsey. So it does associate us with that. Three hundred footballs with our logo have just been distributed to
25 the communities and will get utilised by the young kids on those communities.

Five of the players from the NAAFVLS Remote All Stars football team were given contracts into the NT Thunder team, which is the equivalent of
30 sort of the Northern Territory state side that plays in the Queensland league. Every game that NT Thunder play, whether it's here in Darwin or interstate, at halftime our TV advertisements are streamed as part of our advertising. But I think the real value that an organisation like ours have already got and will continue to get on the basis that we continue with the agreement is
35 getting the message out, especially to young men on communities, is that domestic violence is not allowed and the violence should stop.

I think one of the other stipulations was that our organisation would provide community legal education around family violence to those young
40 footballers. Five of those footballers who have the contracts into NT Thunder are now NAAFVLS ambassadors and have actually joined up as members of NAAFVLS. So hopefully, we can continue to associate with them in the future and hopefully with them being role models on their particular communities, we will get some good exposure through those
45 individual players.

MS MacRAE: Do we have any information from you on what the funding

arrangement is or is that confidential?

MR LANE: I think it should be confidential, but it wasn't a very large amount.

5

DR MUNDY: Thank you very much, Mr Lane, we appreciate your time. If you could get those suggestions as to how we may reduce some administrative burdens for organisations such as yours we'd be very grateful.

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MR LANE: No problem at all. Thank you for the opportunity to present.

DR MUNDY: Can we have Jane Carrigan, please?

MS CARRIGAN: Afternoon, Commissioners.

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DR MUNDY: Could you, when you get yourself settled, please state your name and the capacity in which you appear?

MS CARRIGAN: My name is Jane Carrigan and I appear just as an interested individual, I guess.

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DR MUNDY: It is all right to appear as an ordinary citizen of the Commonwealth.

MS CARRIGAN: Thank you.

15

DR MUNDY: Just before I ask you to make an introductory statement, you have provided us with some material in-confidence.

MS CARRIGAN: I have.

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DR MUNDY: There's a couple of things I'd like to ask you about that material. I'm happy to take that from you in-confidence, if you'd prefer. Then once I've asked you those questions, you can decide whether you want to let it out in public or not. I thought it'd probably be easiest - - -

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MS CARRIGAN: Okay. No, that makes good sense.

DR MUNDY: And if it's kept in-confidence, only officers of the Commission will have access. It's mainly so that I can communicate material back to my colleagues.

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MS CARRIGAN: I appreciate you flagging that for me.

DR MUNDY: Please make an introductory statement.

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MS CARRIGAN: Well, having just seen the gentleman's, mine is relatively light-on. I guess really I rely on the submissions I've put to the Commission and, as you've noted, some of the material has been put in under the cover of confidence. In any event, I guess I'm here to prosecute the relatively unsexy case of self-represented litigants. I do so very mindful and rather grateful that I'm at the end of the day and don't have a roomful of lawyers glaring at me.

40

But in any event, I feel that notwithstanding that the legal system is moving to recognise the reality, I suppose, of the self-represented litigant – and I refer in particular to some very good works by people like John Granger and

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there's a lady in New Zealand currently doing a PhD in the area. But I still am concerned that, notwithstanding legal conferences and like about the subject matter, much of the focus is coming from – well, the focus, naturally enough I guess, is coming from the legal community and that perhaps those people who are the very people who are appearing as self-represented litigants are not actually having an opportunity to stand up and say, “Well, for me, my most scary aspect of being a self-represented litigant was I appeared in front of somebody who might as well have been speaking Latin in terms of for all I understood.” So I guess really perhaps I'm here more as much as whether you had questions of me rather than putting in a very sophisticated preliminary submission.

DR MUNDY: I think it probably is appropriate if we take the bulk of this evidence in confidence. But before doing that, the matters that you're concerned with largely involve litigation against the Commonwealth.

MS CARRIGAN: In respect of that particular matter, yes. Obviously my experiences I think provide a salient case study, I suppose, in terms of the difficulties people face. I concede I'm in a much more advantaged position than many people who might have a case against the Commonwealth in those particular forums. The very fact that I had those sorts of issues just says to me what it would be like for the poor bugger who, quite frankly, doesn't have my benefits of English language, my benefits of an understanding of the legal system. I do really think that my matter raised very serious issues about our understanding of how tribunals are operating and people's capacities to put their cases clearly and freely before those tribunals. So yes, in that sense my concern, I guess, would flow from those events.

DR MUNDY: I guess my reason for asking that is obviously – and it goes to the Commonwealth's model litigant rules – are there any observations you're happy to make publicly on the record about the effectiveness of those rules and how they could possibly be reformed?

MS CARRIGAN: Well, my experience was those rules were not – played no part in the Commonwealth's management of their case or the defence of their case against my application. One thing that did and continues to puzzle me is the way that the model litigant rules apparently only apply if the Commonwealth relies on them themselves. For instance, I can't stand before a judge and say, “It's not fair. The Commonwealth have failed to – they've excluded important potential material” or something like that. I can't fall back on the model litigant rules and try and hold the person appearing opposite me to account of those rules. I think from some of the more querulous self-represented litigant cases I've seen, I think much of the frustration flows from the misunderstanding from ordinary Commonwealth citizens that those rules can actually not be relied upon by an applicant to hold the Commonwealth to account on. Certainly my experience was I can't look at one of those rules and say, “Well, in fairness, the Commonwealth did

try and do that.” They just simply didn’t.

5 **DR MUNDY:** Can I ask in your matter whether the Commonwealth agency concerned appeared in its own right? Was it represented by the Australian Government Solicitor or was it represented by - - -

10 **MS CARRIGAN:** Before the AAT they were represented in their own right by one of their own advocates. Then before the Federal Court they were represented by a third party.

10 **DR MUNDY:** So not the Australian Government Solicitor.

15 **MS CARRIGAN:** No, not by the Australian Government, one of their external contracted lawyers.

20 **MS MacRAE:** Just looking at the facts of your matter, I guess I would say you’d have to be one of the most persistent people I think you could ever come across. In essence, the matter itself was relatively small in the sense that the sum at stake is small. But I guess you persisted because you were interested in – well, I guess I’d be interested to know why you persisted. And I’m guessing it was because you were somewhat – well, you were concerned about the property interest here and the concern about process. So we’ve talked about – sorry, I should let you answer that part of the question first.

25 **MS CARRIGAN:** Well, I guess, yes, “persistent” is probably the only word to describe it. Really, my only reason for persisting was – initially I was just going to let it go until I realised fully what the reasons they were relying on for having denied the 12 days. But the original decision was just utterly irrational and I had been assured by frontline Centrelink staff that it was so irrational it would be overturned at the first original decision.

MR LANE: Can I stop – and that’s at the internal appeal process?

35 **MS CARRIGAN:** That’s at the internal – so when I talk about the original decision, in Centrelink speak that means the very first time you say, “Oi, this doesn’t seem right.” So in that sense, I honestly thought it would be resolved at the initial decision. Then when it wasn’t and on such a cavalier dismissal, I was like all right, well, I’ll take – I was again assured by the frontline staff, 40 “Don’t worry, the internal reviewer of the original decision will overturn it.” Then when that person didn’t, I realised that there’s a – Centrelink is – the staff themselves are overwhelmed by an unwieldy oppressive regime framework in terms of their operational procedures and the social security guidelines.

45 But one guideline – I don’t know how I stumbled across it, but there was one guideline that made me realise that, in actual fact, they just take a position

where they just say no and 99 per cent of people will walk away. That is guideline 1.3.5 which says:

5 *A person affected by a decision of an officer under the Social Security Act may apply for a review of the decision. Liability should not be accepted if an incorrect decision has been made under the Act and there's a right of review.*

10 Well, you know, quite frankly, my right of review almost led me right through to the High Court the way things were going; it was just ridiculous. While I've quoted that I believe the department spent 80 times what they were trying to defend in their external court costs, not their internal costings, I actually think it was probably closer to a hundred, but I'm still waiting on my final freedom of information application on that one.

15 But I honestly think that particular guideline just says it all. They will just continue to deny and most people, for very sound reasons, will just walk away. I can tell you I honestly – when I got the internal review I thought very hard about pursuing it. But I feel that they get away because their clientele base are people who are born down – and notwithstanding I felt pretty jolly born down myself by the whole process – I just felt I had a moral obligation, quite frankly. It sounds a bit trite but that was my reason.

20 **DR MUNDY:** There's still a few people around with these old-fashioned principles.

MS CARRIGAN: Doesn't necessarily make you popular, the old-fashioned ideals and principles.

30 **DR MUNDY:** A wise man once said you don't do this for popularity. Can I just ask you about, coming back to you've used – you clearly aren't convinced the Commonwealth has acted in relation – has acted in accordance with the model litigant guidelines. I think it's fair to say that your case is not the first - - -

35 **MS CARRIGAN:** Stand-alone, no.

40 **DR MUNDY:** - - - (inaudible) that that's an unusual occurrence. Have you pursued the option of raising this matter with the secretary of that department?

MS CARRIGAN: I have - - -

45 **DR MUNDY:** Because that's the recourse, isn't it?

MS CARRIGAN: Yes. I mean, I sought to – in the AAT when my matter was remitted back to the AAT and in fairness to the poor vice president who

had remitted – well, he didn't really have a hearing but because of the way the events flowed he had a summary hearing, I suppose. And, as he rightly noted, he was in no position to be making orders that the secretary I had any contact. That was one of my greatest frustrations, to be perfectly honest. I didn't even know – it took me a while to realise it was actually the secretary of the Department of Human Services, not the secretary of Department of Employment and Workplace Relations who actually was the person who was running the case in the AAT. So I was – and then I was frustrated because everyone kept talking about “our client”, “our client”. I didn't actually know who the client was. I didn't even know who the secretary was until I went looking. So, yes, no, I've had no capacity and that has been one of my greatest frustrations.

DR MUNDY: Our understanding is that – and we may form a view that it's not a satisfactory arrangement. But our understanding is, as legal services directions currently state, that persons who are aggrieved with the conduct of Commonwealth agencies in relation to the model litigant rules contained in the directions, their first port of complaint is the secretary rather than some other person like the ombudsman perhaps.

MS CARRIGAN: Yes.

DR MUNDY: So you haven't raised this matter formally with the secretary?

MS CARRIGAN: Well, eventually as part and parcel of some of the more overt behaviours in the Federal Court, I just started to cc the secretaries in on emails. Now, I was very mindful, I didn't want to become an obsessive pest or something like that. I'm also considerate of the fact that a secretary relies on her people that she has in place to be dealing with those matters. So I sent maybe two or three, I'm not sure, but it was with the purpose of her - - -

DR MUNDY: Can you remind me when this matter occurred? The year will probably be sufficient for my purpose.

MS CARRIGAN: Well, it started in 2011 and middle of 2013 was when I got that final decision.

DR MUNDY: The reason why I ask this is one of our colleagues was formerly secretary.

MS CARRIGAN: Okay. Well, I'm sure it wasn't that person.

DR MUNDY: It clearly frustrates her. Okay. So you've copied the secretary in. You haven't formally written say, “Oi, secretary - - -”

MS CARRIGAN: Well, in fairness, I had discussions with the department's legal representatives. They were on very clear notice that – quite frankly, if

5 the secretary had sent me a note saying, “Gosh, I’ve just realised what’s been going on. This is not good and I undertake to have someone look into it,” I’d have been down the road. But, as it is, the vice president in the summary hearing suggested I do a complaint. In fact, he strongly encouraged me to make a complaint to the ombudsman; and that is the complaint.

DR MUNDY: So you have raised the matter with the ombudsman.

10 **MS CARRIGAN:** Yes. And again, I’ve tried to do it in an objective, non-querulous fashion, but I’ve been wrecked for choice in terms of issues to raise with them it’d be fair to say.

15 **MS MacRAE:** Can I just ask, the other question I have for you. You mentioned at the beginning that the person opposite you in the AAT might as well have been speaking Latin. You also said you had some understanding of the legal system. So just to get an idea of self-represented litigants in your sort of - - -

20 **MS CARRIGAN:** Sure. Sorry, Commissioner, I should be clear on that. To be honest, this is not the first time I’ve represented myself. I represented myself in a matter back in ’95. I’ve never been in the court before. My very first directions hearing I thought was my hearing. So I was surprised to turn up and find lots of other people in the courtroom. I was mostly annoyed because I’d worn my best outfit and in the end it was just a directions hearing. I guess that’s – going back to my very first time appearing in court is that the registrar barking orders at me might well have been speaking Latin, not because he wasn’t a fair registrar, but I simply had no idea.

30 It’s the system really that I think drowns people who are representing themselves. In that respect, I think the system could be made easier for people appearing before courts by – and I’ve printed it out, I’ll leave it with you. But somebody sent it through to me, but I do think it’s a good example of – that’s from the New Zealand High Court and it sets out for self-represented litigants the various options they’ve got. I do think it’s quite a good example, given some I’ve seen. So I think access to information would make a great difference to self-represented litigants or people whose English is a first language and don’t have other impediments.

40 So very separately, that was my issue there. In terms of – so the person appearing opposite me in the AAT, no, I understood. But that was because I’ve since then – well, since then I’ve – since my very first experience I found myself, courtesy of a workplace accident, unemployed and unemployable and so doing a law degree seemed like a good way to fill in the spare time. I’ve never practised as a lawyer and I was never interested in practising as a lawyer; literally was to – I had had quite a significant injury and I was unable to work and so it was to keep me from going insane. I’m not entirely sure doing a law degree was a good idea.

MS MacRAE: I wasn't trying to inquire too much into your private life. But it's just interesting - - -

5 **MS CARRIGAN:** No, no, it's actually - - -

MS MacRAE: You've actually done some legal training, you're still finding the barriers - - -

10 **MS CARRIGAN:** Yes, well, exactly.

DR MUNDY: When you first started to encounter the AAT on these matters and you turned up unrepresented, which is not unusual for someone at the AAT - - -

15 **MS CARRIGAN:** Absolutely.

DR MUNDY: I'm sure if he was here the president of the AAT would say that's - - -

20 **MS CARRIGAN:** No, exactly.

DR MUNDY: Were you given any – and putting aside the fact that you may have studied law, did you have the sense that you turned up and they were there ready – they were going to give you a bit of a – they were going to tell you what was going to go on?

25 **MS CARRIGAN:** Of course that goes to the nub of the issue, particularly in those tribunals. No, I had no – I had a very nice registry staff member, but I was not given any direction in terms of – it wasn't till everything was over that I was trawling through the AAT site, for whatever reason – I can't remember – but and I stumbled across a document and it was like, "Why didn't I find that to start with?" I do think that is a key issue is that there often is information but it's buried so deep in everything else.

35 Now, I'm not suggesting that courts or tribunals have on their homepage, "Yoo-hoo, litigants in persons, over here, this section is especially for you." But I do think that as soon as the tribunals or courts become aware that a person has filed as a self-represented litigant, that they should immediately be sent notice of where they can locate the information, who might be able to assist them in terms of external legal advice and – yes.

40 **DR MUNDY:** So when roughly did these matters – when was your first encounter with the AAT?

45 **MS CARRIGAN:** It was in 2011.

DR MUNDY: I guess the experience was similar when you ended up at the Federal Court?

5 **MS CARRIGAN:** Yes, it was. In fairness to – again, I have great sympathy for the staff in these places because they themselves are not equipped to be trying to reason with people who are, through anxiety or just through being sheer unpleasant and rude, are very difficult people to reason with. So all I got told immediately they became aware I was a self-represented litigant was they couldn't give me any legal advice. Now, I understand that, but in actual
10 fact, you know, somebody who's doing a family law matter or something has no understanding around that. If someone at the registry tells them something, they will regard it as - - -

15 **DR MUNDY:** It was in the Federal Court in Melbourne?

MS CARRIGAN: No, mine was in the Federal Court in Queensland because the Northern Territory is linked to Queensland for - - -

20 **DR MUNDY:** So there wasn't any – we know that in some courts, some (indistinct) federal courts legal aid services will have a duty solicitor there.

25 **MS CARRIGAN:** No, but – and thank you for reminding me. As part of the paperwork I did get from the Federal Court, they put me onto QPILCH and Elizabeth Pendlebury who I think is still there. She was excellent. Now, for me she was excellent because one of the greatest difficulties for self-represented litigants is understanding the whole formatting. You put in an affidavit, it has to read like this. You put in your form, it has to read like this. So she was fantastic and putting me straight, guiding me in that sense. I did my own legal research and, as I discovered, it's very difficult to overturn on a
30 question of law. So between the two of us – but I was also very mindful it's a free service and she herself, her own – so I tried to keep my contacts with her very limited. But there was that option.

35 But again, they can decide whether they will assist you or not and, in fairness, I think the assistance I received was mostly informal. So, yes, in that first instance. And again, but the same with the – and this goes back to the model litigant rules. The AAT did put me on to a legal aid lawyer. To be honest, when I was offered the opportunity I sort of thought I'll end up with an enthusiastic 21-year-old who has – anyway, I didn't, I got a very nice
40 gentleman who obviously did this day in, day out. But because the case that had been put by the department to the AAT was fundamentally wrong, we had a discussion about that. He armed me with various things which – well, in fairness, he pointed me in completely the wrong direction because we both had a fundamental misunderstanding of what the case was. It wasn't until I
45 had to start appealing to the Federal Court that I became aware of how unsound the case that had been put to the AAT.

Now, again I don't blame the individual. I think it's reflective of a department that just takes a one-size-fits-all line and operates particularly on that basis; that they will not give in. They will just keep denying.

5 **DR MUNDY:** So in a funny way the root cause of this problem is the complaint handling at the first instance.

10 **MS CARRIGAN:** Absolutely. I seriously think if I can get the ombudsman to look at nothing else, if he pulls out social security guideline 1.35, that seemed to be the mentality. "We know we're not wrong, but we're not going to deny it." It was just ridiculous.

15 **DR MUNDY:** Thank you very much for your time, Jane, and the material that you've (indistinct).

MS CARRIGAN: Yes, no, I am. I haven't mentioned any names or anything, I don't think.

20 **DR MUNDY:** No, the only name you mentioned was the name of the person who helped you.

MS CARRIGAN: Yes, exactly. And I'm more than happy for her to get credit.

25 **DR MUNDY:** Thank you very much, Jane. These hearings are now adjourned until 9.00 tomorrow morning in Brisbane.

30 **HEARING ADJOURNED AT 2.06 PM UNTIL
WEDNESDAY, 18 JUNE 2014 AT 9.00 AM**