The civil and family law needs of Indigenous people in Victoria

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A report of the Australian Indigenous Legal Needs Project

in association with Larissa Behrendt and the Jumbunna Indigenous House of Learning

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ACKNOWLEDGEMENTS

Australian Research Council Funded Linkage Project: LP100200455.

The ILNP would like to acknowledge the contribution made by all the community members who gave their time to participate in focus groups in Bendigo, Shepparton, Heidelberg, Fitzroy, Framlingham, Robinvale, Swan Hill and Bairnsdale and for the assistance provided by the focus group coordinators in these communities.

The ILNP would like to also acknowledge stakeholder organisations, including all project partners, for their contributions to the project (see Appendix B for the stakeholder interview list).

The ILNP would also like to sincerely thank Paddy Gibson, Lorna O'Shane, Peta MacGillivray and Courtney Young for research assistance provided for this report.

Published by The Cairns Institute, James Cook University, Cairns

Year of Publication: 2013

ISBN 978-0-9875922-8-6

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This report should be cited as:
Schwartz, M., Allison, F. and Cunneen, C (2013) *The Civil and Family Law Needs of Indigenous People in Victoria* Cairns: James Cook University.

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This report is available for download from http://www.jcu.edu.au/ilnp/

LIST OF ACRONYMS

ABS	Australian Bureau of Statistics
AFDM	Aboriginal Family Decision Making
AHRC	Australian Human Rights Commission
ARC	Australian Research Council
ARIA +	Accessibility/Remoteness Index of Australia Plus
ASIC	Australian Securities and Investment Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Services
ATSI	Aboriginal and Torres Strait Islander
CALD	Culturally and Linguistically Diverse
CDEP	Community Development Employment Program
CINOP	Children In Need Of Protection
CLAF	Contingency Legal Aid Fund
CLC	Community Legal Centre
CLE	Community Legal Education
COAG	Council of Australian Governments
CSO	Client Support Officer (VALS)
DHS	Department of Human Services
FRC	Family Relationship Centres
ICHOs	Indigenous Community Housing Organisations
FVPLS	Aboriginal Family Violence Prevention and Legal Service Victoria
ILNP	Indigenous Legal Needs Project
JCU	James Cook University
MOU	Memorandum of Understanding
OHSC	Office of the Health Services Commissioner
RDM	Roundtable Dispute Management
SNAICC	Secretariat of National Aboriginal and Islander Child Care
VACCA	Victorian Aboriginal Child Care Agency
VALS	Victorian Aboriginal Legal Service
VCAT	Victorian Civil and Administrative Tribunal
VEOHRC	Victorian Equal Opportunity and Human Rights Commission

VLA	Victoria Legal Aid
VOCAT	Victims of Crime Assistance Tribunal

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EXECUTIVE SUMMARY

1. Background

This report presents key findings and recommendations of research conducted in 2012- 2013 by the Indigenous Legal Needs Project (ILNP) in Victoria.[1] The ILNP is a national project. Its aims are to:

- identify and analyse the legal needs of Indigenous communities in non-criminal areas of law (including discrimination, housing and tenancy, child protection, employment, credit and debt, wills and estates, and consumer-related matters); and
- provide an understanding of how legal service delivery might work more effectively to address identified civil and family law needs of Indigenous communities.

ILNP research is intended to benefit Indigenous people by improving access to civil and family law justice.

2. Methodology

The Victorian research is based on focus groups with Indigenous participants and interviews with legal and related stakeholders. The eight communities selected were **Bairnsdale, Bendigo, Fitzroy, Framlingham, Heidelberg, Robinvale, Shepparton and Swan Hill** and reflect urban, regional and rural communities.

Sixteen focus groups were held with a total of 161 Indigenous community members in the eight communities. Separate women's and men's focus groups were conducted. Female participants comprised 57.1% of the total, and males 42.9%.

Focus group participants completed a questionnaire (see Appendix A) which covered issues including housing and tenancy, neighbourhood disputes, wills and intestacy, victims' compensation, stolen generations and stolen wages, employment, social security, family matters, discrimination, accident and injury, education, credit and debt, consumer issues and taxation. Some civil law issues not identified in the questionnaire arose in focus group discussions and in stakeholder interviews (see Section 5.14 of the Report).

Over 70 stakeholder organisations servicing or working within the nominated Victorian communities were interviewed to explore the experiences, perspectives and understandings of those providing legal or related services. A full list of stakeholders interviewed in Victoria can be found in Appendix B of the Report.

3. Selection of Priority Areas of Legal Need

Priority areas of legal need were determined by: responses to focus group questionnaires; focus group discussions on *priority* issues; focus group discussions on *unrecognised and unmet* legal need; and stakeholder interviews.

[1] Further information about the ILNP is available at the website: http://www.jcu.edu.au/ilnp/

Four areas of need immediately stand out on the basis of the responses of focus group participants and stakeholder interviews. More than 25% of focus group participants indicated that they had experienced a legal issue in these four areas of law:

- Housing (41.8%)
- Credit/Debt (32.4%)
- Discrimination (29.2%)
- Disputes with neighbours (26.7%)

For reasons explained below we add a further four areas of priority need: child protection; social security/Centrelink; compensation for victims of crime; and wills.

Child protection issues, and in particular child removal, have serious and long-term consequences that are felt by individuals, families and communities as a whole. Over 14% of focus group respondents nominated problems with child protection agencies as occurring in their own lives in the last two years. Both focus group and stakeholder discussion confirmed this area as one of central significance and one that touches on communities' concerns about access to justice more generally. Along with discrimination and housing, child protection was the most frequently raised issue among stakeholders.

Some 75.5% of focus group participants stated that they received **Centrelink** payments and close to one in four of those people (22.7%) said that they had experienced problems with payments over the last couple of years. Only 11% of people who had experienced problems sought legal advice. Taking into account the impact of these issues, and that few people sought legal assistance, social security/Centrelink is identified as a priority area of need.

Two further priority areas fall within the area of unrecognised and unmet legal need. The first is in relation to **victims' compensation**. While one in five focus group members (20.5%) had been victims of violence in the last couple of years, only 31.3% of participants knew of the existence of the victim's compensation scheme. The second area relates to **wills.** While only 5.7% of focus group participants had made a will, a further 56.6% expressed a desire for assistance to create one.

4. Findings in Relation to Priority Areas

We do not canvass here all the legal issues that were covered in the focus groups and stakeholder interviews. Matters relating to Stolen Generations, employment, education, accident and injury are all discussed in the Report. We do not suggest that these are unimportant.

We also note that there were important gender differences in some of the priority areas of legal need. Indigenous women were more likely than men to identify legal problems in the areas of housing, neighbours, child protection and family law, and credit and debt. Women were also less likely to have wills than men.

4.1 Child Protection

In Victoria, Aboriginal children are 9.6 times more likely to be the subject of a verified notification of abuse, neglect or harm than non-Aboriginal children. They are 12 times more likely to be on a

protection order, and 11 times more likely to be in out-of-home care.[2] Over the period 2001-2010, the number of Aboriginal children in out of home care increased by nearly 80%.[3]

Concerns about significant shortcomings in Victoria's child protection system have been the subject of a number of recent inquiries and reports.[4] These have included discussion of a failure to protect human rights enshrined in the *Charter of Human Rights and Responsibilities Act 2006* and to comply with legislative requirements under the *Children, Youth and Families Act 2005*.

The ILNP research in Victoria confirmed that child protection is a significant area of legal need for Indigenous people. Women were much more likely to nominate these issues as a problem than men (22% compared to 6.3%).

Focus group discussion and stakeholder interviews revealed the following as key issues:

- a lack of community understanding of the way the legal dimensions of child protection work and what rights parents have in the system;
- the reluctance of parents to engage with Department of Human Services (DHS) due to mistrust and feelings of disempowerment;
- complaints of poor DHS practice due to shortages of staff and a lack of cultural competence among DHS workers and others working in child protection;
- the failure of DHS to fulfil its statutory requirements, particularly in relation cultural plans;
- allegations that DHS were obtaining consent to orders from parents without true consent and, in some cases, through threats of permanent removal of children if consent is withheld;
- the use of consent orders as a mechanism for avoiding fulfilment of statutory requirements, particularly in relation to consultation and Aboriginal Family Decision Making;
- the failure of courts to scrutinise consent orders or to ensure statutory requirements were met, including formulating and implementing cultural plans and abiding by the Aboriginal Child Placement Principle; and
- lack of access to legal aid funding for some stages of the child protection process, such as in appeals to Victorian Civil and Administrative Tribunal (VCAT) or in Aboriginal Family Decision Making meetings, where a range of concessions may be made by the family without receiving proper legal advice or representation.

Stakeholders suggested that there was a need to develop a child protection system that is more aligned with values of Indigenous self-determination and which recognises the interaction between child protection and a gamut of other legal and non-legal issues. This includes the need for provision of support services to families and early intervention.

4.2 Discrimination

Nearly a third of all focus group participants (**29%)** identified having experienced discrimination over the last couple of years. The majority of cases were identified as race-based and as direct

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[2] Australian Institute of Health and Welfare, cited in Victorian Child and Adolescent Monitoring System, *The Family: Children in Out of Home Care (*20.3).
http://www.education.vic.gov.au/about/research/Pages/203homecare.aspx, accessed 13 October 2013.
[3] State of Victoria, Department of Premier and Cabinet (2012), *Report of the Protecting Victoria's Vulnerable Children Inquiry,* January 2012, 294.
[4] See for eg. Ombudsman Victoria, *Own motion investigation into the Department of Human Services Child Protection Program,* November 2009; State of Victoria (2012).

discrimination. Indigenous men and women identified discrimination at almost the same rate. Only around one in ten of those who identified experiencing discrimination sought legal advice (11.6%).

Discrimination in the provision of goods and services (such as in shops, police, taxis, and other service providers (including health and lawyers)) was seen as especially problematic, as well as discrimination in employment and housing (for example, exclusion from private tenancies).

The actual incidence of discrimination is likely to be significantly higher than reported during the research, for a number of reasons. Discrimination was seen as being pervasive, however it was usually only defined as direct racial discrimination. In some focus group discussions, additional grounds of discrimination were not always identified. For example, in relation to schooling and education, issues of alleged discrimination against children appeared to involve both disability and race, but were only identified as being race-based. There was a poor understanding of indirect discrimination.

There was often cross over between discrimination and other civil law issues. For example, neighbourhood disputes might arise in the context of racial vilification against Indigenous people, or overcrowding and related tenancy issues in public housing can arise because of exclusion from the private rental market on the basis of race.

The research indicated that there were poor levels of access to legal information (knowledge of rights or where to go for assistance or to respond to discrimination) and advocacy in this area, and there were subsequently low levels of formal reporting to legal services or relevant agencies of this issue (including the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Australian Human Rights Commission (AHRC)). Low levels of reporting discrimination also arose because of resignation and fear.

4.3 Housing

Housing, and in particular tenancy, emerged as a priority legal issue in focus groups and during stakeholder interviews. Overall, **41.8%** of all focus group participants identified disputes or problems with landlords. The percentage of Indigenous women identifying such disputes was higher than for Indigenous men (44.6% of women compared with 37.9% of men).

Repairs and maintenance were identified as the principal area of dispute or problem arising in tenancies (in nearly 50% of responses). Rental payments and, to a lesser extent, overcrowding also emerged as key issues of concern. Problems were also evident in accessing housing (including private tenancies) and in overcrowding.

Most tenancy issues related to public or community-based housing. There was a connection between housing and other civil law issues (such as discrimination, debt). For instance, Aboriginal people have little access to the private rental market. Consequently, losing public housing tenancies, including by way of eviction for a range of reasons, may be particularly problematic for Indigenous tenants, given problems with accessing other types of tenancies and housing.

A major problem of secondary homelessness was also identified whereby other family and community members may be obligated to take in Indigenous homeless people. This can have negative impacts particularly on the elderly and vulnerable, and can lead to further problems such as eviction of the principal tenant and debt (where utility bills, for instance, are high due to overcrowding).

Only one in four women and one in six men sought legal advice in relation to housing issues. The research indicated problems of avoidance and delay in seeking assistance because of shame, lack of knowledge of rights, and fear of repercussions from housing authorities or other agencies (such as child protection).

It appears that there are low levels of appearance by Indigenous people when tenancy disputes go to VCAT, which means Tribunal decisions are being made without evidence from the tenant. The important of being able to access quality legal help and advocacy around housing was identified by stakeholders and focus group participants.

4.4 Neighbours

Neighbourhood issues emerged as a priority legal issue, with 26.7% of all focus group participants identifying problems. Indigenous women were more likely than Indigenous men to identify problems in this area (30.4% compared to 21.7%).

Noise was most commonly identified as the cause of the dispute or problem, followed by animals and fights with neighbours. Frequently, the issues raised by focus group participants also included complaints made *against* them rather than by them. Overcrowding exacerbated these problems. Some neighbourhood issues also involved potential racially discriminatory actions by other neighbours (vilification) or racially discriminatory responses by authorities (housing providers, in particular) to complaints.

There was also a significant problem with conflict and sometimes violence within Indigenous communities, including because of inappropriate allocation of housing to families and groups already (potentially) in conflict.

Neighbourhood disputes were also a distinct example of where unresolved housing and neighbourhood issues can escalate into police involvement and criminalisation. The proportion of focus group participants who sought legal assistance for such disputes was 23.8%, with women more likely than men to seek assistance (25.9% compared to 20%).

4.5 Credit/Debt and Consumer

Almost one third (**32.4%**) of focus group participants said that they had been in a situation where a lender had threatened, or had taken legal action against them due to their failure to repay a debt. This dynamic was particularly pronounced for Indigenous women, 38.5% of whom reported having had this problem in the last couple of years, compared with 24.2% of men.

Focus group participants nominated the most common areas where debt arises related to credit cards, mobile phone bills and utilities. Payday lending and book-up were also key concerns. Some 13% of all focus group participants said that their debt issues had led to problems with their credit reference rating or to bankruptcy.

Debt can also be compounded by other criminal law issues such as family and domestic violence (where people feel trapped within violent relationships because of debts, or they incur the debts of an abusive partner); and by imprisonment (people ending up in prison for unpaid fines and defaults, or debts accruing while in prison).

Only 15.1% of people who had had legal action threatened in relation to debt, or who had experienced problems with bankruptcy or their Credit Reference Rating, had sought legal advice. Failure to seek assistance can arise because of lack of knowledge of the law or the sense that there are more urgent issues to address.

Consumer issues also cross over into credit and debt problems. Some direct examples of this include payday lending, book-up and hire/purchase schemes. These become problematic where individuals are paying very high interest rates (for example, pay day lending and book-up); where individuals hand over their bank card pin number to and/or are intimidated by a trader (book-up); or where a person pays considerably more under a hire/purchase agreement than the goods are worth (perhaps 3-4 times the value of the goods). The ILNP research uncovered examples of all of the above.

It was also clear from the interviews with stakeholders and in focus group discussions that many people do not understand contracts and may be susceptible to high-pressure door to door/phone sales. Indigenous people also have less access to credit, in general, and this means they have to rely on other less beneficial forms of credit as consumers (such as payday lending and book-up).

Other consumer issues were evident in focus group responses. These included utility contracts, mobile phone contracts, contracts entered into through door-to-door/telephone sales (including utility contracts), funeral funds, motor vehicle repair and purchase. Problems with a lack of understanding of contracts have a direct link to debt issues where the extent of repayments are not understood and cannot be sustained. Consumer-related problems (such as lack of financial and consumer literacy) exacerbate problems arising in relation to credit/debt.

Only three focus group participants had sought legal assistance or help for a consumer –related problem. Some of the factors inhibiting effective access to justice for Indigenous consumers included:

- shame, acceptance and the prioritisation of more urgent problems;
- low levels of financial and consumer literacy; and
- problems in accessing advocates and support.

4.6 Social Security and Centrelink

Overall, **75.5%** of all participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits 18.7 percentage points higher than that of Indigenous men (82.2% compared to 66.7%).

22.7% of all participants receiving Centrelink payments identified having experienced a dispute or problem in this area, with similar proportions of Indigenous men and women experiencing problems.

Some 89% of focus group participants either left the problem unresolved or attempted to deal with Centrelink directly, rather than seeking legal advice or assistance.

Overpayments or underpayments of allowances constituted half of the difficulties reported, and being cut off or having benefits reduced accounted for another third.

There were a number of factors that are more pronounced in Indigenous communities that contribute to problems with Centrelink. These include:

- the high proportion of people in the community who are dependent on Centrelink payments;

- the more frequent movement of extended family in and out of a given household, which impacts on entitlements; and
- the increased demand by Centrelink for recipients to utilise online and smartphone technologies to manage their entitlements.

Issues with **Centrepay** were also raised by focus group participants and stakeholders. Centrepay was set up to protect the interests of those with low incomes, including by assisting them to better manage their money. However if there are errors by Centrepay the burden falls to the client - not Centrepay - to identify and seek to rectify the situation.

Another fundamental problem with the Centrepay system is that without effective oversight, the scheme appears to be facilitating exploitation of vulnerable Indigenous people by traders through high-pressure sales, scams and rip offs. It appears easy for companies to be approved under the scheme, and to then sign Indigenous people up to highly questionable contractual obligations, with deductions being made through Centrepay to the detriment of Indigenous people rather than for their benefit.

4.7 Wills

Fewer than **6%** of focus group participants had completed a will. However, a majority (**56.6%**) of those without wills said that they would like assistance to complete one. Women were less likely to have completed a will than men, and were more likely to indicate that they would like assistance.

Some focus group participants saw wills as relevant only for people with substantial property to distribute posthumously. People were less likely to think of a will more broadly as something that can bind one's family in relation to wishes about burial arrangements, placement of children or beneficiaries of accumulated superannuation. Specific problems arising from the absence of a will were identified by focus group participants (such as disputes over burial).

4.8 Compensation for Victims of Crime

Focus group participants were asked whether they had been the victim of a violent crime over the last couple of years and just over **20%** of participants reported having been victimised in this way. The proportion of women victimised (23.9%) was higher than men (16.2%). The levels of awareness of the Victims of Crime Compensation scheme were relatively low. Just over a quarter of men (27.3%) and one third of women (33.3%) who had identified as a recent victim of violent crime had heard of the scheme. Some 77% of people who reported having been victims of violent crime recently had not sought compensation.

The reasons for failing to make a claim in the scheme, apart from lack of knowledge of its existence, often centred around being informed of a right to seek compensation too long after the incident to be eligible. There was anger directed at police personnel for failure to give timely advice about the Victims of Crime Compensation scheme. Reluctance to report specifics about the violence was also said to be a factor, where the victim was still in fear of the perpetrator.

5. The Intersection between Civil, Family and Criminal Law Problems

There is a complex interplay between civil, family and criminal law problems. There can be a lateral escalation, where an unresolved civil law issue creates further civil law issues, leading to a complex of legal needs that are, at least in part, created through the very failure to address the initial legal concerns (for example, consumer problems leading to debt). Further, when civil law issues are

left unaddressed or unresolved, they can also worsen to become criminal matters. We note the opposite can also be the case: criminal law issues can give rise to civil law needs.

In particular, the research found that family violence can be connected to a number of civil and family law problems. Family violence was related to legal problems in areas of family law, child protection, discrimination (particularly in relation to policing and intervention orders), housing, debt, victims of crime compensation and Centrelink issues.

6. Priority Issues Relating to Service Delivery

Indigenous people in Victoria are 'being shafted' (in the words of an Indigenous person we spoke to) because they do not know their rights, they do not know how to access information and services, and as often the services are not funded to deal adequately with the many civil and family law problems Indigenous people face. These problems exist across virtually all the areas we investigated, from consumer problems to child protection, from racial discrimination to housing.

The non-criminal legal needs of Indigenous people require much greater attention than they are presently afforded. Currently, there are significant gaps in accessing legal assistance for civil and family law matters. These gaps arise because of the focus on criminal law practice and the model of Melbourne-centric service provision. These problems were acknowledged by legal service providers.

Many of the legal issues discussed in this report contribute to and are caused by the marginalisation and social exclusion of Indigenous people and communities. Being able to more effectively respond to legal problems within a legal framework will ultimately lead to reduced levels of social exclusion for Indigenous people.

Moreover, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) places certain legal obligations upon the Victorian government to act compatibly with human rights and to consider human rights when developing policies, making laws, delivering services and making decisions. The Charter places obligations on government (which would include agencies dealing with housing, child protection, education, etc.) to carefully consider the impact of their decision-making within a human rights framework. Failure to do so may both compound the civil and family law problems we have considered in this Report, and give rise to legal issues under the Charter.

There is a need for more funding to respond to non-criminal legal needs. Many of the gaps and problems in access could be resolved if resourcing was adequate. For example, problems of a Melbourne-centric model of service delivery are partly the result of funding limitations, as is the limited availability of civil lawyers employed by VALS. Increased resourcing across the legal assistance sector would allow for more strategic approaches to legal need, including but in addition to the expansion of individual casework. Such approaches might include improved partnerships, better referral processes and increased networking among legal service providers *and* between legal services and other related organisations; increased CLE in communities; and more policy and law reform work – all of which would ensure far better outcomes in meeting the needs of Indigenous people.

There is a major gap in the community concerning knowledge of, and recognition of, rights in relation to civil and family law. Being able to identify a legal right is the first step in accessing justice in relation to it. Examples of these problems abound in virtually every area we investigated. The people we spoke with in communities generally do not know where to go for help or how to

respond to the problems they encounter. Legal services can increase knowledge in these areas, however we note that there will always be a role for advocacy and support, including from legal services and related government and community sector organisations.

Indigenous people have a complexity of needs. This complexity is created by factors such as literacy and disability and by the myriad of legal and non-legal, criminal and non-criminal issues which people face. It was evident that Indigenous people need help earlier to avoid the complication of problems. There is a need to also avoid compartmentalisation of assistance and advocacy, which itself increases complexity and leads to greater barriers to access. This occurs, for instance, in relation to the ways in which criminal and non-criminal problems arise simultaneously for a client but are being dealt with by different services or agencies.

Holistic service delivery would assist in better responding to the complexity of need. More holistic approaches might include different services operating under a single roof, or through improved collaboration between all services (legal and non-legal, mainstream and Indigenous, community and government). This might be achieved through outreach provided by a legal service in an Indigenous community-based organisation; by non-legal services being well connected with legal services so they can make appropriate referrals or be assisted to work with their clients directly around civil/family law issues. Legal services also need to improve their collaboration with each other.

Service segregation was also identified as a problem. Non-Indigenous organisations should not push Indigenous clients away because of an expectation that they should access an Indigenous service. Indigenous people have a right to choose where they go for assistance, and a referral may be inappropriate if the Indigenous service cannot assist with the problem.

Related to the problem of service segregation is the need for effective engagement with Indigenous people and communities. Non-Indigenous services need to be able to work with Indigenous clients. Strategies might include Indigenous staffing, improved cross-cultural training, more flexible service delivery models and the development of closer working relationships with existing Indigenous organisations. There is clearly a need for much more progressive thinking about flexible service delivery in particular as this was discussed frequently in interviews. A good practice model nominated by some stakeholders was FVPLS*,* which was seen as holistic and flexible.

There were mixed views about the quality of service delivery. However, the main point raised in this regard was the need for effective communication between solicitors and Indigenous people and the need for cultural respect and empathy for Indigenous clients.

PART 1 CONTEXT

1. THE ILNP

1.1 INTRODUCTION AND BACKGROUND

This report presents the key findings based upon research conducted in 2012-2013 by the Indigenous Legal Needs Project (the ILNP) in Victoria.[5] The ILNP is a national research study of the civil and family law needs of Indigenous Australians, based at the Cairns Institute, James Cook University (JCU). The objectives and methodology of the ILNP are informed by a pilot project completed for the New South Wales (NSW) Legal Aid Commission in 2008 by members of the ILNP research team. The pilot research related to the civil and family law needs of Indigenous people in NSW.[6]

To date, there have been few large-scale surveys of Indigenous legal need in Australia. The most recent general legal needs survey was conducted by the Law and Justice Foundation of New South Wales.[7] That research found that Indigenous status was unrelated to the prevalence of legal problems, but that Indigenous people did have a higher prevalence of multiple legal problems.[8] However, as the authors note, there were significant methodological limitations to this research in specifically assessing Indigenous concerns, including sampling size and the use of a telephone survey (Coumarelos et al 2012: 178, 236, 311).

The ILNP aims, on a national level:

- to identify and analyse the legal needs of Indigenous communities in non-criminal areas of law (including discrimination, housing and tenancy, child protection, employment, credit and debt, wills and estates, and consumer-related matters, *inter alia*)*;* and
- to provide a better understanding of how legal service delivery might work more effectively to address the identified civil and family law needs of Indigenous communities.

ILNP research is intended to benefit Indigenous people by improving Indigenous access to civil and family law justice. The ILNP seeks to inform culturally appropriate and effective legal responses to Indigenous civil and family law need by legal services in particular. This should then deliver better access to justice, greater compliance with human rights norms and positive social justice outcomes for Indigenous people.

The ILNP has been funded by the Australian Research Council (ARC) through a Linkage Project grant for a three year period, commencing from February 2011. The research is undertaken in collaboration with 12 project partners, including both legal services and academic institutions. These partnerships provide financial and other support to the ILNP, including assistance in the development

[5] Further information about the ILNP is available on the ILNP website: http://www.jcu.edu.au/ilnp/

[6] Cunneen, C and Schwartz, M (2008) *The Family and Civil Law Needs of Aboriginal People in New South Wales*, University of NSW: available on the ILNP website.

[7] Coumarelos, C, Macourt, D, People, J, McDonald, H, Wei, Z, Iriana, R & Ramsey, S (2012), *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW, Sydney

[8] Ibid, 178

of methodology and in organising fieldwork. In Victoria, Victoria Legal Aid (VLA) and the Victorian Aboriginal Legal Service (VALS) are ILNP project partners.[9]

Over 2011-2014, the ILNP is conducting research in a total of 32 Indigenous communities or 'focus sites' located in four jurisdictions: Victoria, Northern Territory (NT), Western Australia (WA) and Queensland (Qld) (see further below). Combined with the completed NSW pilot study, the ILNP research will provide a comprehensive picture of Indigenous civil and family law needs in Australia, given that the four jurisdictions it encompasses cover urban, regional, rural and remote communities and that more than 85% of Indigenous people in Australia live in five jurisdictions.

A report presenting an analysis of both Indigenous civil and family law need, and of the effectiveness of current legal service delivery, in particular, in responding to this need is prepared by the ILNP upon completion of fieldwork in each of the four focus jurisdictions. These reports are made available on the ILNP website as they are finalised. The Victorian report is the second report to be published by the ILNP. The ILNP's NT report was released in 2012.[10] The ILNP is also disseminating research findings more widely to ensure optimum accessibility for the broader community to the research, including through social media.[11]

1.2 VICTORIAN REPORT STRUCTURE

The Victorian Report seeks to provide:

- enhanced understanding of the civil and family law needs of Indigenous people in Victoria, including by identifying *priority* needs in relevant areas of law, with an emphasis upon material gathered directly from select Indigenous communities; and

- a discussion of current legal service delivery to Indigenous people in Victoria, including gaps in this service delivery and barriers to effective access to legal services.

The report is divided into **three** parts.

Part 1 provides background to the report and to the ILNP. It consists of Sections 1 and 2.

Section 1 provides contextual detail in relation to the ILNP, including the background to the project and the methodology used for the research. **Section 2** sets out brief demographic and other information for each of the Victorian communities which have been the focus of ILNP research. This information is relevant to the consideration of legal needs and legal service delivery. Further contextual information relating to current legal service delivery in Indigenous communities in Victoria is provided in Appendix D.

[9] A full list of project partners is available on the ILNP website at: http://www.jcu.edu.au/ilnp/participants/JCU_083396.html

[10] Allison, F, Behrendt, L, Cunneen, C and Schwartz, M (2012) *Indigenous Legal Needs Project NT Report*, Cairns Institute, JCU: available on the ILNP website.

[11] The ILNP has a Facebook page: https://www.facebook.com/IndigenousLegalNeedsProject and a blog: http://indigenouslegalneedsproject.wordpress.com/ and animated videos of findings are available on these and our website.

Part 2 provides a summary analysis of the priority legal need and service delivery issues. It consists of Section 3 and 4.

Section 3 identifies the priority civil and family law areas of legal need. **Section 4** identifies priority access to justice issues with respect to civil and family law problems.

Part 3 presents the detailed research findings with respect to civil and family law need, and service delivery issues in Victoria. It consists of Sections 5 and 6.

Section 5 considers in detail the fourteen different areas of civil and family law which have been the focus of ILNP research in Victoria, as well as a range of other civil and family law issues discussed by ILNP participants during fieldwork. It draws upon qualitative material from stakeholder interviews and focus group discussions and quantitative data gathered at each of the focus sites in Victoria. **Section 6** looks in detail at how effectively legal service delivery is currently meeting civil and family law need in Indigenous communities in Victoria. This material is drawn from qualitative data, particularly focus group discussions and stakeholder interviews, collected at each focus site.

1.3 METHODOLOGY

The ILNP Victorian data has been gathered through Indigenous focus groups (involving completion of a structured questionnaire and semi-structured discussion), as well as through targeted stakeholder interviews. The data has been analysed to provide information on Indigenous communities' legal needs. It also provides some indication as to how effectively the latter needs are currently being met and what can be done to improve access to and quality of legal service delivery in a civil and family law context for Indigenous people in Victoria.

The report includes baseline quantitative data representing the nature of civil and family law need among the Indigenous men and women who participated in the focus groups.[12] Further, as the ILNP is a study of policy and practice in a practical context, it lends itself to a qualitative research framework. A qualitative approach to gathering data in this instance has provided information pertaining to aspects of people's lives that civil and family law may touch, Indigenous communities' perspectives on legal services and on the factors that inhibit use of those services. This approach has also enabled a relatively small number of targeted stakeholder interviews and consultations to provide information-rich data to facilitate insight into (less quantifiable) matters such as cultural, historical, environmental and other issues that impact on legal needs and access to services, as well as the attitudes and experiences of individuals towards those services.

1.3.1 Focus Sites: Identification and Selection

In 2012-2013 the ILNP visited eight Indigenous communities in Victoria in order to gather the data upon which this report is based. The sites in Victoria were selected in consultation with ILNP project partners in Victoria.[13] Based on their knowledge of relevant communities in Victoria, partners have

[12] The quantitative data is an important indication of the key concerns of focus group participants located in a variety of different Victorian locations. However, it should be noted that the quantitative data *cannot* be interpreted simply as a representative sample of all Indigenous people in Victoria.

[13] For a list of all communities the ILNP is travelling to in each jurisdiction, see http://www.jcu.edu.au/ilnp/about/JCU_083394.html. For a detailed schedule of visits to communities in 2012-2013 see: http://www.jcu.edu.au/ilnp/progress/JCU_083398.html

assisted in the selection of sites with reference to specific civil or family law issues or accessibility issues that they were aware were arising for particular communities.

Further, given that issues of practical access to services are important considerations in this research, sites selected for the ILNP are intended to provide equal representation of remote, rural, regional and urban communities. These communities all have differing levels of accessibility to goods and services, as identified by the Accessibility/Remoteness Index of Australia Plus (ARIA +) classifications of remoteness. We note however that it has not been possible to select equal numbers of communities from these four different categories in this particular jurisdiction. According to ARIA+,[14] all communities in Victoria are classified as 'moderately accessible', 'accessible' and 'highly accessible' in terms of their respective capacities to access goods and services. There are no communities in Victoria classifiable as 'remote' or 'very remote'. The communities selected in Victoria therefore represent rural, regional and urban communities only. They have all also been chosen on the basis of their geographical distribution across the State.

The eight focus communities in Victoria are **Bairnsdale, Bendigo, Fitzroy, Framlingham, Heidelberg, Robinvale, Shepparton and Swan Hill.**

These sites are classified by ARIA + as follows:

Highly Accessible:	**Fitzroy, Heidelberg**
Accessible:	**Framlingham, Bendigo, Shepparton,**
Moderately Accessible:	**Robinvale, Swan Hill, Bairnsdale.**[15]

1.3.2 Focus Groups: Location and Composition

At each of the project sites, qualitative data relating to legal need and service provision was collected through participation of Indigenous community members in focus groups. These focus groups were essential to gathering information about the nature and extent of legal needs, levels of satisfaction with and effectiveness of current service delivery models and limitations in the ways in which Indigenous people in Victoria are currently able to access justice.

In the majority of Victorian ILNP communities, two separate focus groups were held - one group for men and one group for women. In Bendigo, Bairnsdale and Swan Hill, male and female participants met together as a single group without being separated by gender, according to each community's preference. It was initially envisaged that the focus groups would comprise a minimum of six

[14] ARIA+ is widely accepted as Australia's most authoritative geographic measure of remoteness. Indexes of remoteness are derived from measures of road distance between populated localities and service centres. These road distance measures are then used to generate a remoteness score for any location in Australia, with values ranging from 0 (high accessibility) to 15 (high remoteness). **Highly Accessible** is defined as relatively unrestricted accessibility to a wide range of goods and services and opportunities for social interaction. **Accessible** is defined as some restrictions to accessibility of some goods and services and opportunities for social interaction. **Moderately Accessible** is defined as significantly restricted accessibility of goods and services and opportunities for social interaction. **Remote** is defined as very restricted accessibility of goods, services and opportunities for social interaction. **Very Remote** is defined as very little accessibility of goods, services and opportunities for social interaction. See http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442459569, 9.

[15] See the following website for ARIA+ classifications: http://www.spatialonline.com.au/aria/default.aspx

members, with an optimum attendance of ten people per group.[16] A minimum of six people attended all focus groups with the exception of the men's group in Bairnsdale (see Table 1.1). The sampling method for focus groups was purposive sampling. Focus group attendees were paid $50 to cover any expenses arising from their participation and refreshments were also provided. Focus groups were sound recorded in every instance. Participants contributed anonymously and throughout this report are only identified by gender and location (such as 'Heidelberg Women's Focus Group Participant').

In most instances, the men's groups were facilitated by a male researcher from the ILNP and the women's groups by a female researcher. On some occasions groups were facilitated by ILNP researchers of different gender to the focus group participants, but only where communities indicated that this was appropriate.[17] The ILNP facilitators were assisted in running the focus groups by local, Indigenous focus group coordinators. Usually, an Indigenous man or woman residing within the relevant community undertook this work for the ILNP, with potential coordinators often initially identified by project partners or stakeholder organisations.[18] The researchers corresponded with the coordinators leading up to the focus groups to discuss the research, expectations for the focus groups and practical arrangements. The coordinators were employed by the ILNP to invite community members to attend the relevant focus group, explain to them the purpose of the focus group and to arrange for an appropriate venue at which the group could meet. They also sat in on the groups and assisted participants to complete ILNP questionnaires. Focus group coordinators were paid for the time spent in organising and attending the groups.

In inviting participants, focus group coordinators were asked to include persons who represented a cross-section of their communities, as far as possible. That is, representatives were sought from different family or kinship groups, ranging in age and social circumstances. These participants were then asked for their personal perspective about how civil and family law issues arose in daily life and the ways in which they were presently being or might better be addressed.[19]

Table 1.1 indicates that upon completion of the fieldwork in Victoria, sixteen (16) focus groups had been held, with a total of 161 Indigenous community members participating (with a target number of participants at 160). The proportion of female participants compared with male participants was 14.2 percentage points higher (57.1 per cent female participants and 42.9 per cent male participants). The greater number of women in the focus groups has only a slight impact on the results when discussing total number and percentages of Indigenous people nominating particular problems.[20]

[16] Between five and ten people is the optimum size for gathering information in this manner: see Saratankos, S (2005) *Social Research*, Palgrave New York, p164, 196.

[17] For instance, a female and male ILNP researcher facilitated both the Heidelberg Men's Focus Group and the Bendigo Focus Group (men and women from Bendigo were in a single group).

[18] In four of the eight communities an Indigenous, community-based stakeholder organisation, workers from a local Aboriginal cooperative and staff from VALS undertook this work for the ILNP.

[19] Focus group coordinators were advised that those working in organisations in relevant areas (such as women's refuges or financial counselling) need not attend the focus groups as they would be asked to contribute by way of stakeholder interviews.

[20] We could have weighted the number of males, but given that the influence of the imbalance was slight, and the report is only using descriptive statistics, we preferred to reflect the actual number of participants in the focus groups.

Table 1.1 Location and Gender of Focus Group Participants

	Focus Group Participants					
Location	**Male**		**Female**		**Total**	
	No	**%**	**No**	**%**	**No**	**%**
Bairnsdale	2	10.5	17	89.5	19	100
Bendigo	10	45.5	12	54.5	22	100
Fitzroy	11	55.0	9	45.0	20	100
Framlingham	6	33.3	12	66.7	18	100
Heidelberg	6	46.2	7	53.8	13	100
Robinvale	13	50.0	13	50.0	26	100
Shepparton	10	55.6	8	44.4	18	100
Swan Hill	11	44	14	56	25	100
Total	**69**	**42.9**	**92**	**57.1**	**161**	**100**

Table 1.2 shows that participants represented a spread of age groups, from 18-24 years to those 55 years and older.

Table 1.2 Age Range of Focus Group Participants

	Focus Group Participants					
Age	**Male**		**Female**		**Total**	
	No	**%**	**No**	**%**	**No**	**%**
18-24	17	24.6	27	29.3	44	27.3
25-34	10	14.5	26	28.3	36	22.4
35-44	18	26.1	17	18.5	35	21.7
45-54	15	21.7	10	10.9	25	15.5
55+	9	13.0	12	13.0	21	13.0
Total	**69**	**100.0**	**92**	**100.0**	**161**	**100.0**

1.3.3 Focus Groups: Process

The focus groups were semi-structured to provide participants with an opportunity to raise issues they considered important to them and to allow open discussion to explore new themes as they emerged. This approach allowed people to answer questions on their own terms, but still provided structure for comparability across gender and community.[21]

At each focus group a participant *Information Sheet* and *Consent Form* were provided to all participants. This material outlined the purpose of the research, the voluntary nature of participation and ability to withdraw from the consultation at any time, an assurance of the confidentiality and anonymity of individuals in participating in the research and the contact details of the researchers for any complaints or questions concerning the conduct of the research.

During each focus group, participants completed a structured questionnaire, asking them to identify whether they had experienced certain civil or family law issues over recent years and what legal or other action they had taken, if any, in response to those issues.[22] The focus group questionnaire is

[21] May, T (2001) *Social Research: Issues, Methods and Process*, Open University Press, Buckingham.
[22] The issues identified in the questionnaire generally follow those used in other large scale legal needs projects: see for example Coumarelos, C, Wei, Z and Zhou, A.Z. (2006) *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged* Areas, Law and Justice Foundation, Sydney. Additional questions related to

attached as **Appendix A**, and responses to it form the basis of the data presented in Parts 2 and 3 of this report.[23] The focus group questionnaire nominated specific areas of civil and family law and generally asked participants to identify:

- whether any legal issues or problems had presented themselves in these specified areas of law over the last couple of years, with a brief description of the nature of any issues or problems arising;
- whether legal or other advice or help was sought in response to such issues and if so, from whom; and
- how or whether they had resolved any issues that had arisen.

Though the questions set out in the questionnaire are specific to particular areas of law, comments relating to other legal issues arose during both stakeholder interviews and focus group discussion. Discussion of these other legal issues is provided in Section 5.14.

During the focus groups, the ILNP facilitator and focus group coordinator worked with participants through all the questions on the questionnaire as they were being completed. This helped to overcome any potential or actual barriers to completion. It was sometimes necessary to work more closely with individual participants or with participants in smaller groups to ensure that they had an opportunity to respond effectively to the questions posed. Literacy issues were evident in all communities, and at times, the written questionnaire was filled out on behalf of the participant by others assisting.

Participants were also invited to take part in a group discussion after completion of the questionnaire. This discussion allowed participants to expand on the legal issues they had experienced, barriers to accessing legal services and proposed changes to overcome these barriers. The discussion was structured around a range of select questions to allow comparison and to ensure that a focus was maintained on key themes central to the research.[24] Group discussions were held in all communities visited. Analysis of these discussions is included in Parts 2 and 3 of the report.

When legal issues arose during focus groups for which participants needed assistance, the ILNP worked to ensure that focus group participants were linked with relevant legal advice and information.

1.3.4 Stakeholder Interviews

Interviews were also conducted by the ILNP researchers with staff and representatives from stakeholder organisations servicing or working with the nominated communities. Stakeholder interviews were used to explore the experiences, perspectives and understandings of those providing legal or related services.

Indigenous–specific concerns (eg Stolen Generations, Stolen Wages, income management). Family and domestic violence was treated as a criminal matter rather than as civil law. Other hybrid orders (eg. anti-social behaviour orders) were treated as criminal. Other matters such as police complaints, native title or intellectual property were also omitted from the questionnaire for practical reasons of the size of the document and the time it took for participants to complete. However, it is important to note that these and other issues could be (and often were) discussed in focus groups and by stakeholders, and where appropriate this discussion is included in the research. The issue of family violence, for instance, and the way in which it is said to interact with legal need is referred to throughout this report and is discussed specifically within Section 5.14: Other Civil and Family Law Issues.

[23] The questionnaire was based upon that used in the NSW pilot project but amendments to its format and content were made at the commencement of the ILNP in 2011 in consultation with project partners, with the intention of ensuring ease of use and relevance for all 32 ILNP focus communities.

[24] See Patton, M (1990) *Qualitative Evaluation and Research Methods*, Sage, Newbury Park.

Organisations and agencies were selected purposefully to ensure information-rich interviews. Stakeholders were selected on the basis of their direct role in civil and family law service provision to Indigenous clients (as legal services or related support services), provided either to a particular community or to Indigenous communities on a state-wide basis. The majority of stakeholders interviewed were those providing services in the focus sites.

Stakeholder organisations interviewed included:

- Legal service provider staff at Community Legal Centres (CLCs), VALS, VLA, Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS) and other legal services (family and civil law solicitors, office managers, client service officers, community legal education (CLE) and law/policy reform staff, including Indigenous staff);
- Key community-based Indigenous organisations and services working with Indigenous communities in areas related to civil and family law issues (housing, family violence, health and family relationships etc.);
- community-based organisations and NGOs working with Indigenous communities in areas related to civil and family law issues (family relationship breakdown, homelessness, credit and debt (including financial counsellors) and family violence); and
- Government or quasi-government agencies (such as the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and Dispute Settlement Centres of Victoria (DSCV)).

Questions posed to stakeholders at interviews elicited information about their perceptions of Indigenous legal need and the use and limitations of the current legal service provision model. Areas of discussion included:

- the most common types of non-criminal matters that Indigenous people access their organisation or service for;
- the perceived nature and extent of the civil/family law needs of Indigenous people;
- the current relationship of their organisation with legal and non-legal service providers and their understanding of (other) legal service provider policies that relate to the provision of civil and family law services to Indigenous people; and
- any perceived gaps in or barriers to current relevant service delivery and proposed changes to increase service access or effectiveness for Indigenous clients.

1.3.5 Stakeholder Anonymity

All interviews were sound recorded, except where requested otherwise. Participant *Information Sheets* and *Consent Forms* were provided to all stakeholder organisations at the point of interview. A full list of stakeholders interviewed in Victoria is attached as **Appendix B.**

To maintain confidentiality, we have identified stakeholders in a general way throughout this report, with reference only to the type of service they provide as follows.

- Non-Indigenous organisation staff providing support in the community (for example, financial counsellors, etc.) are referred to as *community organisation worker*;
- Indigenous organisation staff providing support in the community (for example, Aboriginal Cooperatives) are referred to as *Indigenous community organisation worker;*

- CLC lawyers and private solicitors are referred to as *Legal practitioners*;
- Aboriginal Legal Services' staff (solicitors and support staff), including FVPLS and VALS, are referred to as *Indigenous Legal Service staff*;
- Legal Aid staff members (solicitors and support staff) are referred to as *Legal Aid staff*; and
- statutory authorities such as the VEOHRC are referred to as *Statutory Authority staff*.

We note that in interviews with community organisations, both Indigenous and non-Indigenous staff from both Indigenous and non-Indigenous organisations participated in the ILNP. It was not possible to indicate in this report whether or not individual staff providing comment were Indigenous or non-Indigenous in every instance, so we have recorded whether *the organisation* rather than the staff member is Indigenous or non-Indigenous.

2. ILNP COMMUNITIES IN VICTORIA

In this section we provide a brief socio-demographic snapshot of the eight communities chosen for research in Victoria. This information is useful in assessing legal needs of Indigenous people and their access to civil and family law justice. It includes a very brief overview of each community's location (including its distance from Melbourne and nearby centres (where legal service delivery is provided from these nearby centres)); its level of accessibility as defined by ARIA+ and a list of legal services it has access to; as well as demographic data of relevance. More detail on current legal service delivery for the focus group communities is provided in **Appendix D**.

As noted, there are no 'remote' communities in Victoria. The level of accessibility for communities in Victoria is generally defined as relatively adequate. In terms of legal service delivery only Bairnsdale and the Melbourne communities of Fitzroy and Heidelberg have permanent offices of FVPLS, VALS, VLA *and* CLCs from which they might seek assistance. All other communities are to varying degrees reliant upon legal service delivery provided 'from afar', including by way of outreach through telephone advice, and some more so than others (see Robinvale, in particular). It is also worth noting that Customer Service Officers (CSOs) staff VALS' permanent offices in regional locations rather than solicitors. This point and perceptions about the Melbourne-centric nature of legal service delivery in Victoria is discussed in this report, particularly in Sections 4 and 6.

The Australian Bureau of Statistics (ABS) data presented below shows:

- lower personal and household income for Indigenous people compared to non-Indigenous people;
- higher average household size of Indigenous households and a much greater proportion of these households requiring one or more extra bedrooms; and
- a significant level of accommodation rented as public housing and (to a lesser extent) community-based housing.

This information is relevant to our analysis and discussion of Indigenous civil and family law need in terms of demonstrating Indigenous social disadvantage.

1.4.1 Bairnsdale[25]

Bairnsdale is located in the south west of Victoria, approximately 280 km from Melbourne. Bairnsdale has 13,241 residents (as at 2011), of which 543 are Indigenous (constituting 4.1% of the total local population) (see Table 1.3). Bairnsdale is defined as a **moderately accessible** community, with significantly restricted accessibility of goods and services and opportunities for social interaction.

Legal Services

- VALS (permanent office in Bairnsdale staffed by VALS CSOs)
- FVPLS (permanent Gippsland office in Bairnsdale)
- VLA (permanent office in Bairnsdale)
- Gippsland Community Legal Service (CLC)[26]

[25] Information relating to East Gippsland Shire at: http://profile.id.com.au/east-gippsland/about/?WebID=100

The Demographic Data for Bairnsdale [27]

Table 1.3 Bairnsdale: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	271	272	543
Non-Indigenous persons	5815	6483	12296
Indigenous status not stated	203	197	400
Total	**6289**	**6952**	**13241**

Table 1.4 Bairnsdale: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	19	43	42
Median total personal income ($/week)	318	482	475
Median total household income ($/week)	737	846	839
Median rent ($/week)	177	200	195
Average persons per bedroom[28]	1.2	1.1	1.1
Average household size[29]	3.3	2.3	2.3
Proportion of dwellings that need one or more extra bedrooms (%)	8.8	1.5	1.8

Table 1.5 Bairnsdale: Tenure and Landlord Type for Households with Indigenous Persons[30]

Tenure/Landlord Type	Total
Owned outright	20
Owned with mortgage	33
Rented:	
▪ Real estate agent	23
▪ State or Territory housing authority	96
▪ From parent/other relative or another person	3
▪ Housing cooperative, community or church group	15
▪ Other landlord[31]	9
▪ Landlord type not stated	2
Total rented	*149*
Other tenure type	0
Landlord type not stated	14
Total	**216**

[26] Principal office is located in Morwell, Victoria.
[27] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Bairnsdale*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC202007?opendocument&navpos=230
[28] Average number of persons per bedroom, average household size and proportion of dwellings needing one or more extra bedrooms excludes 'Visitors Only' and 'Other non-classifiable' households.
[29] Average household size applies to number of persons usually resident in occupied resident dwellings, including partners, children and others temporarily absent on Census Night (max 3 temporary absentees).
[30] A household with Indigenous person(s) is any household that had at least one person of any age as resident at the time of Census who identified as being of Aboriginal or Torres Strait Islander origin.
[31] Comprises dwellings being rented through a 'Residential park (includes caravan parks)', 'Employer-Government' and 'Employer-other employer'. This category applies to all following tables relating to housing and tenure.

1.4.2 Bendigo[32]

Bendigo is located in north-central Victoria, approximately 150km from Melbourne and 120 km from Shepparton. Bendigo has 140,695 residents (as of 2011), of which 1,792 are Indigenous (constituting 1.3% of the total local population) (see Table 1.6). Bendigo is defined as an **accessible** community, with some restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- VALS (serviced by permanent office in Shepparton staffed by VALS CSOs)
- FVPLS (limited service from Melbourne office)
- VLA (permanent office in Bendigo)
- Advocacy and Rights Centre (Loddon Campaspe CLC, permanent office in Bendigo)

The Demographic Data for Bendigo[33]

Table 1.6 Bendigo: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	896	896	1792
Non-Indigenous persons	64803	68502	133305
Indigenous status not stated	2887	2711	5598
Total	**68586**	**72109**	**140695**

Table 1.7 Bendigo: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	20	41	40
Median total personal income ($/week)	366	501	500
Median total household income ($/week)	794	966	963
Median rent ($/week)	175	200	200
Average number of persons per bedroom	1.2	1.1	1.1
Average household size	3.1	2.4	2.4
Proportion of dwellings that need one or more extra bedrooms (%)	10.1	2.0	2.2

[32] Information relating to City of Greater Bendigo at: http://profile.id.com.au/bendigo/home

[33] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Bendigo*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/202?opendocument&navpos=230

Table 1.8 Bendigo: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	138
Owned with mortgage	242
Rented: ▪ Real estate agent ▪ State or Territory housing authority ▪ From parent/other relative or another person ▪ Housing cooperative, community or church group ▪ Other landlord ▪ Landlord type not stated *Total rented*	 136 183 87 21 12 4 *443*
Other tenure type	3
Landlord type not stated	29
Total	**855**

1.4.3 Fitzroy[34]

Fitzroy is located approximately 3 km from the centre of Melbourne. It has 9,432 residents (as of 2011), of which 64 are identified as Indigenous (constituting 0.7% of the total local population) (see Table 1.9). Fitzroy is defined as a **highly accessible** community, with relatively unrestricted accessibility to a wide range of goods and services and opportunities for social interaction.

Legal Services

- VALS (Melbourne)
- FVPLS (Melbourne)
- VLA (Melbourne)
- Fitzroy CLC

The Demographic Data for Fitzroy[35]

Table 1.9 Fitzroy: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	33	31	64
Non-Indigenous persons	4119	4289	8408
Indigenous status not stated	501	459	960
Total	**4553**	**4779**	**9432**

[34] Information relating to City of Yarra at: http://www.yarracity.vic.gov.au/About-Yarra/Maps/

[35] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Fitzroy*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/206071142?opendocument&navpos=230

Table 1.10 Fitzroy: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	26	33	33
Median total personal income ($/week)	433	791	788
Median total household income ($/week)	1458	1484	1483
Median rent ($/week)	175	349	349
Average number of persons per bedroom	1.3	1.2	1.2
Average household size	2.5	2.1	2.1
Proportion of dwellings that need one or more extra bedrooms (%)	17.6	5.3	5.5

Table 1.11 Fitzroy: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	0
Owned with mortgage	3
Rented:	
▪ Real estate agent	12
▪ State or Territory housing authority	11
▪ From parent/other relative or another person	3
▪ Housing cooperative, community or church group	0
▪ Other landlord	0
▪ Landlord type not stated	3
Total rented	*29*
Other tenure type	0
Landlord type not stated	3
Total	**35**

1.4.4 Framlingham

Framlingham is located approximately 242 km south west of Melbourne and 27 km from Warrnambool. Framlingham has 39 residents (as of 2011), of which 35 are Indigenous (constituting 90% of the total local population) (see Table 1.12). Framlingham is defined as an **accessible** community, with some restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- VLA (permanent office in Warrnambool)
- FVPLS (permanent Barwon South West office in Warrnambool)
- Emma House Domestic Violence Services (CLC located in Warrnambool)

The Demographic Data for Framlingham [36]

[36]ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Framlingham*, Canberra, Catalogue No 2002.0; available at

Table 1.12 Framlingham: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	16	19	35
Non-Indigenous persons	0	4	4
Indigenous status not stated	0	0	0
Total	**16**	23	39

Table 1.13 Framlingham: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	21	21	21
Median total personal income ($/week)	331	700	350
Median total household income ($/week)	700	0	700
Median rent ($/week)	100	0	100
Average number of persons per bedroom	1.2	0.0	1.2
Average household size	1.7	0.0	1.7
Proportion of dwellings that need one or more extra bedrooms (%)	0.0	0.0	0.0

Table 1.14 Framlingham: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	4
Owned with mortgage	0
Rented:	
▪ Real estate agent	0
▪ State or Territory housing authority	3
▪ From parent/other relative or another person	0
▪ Housing cooperative, community or church group	7
▪ Other landlord	3
▪ Landlord type not stated	0
Total rented	*13*
Other tenure type	0
Landlord type not stated	0
Total	**17**

http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC20201202?opendocument&navpos=230

1.4.5 Heidelberg[37]

Heidelberg is an established residential and commercial suburb located approximately 15.5 km from the centre of Melbourne. Heidelberg has 63,942 residents (as of 2011), of which 352 are Indigenous (constituting 0.6% of the total local population) (see Table 1.15). Heidelberg is defined as a **highly accessible** community, with relatively unrestricted accessibility to a wide range of goods and services and opportunities for social interaction.

Legal Services

- VALS (Melbourne)
- FVPLS (Melbourne)
- VLA (Melbourne)
- West Heidelberg CLC

The Demographic Data for Heidelberg[38]

Table 1.15 Heidelberg: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	164	188	352
Non-Indigenous persons	29535	31416	60951
Indigenous status not stated	1414	1225	2539
Total	**31113**	**32829**	**63942**

Table 1.16 Heidelberg: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	22	39	38
Median total personal income ($/weekly)	480	624	624
Median total household income ($/weekly)	810	1396	1392
Median rent ($/weekly)	230	300	300
Average number of persons per bedroom	1.2	1.1	1.1
Average household size	2.6	2.5	2.5
Proportion of dwellings that need 1 or more extra bedrooms (%)	6.5	3.1	3.1

[37] Information relating to Banyule City at: http://profile.id.com.au/banyule/about?WebID=140

[38] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Heidelberg*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC201011101?opendocument&navpos=230

Table 1.17 Heidelberg: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	28
Owned with mortgage	30
Rented:	
▪ Real estate agent	30
▪ State or Territory housing authority	61
▪ From parent/other relative or another person	12
▪ Housing cooperative, community or church group	9
▪ Other landlord	3
▪ Landlord type not stated	3
Total rented	*118*
Other tenure type	3
Landlord type not stated	7
Total	**186**

1.4.6 Robinvale[39]

Robinvale is located in northeast Victoria (Mallee), approximately 472 km from Melbourne and 90km from Mildura. Robinvale has 3,472 residents (as of 2011), of which 289 are Indigenous (constituting 8.3% of the total local population) (see Table 1.18). Robinvale is defined as a **moderately accessible** community, with significantly restricted accessibility of goods and services and opportunities for social interaction.

Legal Services

- VALS (Mildura)
- Murray Mallee CLC (outreach from Mildura)
- FVPLS (Mildura)

The Demographic Data for Robinvale[40]

Table 1.18 Robinvale: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	120	169	289
Non-Indigenous persons	1509	1352	2861
Indigenous status not stated	157	165	322
Total	**1786**	**1686**	**3472**

[39] Information relating to Swan Hill Rural City at http://profile.id.com.au/swan-hill/about/?WebID=130

[40] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Robinvale*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/215031403?opendocument&navpos=230

Table 1.19 Robinvale: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	21	38	37
Median total personal income ($/weekly)	343	456	442
Median total household income ($/weekly)	500	921	892
Median rent ($/weekly)	150	150	150
Average number of persons per bedroom	1.2	1.2	1.2
Average household size	2.8	2.8	2.8
Proportion of dwellings that need 1 or more extra bedrooms (%)	17.1	6.0	7.2

Table 1.20 Robinvale: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	4
Owned with mortgage	14
Rented:	
▪ Real estate agent	4
▪ State or Territory housing authority	32
▪ From parent/other relative or another person	9
▪ Housing cooperative, community or church group	28
▪ Other landlord	4
▪ Landlord type not stated	3
Total rented	*80*
Other tenure type	0
Landlord type not stated	13
Total	**111**

1.4.7 Shepparton[41]

Shepparton is located in north central Victoria (Goulburn Valley), approximately 190 km north of Melbourne. Shepparton has 60631 residents (as of 2011), of which 2092 are Indigenous (constituting 3.5% of the total local population) (see Table 1.21) Shepparton is defined as an **accessible** community, with some restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- VALS (permanent office in Shepparton staffed by VALS CSOs)
- VLA (permanent office in Shepparton)
- Goulburn Valley CLC
- FVPLS (limited service from Melbourne)

[41] Information relating to City of Greater Shepparton Community at: http://profile.id.com.au/shepparton/home

The Demographic Data for Shepparton[42]

Table 1.21 Shepparton: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	1001	1091	2092
Non-Indigenous persons	27413	28074	55487
Indigenous status not stated	1558	1494	3052
Total	**39972**	**30659**	**60631**

Table 1.22 Shepparton: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total
Median age of persons	20	38	38
Median total personal income ($/week)	368	514	510
Median total household income ($/week)	752	989	980
Median rent ($/week)	180	190	185
Average number of persons per bedroom	1.2	1.1	1.1
Average household size	3.0	2.5	2.6
Proportion of dwellings that need one or more extra bedrooms (%)	7.8	2.9	3.1

Table 1.23 Shepparton: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	79
Owned with mortgage	205
Rented:	
▪ Real estate agent	182
▪ State or Territory housing authority	230
▪ From parent/other relative or another person	73
▪ Housing cooperative, community or church group	43
▪ Other landlord	26
▪ Landlord type not stated	10
Total rented	*564*
Other tenure type	3
Landlord type not stated	32
Total	**883**

[42]ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Shepparton*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC20200405?opendocument&navpos=230

1.4.8 Swan Hill[43]

Swan Hill is located in northwestern Victoria (Mallee), approximately 338km from Melbourne, 220km from Mildura and 187 km from Bendigo. Swan Hill has 20,452 residents (as of 2011), of which 883 are Indigenous (constituting 4.3% of the total local population) (see Table 1.24). Swan Hill is defined as a **moderately accessible** community, with significantly restricted accessibility of goods and services and opportunities for social interaction.

Legal Services

- VALS (permanent office staffed by VALS CSOs)
- VLA (serviced by Bendigo)
- Murray Mallee CLC (outreach from Mildura)
- FVPLS (limited service from Melbourne)

The Demographic Data for Swan Hill[44]

Table 1.24 Swan Hill: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	400	483	883
Non-Indigenous persons	9,352	9,145	18,497
Indigenous status not stated	554	518	1,072
Total	**10,306**	**10,146**	**20,452**

Table 1.25 Swan Hill: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total Average
Median age of persons	19	40	39
Median total personal income ($/week)	358	486	481
Median total household income ($/week)	710	895	885
Median rent ($/week)	150	160	155
Average number of persons per bedroom	1.2	1.1	1.1
Average household size	3.0	2.5	2.5
Proportion of dwellings that need one or more extra bedrooms (%)	12.2	2.6	3.1

[43] Information relating to Swan Hill Rural City Council at http://profile.id.com.au/swan-hill/home

[44] ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Swan Hill*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/IARE202014?opendocument&navpos=230

Table 1.26 Swan Hill: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	21
Owned with mortgage	68
Rented: ▪ Real estate agent ▪ State or Territory housing authority ▪ From parent/other relative or another person ▪ Housing cooperative, community or church group ▪ Other landlord ▪ Landlord type not stated *Total rented*	 53 116 27 38 7 6 *247*
Other tenure type	0
Landlord type not stated	22
Total	**358**

1.4.9 Conclusion

The community-specific data is reflective of the lower socio-economic status of Indigenous people and communities across Victoria, as evident in their lower incomes and poorer access to home ownership (and subsequent dependency on public housing as a result). Higher average household size, where indicative of overcrowding, may also be related to lower socio-economic status. Poverty and other social issues associated with this lower socio-economic status are likely to give rise to particular legal problems for Indigenous people, a number of which are prioritised in this report (including tenancy and credit and debt related problems, discrimination) and to barriers inhibiting effective responses to such issues (illiteracy, poorer educational outcomes).

PART 2 PRIORITY NEEDS AND SERVICE DELIVERY

3. CIVIL AND FAMILY LAW NEEDS: THE PRIORITY AREAS

Identifying the priority areas of level need among focus communities in Victoria will assist legal service providers to more effectively tailor service provision to the needs of Indigenous clients. It is also hoped that the production of an evidence base in relation to priority areas of need will assist legal service providers to make a case for adequate resourcing of such services.

We do not canvass here all the legal issues that were covered in the focus groups and stakeholder interviews. These are dealt with fully in Part 3, Section 5. However, for the reasons outlined below, we have prioritised a number of legal issues: child protection, discrimination, housing, neighbours, credit, debt and consumer issues, Centrelink problems, victim's compensation and wills. We do not suggest that matters relating to Stolen Generations, employment, education, accident and injury discussed later in the Report are unimportant, or do not give rise to significant problems for Indigenous people. However, they have not been prioritised in the following discussion.

3.1 SELECTING PRIORITY AREAS OF NEED

Selection of priority areas was not drawn purely from responses to focus group questionnaires, although these were important sources of information. The views of focus group participants in discussion were also taken into account, as well as comments by stakeholder organisations providing legal and other services to these communities.

Analysis was also undertaken of areas of *unrecognised* legal need among focus group participants, in that they may not have emerged in focus group questionnaires but might have come out in discussion or in interviews with stakeholders. This takes into account that identification of issues by focus groups presupposes recognition that certain events or experiences have a legal dimension, and particularly in relation to civil law, this is not always readily the case. As such, there may be areas of *unrecognised and unmet* legal need which are significant both in extent and in the impact that they have in communities.

In addition to the identification of priority areas of legal need, there are a number of dynamics evidenced in the Victorian fieldwork that bear particular consideration. The first is a dynamic of escalation: when civil law issues are left unaddressed or unresolved, they can worsen to become criminal matters.[45] We note that the opposite can also be the case: criminal law issues can give rise to civil law needs. For example, family violence can be connected to a number of civil law problems including housing, debt, child protection and discrimination.

The second dynamic is a kind of snowballing (or lateral escalation), where unresolved civil law issues knock on to create further civil law issues, leading to a complex of legal needs that are, at least in part, created through the very failure to address the initial legal concerns. This then points to the interrelationship between different areas of law and to the need to approach service delivery to clients with complex needs holistically, so that the effort spent in resolving matters is maximized and not undermined by the weight of other issues collapsing in. Examples of both of these dynamics are offered in the following discussion.

[45] Schwartz, M. and Cunneen, C. (2009) 'From Crisis to Crime: The Escalation of Civil and Family Law Issues into Criminal Matters in Aboriginal Communities in NSW' 7(15) *Indigenous Law Bulletin* 18.

In Victoria, more than 25% of focus group participants indicated that they had experienced a legal issue for these four areas of law.

- Housing (41.8%)
- Credit/Debt (32.4%) (and we add consumer issues to the discussion of credit/debt because of the degree of overlap between these two areas).
- Discrimination (29.2%)
- Disputes with neighbours (26.7%)

We consider these four areas of law to be priority areas of need.

In addition, 75.5% of focus group participants stated that they received Centrelink payments of some kind, and close to one in four of those people (22.7%) indicated that they had experienced problems with payments over the last couple of years. Taking into account the impact of issues with payments, and that only 11% of people who had experienced problems of this nature sought legal advice, social security/Centrelink is identified here as a priority area of need.

The final area identified as a priority is child protection. Although this was not among the highest identified areas of legal need (at 14.5% of participants), child removal has serious and long-term consequences that are felt across families and communities as a whole. In addition, although focus group respondents may not have nominated child protection as having occurred in their own lives in the last two years in large numbers, both focus group and stakeholder discussion confirmed this area as one of central significance and one which touches on communities' concerns about access to justice more generally.

In addition to these six areas of expressed need, there are two further areas of law that we identify as priority areas of unrecognised or unmet legal need. The first is in relation to victim's compensation. While one in five focus group members (20.5%) had been victims of violence in the last couple of years, only 31.3% of participants knew of the existence of the victim's compensation scheme. The second area of unrecognised or silent need is in the area of wills, because while only 5.7% of focus group participants had made a will, a further 56.6% expressed a desire for assistance to create one.

Finally we note here that there are important gender differences in some of the priority areas of legal need. Significant findings in relation to gendered needs in priority areas are highlighted within the discussion of each legal area below. We note here however that women were more likely than men to identify legal problems in the areas of housing, neighbours, child protection and family law, and credit and debt. Women were also less likely to have wills than men.

We now address these priority areas in turn.

3.2 CHILD PROTECTION

Concerns about significant shortcomings in Victoria's child protection system have been the subject of a number of recent inquiries and reports, including the 2009 Ombudsman's *Own motion investigation into the Department of Human Services Child Protection Program*[46], and the *Protecting Victoria's Vulnerable Children Inquiry* (2012)[47]. These have included discussion of a failure to protect human rights enshrined in the *Charter of Human Rights and Responsibilities Act 2006* ('the Charter') and legislative requirements under the *Children, Youth and Families Act 2005.* For a more

[46] Ombudsman Victoria (2009).
[47] State of Victoria (2012).

detailed discussion of the intersection between these reports and ILNP findings, please see Section 5.1: Child Protection and Family Law.

In response to two different questionnaire sections relating to family law and child protection, some 32.9% focus group participants reported having had child-related legal problems arising in the last two years. While this figure includes issues like child support payments, the large majority of these incidents fall within child protection. As mentioned above, 14.5% of respondents squarely raised child removal issues, but 18.4% of focus group members also nominated a child-related legal issue. As Figure 5.4 shows (see Section 5.1), analysis of those responses showed that many of these concerns also centred around children being taken into care.

While all family matters relating to children are of great import, the focus here is on child protection as a priority area of legal need. This is because of the impact of child removal, the degree of concern and discussion that it elicited in both focus group and stakeholder discussion, and the broader concerns around access to legal advice and access to justice that it raises.

3.2.1 Department of Human Services (DHS) Practice and Access to Justice

There was a widespread sense of injustice, disempowerment and inadequate care and consultation around DHS practices. Focus group participants and stakeholders alike made comments about the Department 'taking the wrong children', not doing enough to 'tick the boxes' in contravention of the best interests of the child, low levels of cultural competence and opting for removal over supporting and strengthening families. These sentiments are encapsulated by these focus group comments.

> They put a lot of stress on (families), because when the kids are removed, they've got to go through all these courses. Instead of sending in someone to help in the home, you try to do your best they say 'You do this and you do that'. People just can't cope with it. (**Bairnsdale Women's Focus Group Participant)**

> They're quick to take the kids… They should be working with the families. (**Bairnsdale Women's Focus Group Participant)**

This was said to compromise the willingness of families in crisis to access support services. As one stakeholder stated,

> There's a fear factor when it comes to the care and the protection of the children – they're not coping, but they don't want anyone to know they need help in case child protection are told. (**Community organisation worker)**

There were numerous examples given by stakeholders of what was said to be substandard practice by DHS. Two categories of practice stand out as being the most problematic. The first is an alleged exploitation by DHS of poor knowledge of law and process on the part of Indigenous families.

> Child protection turns around to say 'You must get an intervention order otherwise we take your child off you.' Or 'We've identified there are safety concerns for the child. If you get an intervention order, you are protected and we'll have nothing to do with it. But if you don't, then you are not protected to stop him from beating up your kids.' … There is a lot of that bullying, intimidation and duress kind of stuff that's happening. (**Community organisation worker)**

The second is a failure to adhere to the legislative requirement around cultural plans designed to protect the rights of Indigenous children and families. It was widely reported that this requirement was not followed. As this stakeholder's comments suggest, this was seen as part of a broader lack of cultural competence among departmental workers.

> So despite all the frameworks around (it) and the legislation, we're still day to day grappling with this … I think that it is so critical to have that 'cultural lens' in what these child protection workers are actually assessing. Without that cultural lens … because they are seeing everything from the white mainstream point of view… I've read reports that talk about the way that parents interact and they have missed parts entirely because they are seeing it only from the white perspective, which is really concerning. **(Indigenous community organisation worker)**

A number of stakeholders allege that DHS avoided the statutory requirements by pressuring families to consent to orders. Where there is a consent order, the court considers that the terms of that order are assented to by the family and so further investigation as to its terms is usually not conducted. This failure to 'look behind' consent orders to ensure that there actually was informed and un-coerced consent was said to be a failure of the courts.

> They don't question what has gone on before. They get to here, so the court doesn't know that someone has come to their front door and said 'sign this' or they've been brought into DHS and told 'sign this or you won't get your kids back'. The court doesn't investigate that process that's happened before hand because there is a consent order. **(Community organisation worker)**

3.2.2 Legal Service Provision and Access to Justice

In relation to accessing legal services, a primary issue was low levels of understanding of what rights exist, or the opportunities to challenge DHS decisions. Without this knowledge, the likelihood of people seeking legal support is reduced.

> Parents (are) in grave situations from not knowing their rights and the implications of that is that they had agreed to various orders ... I've seen it. I don't know if it is a pressure (imposed on parents), or if it is just that they simply don't know their rights. And you know (as a parent) you are walking into a family case plan meeting and you just agree to do anything to get your kids back, to be honest. So that is a concern. This is all going on without any real representation for the families. **(Indigenous community organisation worker)**

Some significant limitations in legal representation were discussed in interviews, including disincentives to challenge DHS decisions because although 'the legislation says that if you don't agree with a decision from DHS you can appeal it by an internal review and then you can go to Victorian Civil and Administrative Tribunal (VCAT), those two steps are not funded by Legal Aid' (**Community organisation worker**). Added to this was a more general sense that for various reasons, people did not routinely seek legal representation for child protection issues.

> They (parents) don't have a lot of representation in court. … And I don't know whether that's because they don't seek it or … This lady, she actually had … to seek a private solicitor to go in and she is going to pay for that now. … When it comes to money and what they call shame—a lot of them just give up. They think 'Ah, well … The kids can come looking for me when they are older.' (**Indigenous community organisation worker)**

> (Some) of the Aboriginal families around here don't like everybody knowing their business, they don't like telling their story over and over again. Once they have told it to DHS or DHS have told it to them, they don't want to then go tell someone else, then someone else again etc. So they don't seek assistance, they just follow what they're told to do with the Department, which means they don't necessarily know what their rights are. **(Community organisation worker)**

Obviously an absence of legal assistance is detrimental to the interests of Indigenous parents who are facing the removal of their children. There is a component of this lack of adequate representation that is directly a result of poor resourcing of legal services. This stakeholder's reflections on the limitations of what duty solicitors can achieve for clients in these types of cases are telling.

> The duty solicitor hasn't got time to go through everything … individual orders and child protection stuff end at 9.30 am and criminal matters start at 10, then there is a big influx, a big rush of people. Child Protection comes en masse with their solicitor there ready to go! Then it's all over and 'You can go home now' and now the criminal matters start. They have to push this through quickly because the criminal matters start at 10am. Just the physicality of the child protection, they have all got folders and law books and you might see a duty solicitor but he's running up and down doing all the criminal stuff that is about to start in half an hour … which then means, people might have lost their kids for three weeks for no reason, because they are just caught up in this rush! I'm sure quite often some of them walk out thinking ... what just happened? They come out crying saying I don't know why they have taken my child away, when can I see my child? (**Community organisation worker)**

While there is an imperative for culturally competent care and protection lawyers and enough of them, the fact remains that they are working within a system that is not adept at dealing well with cultural factors in cases involving Indigenous families.

> I wouldn't say that there are too many lawyers who work with families in this area who are terribly knowledgeable around cultural issues. We have spoken to legal people and also to magistrates about thinking a bit differently and being a bit more respectful to families and understanding where they are coming from. … It kind of was there and then it didn't move forward. I mean, I think that there is a lot of good will, but on the ground everyone's pretty rushed and it's bare minimum so I imagine that most of the families that we know they would find it all pretty daunting … while it might from our perspective, might create a few more challenges in court and whatever—it's fundamentally people's right to get good legal advice. (**Indigenous community organisation worker**)

3.2.3 Child Protection and Connection to Other Areas of Law

Child protection issues intersect with a wide range of other legal issues, both criminal (particularly family violence) and civil. Access to appropriate housing can be a determining factor in reunification prospects. However, as one Aboriginal community organisation stated, the processes for obtaining housing are 'not easy to negotiate and they can be doing all the right things in the world but until there is a physical house they are not going to allow the kids back. So the interaction between systems is so frustrating. (**Indigenous community organisation worker)**

Crossovers between child protection and social security were also noted by number of stakeholders, who expressed reservations about the extent to which DHS could use income management as a condition for keeping their kids. One service illustrated this with a case they were dealing with which

involved ‘a family going to Centrelink trying to get information about support for a child with a disability and being told that the best way to do it if they signed off on income management. (**Statutory Authority staff)**

Where older generations have had an experience of being removed by the government as members of the Stolen Generations, the impact of this on parenting capacity and on attitudes to the child protection system can create intergenerational cycles. As this stakeholder commented:

> For a lot of people that I have spoken to so far, they are Stolen Gen members so they have got lots of issues still from being taken as a child and even for them some of their child protection issues—because of what they didn’t get as children growing up. So they have become parents who have had their children taken away and sometimes grandparents—you know, it’s a generational cycle. (**Indigenous community organisation worker**)

This interviewee went on to comment that this created an obligation to provide such families with strong legal advice so that these dynamics can be taken into account when orders are being made.

> This is another reason that Aboriginal people involved in a child protection system should be getting the best legal advice they possibly can because if you track the issues right back it is often government that is responsible for it. I am not excusing it if they are not looking after their children adequately, obviously kids need to be safe. But there are lots of human rights issues that people need to have taken into account and respected. (**Indigenous community organisation worker**)

Apart from the interaction between child protection and other civil law issues, there is also a dynamic that exists whereby poorly handled child protection issues can cross over into the criminal law sphere.

> It’s also that (if) family issues are not mediated or dealt with … properly, people do pay back and usually this is in a public place and usually the police are in on the scene when it happens so then that becomes a criminal matter. (**Indigenous Legal Aid staff)**

3.2.4 Community Legal Education and Access to Justice

Another important finding is the need for education around the family law and child protection system. This was recognised and commented upon by focus group participants. ‘Child protection is a huge issue for a lot of our families. A lot of our families are not told what their rights are and how they can access legal advice (**Shepparton Women’s Focus Group participant**). It was reiterated as follows by stakeholders.

> Looking at some of our clients who are ingrained in the criminal justice system and how they transfer some of the preconceived ideas into the family law—a very different system of law working around what is the best interest of the child need and that kind of stuff—I actually believe that for the general community as well as for Aboriginal people, the family law is a bit of a mystery. All the dispute resolution you can do and all that kind of stuff. (**Community organisation worker)**

> We know … that half of our clients do not get legal advice. Many of our clients do not understand all the factors. … They are often tricked into signing documents and it’s one of the things—for community to get legal education (so that they know that) as soon as they get child protection involved, to get a lawyer. **(Indigenous Legal Service staff)**

Taking into account the role that grandparents and other kin often have in child protection issues, CLE should be targeted not just at parents but at all sectors of the community with a stake in such matters.

3.3 DISCRIMINATION

Discrimination was nominated in every focus site as an entrenched reality for Aboriginal people.

> It's kind of not exactly an issue that can be resolved in the courts or by law. It's a problem that people face every day and everyone goes through it at least once a day, every day. (**Robinvale Women's Focus Group Participant**)

Overall, almost **30%** of focus group participants said that they had recently been subject to discrimination in some context. **Table 5.10** (**Appendix C**) shows that reports of discrimination came from all focus group locations in Victoria.

Direct racial discrimination was the common basis for discrimination complaints identified in the focus group questionnaires. However, other grounds, such as discrimination on the basis of criminal record or disability, were raised by some stakeholders. Contexts where people were attempting to access goods and services (eg police, 'service providers', shops, pubs and clubs) appear to be especially problematic (see Section 5.2: Discrimination for more detail). Many focus group attendees referred to being singled out for negative attention in shops, for instance.

> Everyone's looking and talking and following you and I'm thinking hello, is anyone going to say 'Excuse me can I help you?' They're too busy following you round… thinking you're going to take something. (**Bendigo Men's Focus Group Participant**)

Other areas where discrimination was a regular occurrence included being refused employment on the basis of Aboriginality; being over-policed as perpetrators of crime ('When the young kids are in the mall, if a fight's broken out and that, it'll be the blackfella that they'll nail…the blackfella gets blamed for it' (**Bendigo Women's Focus Group participant**), but under-policed as victims of crime (particularly in family violence contexts); and discrimination from taxi drivers and private lawyers. Discrimination in the private rental market ('Once they see me, then 'no'' (**Framlingham Men's Focus Group Participant**); in provision of health care in hospitals and clinics; and discrimination against Indigenous children at school was also raised. All of these are discussed in detail in Section 5.2.

Despite the high incidence of discrimination, many people felt that it was an unfortunate fact of life rather than an actionable wrong. In this context, the true incidence of discrimination is likely to be much higher than reported in focus groups. The pervasiveness of discrimination is touched upon in the comments of this stakeholder.

> But it becomes a way of life. It's blatant in the rental market, in the employment market, blatant discrimination in the consumer market as a service user. They just presume they are uneducated so they don't get the job without even doing checks and stuff. It's in every part of our society … even at the hospital ward. **(Community organisation worker)**

This has ramifications for the extent to which people are prepared to pursue legal remedies for discrimination suffered. As a female focus group participant in Shepparton stated, 'I'm sick of talking about it. We've said so much'.

Challenging discrimination is likely to be a difficult process, and part of the difficulty may lie in the emotional energy required to complain, even in cases where a positive outcome of a complaint is likely, and particularly given the personal toll that discrimination itself extracts from those that experience it.

> With regards to discrimination, I worked with a guy that really wanted to pursue a discrimination action out at (organisation named). And I figured that would be a good thing not just for him but for the people of the community, because they do employ people from the community occasionally and the stuff that was going on could have been addressed … quite quickly and effectively. He could have got a good outcome from that, but he just couldn't do it. He really wanted to, but he just couldn't do it. We talked at length about it but he just wasn't prepared to pursue it. He would have to talk about it and it would raise a whole lot of other stuff for him that he didn't want to talk about. I think that was the biggest barrier. He knows that I could get a lot of support behind him and he had taken on other stuff but he just couldn't take that on. It was a shame. **(Community organisation worker)**

It may be difficult to trust that the systemic structures (including institutions, government agencies) that create the conditions underpinning and/or are part of daily instances of discrimination will actually approach redress of such wrongs in good faith.

> All these agencies down here, if you're black you can go in and fill out a form (to make a formal complaint of discrimination), but as soon as you walk out the door they'll throw it in the bin (**Bairnsdale Women's Focus Group participant**).

Long-term, ever-present discrimination can extract very real tolls from those who are the victims of it. Discrimination may result in people not being able to achieve their potential (for example in educational contexts) or can result in inability to access basic needs (where it occurs, for example, in the housing market). It is easy to see, then, the extent to which unaddressed discrimination complaints knock up against other areas of civil law. The following comment links alcohol consumption with the negative impact of discrimination.

> A lot of people get discriminated (against), they get disheartened, they get hurt, they go sit down then they want to have a charge (i.e. a drink) because they're upset. You don't blame people… I've served in the army. Why do they treat me any different? I'm just really upset about this. (**Bendigo Men's Focus Group Participant)**

While there is no suggestion here that the emotional impact of discrimination on the victim resulted in any outward anger, it is easy to imagine cases where discrimination may escalate to retaliatory assault or other criminal offences. One focus group member gives this example.

> Football, you get it bad. Because we're better than them, that's all. The kids cop it a lot. I coach a team and our very first game was an away game. Each team supplies an umpire, and it was the only time I have ever wanted to run onto a field and drop somebody. Because one of the umpires sent one of our young boys off … He intimidated him. … It's as if 'We need to teach these people', that's the attitude. The last home game … their kids were hitting our kids all day, and one of our kids had had enough and he went back at them, and then the attitudes from the team was, 'Well 'these people' never learn. 'These people!' (**Shepparton Men's Focus Group Participant**)

3.3.1 Accessing Legal Advice

Only 11.6% of people who experienced discrimination sought legal advice in relation to it.

> You can go and try to talk (about discrimination) to whoever, but it's like talking to a brick wall. Unless you know the specific people to go to, you need a list in the community of what your protocol is (about how to deal with discrimination), because there's no list of protocols for anyone to look at. It's just all around and around, everyone wants to shove you… They want you to go over this way or that way, but no one wants to address it because it's rife through this town. (**Bendigo Men's Focus Group participant**)

Other issues relating to accessing legal advice included difficulties in pinning down and proving discrimination when it is anything less than overt, misconceptions that a complaint should only be brought if it will have some sort of systemic or strategic outcome, and reservations amongst would-be complainants about whether an agency will take their claim seriously (see Section 5.2).

There was a sense among certain stakeholders that low levels of understanding of discrimination law among practicing lawyers may also result in adverse outcomes for the client if practitioners dismissed people's alleged experiences of discrimination without exploring them properly.

> I think lots of people have a very basic understanding of what discrimination law is, (think) that it is not very complex, and I really struggle with that. Unless someone says 'Go out because you are black' they don't (call it discrimination) … And I find this with lawyers and it's like sorry guys it's a lot more complex than this…. I just find there is really unsophisticated understanding at many levels about what discrimination is like and what we can do about it. **(Statutory Authority staff)**

In recognition of the onerous nature of its complaints mechanisms, VEOHRC have recently overhauled their process to encourage greater numbers of complainants.

> It also worries me that people either don't feel empowered enough to do something about it, and I do have to say that up until the last year or 18 months its partly been about (the) … process (of complaint), so (VEOHRC has worked) hard to streamline that to make it a lot more accessible to people. But it's hard to get over that sort of reputation. **Statutory Authority staff**

The more successful complaints brought to agencies such as VEOHRC, the more likely people are to come forward with complaints.

> (We need) just one (Aboriginal complainant)! (We) just need one (who will then) go back to the community and say that it actually worked … It would be good to get some runs on the board. **Statutory Authority staff**

3.4 HOUSING

Housing was identified as the most prevalent legal issue among focus group participants. Overall, **41.8%** focus group participants identified housing as an area where legal issues had arisen for them over the last two years. Among the focus groups the frequency of the occurrence of housing-related problems varied from 23.5% in Framlingham to 57.9% in Bairnsdale, as Table 5.14 (**Appendix C**) illustrates.

Access to adequate housing is a basic human need and a human right, and problems with accommodation feed into many other issues, both legal and non-legal. Housing issues have a serious impact on individuals and the community as a whole, as this comment by a community organisation in Bairnsdale suggests.

> Definitely number one is the housing and tenancy … it affects so much other stuff like health and relationships, housing is huge … If you've split from your wife and the wife's got the kids, it's very hard for single men to get houses … They want to have access to the children, but you can't have access unless you have a house, but you can't get the house unless you have the children. It's really going back and forth. And that causes all that family violence and they end up in court and obviously that leads to poor health outcomes because of all the stress. And you see, like, it's happening at the moment and it feeds right through to the grandmothers. It's really sad. It might be that one housing issue that feeds into so many … it affects so many people … and its actually killing people. I can see a lot of our elders, like it's killing them, this sort of stuff. (**Community organisation worker)**

Within this area of legal need, problems with repairs and maintenance in public housing were the most pressing concern. Failure to maintain property means that many families live in substandard conditions, which can be physically dangerous and pose health risks. Often, tenants are forced to make do with ad hoc self-repairs.

> My bathroom, you step out of my shower, and the floor is all spongy because all the water has got under the tiles. If I was to stamp on that, my foot'd go straight through. … But it's going to cost thousands of dollars, so they can't fix it. … There were termites in the house previously, before I moved in. They reckon they've got it sprayed out, but in my kids' bedroom the whole window frame fell out of the brickwork so I've had to go and buy a piece of board and it's still there. I'm paying good money on rent, and it's not getting fixed! It's not fair mate. **(Shepparton Men's Focus Group Participant)**

What is highlighted in this case is the power imbalance between a housing authority (conflict with whom can affect access to future tenancies) and a tenant in need of fundamental repairs or maintenance. Without good legal advice and advocacy, a tenant can often feel that they have no choice but to tread lightly to avoid eviction. This is exemplified in these comments by focus group participants.

> Then there was one time I put a complaint in about one of our properties. I fell through the floor. I rang the real estate agent twice, they wouldn't do nothing, so I called the Tenants Union, and within a week I'd got notice to vacate the premises. They knew that was a way of getting us because we have two little dogs, and to get a house in Melbourne with two little dogs, it's near impossible. (**Shepparton Men's Focus Group Participant**)

> I had repairs but they did a crap job. No doors on the cupboards. The fan above the oven doesn't work. The oven doesn't work. There's heaps of stuff. I didn't get legal advice because I didn't know how to. (**Framlingham Women's Focus Group Participant**)

The reality of this power imbalance was also raised by stakeholders, including one Indigenous community organisation, who states, 'We've got a woman (whose) … 20-year old fence fell down. They are taking her for that. She's been in the house for 20 years and the fence was there before she got there' (**Indigenous community organisation worker)**.

As discussed more fully below in Section 5.3: Housing, a sense of injustice emerged from focus groups about having to continue to pay rent where repairs were not being undertaken by housing authorities. Where there is family violence that necessitates a party leaving their place of residence to be safe, another layer of perceived unfairness is added where rent is still required to be paid. One woman in the Heidelberg focus group asked 'If you have to leave for domestic violence, I don't understand why you still have to pay rent?' She continues as follows.

> We'd actually moved out. We couldn't stay there. Our lives were more or less at risk. So we basically had to move out of there in a hurry … but because the keys were lost … I understand what they (housing provider) are saying, because I still had the keys they were still charging me rent, but they weren't listening to me. I couldn't live there because of the violence. (**Heidelberg Women's Focus Group Participant**)

A stakeholder organisation also commented on this point.

> When the women (escaping domestic violence) come to me they usually have left the relationship or he has been put in jail or he has gone to get help somewhere else. So then they struggle with rent, and there are holes in the wall that need to be fixed, so who's going to pay for them? And they have to get out of the house as the rent costs too much. (**Community organisation worker)**

Tenancy issues intersect with a range of other legal issues. Focus groups spoke of discrimination in the private rental market, and of a kind of racial profiling among housing providers whereby Indigenous tenants only get housed in certain areas, often away from non-Indigenous families, which can lead to neighbourhood disputes.

Where family members run into legal or other issues of their own, overcrowding of 'legitimate tenancies' can put those tenancies at risk and lead to debt, disputes and other risks associated with overcrowding. Inadequate access to accommodation for people exiting prison also has obvious potential to snowball into other legal matters, including as a result of overcrowding in existing accommodation as families stretch to take people in. This was emphasised by one stakeholder.

> There is a real need for Corrections Victoria to start to house people appropriately. To get parole you have to have somewhere to live and a residential address. So families will take someone in to give them a residential address so they can get out on parole but there is no room, there is nowhere for them to live, there is nowhere for them to sleep. If they want to regain access to their children, there is nowhere for the children to come, so they have to sleep on a sofa. That's good enough for parole but it's not good enough for them to resume their life and move forward in any way. Then it gets overcrowded even more by gaining access to their children. There is nowhere for them to stay. It's a real dilemma. (**Community organisation worker)**

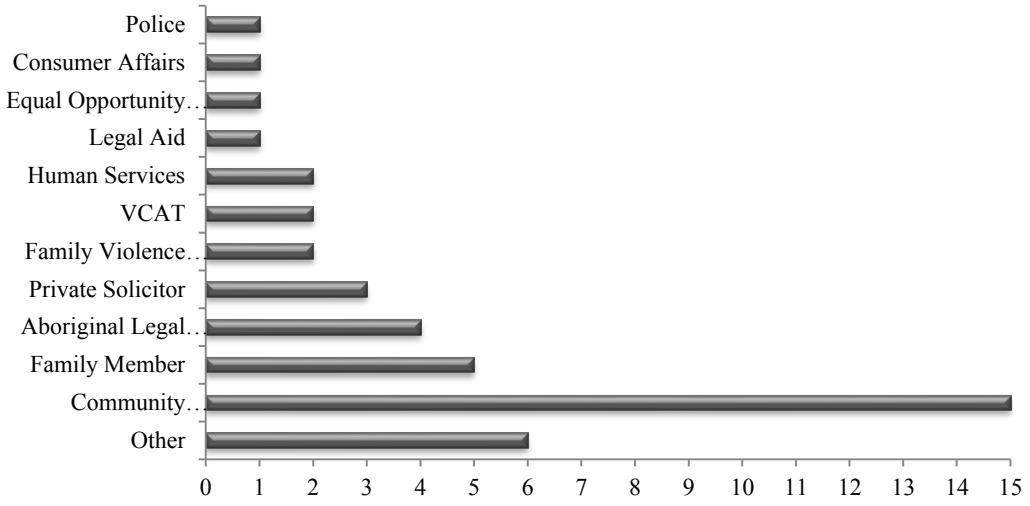
Unresolved criminal matters may also affect people's willingness to attend VCAT hearings.

> They don't go to the Tribunal because they are scared of the Tribunal. And also because the Tribunal is in the Magistrate's Court, so if they've got warrants out for them they won't go because they are worried about being picked up for warrants. **(Indigenous community organisation worker)**

With only slightly more than one in five people accessing legal advice in relation to their housing dispute (or 21.9%; see **Figure 5.3** in Section 5.3: Housing), the vast majority of Indigenous people who identified a housing problem (78.1%) were either living with the fallout from their tenancy disputes or attempting to deal with the relevant housing authority themselves. It is also worth noting that the majority of people who did seek legal advice did not actually do so through legal service providers.

As **Figure 3.1** below indicates, participants generally sought assistance from community organisations, many of which the ILNP interviewed as stakeholder organisations. Advice was sought from legal practitioners or legal services by a total of 10 participants out of 42: VALS (4 participants), private solicitors (3 participants), FVPLS (2 participants) and VLA (1 participant) (see **Table 5.21: Appendix C**). Five people sought legal advice from family members.

Figure 3.1 Source of Legal Advice Provided to Participants for Tenancy Issue



What emerges here is a picture on the one hand of great legal need, with enormous ramifications where that need is unaddressed or poorly handled, and on the other hand inadequate access to legal service provision, which is the very thing needed to redress need. As discussed more fully Section 5.3, there is anecdotal evidence both of extremely low levels of representation of Indigenous clients at the Tribunal, and high levels of success in mediating tenancy disputes with DHS where they are handled early and where strong relationships exist between advocacy bodies and housing providers. As such, it is apparent that all elements are in place for better resolution of tenancy disputes. It is therefore a matter of some urgency that priority is given to expanding access to tenancy advice and representation for Indigenous people.

A female focus group participant in Shepparton summarises it this way:

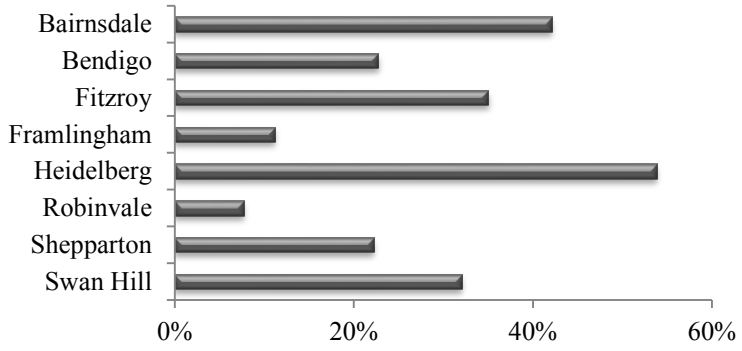
> People haven't got a liaison person to speak for them, and know the jargon and the legalities about what needs to be said. Because people are entitled to have a healthy, good life, and to live in a stable home, same as anyone else, and not be punished. Especially if you have children, whether it is winter or summer, all those health issues, whether it's water or warmth... And I don't think people have got someone assertive enough to be able to talk on your behalf. (**Shepparton Women's Focus Group Participant**)

3.5 NEIGHBOURHOOD DISPUTES

Some **26.7%** of focus group members indicated that they had had a dispute with a neighbour over the last two years, and **76.2%** of those respondents did not access any legal advice in relation to the dispute in question. This may contribute to the broad consensus in focus group discussions that these issues can cause a lot of grief to individuals, largely without satisfactory resolution. So, 30.4% of Indigenous women, compared with 21.7% of Indigenous men, said that this was something they had experienced recently. 73.8% of disputes involved complaints concerning noise or animals.

Figure 5.2 shows that disputes or problems with neighbours were more pronounced in some focus groups compared to others. However overall, more than one in four focus group participants identified neighbourhood disputes as a problem (See **Table 5.23: Appendix C**).

Figure 5.2 Participants Who Identified Neighbourhood Dispute by Community



Neighbourhood disputes may have serious consequences for a tenant and it clearly crosses over into housing-related legal issues. It can also be bound up with discrimination and can lead to criminal offending. As such, problems with neighbours can be understood as a pivot point for a number of areas of civil, family and indeed criminal law. The following comment from a woman participating in the Bendigo focus group provides an example of the interplay between neighbourhood complaints (in this case in relation to noise) and tenancy issues.

> When there's music going in the street, my kid is the first one they blame for it and who do they ring, they ring (Housing) to have her evicted. And then even this so-called Aboriginal woman had my kid charged and we had to go to court for that to have her (woman's daughter) moved from her house … Evicted, not being moved, evicted, nowhere else to go! (**Bendigo Women's Focus Group Participant**)

A significant theme that emerged in focus groups was the extent to which police were called as a first response to neighbourhood disputes. This is part of the dynamic whereby such disagreements may escalate to the criminal justice realm. Such disputes can also be quickly scaled up into community wide disputes, as this Indigenous stakeholder organisation illustrates.

> We have what's called community violence here in one area of Bairnsdale and it's a couple of Indigenous families in the east. … (It involves) community housing properties, Office of Housing properties, but it's just those community members don't get on. So, neighbourhood disputes, yeah I've actually got one that rang Friday and she is in emergency accommodation because the community violence over there is so bad. (**Indigenous community organisation worker)**

What is clear, then, is that arguments with neighbours can quite easily cross over into violent conduct that can have ramifications both for tenancies and in the criminal law. This may be worsened by failure to take into account the 'mob map' in a given community, and ultimately forcing certain families to live in close proximity to each other despite existing tensions.

> I think there's more crime if you're going to slap a bunch of people that don't know each other or get along with each other in the middle of nowhere without any choice about where they're going to live. Whereas if you give back a little of that freedom, 'Well where do you want to live, where would you like to live?' **(Community organisation worker)**

Where allegations or complaints that are made from non-Indigenous neighbours have a racist or discriminatory hue, this not only raises another legal issue but exacerbates the hurt and ill-feeling experienced.

> We should be able to put in complaints about these neighbours. They cause us a lot of stress. A lot of unnecessary stress and it's based on race. It's every day, every second day! We shouldn't have to put up with this! ... We die early anyway. We don't need this extra stress. We don't last that long, we're not going to be around that long, they don't need to worry! (**Shepparton Women's Focus Group Participant**)

Taking into account the impact of unresolved disputes with neighbours on quality of life and its capacity to cross over into other areas of law, the low levels of access to formal avenues of redress (other than through police) is of concern. As one stakeholder commented, people may be unlikely to seek legal advice when a dispute has not yet attracted the attention of the criminal law. With the Koori community it's … the proactive thing, trying to do something about it before it escalates' (**Community organisation worker)**. The words of one focus group participant about police intervention are telling, 'At the end of the day, that's the only way that it can be resolved' (**Robinvale Women's Focus Group Participant**).

3.6 CREDIT AND DEBT/CONSUMER ISSUES

Almost **one in three** focus group participants have experienced a threat of legal action on account of a debt in the last two years, making it the second most common legal issue identified across all groups. It was also one of the categories of legal need that had the lowest rate of access to legal advice, with 84.5% of people not seeking legal advice about how to deal with threatened legal action. It was also a problem identified more frequently by women.

Table 5.28 (**Appendix C**) shows 54 individuals identified legal problems in relation to non-payment of financial obligations or issues with credit reference ratings or bankruptcy. Some 17 of the 54 individuals identified problems in both categories.

Debt issues interact strongly with consumer law matters. To take just one example, a client of one service 'was being charged by two companies for electricity over the same period of time. We've got no idea how that works' **(Indigenous community organisation worker)**. Unaddressed consumer problems can easily give rise to problematic levels of debt. Examples of the types of consumer issues identified by focus group participants included telephone contracts, door to door/telephone sales, funeral funds, rent/purchase agreements, vehicle repairs and sales, faulty goods, access and entitlements to superannuation, and disputes with banks and insurers (see Section 5.6: Consumer).

Low levels of financial and consumer literacy means that it is difficult for Indigenous consumers to identify a legal problem, so incidents of relevant problems are actually likely to be much higher. Mobile phone contracts, which were also widely identified in stakeholder interviews as being problematic sources of debt, constituted the most commonly identified category of problems. One issue relating to phones (but which arises in other consumer-related contexts) is that regular payments are often made by direct debit from bank accounts, without consumers having a proper grasp on how and what payments will be made, rarely keeping tabs on what is actually being deducted, including as a total amount payable over time. See also the problems that arise in relation to debt from book up and payday lending, rent-to-buy schemes and the use of Centrepay to enable deductions from Centrelink benefits for questionable contractual arrangements (Section 5.6: Consumer).

Aboriginal people may fall prey to unethical traders and other unconscionable conduct due to poverty, low consumer literacy or a reluctance to say 'no' to what appears to be an opportunity (like an offer of a free phone). All of these things lead to a higher likelihood of people taking on financial obligations that they cannot meet. As discussed more fully in Section 5.6, there is some suggestion among organisations working with communities that salespeople take advantage of these factors to make sales.

> You get the cold call, the door knocking, you get people try and confuse them and get them to sign up and things like that. … I know we have had a quite a few elderly people that had signed up to three or four different electricity places. They seem to be targeting the elderly. (**Statutory Authority staff)**

> I know there's been a huge push to stop door-to-door sales. There's been a lot of work done by ASIC (Australian Securities and Investments Commission) and some local consumer groups around that. But that certainly is an on-going problem that gets people locked into contracts that they can't get out of or don't know their rights (in relation to) and (then they) come to a financial counsellor too late down the track. (**Indigenous community organisation worker)**

The pervasiveness of debt, the issues that it raises around consumer protection and basic financial literacy, and its impact on the self-sufficiency of individuals and families makes it an area of need of some significance. Debt can also create a 'snowballing' effect into other areas of civil law, such as housing and consumer law. 'I'm dealing a lot with utilities and those sorts of things, when someone does get housed or when you get cut off or when you do get someone into housing and you try and connect them you find that there is a large debt there—that's hard to deal with' (**Indigenous community organisation worker).**

Because of the policies of housing authorities not to forgive debt even after long periods of time, bankruptcy can be the most viable option for people in serious debt.

> A lot of tenants especially in community housing, when the debt gets too high they'll declare bankruptcy and they know they can do it every twelve months (to) wipe their debt. And then they'll build up to another debt and then they'll just wipe it again … They've got 101 bills and they are just going, 'Oh, I've got to get rid of them.' So, they just wipe them out. And then one person does it and then the next person and the next person and then you just get an influx of them and then you won't get nothing for 12 months. And then they'll just come again. (**Indigenous community organisation worker)**

While financial counsellors provide an important service in striving to increase levels of financial literacy and in managing the situation as they receive it, legal service providers may be more inclined to take a rights based approach to the situation.

> There are times when people are stuck and you need more than just a financial counsellor saying 'Let's look at how much money you have got'. Why can't we challenge that firm and take them through court because of the bad service that they have given us and yet we had to end up paying? (**Indigenous Legal Service staff)**

Despite this, only three individuals (less than 6% of those that identified a consumer-related issue) indicated they had sought legal help or assistance for their consumer-related problem, and only 15.1% of people for debt issues. There may be numerous reasons for this including shame, denial and having more urgent issues to deal with. This was reiterated by a number of stakeholders, who commented of their clients, 'They'll go so far and then they'll stop because it just seems too hard' **(Community organisation worker),** and 'Sometimes there is another factor of being caught out and not wanting to highlight it and to simply walk away, bury their head in the sand' (**Statutory Authority staff)**.

More effective responses to this area of legal need may help individuals in cases where unconscionable conduct has led to debt and might at the same time discourage companies from targeting Indigenous communities as prey for high-pressure sales or other unethical practices. It might also stymie the potential that debts can have to become criminal matters. As one Indigenous community organisation stated, 'There is a huge source of people going into prison (stemming from) financial issues, not from criminal issues' (**Indigenous community organisation staff)**. Examples such as the following demonstrate the importance of ensuring greater levels of advocacy, support and information with respect to consumer issues. This comment tells the story of a Koori woman who purchased a defective vehicle, of the responses of both parties as a result, and of the clear link between criminal and civil law issues. If the woman in question had known that she could get some help as a consumer things may have turned out differently.

> We had one recently where a single mum with a lot of children and one sick child bought a car, private sale in a country town. The car was a lemon so she went back to the people's house to say, 'This car has got this wrong and this wrong and this wrong with it'. And the couple said, 'Ah well, buyer beware' sort of thing. And that led to some yelling and screaming and (someone) was pushed over or something like that, which led to criminal stuff. Police were called. The lady, when we spoke to her, she knew that she'd done the wrong thing. But she is in a highly stressful situation. She is a single mum. She says there was a bit of attitude from the young people. … And she was willing in the beginning to sort of negotiate and say, 'Can you give me some money back so that it can get fixed or (can) you to take it to a mechanic to get it fixed?' But that has actually gone very bad now. And the other party, when I spoke to them they said … 'You know what Aboriginals are like' sort of thing … (T)hat set off what is now very serious for that woman. It didn't get to mediation. … Because of the attitude of the other parties and some of the comments that they'd said I don't know I'd want the woman in the room (for mediation). It's their underlying attitude…. I wasn't sure whether I wanted to set her up for that or not. That would come out in the mediation. But in the end the criminal stuff took over. But it did start from her actually not knowing where she could go. (**Statutory Authority staff)**

Legal service providers have a role to play not only in providing after the fact advice for debts incurred, but also in raising levels of understanding in communities about consumer protection and

related issues. As these Indigenous organisations stated:

> We need to educate them about their rights and also their responsibilities when it comes to signing a contract … and not knowing that there is a cooling off period when you sign a contract. But also if you signed a contract and you find that the goods that you have—like if you get a lemon car—how do you get out of that after the cooling off period? (**Indigenous Legal Service staff)**

> I think there is definitely more need for consumer legal support. There is definitely under-supply of that for people in very difficult situations and being Indigenous as well in those situations adds another whole myriad of issues that aren't being addressed. So definitely there is a huge potential for more funding and more support and more one-on-one case management for consumers in these situations. (**Indigenous Legal Service staff)**

3.7 SOCIAL SECURITY

Some **75.5%** of all focus group participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits 18.7 percentage points higher than that of Indigenous men (82.2% of women compared with 66.7% of men) (see **Table 5.37: Appendix C**). Almost a quarter (**22.7%)** of participants receiving Centrelink payments also identified having experienced a dispute or problem in this area (with no significant gendered difference). Overpayments or underpayments of allowances constituted half of the difficulties reported, and being cut off or having benefits reduced accounted for another third. Some **89%** of focus group participants either left the problem unresolved or attempted to deal with Centrelink directly rather than seeking legal advice (see **Table 5.42: Appendix C**).

In relation to over and underpayment of entitlements, there were a number of factors that might be more pronounced in Indigenous communities that contribute to these problems. One is the more frequent movement of extended family in and out of a given household, which might be construed by Centrelink as altering entitlements, for example, of young people who are recorded as living out of home. When Centrelink moves to reduce entitlements—here, on the basis that a young person is again living in a family home—it is often quite difficult to regain former entitlements when family members move on.

Another issue that may be particularly acute in the Indigenous community is that people may be ill equipped to utilise technology to manage their social security issues. This may be because of low levels of technological literacy (particularly among older people) or because people do not have phone credit to use to call helplines. Mistakes in self-reporting because of technology-based confusion can be extremely significant, but Centrelink may not be sympathetic to such issues.

> I have spoken with Centrelink down here and they were 'Ah, well. We are not an education system.' But then you want us all to use the internet or the phone or a mobile. You know, those people don't have that ability. My clients don't have the credit on their phones to do that. (**Community organisation worker)**

Mistakes or maladministration of Centrepay was also a problem. Where financial literacy is low and people are relying on the Centrepay 'system' to manage obligations, discrepancies can have serious consequences. One focus group participant noted that Centrelink made an error about the amount being debited for rent. They were debiting the correct amount, but fortnightly rather than weekly. As a result her tenancy was now at risk, with eviction threatened for rent arrears. 'And no one notified me

until I was $1000 behind! People are being technically punished when they are seeking help' (**Shepparton Women's Focus Group Participant).**

This touches on one of a number of more general concerns about the way that Centrepay operates. The first is that although the scheme was ostensibly set up to protect the interests of those with low incomes, including assisting them to better manage their money, there is little if any face to face component to the scheme and if an error occurs, as in the case study above, the burden falls to the client—not Centrepay—to identify and seek to rectify the situation. These are the same clients whom Centrelink has identified as being in need of Centrepay because of their lack of financial literacy and capacity for financial self-management.

> The onus is all on the client. … If there is a shortfall on the payment because it was over-set by Centrelink, but they've underpaid somebody and that translates into debt, it's not Centrepay's responsibility, it's the client's responsibility. Even though they've created that debt in the first place. Which I think is mean-spirited at the very least. …We need to assume that they (Centrepay) are protecting the vulnerable. …Well you would think so, you would think that they would have some sort of obligation really. (**Indigenous community organisation worker)**

Another fundamental critique of the Centrepay system is that without effective oversight, the scheme appears to be facilitating exploitation of vulnerable Indigenous people by traders through high-pressure sales, scams and rip offs. It is all too easy for companies to be approved under the scheme and to then sign Indigenous people up to highly questionable contractual obligations, with deductions being made through Centrepay - to their detriment rather than their benefit. This issue is dealt with in more detail in relation to consumer law.

Income management, introduced in 2012 to the Shepparton Local Government Area, adds another layer of complexity. Some **12.2%** of all focus group participants in receipt of benefits were also subject to income management. There was an expectation among stakeholders that as income management was rolled out more widely in Victoria, it would give rise to a range of legal problems. 'DHS are still trying to wrap their heads around what it's going to mean for them. We think there's going to be a significant impact here, but the Federal Government is not recognising that' (**Indigenous Legal Service staff).**

One stakeholder raised the interconnection between social security issues and potential criminal law matters. The transfer of payments to single parents with children over the age of seven to the Newstart allowance was said to throw up a risk of increased debt and, in turn, crime. 'That's where you get the young ones stealing and pinching. It's a terrible thing to do but when you've got to steal food to live, you know what I mean? It's about survival.' (**Community organisation worker)**

The systemic nature of the issues raised in relation to Centrelink, Centrepay and income management, combined with the profound effects that this area has on people's lives and the high percentage of people who receive social security benefits makes this an area of priority legal need.

3.8 UNMET OR UNRECOGNISED LEGAL NEED

3.8.1 Wills

While fewer than **6%** of focus group participants had completed a will, when specifically asked whether it would be something that they would like to do, a majority (or **56.6%**) of those without wills said that they would like assistance in completing a will. Women were less likely to have completed a will than men, and were more likely to indicate they that would like advice in completing one. These figures broadly correspond with other research about Indigenous people and wills.[48]

As discussed more fully in Section 5.8: Wills and Estates, the low number of Indigenous will completions may be accounted for by the fact that with Indigenous people addressing from day to day a large number of pressing issues (and often, crises), making a will seems like a luxury rather than a priority. It may also be that wills are viewed as relevant only for people with substantial property to distribute posthumously. As one focus group participant explained, 'People don't do wills because they haven't got any assets' (**Framlingham Men's Focus Group Participant**). People are less likely to think of a will as something that can bind one's family in relation to wishes about, for example, burial arrangements, placement of children after a parent or guardian's death and/or beneficiaries of accumulated superannuation. The lack of awareness of the issues that can be covered in a will has been identified in other research, as have the particular concerns over burial.[49]

Without legal education and increased awareness about the utility of wills, this situation may be unlikely to change. In addition, affordable and timely legal assistance in the drawing up of a will needs to be made available to community members.

> I remember one day I rang five different phone numbers while the person was sitting next to me just trying to get some sort of legal advice around those (estate planning-related) issues that they had. You have access to Department of Justice legal advice and all sorts of stuff that helps but sometimes they are difficult to access as well. … Quite often you give them (their) phone numbers and ask (them) to give them a ring and they will come back in a couple of days or weeks and they haven't been contacted and that just perpetuates the frustration. **(Indigenous community organisation worker)**

3.8.2 Victims Compensation

Levels of awareness of victims' compensation entitlements were relatively low. Just over a quarter of men (27.3%) and one third of women (33.3%) who had identified as a recent victim of violent crime had heard of the scheme (see **Table 5.50: Appendix C**). Lack of knowledge about the scheme was a theme that emerged in focus group discussion, with one Robinvale participant explaining, 'There's not a lot of information about what this is there for' (**Robinvale Women's Focus Group Participant)**, a position confirmed in Heidelberg, where one participant said, 'It's not known to a lot of women' (**Heidelberg Women's Focus Group Participant).**

The high level of unmet legal need in this area was commented on by stakeholders, too.

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[48] Vines, P (2013) 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Culturally Appropriate Wills' 16(2) *Australian Indigenous Law Review* 18

[49] Ibid.

> If we were to go out to the regions with a bunch of VOCAT (Victims of Compensation) forms and we had a public meeting in each of those regions, we would be able to sign up stacks and stacks of clients. There is a vast majority of people with unmet needs who are unaware of their rights. **(Indigenous Legal Service staff)**

Focus group participants expressed anger at police personnel for failure to give timely advice on this.

> The coppers only tell you this stuff a few months after it has actually happened. Because you have to apply for it within a (certain) period of time. (**Shepparton Men's Focus Group Participant)**

Stakeholders also suggested that unwillingness of legal practitioners to act for clients with complex cases or needs can be an obstacle to successful claims.

> (Victims compensation matters) are not done very well. (It) is done by the private sector, and they wouldn't touch our clients where it's not straightforward. Where there is no conviction, there is often no reporting of a crime and so there is a lot of work that has to go into creating the evidence to go before the court as well as all the forensic evidence in relation to the impact of injury. That I see as a real gap that isn't picked up… There are quite legal and technical issues of evidence. … I've seen where other community agencies do victims' compensation and there is so much that is missed. **(Indigenous Legal Service staff)**

From the data gathered from focus groups and the reflections of stakeholders, it is clear that access to compensation for victims of violent crime is a significant unmet civil law need. These results are broadly consistent with other research in the area.[50] The pathway to remedying this gap lies in a combination of improved community education about the availability of the scheme, including through a commitment by police to notify victims of their entitlements, and better resourcing of legal services to act in the interests of their clients in pursuing compensation. It is also important to remove other barriers that might inhibit Aboriginal access to compensation, such as the effect of prior criminal offending history.

[50] Aboriginal Family Violence Prevention and Legal Service Victoria (2010) *Improving Accessibility of the Legal System for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault*, Policy Paper Series, No 3.

4. PRIORITY ISSUES RELATING TO SERVICE DELIVERY

4.1 Indigenous Access to Civil and Family Law Justice

Non-criminal legal need within Indigenous communities requires much greater attention than it is presently afforded. Addressing Indigenous civil and family law need is an important goal in and of itself: Indigenous people are entitled to adequate access to justice when problems arise in relation to housing, social security, education and other issues. Unmet need in these areas, however, also contributes to a range of broader social problems for Indigenous people, including criminalisation and offending. Many of the legal issues discussed in this report contribute to and are caused by the marginalisation and social exclusion of Indigenous communities. Being able to more effectively respond to legal problems within a legal framework will ultimately lead to reduced levels of social exclusion for Aboriginal and Torres Strait Islander people.

ILNP research in Victoria indicates that presently in certain civil and family law areas, particularly those that have been identified as priority areas of legal need, Indigenous people are facing significant legal problems, often on their own and without sufficient legal knowledge or assistance. There are currently serious gaps in legal services being provided to Indigenous communities, with a much stronger focus on meeting Indigenous criminal law than civil or family law need in terms of service delivery. These gaps relate to the level of civil and family law casework and advice provided to Indigenous communities by legal services, as well as to law reform and policy work and to CLE:

> From a civil point of view … the rumour mill suggests we're not going to do something for (Indigenous people). The rumour mill is correct in a lot of cases. If you go back to the list (of civil and family law matters that might be taken on), there's not a lot we can offer… We can't offer them very much. (**Indigenous Legal Service staff)**

Further, of particular concern to ILNP participants in Victoria has been the Melbourne-centric focus of legal service delivery. At the time of our research VALS, for instance, based its one civil lawyer in Melbourne, from where that person had to service the whole of the State. In this context, ILNP participants in regional Victoria have identified a feeling of isolation from and an inability to access legal help. As one woman in the Shepparton focus group states, 'And then to access legal advice, it has to come from Melbourne. For legal advice, accessibility is almost non-existent here'.

A further important point concerning access to justice that is specific to this jurisdiction is that the Victorian Charter places certain legal obligations upon State government (public servants, local councils and other public authorities) to 'act compatibly with human rights and to consider human rights when developing policies, making laws, delivering services and making decisions'.[51] This gives rise to particular issues of access to justice for Indigenous (and other) people living in Victoria. What the following comment from a statutory stakeholder suggests is that the Charter requires government (which would include agencies dealing with housing, child protection, social security, education etc.) to carefully consider the impact of their decision-making within a human rights framework. There is in this sense an issue of 'justice' (and of access to it) *separate and in addition to* other legal issues (for instance, tenancy rights under the *Residential Tenancies Act 1997* (Vic)).

> If we are playing around with families (through child protection) and that sort of stuff and you are making decisions about this stuff or even housing, there are legal rights engaged here that

[51] Taken from the VEOHRC website: http://www.humanrightscommission.vic.gov.au/index.php/the-charter

> you guys making these decisions have got no understanding of - even though you've got an obligation to consider them (under the Charter). So there is a whole sort of 'package' (of rights) … that you need to have a think about. And I think certainly the lawyers in some of these Departments are starting to think in a slightly more sophisticated way about it. But that's certainly how I talk about those sorts of issues. Even things like education. You are talking about a person's right not only to education - but about the right to economic participation and social participation down the track. So you need to have a think again when making these decisions about excluding the child or limiting their attendance at school, what rights are engaged? Where have you given (appropriate) consideration to this 'package' of rights? …And you are an individual (as a public servant), but you have just made your whole Department liable for this (through your decision-making), so have a think about it. …It's about the rights-based approach, but it is also about being pro-active and thinking about it first so that the (Indigenous) person doesn't get to the door and encounter a problem. **(Statutory Authority staff)**

4.2 Resourcing Civil and Family Law Need

The issue of under-funding of legal services needs to be considered and responded to as a fundamental first point in addressing gaps in service delivery and poor levels of Indigenous access to civil and family law justice in general. The latter are attributable to problems with resourcing of legal services, to an important degree. Legal services have an essential role to play in addressing barriers which inhibit access to civil and family law justice, but all legal services - and Aboriginal legal services in particular, as the principal providers of legal services to Indigenous communities - must be sufficiently resourced to achieve this, *and* without reducing resources presently committed to meeting Indigenous criminal law need.

> If we could get more funding for culturally relevant services like VALS, like (FVPLS), that would be a big bonus - and civil law and family law matters will be dealt with in a proper manner. (**Indigenous Legal Service staff)**

Enhanced funding would mean that legal services could provide Indigenous clients with more comprehensive assistance and representation and could better connect with Indigenous community members who are perhaps insufficiently resourced to make their way to the doors of these legal services seeking help. They might also be in a better position to undertake additional law and policy reform and CLE work. This would all ultimately lead to a more strategic (and more effective) approach to addressing Indigenous legal need.

4.3 Knowing About Rights and Importance of Advocacy and Support

Indigenous focus group participants in Victoria appeared to have little knowledge about legal rights, the law and appropriate legal remedies. One woman in the Framlingham focus group stated, quite simply, 'I didn't know you could get legal advice with civil stuff'. This may be partly due to the lack of focus on civil and family law issues by major legal services. Identifying a specific legal issue and associated right or responsibility is an important first step to seeking justice in relation to it, including through legal services. It is also necessary to then know how respond to a problem, including knowing where to go for information or help. Participants identified a need for more information in these areas.

> If someone could put down a 'pro forma' about how to go about these legal matters, then we have something to follow. We need something to follow, 'cause nobody's actually set

> anything down in black and white for us to follow…. We need somebody to set something down so we know this is the process we need to go through to fight for this, to fight for that…. If you don't know how to go about it, then nobody wants to take (it on)… How to go about your housing issue, how to go about if you've fallen and slipped and broke your ankle in a supermarket. (**Bendigo Men's Focus Group Participant)**

Stakeholders commented similarly.

> I'm just thinking that there is a gap in knowledge here in the communities, families, young people, old people in regards to their right and responsibilities in all that you see on this list – civil law issues. I believe that if they had knowledge about what was going on they would exercise their rights a little more in regards to these things. A lot of these things here happened to me and I didn't know when I was a young man what to do. Now that I know, the first thing that I'm going to do is ring (the) VALS office up if there is a discrimination issue or if I need to put a victims compensation thing in. (**Indigenous Legal Service staff)**

Legal (and other) services can and should work to increase communities' legal knowledge in this regard. It is also worth noting that whilst access to legal information may empower Indigenous people to tackle certain issues on their own, there is also always going to be a need for legal and other advocacy and support alongside increased community awareness and understanding of the law.

> (There are) a lot of people in very vulnerable and disadvantaged circumstances who can be provided with information but don't have the means or the will to help themselves with that information and need extra assistance. (There is a range of)… community-based organisations with specialist skills in tenancy (for instance)…. (which can) step in and assist. That assistance can range from 'Here are your options, and let me explain what your options are and how they can have consequences for your circumstances'. Like, I may not understand what the implications might be and they can spell it out for me face to face. And it won't cost me anything. They might negotiate with my landlord (for a tenancy issue). I might feel that I am powerless and can't speak for myself. So, they will take it (to VCAT) …. So when you've got someone in vulnerable circumstances they can stand next to the person and help. (**Statutory Authority staff)**

4.4 Complexity of Indigenous Legal Need and Implications for Service Delivery

Indigenous legal needs are often complex, including due to factors such as literacy and disability, but also because of the way in which criminal and non-criminal issues and legal and non-legal problems connect to compound need for Indigenous people. This important point has been clearly identified throughout the ILNP research conducted to date. This complexity inhibits levels of access to justice, including because it affects Indigenous capacity to respond appropriately to legal problems and also makes the task of meeting need much more difficult for service providers.

Low levels of literacy, for instance, make it hard for Indigenous people to understand rights and responsibilities and how to respond to legal issues and to negotiate the legal system and legal processes, but it may also give rise to legal issues to begin with. A different way of communicating with Indigenous people is required, including in terms of how legal services inform the community of help that is available to them.

Further, as an illustration of the way in which criminal and civil/family law issues compound need, where Indigenous people are incarcerated due to a criminal law issue it may be difficult to address their civil law problems (such as outstanding consumer or credit and debt matters). Finally, social and emotional issues that may be more prevalent within Indigenous communities are also likely to lead to barriers inhibiting effective responses to legal issues. The ILNP has seen numerous instances of this in the communities we have travelled to.

> And you look at lack of (Indigenous) access to appropriate health care, poor nutrition, inappropriate or inadequate housing, experience of violence and trauma, substance abuse and the breakdown in the traditional structures, you've got all of that happening too (alongside civil and family law issues). (**Statutory Authority staff)**

All of this has implications for legal service delivery. One important point is that poor access to information and legal assistance may lead to increased complexity of legal problems, as it is one reason for the delay that appears to occur in Indigenous responses to legal (or potential) legal problems. It is thus important to work with Indigenous people to ensure that they engage with legal issues at an earlier stage.

Legal (and other) services must also work harder to recognise and as far as possible to address in a more holistic way the broad range of inter-related issues arising for their Indigenous clients, rather than (for instance) leaving these issues for another service to deal with, including by way of cold rather than warm referral. The latter type of approach leads to compartmentalisation of need, which decreases capacity to access to justice.

> And of course, the bureaucratic approach of a lot of mainstream organisations doesn't help. A person rings up and they're told, 'Oh, we don't deal with that, you have to go somewhere else'...People keel over on the treadmill and just give up. **(Community organisation worker)**

To illustrate compartmentalisation in practice, there is some evidence that legal services might be separating criminal from non-criminal legal issues when they are providing a service to clients, including where these issues are clearly connected. This means that certain needs remain unmet or that the complexity of need is increased where unaddressed, only making it more difficult to tackle relevant issues for a client at a later date. It is suggested that either way, they are left in a permanent state of crisis.

4.5 Holistic Service Delivery

A number of possible strategies have been suggested to address Indigenous needs in these areas more comprehensively. It is not always possible, although it may be an ideal, to have a single service covering all issues arising for a client. Other strategies, however, include having a primary worker, whether located in a legal or other service, responsible for ensuring adequate coordination of and communication between the different services that need to work with an individual client. A 'one-stop-shop', where a number of problems and questions might be dealt with under a single roof, was also identified as effective.

> There needs to be a 'one-stop shop', all under one roof. You don't want to have to be walking into a hundred different doors trying to find the answer you are looking for… You need one big hub, where you can walk in and go to over here for housing, over there for legal service. (**Shepparton Women's Focus Group Participant)**

Services may collaborate in other ways, even where not under the same roof. Partnerships between non-legal and legal or mainstream services appear to work well. Of note, Indigenous people are more likely to be connected with a non-legal than a legal service, perhaps particularly where that non-legal service is also an Indigenous, community-based organisation. Non-legal services are providing invaluable assistance and support to communities, including where they are working alongside legal services. A number of these organisations called for legal services to work harder to initiate relationships with them so that the communities they are servicing may benefit. In this context, referral pathways and sharing of resources between the different services may be effective, as the following comment from a statutory authority stakeholder suggests.

> (We believe that Indigenous people) want to deal with their own trusted community-based organisation. So we've developed very strong links with these community-based organisations. We are working very closely with RAJACs (Regional Aboriginal Justice Advisory Committees) and LAJACs (Local Aboriginal Justice Advisory Committees) and people might approach members (of these organisations) directly. And then those members will liaise with us and we'll either refer the matter over or if the (individuals) prefers to stay and only have contact with their trusted community member then we'll do it that way. **(Statutory Authority staff)**

Collaboration may also be evident through the provision of outreach to Indigenous communities by mainstream or legal services and (again) through community-based, Indigenous organisations. Outreach provided by the Department of Justice has been identified as a successful example of this.

> We have the Department of Justice come in the middle of next month. They come around in a bus and see people. It seems to be good. We have got it out there to the community to let them know. They talk about things like working with children, anything to do with courts, …. even the simplest things like you want your birth certificate, things like that. …. They park right out there in front – well they did last time. **(Indigenous community organisation worker)**

Further, development of effective relationships between different *legal* services is also essential to meeting Indigenous legal need, in all its complexity. More work is needed in this area:

> I think (links between Aboriginal and non-Aboriginal legal services are) reasonable, (but that) it could be better developed and (we could) have a much more proactive and more efficient way of working together. (**Legal Aid staff)**

4.6 Service Segregation

Indigenous people are often pushed into using Indigenous legal (and other) services, when they may in fact wish to seek assistance, support or information from a *non*-Indigenous service. A desire for confidentiality and privacy in a small town may be one of a number of reasons why such a choice is made.

> A lot of them don't want to go to VALS because they don't want everyone to know their business. There is this perception that this is going to get out so they don't go to VALS… Sometimes it's a conflict and they don't want to be seen or they have had a bad experience in the past. **(Indigenous community organisation worker)**

This may create barriers to accessing justice, including for someone who may have taken some time to initiate contact with the non-Indigenous service in question - assuming that they would be able to assist, but who is then pushed onto an Indigenous service that may not even have capacity to work with them.

> Quite seriously, our women do not give a shit – they just want to go where they can get a service. They don't care if it's mainstream or if it's Aboriginal. They don't care. Yeah, and it's one of the things that bothers me most about service implications when they go to mainstream services and they get referred away. You know, and it's just something… It's a real... It's hard for some people to actually ask for help. There is shame, there is time, there are kids and all this other stuff. They actually walk into a service and say 'I need some help with this.' 'All right, here you go. There is an Aboriginal Service.' The opportunity (to connect and assist) is gone. **(Indigenous community organisation worker)**

Whilst acknowledging the primary importance of well-funded Indigenous legal and other service provision, non-Indigenous services need to be more willing and able to work with Indigenous clients, without making an assumption about what is best for that particular client (in terms of Indigenous versus non-Indigenous service provision).

4.7 Engaging Effectively with Indigenous Communities

The latter point is connected with the issue of engagement between non-Indigenous services and Indigenous communities. There is evidence of poor levels of community engagement, including of legal services (CLCs and Legal Aid offices).

Engagement might be improved in a number of ways. Stakeholder comments noted the importance of having Indigenous staff on board, particularly but not only at non-Indigenous legal services, to enhance engagement. A woman in the Fitzroy women's focus group, for instance, suggests that Aboriginal legal services need to be improved by 'putting more blackfellas in there… And make them do more cultural awareness.' An Indigenous community organisation also highlighted the value of Indigenous staff to an organisation with a focus on Indigenous service delivery, stating, 'I've been here for fifteen years now. It always helps if you have that Aboriginal person … because they are your 'road' into that place. If you haven't got that person in there that the Aboriginal person is comfortable with, they aren't going to come to your door'. **(Indigenous community organisation worker)**

Further, accessibility might also be increased by making a service as 'flexible' as possible in terms of methods of contact and ways in which relevant help is provided. FVPLS was praised by one Indigenous stakeholder as being (comparatively) easily accessible by phone, apparently therefore more 'open' to contact by those in need.

> I mean, the other thing is, when you call FVPLS… When you call FVPLS, the phone gets answered and you can talk to somebody. When you call Women's Legal Service…their hours are just all over the place. I think it's either from 2 till 4 o'clock on a Wednesday, and it is in between 5 and 7pm on Thursday, and you just kind of go … I need a diary just to… And you call them during their hours and it's like… You are going to wait at least 40 minutes. If you called Women's Legal Service you'll be on hold for good 40 minutes before you get through…. I think when we call FVPLS every single time someone answers the phone**.** **(Indigenous community organisation worker)**

Further issues relating to flexibility include *not* using a strict appointment system and understanding that Indigenous people may not be able to maintain contact as effectively as others because of, for instance, poor access to phones and to transport.

> I suppose that's another part of being discriminated against - and not just Indigenous people but for people who are homeless or (who)… are on benefits only… Some services say, 'Give us a call this time or that time.' People don't have access to phones. Or they'll get here whatever time. And people don't have access to transport. (**Community organisation worker)**

There was a plea by non-legal advocacy organisations for some progressive thinking by legal services in response to such issues and in relation to strategies legal services might put in place to increase accessibility for Indigenous people, including by operating a drop-in type service.

4.8 Improving the Quality of Legal Service Delivery

Finally, there were also differing views about the overall quality of legal service being provided to Indigenous clients. Some indicated that Indigenous people were provided with poorer service because of their racial background. By way of example, one participant in the Fitzroy women's focus group suggested that Aboriginal Legal Services 'think because you're Aboriginal you're dopey' or they **'**make you feel inadequate'. Others felt that legal service provision to Indigenous people was unproblematic.

There was some comment about issues that solicitors appeared to have in communicating with Indigenous people, reflecting a lack of cultural respect and empathy. These were mostly raised in the context of criminal law service delivery, however.

> They need to beef up their customer service skills as well when you are talking about policies …as I don't think they have very strong policies on that. They need to be respectful to our mob, talking about their cases out in the open. Privacy is non-existent…. and that turns a lot of the mob off. Everyone knows about it, so no one wants to get these legal needs addressed. There isn't enough space in our court to talk privately. It doesn't matter if you are Aboriginal or not, sometimes when you are telling your story it's done right there in the foyer or outside in the cold or the hot. (**Indigenous Legal Service staff)**

PART 3 DETAILED ANALYSIS OF LEGAL NEEDS AND SERVICE DELIVERY

Section 5 of the Report provides detailed analysis of various legal needs that arose through focus group discussions and interviews with stakeholders in Victoria. **Section 6** of the Report goes on to provide analysis of the various issues that arise in relation to service delivery.

5. INDIGENOUS LEGAL NEEDS

The order of the discussion below follows ILNP findings about the priority areas of legal need.[52] Priority areas of need are dealt with first (Sections 5.1-5.9). These are ordered according to the extent to which participants (both stakeholders and focus group participants) provided comment in relation to them - commencing with the priority areas *most* commented upon and finishing with those priority areas that attracted less comment. However, there is no suggestion that any of the priority areas are more important than others.

Sections 5.10-5.14 provide detail about Indigenous legal need in the remaining areas of civil law. Although these areas are not prioritised by the ILNP, this does not imply that they are not important to Indigenous people. Legal needs arise in *all* of them to varying degrees – needs which certainly require further attention by legal services and otherwise.

For most areas of need, we have provided graphs showing the percentage of focus group participants identifying various issues, the specific type of problem they nominated, and whether they sought legal assistance. Reference is made throughout to relevant Tables in **Appendix C**.

5.1 CHILD PROTECTION AND FAMILY LAW

A major area of concern among focus group participants centred on children: primarily in relation to removal of children into the care and protection system, but also regarding contact and residency after separation from a partner. While child protection issues may not be among the most frequently experienced matters reported by focus group attendees, they provoked emotional discussion among participants and touched on matters core to the wellbeing of individuals and families. It is also clear from the discussion below that the ramifications of contact with the child protection system echo through whole families and communities, and as such, its significance cannot be calculated simply by reference to the number of incidents from the last two years reported in focus groups.

5.1.1 Characteristics of Family Law and Child Protection for Indigenous people in Victoria

Poor community understanding of the governing legal framework

There are a number of points worth making at the outset of the discussion of family law and child protection. The first is the impact of unfamiliarity with family law and its processes, which some stakeholders identified as affecting the use of the system by Indigenous clients.

> Unless you have been well informed to do your own research, how would you ever know – this is the thing. Down at court there should be – or if there is I've never seen it – there should be people there based in the court prepared to offer support and information right there on the

[52] We explain the criteria applied in selecting priority areas of need in Part 2 Section 3 of this Report.

> day. It just doesn't happen…I'm talking about family resolution and mediation – it's just not there. (**Community organisation worker)**

This statement reflects a need for greater awareness within the Indigenous community of the large role that mediation plays in parenting disputes. As suggested by the stakeholder, this may require more court based information, or increased information dissemination via trained liaison officers or Aboriginal mediators.

Stakeholders reiterated the significance of poor understanding of how to challenge departmental decisions, or in some cases, the significance of such decisions.

> Some of our clients have had children removed in the interim where there were no grounds. And we've been contacted by referral sometime along the track and made applications to have those orders dismissed and challenged. There is a presumption I think, that child protection get it right all the time and that they will have the evidence before the court, and they don't. **(Indigenous Legal Service staff)**

> It's not always that those proceedings are seen as having the consequences until it happens. (**Legal Aid staff)**

Connections to family violence

Although we do not explicitly discuss family violence in this section (because it is criminal matter), it is important to identify that family violence is a relevant dynamic in family matters and in child protection matters particularly. Family violence is present in 64 per cent of child protection cases in Victoria involving Aboriginal children.[53] Stakeholder organisations confirmed that family violence issues cannot always be easily separated from family law issues.

> In terms of family law and the focus on dispute resolution and family relationship centres… there is a real gap in terms of how they respond to Aboriginal victims of family violence. Their lack of referral to family services and specifically, their lack of referral to Aboriginal legal services… (**Indigenous Legal Service staff)**

> There seems to be a lack of support for men… there is not a lot of (assistance for the men) with regard to access to children or just simply attending a court order…There is not a lot in that family violence, or even in the family law, there is not a lot of support there for both sides…in the sense of promoting what are the rights and obligations of both parties, in that sense, what is the best interest of the child. **(Community organisation worker)**

> When they separate from their partner they have to go through all this rigmarole with child support, which often involves getting him to sign paperwork. But if he is violent or if he's disappeared and they don't do it then they get penalised. They don't realise that they can be exempt (because they are at risk of violence)…. No one has explained it to them in Child Support or Centrelink. And then all that gets paid back. Even the previous financial year… I'd say about a quarter of my clients are underpaid. (**Indigenous community organisation worker)**

[53] Victorian Government Indigenous Affairs Report, cited in Aboriginal and Family Violence Prevention Legal Service Victoria (FVPLS) (2011), *Submission to the Protecting Victoria's Vulnerable Children Inquiry*, 6.

Where there is a family violence context to family law issues, the interaction between these two spheres of law is often not well managed – a problem articulated by this stakeholder.

> There are a high proportion of Indigenous women and men that are on the intervention order list, and probably more often they are police-initiated applications… And so, the police may assist. … (but) often what the woman is wanting is different to what the police are asking for… Probably, it's more pronounced with Aboriginal women. I would say so. And I guess the problem with that is that because (the women) are not engaged with a lawyer, there are often these ancillary issues…. They may be family law or they may be around a victim's of crime claim and those sorts of things that aren't being addressed because that woman's only being represented by the police and there might be conflict between the woman and the police anyway.
>
> … If children are included on an (intervention) order they almost without question include a provision that allows for contact between the perpetrator and the children, in the family court orders or written agreement or whatever... It's pretty certain that some family law process will start down the track and women start to get anxious about when that might happen, what their rights are going to be…. So, there is real need for her to have access to family law advice as distinct from the family violence advice. (**Legal practitioner)**

Grandparents as stakeholders

It is well understood, but also worth noting, that grandparents can be key stakeholders in legal issues involving children. This is exemplified in the following comments.

> They've got the grandkids dumped at their door and potentially family violence scenarios as well where the abusive son or the abusive daughter is then having a go at the grandparents and the extended family sort of thing… It's an unmet legal need that deals with the family law issues that grandparents (have); child protection, kinship sort of stuff. (**Legal practitioner)**
>
> I've done some separate work on grand-parenting and in particular, grandparents who find themselves with the care of their grandchildren as a consequence of child protection where the DHS are involved with the children's care... I have one Indigenous client… She's got permanent care of her granddaughter and is looking at having permanent care of one of her grandsons now too. We've been assisting her for some time now… (It's) often when an older person finds themselves displaced from family that one of the things is contact with the grandchildren, that's one of the things that happens first, they lose that contact. (**Legal practitioner)**

The need for non-legal support in child protection matters

It is recognised that 'it is only within the context of healthy, flourishing communities that long-term solutions to Aboriginal child welfare can be found'[54]. In this vein, there is a clear interaction, particularly in issues involving children, between legal needs and the need for ongoing support for families of a non-legal nature: 'A lot of other Aboriginal families are not linked in with a support service while they go through that child protection journey and often the outcomes are quite poor… They tend to get railroaded' (**Community organisation worker).** This can lead to continued

[54] Harris-Short, cited in Secretariat of National and Aboriginal and Torres Strait Islander Children (SNAICC) (2013) *Whose Voice Counts? Aboriginal and Torres Strait Islander participation in child protection decision-making* 54.

interaction with the child protection system in circumstances where this might not be strictly necessary.

One stakeholder expressed frustration at their perception of the attitude of DHS whereby 'there's no follow through: 'We got the order'. Then they just walk away from that family. They will come back in 11 months time and say 'You haven't done anything that we have asked you to do. We need an extension for another 12 months''. The interviewee went on to say, 'It's really atrocious. The family don't know what the expectations are, no plans are being developed, there's nothing in place, we've just got the order and nobody knows what they have to do' (**Community organisation worker)**

In their submission to the 2011 *Protecting Victoria's Vulnerable Children Inquiry*, VHREOC made a recommendation specifically addressing the need to provide services to support Indigenous families in matters that touch on child protection issues. The recommendation was in these terms:

> In order to protect Aboriginal children's cultural rights and to reduce the continuing over-representation of Aboriginal children in child protection, (we recommend that) adequate resources are made available for Indigenous specific prevention, early intervention and response, including through Aboriginal family support, children's services, out-of-home care and allied services including Aboriginal controlled legal, family violence and health services.[55]

The urgency of such a recommendation is particularly acute because the absence of ongoing support can lead not only to poor outcomes in existing cases, but can contribute to an inter-generational perpetuation of the dynamics that lead to child removal.

> I can think of a number of clients who have had multiple children removed and it's also about that support that is being offered to that person to actually prevent it becoming a repetitive cycle, which we see is so continuous. And the damage that it does not only to that individual but to the kids and subsequently to the other members of the community is just terrible… There is one woman that I've known and I also knew her mother and it's become so generational that she's had nine children that she has no access to. We see a lot of exactly that same thing… We understand and we are trying, but there actually isn't anyone except a lawyer to refer them to and it's not quite the right thing they need at the time. And (DHS) seems too much like the bad guy… They are not going to support you and talk to you and counsel you and advocate for you in the right kind of way. That's probably the biggest thing I can see. (**Community organisation worker)**

The following discussion is divided between issues arising in relation to children and issues that follow a divorce or separation, such as disputes about property.

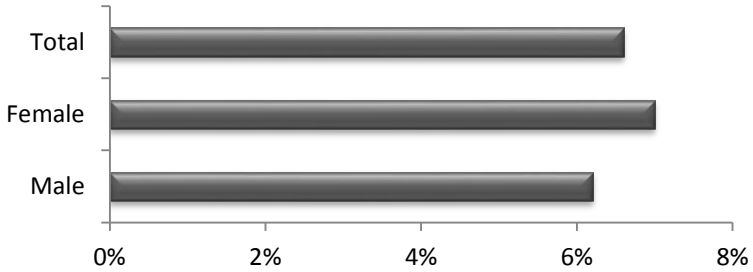
5.1.2 Divorce and Separation

Figure 5.1 shows that **6.6%** of focus group participants overall identified a dispute over money, property or superannuation following a separation or divorce (see **Table 5.6: Appendix C).** Men and women identified this as a problem at approximately the same rate. The focus group where participants were most likely to have experienced such an issue was Heidelberg (23.1% of

[55] Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2011), *Submission to the Protecting Victoria's Vulnerable Children Inquiry*, Melbourne VIC, Recommendation 9.

participants), whereas 0% of participants in the Bairnsdale and 3.8% in Robinvale focus groups identified these as issues (see **Table 5.7: Appendix C**).

Figure 5.1 Participants Identifying Property or Superannuation Dispute Post-Separation or Divorce



Out of the 10 people who had identified this type of legal issue, three women (and no men) said that they had sought legal advice about it.

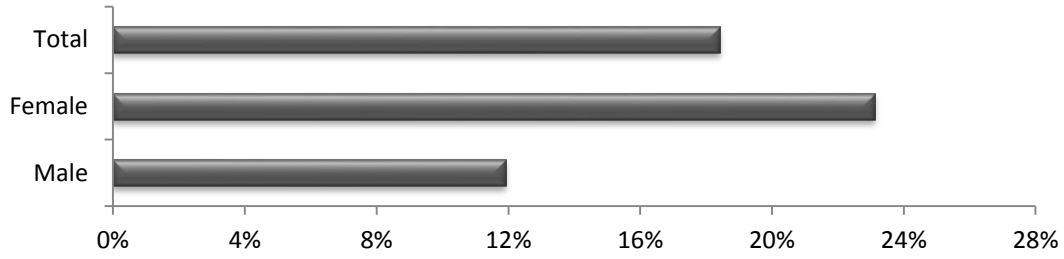
5.1.3 Residence, Contact and Child Support

Focus groups participants were asked whether, over the last couple of years, they had had:

- any problems about residence or contact arrangements such as custody or access in relation to children or grandchildren; or
- problems in relation to child support payments.

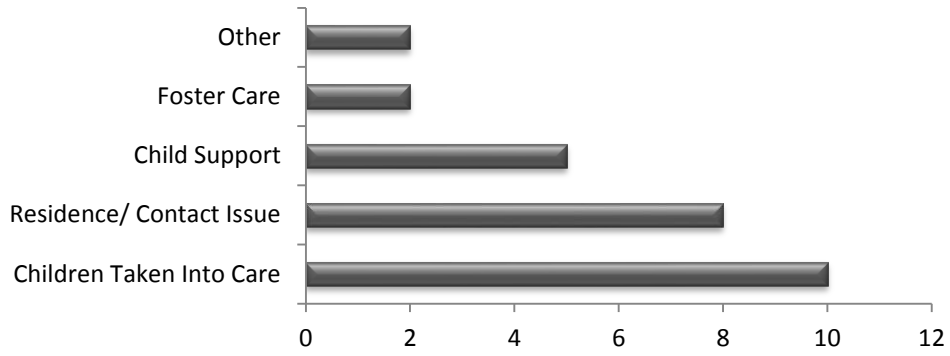
As illustrated in **Figure 5.2**, **18.4%** of focus group attendees said that they had experienced an issue with child support, contact or residence. Women were more than twice as likely (23.1%) to identify such an issue than men (11.9%) (see **Table 5.36: Appendix C).**

Figure 3.2 Participants Identifying a Child Support, Contact or Residence Issue



As shown in **Figure 5.3** the most frequent issue related to child removal or foster care (12 out of 27), with the remainder focused on residence or contact issues (8/27), child support (5/27) or 'other' issues (2/27) (see **Table 5.3: Appendix C**). Child protection (removal) matters are dealt with below in Section 5.1.4.

Figure 5.3 Type of Family Law Issue Relating to Children



Residence issues

In relation to residence issues, stakeholder interviews suggested that there may be a reluctance to seek formal residency orders because of fear of conflict with or violence from the other parent.

> A lot of women don't bother with… residency orders. Even when I say to them 'No, you should.' Women don't get the orders that say 'Little Bobby lives with Mummy.' A lot of our clients just don't want to go down that road. They don't want to go down that road because they think it's going to inflame the situation with him. But we do ultimately get to a point where little Bobby just doesn't come home one day. And then we've got to (get) a recovery order… So, all that means that we have to wait again till little Bobby doesn't come home and then you see huge crying over here and you see people's lives in crisis. (**Indigenous community organisation worker)**

There was also a view that family law processes may be avoided because the finality of orders might be seen as undesirable.

> Family law, the local community don't use family law. It's just seen as big, it's too big, the decisions are too final. Most of the blokes are inclined to say 'Well I'm just walking away, they will find me when they get bigger'. Rather than try to go to the family law. Some of that is because they have had criminal involvement and they don't want to go in there and start it again. Some of it I think is because it's all so final and things could change tomorrow and they could start seeing the kids. (**Community organisation worker)**

Child support

Conflicts concerning child support payments were raised by one focus group.

> This fella here (in the focus group), he paid his child support, he done everything but the woman wouldn't let the kids go near him. If he's paying his child support, then she left him with a big bill, he had to pay that off as well. I think it should be liable for that woman to pay him some money back. He did the right thing, and she just turned around and took full advantage of him. Nine times out of ten the woman's always right. Soon as the woman reports something, if that man's got a history of violence or whatever, they just decide and the woman's got all the say, whereas I think it should be 50/50. I was led to believe that nowadays, it's not like that anymore. A man's got equal rights to his kids, whereas this man's

> done everything right and the woman wouldn't let his kids go near him. (**Robinvale Men's Focus Group Participant**)

Although not raised by focus group participants, stakeholders also nominated an issue that arose in relation to the link between eligibility for sole parent payments and proof of non-receipt of child support payments.

> The pressure from Centrelink to nominate the other parent is quite traumatic in the community. Not a lot of the babies have birth certificates, sometimes there is no one nominated on there as the father. The pressure from Centrelink is enormous to nominate that person and pursue that person for money for the baby. That's very traumatic for a woman… I don't think it's particularly just our area. There has to be another party named and they have to be financially responsible for the baby, or you have to prove why they're not. If they don't, part of their sole parenting payment is reduced if they don't seek child support. They have an eleven week time frame. (**Community organisation worker)**

> They have been forced to go through this whole birth certificate and nominating the father process, you're forced to do that or your payments are cut, that's the traumatic bit. Having gone through that then you don't get anything anyway, that was a bloody waste of time. (It's) an invasion of their privacy. (**Community organisation worker)**

A potential for child carer payment issues to give rise to tensions that can lead to community disputes was also noted.

> Once there's family violence, you can rely on that to not chase child support but they are not admitting family violence. They have got this eleven week window. The process of just getting a person's name added to a birth certificate, that takes ages itself because you tell Births, Deaths and Marriages who you think the father is then they communicate with that person. That person might not even respond or you might not even know where they are. Even that can take 10 weeks just doing that and you still might not get an answer at the end of it. As for the clients, they are not worried about the bureaucratic red tape, they're worried about their payments about to get dropped. Then it's kind of like a financial penalty to them for trying to do the right thing. That causes friction in the community because he already knows what's going on, he won't sign that. 'It's not his kid. Yes it is'. It starts to cause a lot of friction in the community. (**Community organisation worker)**

Other obstacles to satisfactory legal outcomes in the event of separation

Stakeholders noted other types of issues that clients had raised relating to access to children in the event of separation.

> The calls will come through for family law stuff that wasn't related to child protection. The issues would be people wanting to spend time with their children. The other party is basically not around. A common situation is where a father who is estranged from their family will be trying to re-establish contact with the children. We do quite a lot of location orders, people trying to track down mother and children. **(Indigenous Legal Service staff)**

The length of Family Court proceedings was also nominated as a factor that led to a lower usage rate of the family law system within the Indigenous community.

> Family Court process is a lot more daunting… They just want to get into court, do what they have to do and get out. You don't do that with the family law process. It's a twelve month process. They are not going to stick at it for twelve months. I think it's a disadvantage for grandparents and extended family because often they don't see the children. They'd need their own access order, (which) the grandparents would have to initiate and they just don't do it because they won't override what their child wants. (**Community organisation worker)**

> (In a) recent case I have had in the Family Court there was an Aboriginal father and he sort of dropped out of the proceedings half way through. It was initially his application for contact with the child but initially it wasn't resisted by the child's mother, who was non-Aboriginal, and he could have succeeded, he could have got what he wanted but he just… It was so many appearances because that's the nature of it. Anyway, he just sort of dropped out so there was only so much the court could do in that situation. (**Legal Aid staff)**

Other characteristics of both the family law system and Indigenous clients were raised by stakeholders.

> They don't use it (family law system) because they usually have drug and alcohol issues. They can't organise themselves to go to appointments or to attend court. You know there is that many times that they have failed to show and it's probably more to do with their addictions than anything else. But there is opportunity there. There's Legal Aid, there are solicitors, they are all on hand. There is the Aboriginal Legal Service in Melbourne that you can connect in with and they will represent you in the court…there is the help there. (**Indigenous community organisation worker)**

> The lower socio-economic people are not in the Family Court either… Clients in the Family Court are so different to clients in the Children's Court. They are just very different social strata… It maybe is that they think it's not a place where they would go. They would just work it out themselves or they would just put up with the situation that's just not good because there is no… There is a perception that there is no power. Because I don't think it's that their families are staying together at a higher rate. (**Legal Aid staff)**

5.1.4 Child Protection

In Victoria, Aboriginal children are 9.6 times more likely to be the subject of a verified notification of abuse, neglect or harm than non-Aboriginal children. They are 12 times more likely to be on a protection order, and 11 times more likely to be in out-of-home care.[56] Over the period 2001-2010, the number of Aboriginal children in out of home care increased by nearly 80%.[57]

Over a number of years, legislation governing child protection has come to include provisions specific to Aboriginal children. In 2005, the *Children Youth and Families Act 2005* (Vic) was enacted, which includes the Aboriginal Child Placement Principle (setting out a hierarchy of placement options for removed children) (ss. 13-14);[58] provision for the delegation of the Secretary's functions to the principal officer of an Aboriginal agency (s.18); and the requirement to prepare and monitor the

[56] Australian Institute of Health and Welfare, cited in Victorian Child and Adolescent Monitoring System, *The Family: Children in Out of Home Care*, para. 20.3. http://www.education.vic.gov.au/about/research/Pages/203homecare.aspx, accessed 13 October 2013.
[57] State of Victoria (2012), 294.
[58] On June 2009, 59.5% of Aboriginal children in out of home care had been placed in accordance with the Aboriginal Child Placement Principle; see State of Victoria (2012), 294.

implementation of a cultural plan for every Aboriginal child placed in out of home care under a guardianship to the Secretary order (s. 176). While these provisions make Victoria's one of the most advanced legislative schemes in relation to the needs of Aboriginal families, lack of adherence to the legislative requirements are reported to undermine its efficacy. The East Gippsland Discussion Group reported to the *Protecting Victoria's Vulnerable Children Inquiry* as follows.

> The child protection legislation and program policies are often ignored, given cursory acknowledgement or in some cases draw discriminatory comments form child protection workers. This would indicate at least varying degrees of implementation of legislation and initiatives.[59]

The child protection system in Victoria has been the subject of various reports and inquiries in recent years, a number of which are relevant to the current discussion. These include the 2009 Ombudsman's *Own motion investigation into the Department of Human Services Child Protection Program*[60] and the Victorian Government's *Protecting Victoria's Vulnerable Children Inquiry* (2012), which includes a chapter entitled 'Meeting the needs of Aboriginal children and young people'[61]. Child protection issues intersect with legal protections afforded by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter). Both the Charter and the *Children Youth and Families Act 2005* provide that the 'best interests of the child' be paramount whenever the state takes actions that affect a child. In the Charter, the distinct cultural rights of Aboriginal people are also protected .[62] A statutory authority stakeholder noted the obligations placed on DHS around child protection by the Charter.

> …Certainly around family, privacy and reputation and those sorts of things in that space there is a distinct lack of understanding (by DHS) about the fact that these are legal rights and obligations (provided for in the Charter). It's not just a customer service charter. **(Statutory Authority staff)**

Child protection emerged in the ILNP research as a priority area of need for Indigenous people in Victoria.

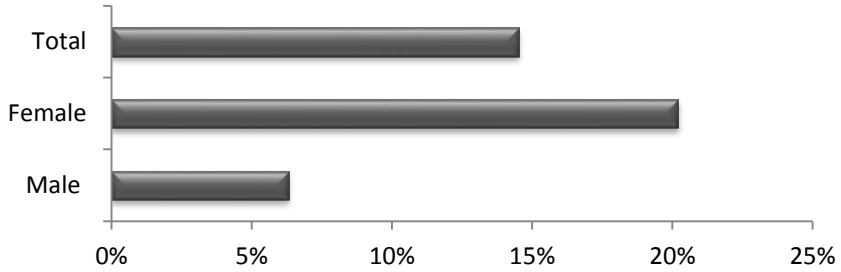
> 99.9% of our female clients don't have their children with them. (**Community organisation worker)**
>
> Some of my clients haven't seen their children for years and they live in the same town. (**Community organisation worker)**
>
> Nearly every Aboriginal family in the southwest has contact with Child Protection. (**Community organisation worker**)

Focus group participants were asked whether they had recently experienced problems in relation to children being taken into care, problems about fostering, adoption or guardianship, or issues with family members taking children and not returning them. The responses to these questions are set out in **Figure 5.4**, which shows that **14.5%** of participants identified an issue of this nature. Women were

[59] Quoted in State of Victoria (2012), 303.
[60] Ombudsman Victoria (2009).
[61] State of Victoria (2012), Ch 12.
[62] *Charter of Human Rights and Responsibilities Act 2006*, s19.

much more likely to nominate these issues as a problem, with almost a quarter (22%) saying that it was something that had arisen, compared with 6.3% of men.

Figure 5.4 Participants Identifying Child Removal Issue



Child protection was by far the area of family law that focus groups identified as a serious cause of concern and grief. The seriousness of the ramifications of child protection intervention for families, coupled with a widespread sense of the lack of understanding among Indigenous clients of their rights under the child protection regime – including understanding avenues for legal representation – led interviewees to identify a strong sense of disempowerment, or, as one stakeholder put it, 'getting shafted'. The following scenario demonstrates this dynamic.

> The kids are on an order for 12 months, automatically they go for 12 months and they have limited access, they have limited funds to get to access. DHS cut the funds off after a little while and they have to budget themselves to get access. Even though the legislation says that if you don't agree with a decision from DHS you can appeal it by an internal review and then you can go to VCAT, those two steps are not funded by Legal Aid. They give them a bit of paper at the back of their order that tells them what they can do. A lot of our clients can't read or don't read that bit of paper so they have got two steps in their rights, even though they're there, (which) they don't know anything about it. (So the appeal process is) completely ineffective for Aboriginal families. If they question it they are labelled 'non-compliant', they are troublemakers then. So the bar gets raised higher and they have to jump over much higher hurdles if they get labelled non-compliant. If they don't have a support system in place (through a worker) or somebody at one of the Aboriginal organisations, they don't know that they've got that right to appeal it, you don't have to do what you're told. DHS are very quick to tell people that *they* make the decision. They don't tell them that the court makes the decision, people just think that they have got no choice and because every family has got DHS involved and think 'it's my turn'. They get completely shafted in the outcomes and they're not the best outcomes for the kids and that's supposed to be the whole focus! (**Community organisation worker)**

Such issues were said to be compounded in circumstances where there was additional vulnerability, for example where a parent (or child) has a disability.

> For people with a disability they are more likely to have their children removed through child protection. You add that overlay then of who is likely to be subject to child protection orders and Aboriginal people figure very prominently there. So you have Aboriginal communities having their children removed and in many cases it would be the consequence of disability. You look at those child protection cases and you analyse who has been affected and why… Again, significant numbers have a disability. (**Statutory Authority staff)**

> People are given no advice about their rights in those circumstances, so they are entering into agreements with DHS and DHS essentially is taking guardianship of that child…. Well, DHS child protection officers are writing those agreements. (**Statutory Authority staff)**

5.1.5 Concerns Around DHS Practice in Child Protection

> The system is failing those it has been established to protect. Frustratingly, these problems continue to occur despite having what many consider is world leading child protection legislation and a sound policy approach emphasising prevention and early intervention.[63]

Discussion of child protection in focus groups went beyond the grief of child removal itself to a strong consensus that DHS policies and practices worked to the detriment of the children and their families. In the words of one stakeholder, 'I understand they're flat chat and short staffed…but why should the kids suffer because the parents don't understand the system, don't understand their rights and DHS want to tick the boxes quickly, get the order made, shunt them off to somebody else and that's one less they have got to worry about?' (**Community organisation worker).** This estimation of DHS practice echoes the observation of the Ombudsman that 'The effect of a child protection system stretched beyond its capacity can manifest in poor case practice'.[64] Among the failures identified by the Ombudsman were an unacceptable number of unallocated cases, an inability to respond to cumulative harm, inadequate supervision of staff, failure to comply with best interest case planning, to complete stability plans and cultural plans.[65]

Focus group participants expressed stress, disempowerment and a sense of injustice in their interactions with DHS:

> I can talk until I'm blue in the face about the child protection agency. I raised my two grandchildren. I've still got them in my care and at the same time there was no support put in place for the parents to get their act together and to get their kids back. It's a long story and I'm sick of talking about it. **(Bendigo Women's Focus Group Participant)**

> I just housed a young girl for a couple of days who was displaced through being with a man that was very violent. She's done the right thing and left him. But between all that, she's lost her kids, unbeknownst to herself, because she was caught in a bad situation. And she's got to fight now for her kids. And she's a great mother. Only because the man showed the violence and now she's lost her kids. It's very sad. She had nowhere to go. She's got workers on her (case) now, but nothing's happening quick enough. There's nothing emotional about DHS. They don't care. All they do is just come in and take the kids. They don't care about the emotions of the kids, or the emotions of the parents. (**Bendigo Women's Focus Group Participant)**

> They're terrible, they're taking the wrong kids away. (**Fitzroy Women's Focus Group Participant)**

> DHS are great ones to take our children away… (It takes) two or three years to get them kids back. It's stolen generations all over again, so why did (the government) say sorry? (**Bairnsdale Women's Focus Group Participant)**

[63] Victorian Equal Opportunity and Human Rights Commission (2011), 3.
[64] Ombudsman Victoria (2009), para 24.
[65] Ibid, 9-14.

Some of these concerns were reiterated by stakeholders. In almost identical terms as expressed above in a focus group, one Indigenous service provider stated, 'The only way I can sum it up is they remove kids that don't need to be removed. And they leave the ones that need to be removed there' (**Indigenous community organisation worker).** Others agreed:

> The child protection here just sucks. To try and get an answer out of them is like pulling teeth. You get told this one day, this the next day. And the whole point of it is (supposed to be) the best interest of the child. (**Indigenous community organisation worker)**

There was a suggestion from one stakeholder that there was a racial dimension to the level of contact that Indigenous people have in Victoria with the child protection system.

> Sometimes the community finds that frustrating because they see other families struggling themselves with issues, but *they* don't have Child Protection banging on their door and on their doorstep, so that's frustrating. (**Community organisation worker)**

Other stakeholders spoke of the lack of cultural awareness among DHS caseworkers and the ramifications that this can have on the quality of child protection outcomes.

> There is a distinct lack of cultural awareness within the implementation side of things… Certainly, the notions of shared care and all that, (DHS) people don't even know what it means half the time. So, the notions of shared care or family care models which often operate… there is not a lot of understanding of those sorts of things. (**Statutory Authority staff)**

Registered community service organisations working in child protection contexts are subject to an externally reviewed standard in relation to cultural competence in the provision of services to Aboriginal children, young people and families. It is significant that a 2011 DHS report on the outcomes of this external evaluation identifies that only 48% of such organisations were said to have met the standard of respecting Aboriginal children and youth's cultural identity.[66]

In the following case study, the point is made that low levels of cultural competence among child protection workers can lead to the removal of children in situations of questionable necessity. The interviewee reiterated the need not only for cultural awareness training, but for training to be tailored to the specific community where work is to be carried out.

> I always remember years ago we had a major child protection drama because none of the beds were made, all the mattresses were in the lounge room and it was like what was the issue? They were all around the heater. But the child protection workers were just so appalled that they removed all the children immediately. What's going on, what's the child protection concern here? That one took about three or four months to get their children back, it was just ridiculous, but it came down to case workers not understanding the cultural aspects of things. (If it is true that they do their) training online, that is probably not helping the situation at all. (A lack of) local cultural understanding is a big issue. I know myself from what I was taught in Melbourne. I did a three or four day course and got a lovely certificate, but it meant nothing when I got home, when you're dealing with people from other areas and the local 'barnies' that go on between the families. It doesn't teach you the politics of your local community. (**Community organisation worker)**

[66] Department of Human Services (2011), *Report of the External Reviews of CSOs against the registration standards under the Children, Youth and Families Act 2005,* 20.

Failures in the child protection regime were seen by focus group participants as continuing to cause general mistrust of government agencies and the law.

> I've seen (a particular service's) workers come into our community and work with families (with children in care), but also be messengers for DHS to bring negative information back that has caused great harm and stress to those family members and to those families. (This service) had been notified in relation to those concerns (but) had stood firmly by their employees and has failed to resolve the issues that have been raised. And it's still left those families out there under deep stress, with those matters unresolved and with those children still being in a situation where they are still being challenged through the system and I think that's wrong. (**Bairnsdale Men's Focus Group Participant)**

> Those DHS workers, they are lawyered up, they get all the information. They stand with their lawyer to take you out. (**Bendigo Women's Focus Group Participant)**

This lack of trust, coupled with the power that DHS workers have over families, creates poor outcomes for wary, disempowered families.

> One of the biggest problems we have (in Gippsland) is antagonism by workers who say our clients won't engage. So, that's a really black mark against them because they are not 'engaging' with the Department. And without any kind of sensitive approach or understanding or reasonable expectation of that person, who has generally been scarred through the system themselves. And why the hell would they trust the system that didn't actually assist them? (**Indigenous Legal Service staff)**

This theme of lack of trust in and esteem for the responsible government agency pervaded stakeholder comments. This interviewee emphasises the lack of engagement between DHS bureaucracy and on-the-ground service delivery to Indigenous clients.

> There is an Aboriginal focus unit in DHS that don't know about Aboriginal services. They have no idea! And I will ring them up and they will go 'But I am working with this client'. She is a client of ours. And they'll go 'Who are you?' And we are the peak Aboriginal Family Violence support provider in Victoria. And they go, 'Let me get some details.' Oh, my God! You are an Aboriginal focus unit and you have not heard of us! The majority…all the women we work with experience family violence. (Yet) DHS don't interact with us. I had a care plan meeting the other day at DHS that DHS didn't even turn up to! Now, they've already told us they are taking this pregnant woman's baby. They can't turn up to the care plan meeting and they are about to take this woman's baby that is still in her belly. **(Indigenous community organisation worker)**

> The problem with DHS is (that) they change the caseworkers all the time. So people get sick of telling their story to this person, that person. You just get used to that person and you get another person. I think that's a big problem with DHS. They don't keep the same worker with the families… and you seem to get lost in the system. (**Indigenous community organisation worker)**

There is some suggestion that parents feel that the Department discourages them from obtaining a lawyer, or advises them that one will not be necessary.

> I have not actually heard DHS say this but the women say to me that child protection says, 'It's all right. You don't need legal representation. You can sort this out'. (**Indigenous community organisation worker**)

> (Clients are) thinking 'If we don't go to court we do not need a lawyer.' So, they are not self-referring at that early stage… They are waiting till, like, a really crucial thing. And DHS would say 'It's not that big of a deal. We are just going to make an order and the kids aren't being removed from you. When you get to court we can get legal representation for you.' (**Indigenous community organisation worker)**

Other observations of child protection authorities included a perception that they lacked clarity in their instructions. This was particularly complicated where inter-jurisdictional arrangements were in place, as in the following case study recounted by an Indigenous foster carer as part of a stakeholder interview.

> They'll say, 'The kids are there till July.' And then I could get a phone call today and they'll say, 'Oh, no, the kids have got to be here next week.' As soon as the parents have the parenting capacity then the kids can go back or we'll transfer the order. But then tomorrow they might ring up and say, 'Hang on, we are back to July.' So, it's…I don't know from one day to the next, and all I am thinking is that these little children have got attached to me and my family and they are not going home. If they do go home it's going to be a matter of a month before they are removed again. So, the best interest of the children will be to put them into a permanent care arrangement… You have got to do what is right for your community and they are my community. I'll never do it again. It's turned me off foster care for the rest of my life because of the system. Especially here! This little boy, he was going home to his parents for a trial and when I took him over there they knew nothing about it. And I've got this kid standing in the middle of a DHS office and I am saying, 'I am delivering him to you, you need to get him back to his parents now.' 'Oh, no no no! We haven't done our assessment.' It's like -well, you need to communicate with each other because it's one of your officers that went down and visited this morning and had done an assessment and everything is okay. And WA (the other relevant jurisdiction) have rung me and said, 'Everything is okay, take him over there at 1.30pm and they will reunify him with the parents. The parents have been told that he is coming.' Somebody do something! In the meantime this poor boy is standing there wondering what's going on. And not only that, he's had to witness stuff in that half hour that we've been in the foyer that a little kid shouldn't have to witness. A dad pulling a kid out of mum's arms… It was not nice. Over here it really needs to be an overhaul. (**Indigenous community organisation worker)**

5.1.6 Failures to Fulfil Legislative Requirements: Cultural Plans and Consent Orders

When an Indigenous child is removed out of the family and placed under a guardianship to Secretary order, there is a statutory requirement for the provision of a cultural plan.[67] The purpose of a cultural plan is to determine 'how the Aboriginal child placed in out-of-home care is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture.'[68] In practice, however, stakeholders reported that the formulation and implementation of such plans are variable at best, with very few consequences for the Department for such failures. As one stakeholder stated, 'It's pretty much, no, we're too busy, we'll just make the decision.'

[67] s176(1) *Children Youth and Families Act* 2005 (Vic).
[68] s176(2) *Children Youth and Families Act* 2005 (Vic).

> I can tell you that (cultural plans do) not happen, really! And that came out in (a recent) inquest and that's another inquiry that really ought to be made. And the Department being held to account for it. And the courts should actually be making those inquiries... Often they aren't even made aware of that because they find it too hard work… It's not on their list of priorities even though it's legislated in the Act as a requirement. There is a case where over the whole year in terms of involvement there was not one single Aboriginal family decision made (via statutory Aboriginal Family Decision Making (AFDM)), even though the child's paternal grandparents are seeking custody of the child who is currently in a non-Aboriginal family placement out of home. Even though there is family, there is *all* of the makings of the Aboriginal decision making forum, but they just don't do it! They haven't done it! There is no real ramification for that… It's come up in cross-examination of the worker. You know, 'You are obligated to it, you haven't done it'. That's about it...the whole thing is a joke really…the whole thing becomes this academic theory that has got nothing to do with the practice. (**Legal Aid staff)**

These reports from the field are confirmed by the Victorian Aboriginal Child Care Agency (VACCA) in the 2009 Ombudsman's inquiry into child protection. There, VACCA stated that only 20% of Aboriginal children for whom a cultural plan was legislatively mandated actually had such a plan in place, and referred to this 'lack of compliance…(as) a major concern.'[69]. The inquiry found the DHS was failing to meet its statutory obligations and was in derogation of its duties under the *Charter of Human Rights and Responsibilities Act.*[70] As such, the Ombudsman recommended the establishment of arrangements 'to ensure compliance with practice standards and key statutory obligations such as…cultural plans', including independent scrutiny and regular auditing by an independent body (Recommendation 14). Failure to implement cultural plans is also a direct contravention of the DHS *Aboriginal Cultural Competence Framework*, which recognises the 'decisive influence of culture and connection to community in providing services that are in the best interests of Aboriginal children and their families.' [71]

Linked to the failure to implement statutory requirements are suggestions, made by a number of interviewees, of unconscionable practices around obtaining consent orders for removal of children without true informed consent. The *Children Youth and Families Act* 2005 (Vic) requires that:

> The placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener
> …
> and, wherever possible, attended by-
> (i) the child; and
> (ii) the child's parent; and
> (iii) members of the extended family of the child; and
> (iv) other appropriate members of the Aboriginal community as determined by the child's parent (s12(b)).

Such meetings are in furtherance of the Aboriginal Child Placement Principle, which sets out the hierarchy of desired placements for Indigenous children in care (with an Aboriginal family from

[69] Ombudsman Victoria (2009), para. 402.
[70] Ibid, para 432.
[71] Department of Human Services (2008), *Aboriginal Cultural Competence Framework* 15.

within their community as best practice, and with non-Indigenous carers as a last resort).[72] The requirement for meaningful consultation also goes to the assertion by stakeholders to the *Protecting Victoria's Vulnerable Children Inquiry* that increased self-determination is 'a foundational requirement to improve outcomes for vulnerable Aboriginal children'.[73]

Yet the ILNP was told that where there is a consent order, a court will not usually investigate the terms of the order-including the degree of family decision making that occurred leading up to it. This, it is alleged, makes consent orders a way for DHS to avoid having to fulfil the statutory consultation requirements.

> It says there must be a decision making process involving the community. It says 'must', it doesn't say 'may', but DHS don't do it because orders are being made by consent. (**Community organisation worker)**

> It has to come from DHS to say, 'You have a right to get legal advice before you sign this bit of paper'. DHS is not going to tell them that because (advocates) are going to say, 'Hang on a tick, we don't agree with your decisions'. If (clients) are not involved with another support agency who says 'That's not right, you don't have to agree with that', and then 'Get to a solicitor', they tend to just sign on the dotted line and think 'Alright, this just gets rid of them'. (**Community organisation worker)**

Secretariat of National Aboriginal and Torres Strait Islander Child Care (SNAICC) calls 'the absence of any strong system to enable consent of Aboriginal and Torres Strait Islander peoples to decisions… perhaps the most significant weakness in the current system in enabling participation.'[74] ILNP stakeholders expressed the view that it should be the duty of the court to ensure that consent orders have been signed with informed consent, and that other legislative requirements have been adhered to (see below).

The related issue of quality of practitioners representing DHS interests in court has been considered by the Victorian Ombudsman, particularly in regional areas.[75] The Ombudsman particularly noted that, 'in rural areas child protection workers have historically been required to appear on behalf of the department in consent matters.'[76] A number of submissions to the Inquiry commented on the legal and practical inexperience of workers handing matters up in court, and the undesirability of them taking on this role. It might also be noted that junior caseworkers without a legal background may not have a good sense of duties of disclosure to the court (and indeed are not bound by the same professional standards as lawyers in this regard). The Victorian Law Reform Commission notes that there is a conflict issue that arises where child protection workers are 'both applicant in the application and representative of the department before the Court.'[77] This has led the VEOHRC to conclude as follows.

> The current model of in-house representation for DHS protective workers may result in the

[72] See s13 *Children Youth and Families Act* 2005 (Vic).
[73] State of Victoria (2012), 302.
[74] SNAICC (August 2013) *Whose Voice Counts? Aboriginal and Torres Strait Islander participation in child protection decision-making 36-37.*
[75] The Children's Court Guidelines for New Model Conferences require DHS to have legal representation only during the final phase of a conference to assist with negotiation and drafting of minutes.
[76] Ombudsman Victoria (2009), para. 288.
[77] Victorian Law Reform Commission (2010), *Protection Applications in the Children's Court Final Report No 19,* 388.

> unintended consequence of the Department acting in a manner that is not in the best interests of the child, or that has failed to consider the human rights implications of a particular disposition or strategic decision.[78]

5.1.7 The Role of the Court

In 2009, the Ombudsman raised the concern that 'most child protection cases receive limited if any external scrutiny.'[79] He then focussed on the need to establish ongoing, rigorous expert scrutiny of Departmental decision-making, making recommendations to this effect.[80] Although the Ombudsman did not consider the role that the court might take in providing external oversight of DHS decisions, this was something that was raised in stakeholder interviews. It was also recently considered by SNAICC who stated as follows.

> In care and protection applications to the courts there is opportunity for enabling influence of cultural advice through independent consideration of that advice by the court… (This) relies on magistrates being aware of consultation requirements and proactive in holding child protection services accountable… (I)t appears that whether magistrates do this is highly variable.[81]

A further rationale for additional involvement of courts put forward by FVPLS is the potential for judicial oversight to address the distrust of decisions of child protection services because of stolen generations policy, and to increase the perceived legitimacy of such orders within the community.[82]

Concerns were raised by stakeholders in the ILNP research about the fact that where the Department presents consent orders to the court, courts did not generally investigate the nature of consent. As one stakeholder said, 'They don't look into what has happened before we got to court… (Like the stolen generations), 'it's by consent' because we put them in the car and we took them.' (**Community organisation worker).** Other stakeholders reiterated this frustration with the willingness of the court to allow 'consent' orders to proceed without investigation.

> One of the big issues that came up (in CLE outreach forums to non-urban areas in Victoria) was that the Department was essentially coming to court with signed consent forms on behalf of the parents-consenting to the children being placed out of home, for example. Quite alarming things! The quality of that letter of consent, or the nature of it, was never investigated by the courts…It's a big problem for us because we don't know about those cases because no one comes to the counter to us for legal advice (for them). The Department don't come and tell us that they've got this case where they've just got this consent letter. Those cases just get called into court and the only thing between the order being made and not made is whether a Magistrate says 'I am a bit concerned with this consent letter. What can you tell me about the nature of the signing of that? How did it come about?'…which they *should* be doing because the Magistrate is bound by what's in the best interest of the child and there is a whole lot of decision-making in place, so they should look behind a signed consent form…Or if the Department are going to rely on consent, it should be accompanied by a

[78] Victorian Equal Opportunity and Human Rights Commission (2011), 34.
[79] Ombudsman Victoria (2009), para 62.
[80] Ibid, 17-18.
[81] SNAICC (August 2013), 34.
[82] Aboriginal and Family Violence Prevention Legal Service Victoria (FVPLS) (2011), *Submission to the Protecting Victoria's Vulnerable Children Inquiry*, 9.

> statement of independent legal advice, like they do for mortgages. You can't sign that document without obtaining legal advice. (**Legal Aid staff)**

Other stakeholders spoke of a general attitude in the court to 'bulldoze' through dispositions without allowing issues to be fully ventilated (or, at times, the family's representative to even be heard).

> We see it all the time. There is meant to be a process of consultation and ensuring that all the parties involved have legal representation. It's common if you are involved. You'll go down and see a client to take some instructions and then go up to court to negotiate. And they say, 'Oh, this has been heard already. The matter has been called. It's done and dusted. These are the consent things that we did.' And you think 'The client doesn't even know it's going on. You didn't even call me to court. And you just sat there and rolled everything through'. (**Legal practitioner)**

Concerns were also raised about the independence of organisations providing assessments to DHS for court assessment. The opinion was expressed that because DHS 'are (the organisation's) biggest client, so their reports always come back in on the side of caution heading in the direction of the DHS recommendations.' (**Community organisation worker)**

Some stakeholders also raised specific limitations for court processes in non-urban areas. An inability or unwillingness on the part of courts to expedite processes relating to placement of children leads to real disadvantages for those families.

> Quite often they would adjourn here for three weeks to do a kinship assessment for the kids to go to a family member. In Melbourne they do that while you stand there. They say here, 'We can't possibly do it straight away', but they can do it in Melbourne! Then for three weeks the kids have been removed. We don't have a lot of Aboriginal placements, quite often the kids don't go to Aboriginal placements, they get separated. You would have two with one family and one with another. The whole process here is so different to what happens in the Melbourne Children's Court, where they have a whole group there working on finding a placement. Where's the aunty, where the uncle, where can we go to? Straight away. They can do the police checks on the spot, which we don't do. (**Community organisation worker)**

> In the country courts… it's possible that the matter goes ahead without children being represented… The court can adjourn the matter so that the child gets legal representation but again the gatekeeper to that is going to be the Magistrate… in the country areas it's often the case that the parents aren't represented. And that orders go through either with the consent order or the Department were able to argue for substituted service (where) they can't locate them. (**Legal Aid staff)**

One Indigenous legal service provider thought that allowing family law matters to be dealt with through the Koori Court would make a significant difference both to willingness to participate and to outcome.

> Family matters are not dealt with through Koori Court, which is just crazy—you can deal with criminal matters in a cultural matter, family matters you can't. That's just crazy. Family is family, you deal with these things. So that's a gap with Koori Court but it's a gap that will be addressed at some stage in the future by the Parliament hopefully. (**Indigenous Legal Service staff)**

This stakeholder emphasised that greater involvement of Elders in civil and family law dispute and problem resolution would be ideal.

> These types of things, when it comes to care and protection and access, maybe intervention orders can be dealt with in a cultural way. That's sort of a gap that needs to be addressed… Get the Elders in on things to stop things, they know about these things. (**Indigenous Legal Service staff)**

FVPLS have stated that although the Koori Court model is not transferrable where hearings are contested, 'A Koori List within the Children's Court would facilitate improved judicial oversight of arrangements for Aboriginal and Torres Strait Islander children.'[83]

Other stakeholders referred to the need for a less adversarial approach.

> It's not overly conducive to getting collaborative outcomes especially at that phase of it.— Maybe beforehand when you are having informal conferences with people, but once it's in the courts it's pretty serious business… Victoria has conducted an extensive review of the child protection system,—the Cummins Review— (and) big recommendations have been made. We are yet to see what that means in terms of changing of court practices or more collaborative or non-adversarial conflict resolution processes within child protection. But that may lead to some better outcomes. (**Legal practitioner)**

Failing this, taking measures to make court less alienating and more culturally accessible was said to be a priority by stakeholders, although what work has been done in this arena was limited to urban Victoria.

> We have tried to do some work in Melbourne Court about having different processes. So they have a lot more kind of emphasis on doing some round table work, trying to talk, and not necessarily having lawyers involved in the discussion. And also how they set it up now in the room for Aboriginal families, there is a flag and that it's all culturally appropriate. So there has been a bit of thinking about how we make court more culturally appropriate. Again, it's concentrated more in Melbourne metro. There has been discussion about whether we could have some key people from community who are associated with the court but more about directing people through the process. Obviously not giving legal advice but being there for when people do front up and they are not sure what to do and who they can talk to. It's a bit hit and miss now. (**Indigenous community organisation worker)**

5.1.8 Access to Legal Advice and Representation for Child Protection and Family Law Issues

Lack of information about legal rights

As discussed at Section 5.1.1, there was a sense among focus group participants that it can be difficult to access information about legal recourse for family law issues. The following comments are from female participants from just one focus group, Framlingham Women's Focus Group.

> I'm having a dispute with my ex-partner about my daughter but I don't know who to go to.

[83] FVPLS (2011), 23.

> I can't contact my niece and nephews and I don't know if I have any rights as their aunty.
>
> (On DHS consent orders) Nope, people don't understand that stuff.
>
> Our daughter died nearly twenty years ago and my ex stills gets letters about child support. That's half the reason he doesn't fill out his tax because he owes so much in child support.

Another focus group participant suggested that failure to access legal advice for child protection matters stemmed from poor knowledge of the way that this area of law works and what redress might be possible.

> Child protection is a huge issue for a lot of our families. A lot of our families are not told what their rights are and how they can access legal advice (**Swan Hill Women's Focus Group Participant)**

This was confirmed in stakeholder interviews.

> In terms of child protection, a lot of the women don't know that they can have legal representation so… they are not coming to us identifying that they need support. It's just because we do get talking to them we go, 'Hang on a second! You don't have a lawyer?' So, it's us that identifies and talks to them about the support that they can get. **(Indigenous community organisation worker)**
>
> We are often having conversations with adults about, 'You need to get legal advice, you need to do this and that' and what we often find is that they are kind of almost a bit paralysed about where to go. So our role is to unpack that for them a bit and to have connections with some of those workers out in the local areas. So then we can say to people 'Look this fella is really good, he may not be Aboriginal, but he has worked a lot with Aboriginal families, he'll be fine'. But we find that-and it's partly that stuff about people being really fearful about what it all is going to mean-they tend to, and I guess given their circumstances in terms of that they don't have the means to do anything else-they are often relying on Legal Aid, they are often relying on people who show up at court on the day, it's rushed, they struggle with the processes, they get confused, it's not family friendly, it's not culturally appropriate-it's all those things. It makes it really hard for families. (**Indigenous community organisation worker**)

Stakeholders reiterated that the complexity and stress of the child protection system means that people may not have a full understanding of what is occurring, particularly in court processes.

> We have to make sure that we write things down for people (at court) and explain it again. It kind of just doesn't stay in their heads, which is understandable. (**Indigenous community organisation worker**)

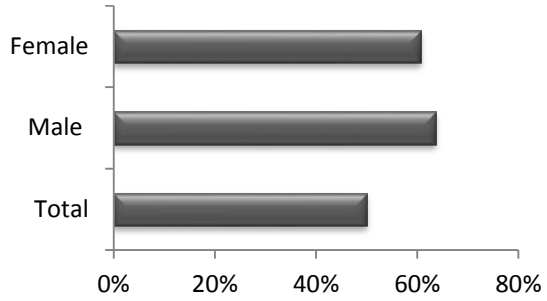
This highlights the pressing need for adequate legal advice in this area. It also underlines recent research from SNAICC, which stresses the importance of participation of Aboriginal Community Controlled Organisations in child protection decision-making. These organisations are well placed to be able to inform individuals about their rights and advocate for those rights at agency level.[84]

[84] See SNAICC (2013).

Level of access to legal services

Twenty-eight individuals in focus groups responded to a question asking whether they sought legal advice in relation to the issues around family law and child protection matters. **Figure 5.5** shows that of these, 60.7% said that they had done so, with women more likely to seek advice than men (63.6% women compared with 50% of men).

Figure 5.5 Participants Who Sought Legal Advice in Relation to Family Law/Child Protection Issue



Despite the high percentage of focus group participants who said that they had sought legal advice (although the numbers are small), there was a strong perception among legal practitioners and other organisations that Indigenous clients either did not seek to resolve disputes through the family law system, or were also not obtaining legal advice when they were compelled to take part in legal processes.

> We don't have a large Koori population client-base…in relation to family law I can count on one hand in the four or five years we've been here. They are not making their way here, but I don't think they are making their way anywhere. (**Legal Aid staff)**

There were a number of hypotheses as to why this was the case. As these stakeholders suggest, there may be informal mechanisms in the community that a family feels is better suited to their situation than a formal court order.

> In ten years I have probably written two or three agreements for an Aboriginal family, that's about it. More so we would probably do safety plans than family law agreements. A lot of the women don't want to stop the kids from seeing their dads, a lot of women might be in horrible family situations but they don't want to break up the family. Family law is like a 'finality' to that, to break up the family, and they always want to leave that door open. A big difference and probably a positive as well though, they have got really good supports in their community, they are really well supported by aunties and grandmas and other people in the community who know what's going on behind the door even though they don't talk about it. Everybody knows who is harming who and who isn't. They don't tend to need (family law) because if something goes wrong someone else grabs the kids and looks after (them), then it gets sorted out and then it settles down. The kids come home again and we move on. So it's more about a safety plan, if he comes home drunk and he starts this what are you going to do with the kids well then they can run across the road to so and so. (**Community organisation worker)**

> I don't see very many Aboriginal families in the Family Court…They are quite strikingly absent, if you ask me. And I think that's a sort of Aboriginal cultural issue where if there is a break down in the family they just deal with it in another way. (**Legal Aid staff)**

Other rationales for a lack of interaction with formal legal processes were offered. The following comments pertain to the cultural inappropriateness of the family law system specifically, combined with a preference among Indigenous families to sort matters out internally.

> If you look at custody orders it almost rips the two sides apart doesn't it? It's not a sit down and chat with a few Elders saying, 'We have a few issues at the moment...' and it doesn't really identify the kinship, the aunties, which are more tight-knit in the Indigenous community. It also doesn't say, 'Look, whilst you have these issues about the children that are here now…' They don't provide the channel of hope that in the future we will work towards this. (**Indigenous community organisation worker)**

> I took a person once (to a FRC/mediation). We had to go to Bendigo and the questions that they (the mediator) were asking the community person was way over even my head. So we took a break and went out to the car and we did a timeline… I then had to connect the timeline with things that occurred in this person's lifetime to try and join the dots together. That's what the family mediation wanted. It's not really comfortable…It's not really culturally aware I suppose you might say. (**Indigenous community organisation worker)**

> Families are incredibly reluctant to-—you know, grandmas are reluctant to use Family Law Court because again that's another court system which is really alienating. People are really frightened of it. And there is also, there are a number of our families who don't necessarily want to make permanent arrangements for their grandchild because at the end of the day they also belong to their daughters or whatever, for instance. The Family Law Court is an option that a non-Aboriginal person might use but not many of our families would even contemplate it. (**Indigenous community organisation worker**)

One focus group participant talked about cost as a barrier to obtaining legal advice.

> Where's our money to challenge it? Where's the money for the courts? ... DHS (take your kids) and you get an order… And then those twelve months or six months is up and they're trying to put another twelve months on top. You're supposed to fight it if you want your kids, but there's also no money out there to help you. (**Bairnsdale Women's Focus Group)**

Quality of legal service provision

Where Indigenous clients do have matters heard at court, the imperative for skilled and sensitive legal practitioners cannot be overstated.

> Child protection will make arrangements that there is a psych assessment set up the same day when there is supposed to be a drug assessment or something like that. Which is impossible for anybody, let alone a client who (has)…some historical mental health issue or is in the immediate sense suffering from post-traumatic stress disorder from family violence. So, it's that kind of being able to tease away (all the issues) and it's not the kind of work that private lawyers nor Legal Aid can do. (**Indigenous Legal Service staff)**

> (After a client is allocated a Legal Aid solicitor at court, it is) really difficult for them to change and they are kind of stuck with this lawyer they can never get hold of… This lawyer has never come to the DHS meetings so they are not represented at these meetings. They only actually get represented at the court hearings. Whereas what we are trying to do, if we can… we try to get women linked with legal services such as FVPLS because they are there along the way. They'll come to the small meetings, they'll come to meetings here with us. It's not, 'We are going to wait till you are in court before we support you.' It's 'Let's get in so we can support you all the way through so you are informed, you are making choices that are informed choices.**' (Indigenous community organisation worker)**

> You look at the number of times that our families don't appeal case planning decisions. We often say 'You have a right to appeal if you are not happy.' I think that the better that the legal support can be then the more empowered people will be. Families do work incredibly hard to try to do the right thing, but often it's the processes and the feeling of not being supported in that that is their undoing. How they respond in court-you know their fear and their anger gets interpreted in all sorts of ways. Often our role with child protection is to calm the waters a bit. If they had someone to help people through the legal processes then people wouldn't blow up as much in court. But it's a really daunting process. I guess it stands for a lot of things that are really quite awful for Aboriginal people and on top of that they are being asked to be respectful in a place that in the past has never been very respectful to them. The better that the legal support could be,I think people would respond well to that. (**Indigenous community organisation worker**)

FVPLS speak of the necessity of access to dedicated Aboriginal and Torres Strait Islander legal services who are 'best equipped to deal appropriately with cultural issues and to advocate for necessary systemic change.'[85] One stakeholder raised the role that an Indigenous field officer might play in assisting mainstream services provide adequate, timely advice to clients in child protection matters.

> People have such bad associations and bad experiences with child protection that encouraging them to call them—it just often doesn't happen for them to make access to negotiate. I guess having a liaison between (them and DHS might assist)… It's really difficult… Just that middle person can really help both advocate for the person once they get there, because you usually get emotional when you are talking to the people who have taken your children away, understandably… Having someone there who can either be there for you or help calm you down…and we (as a service) have got no real way to catch up with them because we just can't go somewhere where we know they are having a BBQ next Thursday. It's really hard to grab them again and then it goes for another month or year that this matter remains unattended and their unhappiness continues. (**Community organisation worker)**

5.1.9 The Impact of Inadequate Funding of Child Protection Legal Services

As the situation currently stands, stakeholders expressed the view that levels of funding to family law and child protection services do not allow for the frequency and quality of contact with communities that would allow for productive practitioner/client relationships. While the community's role in

[85] FVPLS (2011) 10.

decision-making has been formalised in the *Children, Youth and Families Act 2005* through AFDM,[86] VHREOC has expressed concern in this context as follows.

> Both the Victorian Aboriginal Legal Service and the Aboriginal Family Violence Legal Project report that AFDM is currently underutilised due to a lack of available convenors, unwillingness of DHS to participate and general under-resourcing of Aboriginal provisions in the *Children, Youth and Families Act*.[87]

VLA does not currently fund lawyers for children or family members to attend AFDMs. FVPLS Victoria, in their submission to the *Protecting Victoria's Vulnerable Children Inquiry,* discuss attendance at AFDM meetings where clients are not represented,

> …recognizing the often significant disempowerment of clients in these meetings…and failure of DHS to accord procedural fairness and to adhere to law and procedure specified for Aboriginal and Torres Strait Islander children.[88]

The lack of dedicated child protection solicitors and not having 'enough staff to cope with the demand-particularly in rural areas were identified as particular issues in the ILNP research. Because of this, generalist outreach solicitors 'who are not as familiar with the laws as the dedicated child protection solicitor' are picking up child protection cases, which in turn means that 'a number of people may be used on one case as opposed to one dedicated child protection solicitor. Therefore, (there is) a lack of familiarity and trust'. (**Legal Aid staff).** The disparity in access to legal services in remote areas was an issue echoed by other stakeholders.

> Certainly we see a lot of missed opportunities because often the legal services are not there, particularly in rural areas. They have to be really proactive to get that support but it's not often the way that our families feel comfortable working. (**Indigenous community organisation worker**)

Other concerns around models and levels of funding and the direct ramifications of these on the outcomes for Indigenous families were raised by a number of other service providers:

> It's that gap in funding. And VALS don't do child protection on circuit, they don't do intervention orders on circuit, they don't do family law on circuit. All we get here is criminal law... When our solicitor comes down she has no understanding of how intervention orders, family law, child protection all interrelate to criminal matters that she might be dealing with. She might have somebody who hasn't paid their fines and they've now got an imprisonment in-lieu order. She won't understand the family violence background that got that person to that point… She won't understand any implications of that because they only get that really specific role, that's what they're paid to do… A solicitor from VALS (is) complaining about that…at the moment, saying, 'I at least need to know the basics of the other areas of law and how the criminal law impacts'. (**Community organisation worker)**

One stakeholder suggested that if child protection legal services were better funded, lawyers would have more capacity to hold DHS to account in fulfilling legislative requirements.

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[86] *Children, Youth and Families Act 2005* s12(b).
[87] Victorian Equal Opportunity and Human Rights Commission (2011), 35.
[88] FVPLS (2011), 5.

> There needs to be an obligation put on DHS to tell people of their rights and not just to put it on a bit of paper and shove it out the back. There needs to be more motivation for them to meet the obligations of the legislation. If there is no funding for solicitors to tell them that they have to do their job they will get away with it. (**Community organisation worker)**

A particular issue arises relating to the stage in a child protection case when a client can access Legal Aid.

> (Legal Aid is) not funded to do an internal review, you're not funded to go to VCAT, and yet they are the only two legislated points of appeal… How many of our clients can afford to pay? The internal review process, a lot of them can do that themselves, but there's no way they can stand in VCAT. At that point, DHS brings in a barrister, then you have got potentially uneducated (persons with) mental health, drug issues. Some of them should have had their Zanax that morning but haven't taken it because they are going to go into the Tribunal. Then they are completely edgy. How are they supposed to represent themselves? They can't do that. It's just not meeting their needs. (**Community organisation worker)**

> Legal Aid only funds once the protection application's (PA) been issued. So if you're a private solicitor or a Legal Aid solicitor, you're not funded to do preventative work. You're only funded from the time that the PA is issued, then once that PA is issued you're not funded to go to case plan meetings, which is where the bulk of the decisions are made, clients tend to get angry, storm out, decisions are made without their input. (**Community organisation worker)**

> There're ways of avoiding court completely but nobody funds a solicitor to do that. It's only an organisation like FVPLS (where there is family violence) or…community legal centres who can do those extra steps or private practitioners who say this will be part of our program. (**Community organisation worker**)

This concern about the stage in the process at which legal advice can be accessed was also canvassed by the VHREOC in their submission to the *Protecting Victoria's Vulnerable Children Inquiry*. The Commission made a connection between access to legal representation and the capacity to receive a fair hearing, as protected by 24(1) of the Charter.

> All parties should also have the option of legal representation for all proceedings throughout the life of a child protection matter (including Court appearances, Dispute Resolution Conferences and New Model Conferences) to ensure that any agreement reached is consistent with the best interests of the child.[89]

Interviewees said that scarcity of service providers in family law was compounded by conflict issues:

> The problem that may crop up…is in relation to conflict. If we've acted for them before and the other party, it means the Family Division can't act. We need more diverse service providers in the family area to ensure people are not conflicted out. (**Indigenous Legal Service staff)**

> So if you have a situation where in the family, it's dad and he's got charges and they are concentrating on that and he might not be with the mum anymore, but mum wants some legal

[89] VEOHRC (2011), *32.*

> advice on child protection, (a) sometimes she isn't going to feel OK about (VALS) providing that service and sometimes what gets back to us is that 'We are already representing dad in other matters so we won't be able to help you'. (**Indigenous community organisation worker**)

5.1.10 The Interaction Between Child Protection and Other Legal Issues

Another important dynamic noted by stakeholders is the interaction between child protection issues and other areas of civil law such as housing, income management, stolen generations and neighbourhood or intra-community disputes.[90] This encompasses, and goes beyond, the Ombudsman's recognition that 'there is significant overlap between the child protection jurisdiction and mental health, disability, drug and alcohol and domestic violence sectors.'[91]

Housing was raised in interviews as a particularly important issue.

> I've got plenty of tenants whose kids have been removed, probably 10%. We give them the houses even though the kids have been removed because we know that one day the kids will come home. And it's a big thing in this community. Like you know, how come she's got a house, she's got no kids, they've been removed. And it's like—you know what, where are those kids to go back to? And she's done the right thing by getting on the list, waiting, providing all the right documentation. (**Indigenous community organisation worker)**

> When child protection and DHS are involved, they often won't allow…the child to go back to the family because they are homeless. But you have a…homelessness system which is not easy to negotiate and they can be doing all the right things in the world but until there is a physical house they are not going to allow the kids back. So the interaction between systems is so frustrating. (**Indigenous community organisation worker)**

These stakeholders highlighted the interaction between child protection and social security.

> I think we have an added complexity at the moment with income management coming in. It's not the intervention but-enough said about that! (We) aren't seeing any mandatory or vulnerable families come through yet, but I expect to see more…when Child Protection start wielding sticks and so they start putting people on non-voluntary (management). So I think that will have some issues. (**Community organisation worker)**

> We had a case study given to us a couple of weeks ago of a family going to Centrelink trying to get information about support for a child with a disability and being told that the best way to do it (was) if they signed off on income management. So, it's this real… **(Statutory Authority staff)**

There is also a particular tension between people who have been affected by the Stolen Generations and issues concerning child protection.

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[90] See also ibid.,14: 'The risk factors for families in contact with the child protection system … include substance dependency, family violence, homelessness, poverty, imprisonment, limited social supports and barriers to parent-child attachment. Many of these factors are interrelated. Often they are chronic and multi-generational. All are likely to be experienced by those facing discrimination and social exclusion, either as a cause or as an effect.'

[91] Ombudsman Victoria (2009), para 47.

> Families who still have people who are affected by the Stolen Generations-they are raised in a family where, 'We don't invite the police, we don't invite the DHS, we don't invite any authority into our home'. Even if it's a positive, 'We still don't do it, we don't invite them into our home, we don't work with them we don't engage with them if we can avoid it'. Then that's passed down to their kids as well, I don't think that's taken into consideration with how they deal with people from the community. We have got a lot of people around here who still have grandparents or parents who were stolen generation. (**Community organisation worker)**

People who have themselves been removed as part of the Stolen Generations can be understood as a group with special vulnerability for whom mounting a challenge to child protection intervention might bring compounded difficulties.

> I think that my sense of a lot of Aboriginal people coming into contact with child protection is because of the legacy of the past, they get very frightened and virtually give up and think, 'This is a foregone conclusion. I am going to lose my children', and I think that that's incredibly sad. (**Indigenous community organisation worker**)

One stakeholder argued that where there is interaction between the child protection regime and other areas of law, the child protection issues 'trump' others, with poor outcomes for families. Issues around disability provide a telling case study.

> The pressures on the family coming from a disability services perspective are quite different from the child protection perspective. But they are all sort of washed into the child protection thing, often on the grounds of race. And it's like, hang on, the issues around dealing with a kid who's got specific issues because of a disability are quite different to child protection! But there is sort of this general assumption that it's a child protection issue. **(Statutory Authority staff)**

The following case study demonstrates the escalation of what is reportedly a failure of child protection agencies to provide adequate support to foster families. The knock-on effects into other areas of law, notably employment and criminal law, are also starkly demonstrated.

> (For foster care placements), they are supposed to do an assessment every two weeks for two years … she's had those children for seven years and the Department have visited her once… So she'd gone in there and said, 'These children have really serious issues.'… They said, 'Yes, we'll set this up for you.' Nothing. And that led to legal stuff because the partner's in jail now, because he hit one of these kids. She's been charged because she was at work, but she knew there was some sort of tension in the house, so she is charged with failing to protect the children. So she's lost her job, she's lost her working with children check, she's lost her five foster children…and she's lost three of her own … So, that's what I mean. People like that, they should have just worked with them and said, 'Yes, he's done the wrong thing. Yes, he admitted he'd done the wrong thing from day dot.' You know? She wasn't even home! How the hell could she prevent something when she is not at home? ... And this poor woman has her life just being ripped out from underneath her. So, that's the child protection system at its worst. (**Indigenous community organisation worker)**

Further discussion of the failure to adequately monitor care scenarios-in this case, reunification-and the way that this can escalate to criminal matters, is illustrated in this next case study. Here, a respite worker is said to have stepped in to play a supervisory role because of the failure of the Department to do so.

> She (the respite worker) does go in and helps Mum every couple of days, checks on the kids because child protection aren't doing that. She was telling me on Friday she took twenty-four bags of rubbish out and the kids have lived in absolute squalor but child protection haven't been there to check since they placed those children back. They are more or less like, 'Yes, you can go home now.' And off they go. And this actually causes a lot of family violence. (**Indigenous community organisation worker)**

It may be that earlier, adequate provision of legal advice in relation to family law would have the advantage of preventing some situations escalating to the extent that child protection becomes an issue. Community legal education with a focus on educating Indigenous clients about the family law system may therefore act as a preventative measure in relation to child protection matters.

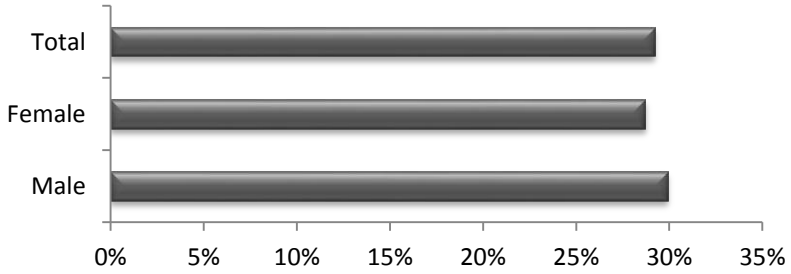
5.2 DISCRIMINATION

Discrimination emerged as an area of priority need during both focus groups and stakeholder interviews conducted in Victoria. Focus group participants were asked whether they had experienced racial or other types of discrimination over the last couple of years (including on the basis of age, marital status, gender, disability or sexual preference). Participants were also asked in what context the discrimination in question had arisen, such as in clubs and pubs, in government service provision, or in employment. Further, participants were asked if they had sought legal advice in relation to discrimination.

5.2.1 The Extent of Discrimination

Figure 5.6 shows that overall, nearly a third of all focus group participants (**29%)** identified having experienced discrimination, with Indigenous men and women identifying an experience of discrimination at almost the same rate (28.7% of women and 29.9% of men) (see **Table 5.9: Appendix C**).

Figure 5.6 Percentage of Focus Group Participants Identifying Discrimination Issue



At the outset, we note that although discrimination is identified by participants as one of the more common civil or family law issues, the numbers above may not represent the true extent of discrimination in the ILNP focus communities. We suggest that the actual incidence of discrimination is significantly higher than that reported during the research. The reasons why it might be under-recorded or under-reported in various contexts are discussed in detail below.[92]

[92] For report on discrimination in Victoria, seeVicHealth, McCaughey Centre: VicHealth Centre for the Promotion of Mental Health and Community Wellbeing, the Onemda VicHealth Koori Health Unit and the VEOHRC (2009), *Building on Our Strengths: A framework to reduce race-based discrimination and support diversity in Victoria*, Melbourne VIC. Available at: https://www.google.com.au/webhp?source=search_app&gws_rd=cr#fp=456c2186ba13fcc&q=)%2C+Building+

Although the same point might be made in relation to a number of civil and family law areas, discrimination stands apart in a number of ways. Discrimination is described as being an everyday occurrence, touching most (if not all) Aboriginal people at some time, and it arises in many different areas of life. As a participant in the Robinvale Women's Focus Group states, for example, 'You're going to face it no matter where you are. You're going to face it at work, at home, school, wherever'.

Comments by stakeholders also illustrate the pervasive nature of discrimination. 'The community feels it (discrimination) in general. When they go for a job, when they go for housing', according to one stakeholder located in Bairnsdale **(Indigenous community organisation worker)**. Further similar comments are as follows.

> We deal with it on a daily basis. You would think that in this day and age it would be easier but it's not. … The City Council of Shepparton has just completed a survey and they are going to be providing the results of the data collected to the Aboriginal community … and they have sent it to me yesterday. It's just terrible, the incidences of discrimination. **(Indigenous community organisation worker)**

> I don't think I've had many clients that come in here that haven't at some stage complained about being discriminated against, for wearing torn or worn clothes or something like that. Young people included, sadly. (**Community organisation worker)**

The example provided here by an Indigenous community organisation in Swan Hill again illustrates the multiple layers of discrimination against Aboriginal people.

> Swan Hill (is) where the most desperate communities in the State are. I've seen community fighting in the street and the police are standing there watching and one of (the police) said they were not going to address that at all. 'Let them sort it out themselves.' It's shocking! Community go to St. Vincent De Paul to get emergency relief and they are saying, 'No, we don't supply that to you. You need to go to the Aboriginal Coop(erative) first.' But the Aboriginal Coop has run out. Even the other welfare services treat the Aboriginal community like that in Swan Hill. And these are the original communities. You've got Aboriginal traditional owners living alongside the original settlers. They know each other. There is a great divide in towns like that. Young Aboriginal kids, you do not see them employed at McDonalds, Kentucky Fried or Coles at all. They only take them in local government and they will probably only take four. It's straight down the line in those towns. **(Indigenous community organisation worker)**

The following comment further highlights the fact that where discrimination occurs for Aboriginal people, it is unlikely to arise on one ground or basis alone. In this instance, the potential for discrimination on the basis of criminal record, amongst other bases, is raised as a concern, given Indigenous over-representation in prisons.

> There's a large percentage of Aboriginal males in the prison system. If you come out of jail, whether you're Aboriginal or not, it's going to be hard to find a job and work, regardless of

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on+Our+Strengths%3A+A+framework+to+reduce+race-based+discrimination+and+support+diversity+in+Victoria%2C+Melbourne+VIC. See also Ferdinand, A, Paradies, Y and Kelaher, M (2013) *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey*, Lowitja Institute, Melbourne VIC. Available at: http://www.lowitja.org.au/sites/default/files/docs/LEAD%20Report-WEB_0.pdf

> whether you want to. So how does society answer it? We throw a Newstart allowance at them so they can get paid, which is good. I want them to get paid. … (But) if they go into jail, then they learn these amazing skills, then they can't find themselves a job when they get out because they're discriminated against. Not only now are they Aboriginal and discriminated against, they're an ex-prisoner too and they're discriminated against. So, add that onto it and then on top of that they might be living in a Housing Commission house, so all of a sudden they're a 'houso', they're Aboriginal and they're just from jail. I hate that sort of discrimination. You throw them at society and they don't take it very well. **(Community organisation worker)**

Stakeholders were also asked whether the civil and family law needs of Aboriginal and *non*-Aboriginal people differed. Racial discrimination, in particular, is clearly one issue that Indigenous people are much more likely to face than non-Aboriginal people (other than those from CALD communities), and so in this area Indigenous legal needs will obviously differ from non-Indigenous legal need.

An agency in Mildura, for instance, provided an example of an employer choosing a non-Aboriginal applicant for a job over an Aboriginal applicant for no reason other than race. The agency noted that this is a good example of where the nature of Aboriginal legal needs differ. 'Yes … like the last (example) I gave you of discrimination and employment working together. Well for that, that I think would affect your Aboriginal community more so than anyone else' **(Community organisation worker)**.

5.2.2 The Nature of Discrimination

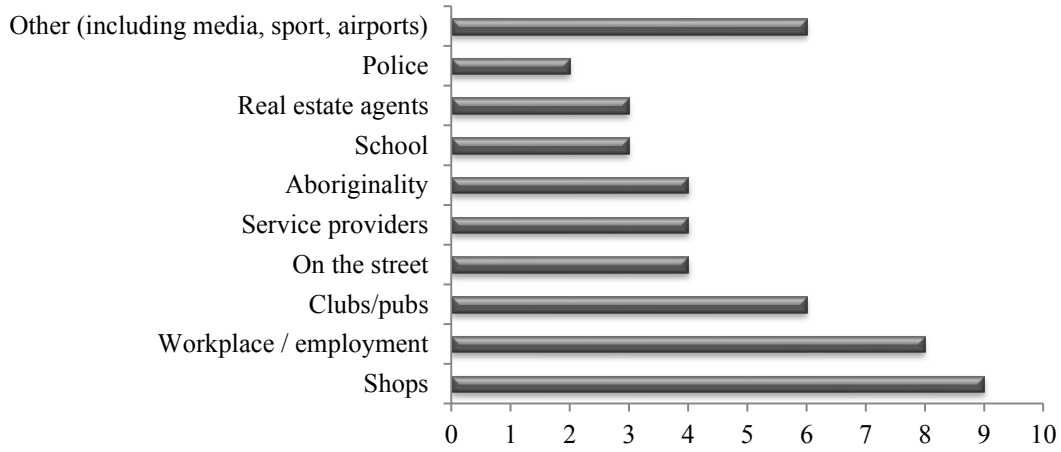
Participants were asked to identify the nature of discrimination they had experienced. In all instances, the discrimination identified was *racially* based. However, it was clear from focus group discussions that other grounds such as criminal record and disability might also have been relevant considerations. During interviews many stakeholders also frequently focused upon racial discrimination as an issue, rather than discrimination upon any other ground. Further, the discrimination identified was, in general, direct rather than indirect in nature. This is likely to be a reflection of how discrimination is understood by participants in the research, both within the context of the ILNP research and in legal terms.

No other type of discrimination, besides racial discrimination, was nominated by focus group participants. The fact that the discrimination identified by participants was only of a particular type suggests, once again, that the rate at which it is identified as occurring (29%) will be an under-representation of its incidence. Instances of indirect discrimination or of discrimination on grounds other than race were not directly raised in the focus group discussions or within the completed questionnaires, although as noted above, the context of the discussions suggested other grounds may also have been relevant.

Figure 5.7 indicates that shops and employment were the most common areas in which the discrimination occurred. Of the 49 responses provided by 42 participants when asked to identify the context in which the discrimination arose, 9 participants identified that discrimination had occurred in shops and 8 participants identified it within employment. These areas were followed by pubs and clubs (6 participants); 'on the street', 'service providers' and a general category of 'Aboriginality' (4 in each of these areas); school and real estate agents (3); police (2); and then in a range of other areas

(including in the media, in sports and at airports (6)). In combination, goods and services (that is, police, 'service providers', shops, pubs and clubs) appear to be especially problematic.

Figure 5.7 Nature of Discrimination Nominated by Those Who Identified it as an Issue



Shops

Shops were the most common site of discrimination, which included refusal of service in or access to shops.

> The kids that muck up down the street are not allowed in the shops, and that's okay, but …white kids are mucking up down in the street but (are) allowed in the shop. Our kids get into more trouble than non-Koori kids. (**Bairnsdale Women's Focus Group Participant)**

In some instances, Aboriginal people reported being unfairly denied the right to purchase takeaway alcohol from a store because of assumptions relating to levels of intoxication.

> They think you've had enough (to drink), because you're Aboriginal. I'd only had one drink. So I had to go into the street and find some gubba to go in and buy me a case of grog. He went in straight away and he was drunk! (**Heidelberg Men's Focus Group Participant**)

> There was community violence here in Spencer. The bottle shop owner down here refused to sell alcohol to one Koori girl. Just so happened that Koori girl actually worked at (……) and she is not stupid and she's not backwards in coming forward. She went straight to the police and said 'He is refusing to sell me alcohol.' … And it was in the paper, like you know, they are refusing Aboriginal people alcohol now. … The police had spoken to all the bottle shop owners and said 'If someone comes in intoxicated, I don't care how much of a hard time they give you, do not sell them alcohol.' So, they misinterpreted that and thought 'We just won't sell it to Aboriginal people.' And like I said, the one person that walked in there was the person who had a bit of knowledge and had a bit of guts. **(Indigenous community organisation worker)**

Another issue around shops was the hyper-vigilance of security personnel around Indigenous customers. Some Indigenous focus group participants reported receiving negative attention by security guards and other staff in shops. 'I've had it in the supermarket, being followed around',

claimed a female participant in Framlingham. There appears to be an assumption that an Indigenous person is likely to thieve.

> I find it a lot in shopping centres when all I want to do is shop without feeling uncomfortable and (without) someone looking at me feeling like I'm going to steal something. And I don't even steal and I feel guilty for just going in there… That's discrimination now. It (discrimination) doesn't have to (happen) verbally. **(Heidelberg Men's Focus Group Participant)**

> (Discrimination is) everywhere. You go into a shop and you're a blackfella, they follow you. If you go in dressed up and you're a blackfella, it's alright, but if you go in just like this, they stalk you. **(Fitzroy Women's Focus Group Participant)**

> We experience racism all the time. Often refused service when going out, if with a group of Aboriginal people. Often followed around by security in shopping centres. **(Indigenous Legal Service staff)**

Employment

Focus group participants also commented on how hard it is for Aboriginal people in their respective communities to find much-needed employment. Sometimes, the decision not to employ them is seen as blatantly racist.

> You ring up about jobs and they say, 'Oh yeah, that sounds good, give us some information about your background, some work you've done'. And as soon as you go in there for an interview and fill in some forms, their attitude changes. **(Heidelberg Women's Focus Group Participant)**

> We need a lot more employment. … You don't see us working in shops and things like that down the street, because we're black. We are black. **(Shepparton Focus Group Participant)**

> It's been going on for over 100 years. That's why we work for Aboriginal organisations, because we can't get jobs. **(Framlingham Men's Focus Group Participant**)

A male participant in Robinvale noted that competition for jobs comes from other minority groups. He states, 'I heard they wouldn't hire Aboriginals out on … farms. They've got Tongans and Asians out there (instead)'.

People also reported being treated unfairly *within* employment because of race, and the negative impact that this has on an individual.

> (The) manager herself, she came out to me and called me (racist names) and told me to hit a kangaroo on the way to work if I wanted a feed. … They don't know how much that hurts a person … I went on two years WorkCover, stressed to the 'max'. … I couldn't get no Centrelink money because my financial earnings were too much from the previous year. Nearly lost my house, nearly lost everything. **(Bendigo Men's Focus Group Participant)**

Stakeholders commented similarly on the exclusion of Aboriginal people from employment opportunities due to race and on the effects of this exclusion upon individuals and whole communities. This is said to occur no matter how much money government puts into relevant training to boost Indigenous employment and regardless of the ability or educational and other relevant

background of prospective Indigenous employees. Where there is the possibility of discrimination by a prospective employer, having requisite skills and experience will be largely irrelevant, as one of the examples below illustrates.

> When an Aboriginal person finishes school and they apply for a job I just find that most of the time from what I've observed they won't get the job. They won't get the job that they apply for. And I think that makes it really hard for … them to have too many goals, dreams, stuff like that. The government is throwing lots of money at courses and training and then in the end (they're) not getting a job because they're being discriminated against, in my opinion. So, I think there's a lot of work that needs to be done there. (**Community organisation worker)**

> Health and us would be the biggest Aboriginal employer and other than that you would be hard pressed to find an Aboriginal person working in other organisations. So predominately our Aboriginal-controlled organisation has been the biggest employer of Aboriginal people, which it should be, but there was a time when I think (person's name) was the only Aboriginal person employed outside (of this organisation)... Shepparton is what it is but you know you kind of – it's hard getting a job when you are starting from minus ten. (**Community organisation worker)**

> We've got a lovely town in the Loddon Valley where a lot of people go to for a holiday, but there is a lot that goes on there, and one of the stories was that one of the young girls who is related to an Elder in this town could not … get work experience as everybody else in her year level had. And her relative's a fairly vocal and public Elder. You know, she's done a lot of hard work in the community and her granddaughter is very well presented and well spoken, good marks, no problems at school. She could not get the work experience and she'd gone everywhere. And other people who probably presented poorer than her and didn't have the marks and all that sort of stuff walked into a position. … That just seems to be so awful for someone her age to experience that. (**Statutory Authority staff)**

Other Goods and Services, including Police

Goods and services in general were identified as being particularly problematic in terms of discrimination ,including shops, pubs and clubs, 'service providers', and police. Discrimination by police was identified with some frequency. There is certainly a sense amongst focus group participants that Aboriginal people are over-policed. As one male participant in Robinvale states, 'If blackfellas are having a fight (police) are straight there, bang, they lock them up, whatever. If it's Tongans, they'll sit back in their car and watch it, (they) don't get involved in it.'

Conversely, police are also said to *under*-police where Indigenous people are victims of crime, with reports of the police response to family violence providing an example of this.

> And the different community members coming forward and saying 'If you ring up from that particular area of town … and say 'Look, there is a serious domestic dispute. We need you to get out of here', there will be no response. We've got examples of one of the support workers (who) rang up because someone was experiencing violence. She'd rung the police and the police had said 'Well, why don't you go around there?' (**Community organisation worker)**

> I think it's generally acknowledged that the police response to family violence across the board is poor in (Echuca). There is currently a very poor response. There are just some very

> old and entrenched people in that station. It's that community discrimination that is historical as well. (**Community organisation worker)**

In discussing the use of standard conditions rather than specific conditions on family violence orders for Indigenous women, one stakeholder noted that, 'Indigenous women are more often represented only by the police. Police aren't great at tailoring orders to the needs of women and also are less inclined to engage with what that Indigenous woman actually wants' (**Community organisation worker).**

Poor interactions between police and Aboriginal communities, as suggested above, may be historical in nature but continues into the present. A participant in Heidelberg stated that police discrimination is less overt than it used to be, but that it still exists. 'I think the levels of discrimination and racism from the police hasn't changed, it's become more covert'. (**Heidelberg Men's Focus Group Participant**) Stakeholders agreed that discrimination by police remains widespread. 'In terms of ancillary sort of civil type matters, discrimination type matters (around policing), if there is any legal capacity to pick up that particular stuff we'd be just absolutely swamped with stuff'. **(Community organisation worker)**

Further examples of discrimination in relation to goods and services included taxi services and private legal practitioners.

> The other day I was talking to another Koori bloke … he said that he got into a cab on a Friday night or Friday afternoon, don't know when it was, before him was a couple of Koori girls in the cab and (the driver) said 'I'm not taking you around until you pay up front'. He said he had the money at home. It just stuck out you know, just simple things like that. Here in Mildura, it is sort of underlined. ... There are tensions there, purely because of the visibility of Kooris. **(Indigenous community organisation worker)**

One Indigenous community member suggested that where Aboriginal people have the financial capacity to access private lawyers, they may still find it difficult to get legal help from such lawyers due to underlying racism within private firms.

> How many civil solicitors do we have (here)? Three firms and they are not Koori friendly at all to me. The mob's main service provider is VALS. It's the front line. If they are not used to Aboriginal people going through the front door, they can make it very difficult to sit on the couch and wait for the friendly solicitor to come in and see you. I had to go to a law firm. I won't say which one. I nearly walked out of there—the vibe! I went to a local firm and the receptionist looked me up and down ,'And who are you here to see?' The reception represents your business. It's just the communication thing again. We see our mob when they come in and we make them feel welcome. You go into the other places and you feel that you are not welcome there. How is the community meant to address these civil needs when they are not made to feel welcome? (A) huge barrier is racism. That's exactly what it is. Let's just say it straight out. They have these perceptions 'How can that black fella afford this solicitor?'(There are these) perceptions that we are broke, dirty and that. That has to change and so does the way of communicating as well. **(Indigenous Legal Service staff)**

Stakeholder organisations and focus group participants referred to discrimination within health care, evidenced by disrespect and bad quality care provided to Indigenous patients. 'I've had discrimination at the hospital. I was going to come back and make a complaint' (**Framlingham Women's Focus**

Group Participant). One agency referred to stereotypical assumptions around Indigenous peoples' use of alcohol, which may result in a patient with epilepsy, as one example, not being treated appropriately. '(W)ith discrimination, the kinds of complaints we get would be—somebody's got epilepsy, they go to the hospital, it's assumed that because they're Indigenous they're drunk and they're not treated well' (**Statutory Authority staff).** Another agency also commented about health care provision.

> (B)ut us as workers here, we try and protect our clientele. You know if you have to take an Aboriginal Elder to the doctor we see that, we see that straight away, you know-talking over the top or they won't listen properly and I really hone in and stop that, 'Hang on a minute this man is trying to tell you something here.' … That's the way I deal with it. (**Indigenous community organisation worker)**

Housing/Real Estate Agents

As discussed in the context of housing-related issues, Aboriginal people may be excluded from private tenancies not only because of the cost of renting private properties, but also on the basis of their race. This feeds into problems around access to housing and overcrowding, as Aboriginal communities are competing for very limited public or community housing.

Discrimination in housing appears to be a serious issue for Aboriginal communities, and it was one of the more common areas of discrimination highlighted during focus group discussions.

> I applied once (for private rental). Soon as I said I was Koori … they were like, oh yeah, you can get it and then they were like, they rang me two hours after and said 'Nup, you didn't get it' (after seeing the tenancy application form, which asked whether the applicant was Aboriginal or Torres Strait Islander). (**Heidelberg Women's Focus Group Participant**)

> It is a pretty racial sought of town. Once you go there (to a private rental) and they see you … they say 'sorry'. (**Framlingham Men's Focus Group Participant**)

> Still making me feel real shame about this town of Bendigo, as in shame for those people out there, as in white people. I've seen that many times when young Aboriginal ladies, young Aboriginal men been trying to go to normal real estates to get houses, they just push them aside all the time. My lady walked in one time after this young girl, (who) couldn't get keys (to look at a rental property). They said that the house was taken, everything was taken, sorry there's no more houses left. My missus walked in five minutes later, grabbed the keys to the house she wanted to look at. That's how simple it is, that's how ignorant they are here. They need to be woken up to themselves 'cause I believe everyone has a human right to a home. (**Bendigo Men's Focus Group Participant**)

Stakeholder organisations supported participants' claims about discrimination by real estate agents and landlords. An Indigenous organisation in Bairnsdale stated, 'Probably only one per cent of (Aboriginal) people get private rental. You say your last name, which is identified as Aboriginal, or you go in there and it's like 'No''. Another Indigenous community organisation in Mildura claimed, '(Discrimination) happens here. It is nothing that we tackle head on, but it happens. To be honest it certainly happens in the real estate market, it certainly happens' (**Indigenous community organisation worker).**

Another example was provided in relation to caravan parks.

> You find that with the caravan parks, you always ring up and enquire and they say 'Yes we have a vacancy' and then when you turn up and they see that they are Aboriginal they say 'We will ring you back as it's been taken'. They are very blatant about being racist. The unfortunate thing for the Indigenous community is that it's generally accepted. (**Indigenous community organisation worker)**

However, as suggested, discrimination is difficult to 'tackle head on'. Real estate agents do not have to give reasons for declining a tenancy application, and they are aware of this, as well as of their legal obligations to *not* discriminate against applicants. Part of a real estate agent's training relates to discrimination law and whilst this is a positive thing, as one stakeholder suggests this may only make them more careful to *be seen* to be not discriminating.[93]

> We've worked in the past with VEOHRC in relation to Indigenous issues in private rental and we'll continue to (do such) work in the future. We know that VEOHRC has just lodged a survey on discrimination and private rental.[94] (You) know, discrimination, racism—these are all issues that everyone is aware of. It's a component of the training that all real estate agents and the like and the licensed representatives have to be trained in. The training of real estate agents has become part of the national framework. So, there is a national curriculum and it's part of their curriculum that they have to understand equal opportunity in their jurisdiction. ... It's the certificate IV in real estate practices. (**Statutory Authority staff)**

> Real estate agents are very, very well educated. They know the course well (referring to the aforementioned compulsory training)… The discrimination I am quite surprised about. We get a lot of people coming here and saying, '(We) can't get properties. We've been trying and trying and we clearly have been discriminated (against)'. Agents are very, very careful. They certainly would not be giving out any information to give them a hint that they are being discriminated against. So, they are very tactful. Because they don't have to, under the legislation, they don't have to give a reason. But it is, it's very difficult to get rentals. And people are competing with thirty or forty people. (**Statutory Authority staff)**

> And even housing wise … that's a particularly big one, particularly around Shepparton, where all of the real estate (agents) know people, they know each other very well so it's very difficult. … Probably in the last twelve months I've had the most success I've had in a long time (in housing Indigenous people in the private tenancy market). It's been a really hard fought battle (particularly) if you happen to be a single mum or dad or on Centrelink benefits. (**Indigenous community organisation worker)**

Where there is discrimination, it can be reasonably easy to hide it within the tenancy application assessment process. Applications are rejected or accepted with reference to established criteria including rental history, employment background, finances etc. Whilst reference to such criteria may be reasonable, non-Indigenous applicants are more likely than Indigenous applicants to have a stable income and a good rental history, for example, and to therefore be successful in their tenancy

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[93] Education of Estate Agents - CPP40307 - Certificate IV in Property Services (Real Estate): http://training.gov.au/Training/Details/CPP40307. See for example, the unit CPPDSM4007A - Identify legal and ethical requirements of property management to complete agency work

[94] VEOHRC (2012) *Locked Out: Discrimination in Victoria's Private Rental Market* Melbourne Vic, go to: http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/150-locked-out-discrimination-in-victoria%E2%80%99s-private-rental-market-aug-2012

application. Such criteria will also in some cases provide reason to unfairly reject an Indigenous applicant without it looking anything like discrimination.

Agents and landlords may stereotype Indigenous applicants (even if subconsciously), including those that *do* tick all the boxes in terms of rental and employment histories, for instance. Where this occurs, discrimination laws may be breached. A government agency discussed the circumstances of one Koori woman looking for a rental property in Bendigo who would have appeared to be a good prospective tenant, but who still found it difficult to rent.

> With housing, discrimination for Koori people applying for housing is unbelievable. It took her over six months to find a house (as a private rental). And she is well-educated, has a very good job and she had to live with her son and daughter-in-law for a period of time until she was (housed). … A lot of people say they wouldn't even bother. … She was very well educated and good income … so, you know, it's out there. (**Statutory Authority staff)**

An Indigenous staff member of a family violence advocacy agency provided further comment about racist stereotyping in housing.

> And again, I don't think they (landlords, real estate agents) mean to. I think that there's just this natural perception that some people have that… (Aboriginal people are) going to commit a crime in that house, I can't put them in there, you know. The truth of the matter is, it's quite interesting… My grandfather is an Aboriginal and I don't even kind of look it (Aboriginal), you know, not even kind of. Does it mean I'm going to commit a crime? Am I going to wreck the house? No, it doesn't mean any of that. (**Community organisation worker)**

As another illustration of perceptions held by some agents, a male participant in Shepparton stated, 'One of our friends, a white friend, she was going to buy a house and she went to a real estate agent, and they were warned, 'Don't buy down by the (Aboriginal) aged care facility''.

Racial discrimination may *also* occur when Indigenous people deal with agents in relation to *purchase* of a home.

> We had people say they'd heard from the real estate agent that they didn't want Aboriginal people buying the house, they didn't want Aboriginal people moving into their neighbourhoods, because they devalue properties. … I have heard a policeman openly make that comment—that Aboriginal people moving into his neighbourhood would de-value the neighbourhood. (**Shepparton Men's Focus Group Participant**)

The aforementioned housing-related issues principally concern private tenancies and real estate agents. In terms of public or community-based housing, there is some suggestion that housing providers' are deliberately allocating Aboriginal tenants housing located in a single, effectively segregated area because non-Aboriginal households do not want to live near Aboriginal people. Issues such as this, providing some indication of racism which occurs across whole neighbourhoods, as well as the allegedly discriminatory way in which public or community housing providers' deal with such racism, have been discussed in the context of neighbourhood disputes (see Section 5.4: Neighbours).

Education

Education is dealt with as a separate issue in the ILNP research (see Section 5.11: Education). However in some instances, problems that are reported in this area cross over into the area of

discrimination, particularly racial discrimination and discrimination on the basis of impairment or disability.

The following comment by an Indigenous stakeholder organisation suggests that discrimination in schools is ubiquitous.

> My kids growing up … they faced it (discrimination). My daughter faced it at primary school and it's pretty hard. I think that if you have Aboriginal kids growing up they do face discrimination. It causes some kids to have chips on their shoulders so they always have this 'them and us' attitude. They aren't accepted out there. (**Indigenous community organisation worker)**

Another focus group participant commented as follows.

> My son's had a lot of trouble at school—I don't know if it was because he was black but he was labelled as a 'naughty' kid. (**Framlingham Women's Focus Group Participant**)

A further example is provided by an Indigenous legal service. This is both another instance of racial discrimination in education and also comment on the power imbalances that might arise in responses to such problems.

> (Discrimination is occurring in) schools. (When) I was working at the Legal Service about five or six years ago we went through the process of mediation with a couple of school kids. They took their school through the process. They had invited an MP to the school and he didn't realise that there were Aboriginal kids in the audience and made some really racist remarks. But then what happened with them was that they had to go to mediation. The person that was doing the mediating was supposedly unbiased in their approach but the environment that they selected wasn't conducive to young kids being able to speak freely. The MP was quite articulate and got his information across and that really (influenced) the whole process. Through that process you are not allowed to have a solicitor to act for you. (**Indigenous Legal Service staff)**

Although most of the information gathered during the ILNP research pertains to racial discrimination, Aboriginal people are discriminated against on grounds in addition to or other than race. Behaviour at school that is potentially related to disability, for instance, may be poorly or punitively addressed by schools where the student in question is Aboriginal. What schools need to be doing better, according to the following stakeholder, is providing culturally appropriate disability services. It is the combination of race and disability for some Indigenous children that a number of schools do not appear to be presently working with very effectively.

> Discrimination is a big issue. (There is) overt discrimination … around kids with disabilities. Because they are Aboriginal, there is no attempt to go through that assessment process around whether they actually have a disability until they have been excluded from the school. There are a whole bunch of suspension practices because they are poorly behaved, because they are Aboriginal. There is a lot of that. I find (it) interesting that (this arises) in a state where there are so many services and so much intent to support that community. There are clearly issues around discrimination and how those decisions are being made and the perceptions around those families. (**Statutory Authority staff)**

> Part-time attendance patterns and things like that, putting kids on 2-3 hours a day, three days a week because of behaviour. … part time attendance, use of restraint, a whole bunch of stuff around that at the moment, adjustments (for disability). Culturally appropriate disability service provision—when you put two things together (disability and race), it's very difficult for people to get a grip on it. (**Statutory Authority staff)**

There are also reportedly issues relating to the mainstreaming of schools based on false perceptions that Aboriginal kids do not require Indigenous-specific programs, initiatives or learning.

> There are a series of issues at the moment with cultural units or Aboriginal-specific units within the schools or schools themselves gradually being shut down. So, they'll stop enrolments. And there are three schools I can think of at the moment where this is happening, where they've stopped enrolments in the primary (school) to cut off the supply—and then they are saying that there are not enough students to keep the school open (in order) to mainstream the kids. Because there is a notion that they are better off in a mainstream setting without understanding that actually they are not better off in the mainstream setting because they are used to growing up in the community.

> (There) is a perception in Victoria that the Aboriginal community is urbanised, that there is no 'identity' for the Aboriginal community. So, to say things like 'We are going to shut down the Aboriginal Unit' people will go 'That's okay, because these are mainstream kids, they don't have an identity or a cultural background'. And that's a significant issue. If they said that to the Greek community, you know, you don't have a cultural identity as a Greek person because you live in Shepparton or Mildura, there would be an outrage. But it's okay to say about an Aboriginal community. (**Statutory Authority staff)**

General Community Attitudes

Community-wide racism and racial discrimination are reported by both stakeholders and focus group participants, including instances of hate crime. 'There's a lot more hate groups that have come out. We've experienced a tinge of Ku Klux Klan activity here (in Melbourne).' (**Heidelberg Men's Focus Group Participant**)

Other examples demonstrating racist attitudes towards Aboriginal people at a community level, which would be unlikely to constitute an actual breach of discrimination law, include the following.

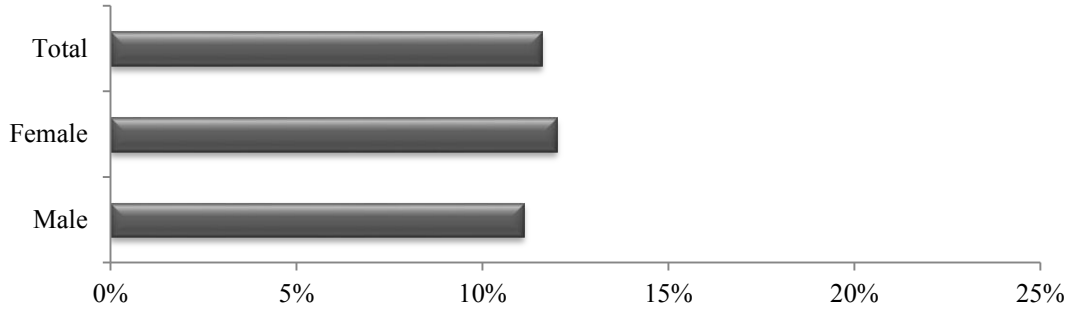
> These mob, everyone will tell you, you walk into a shop they'll check out the black kid. Automatically, if you're walking down the street, and you might have a hot drink, you are automatically alcoholic. The community here, being in a country area, always think the worst. (**Bairnsdale Women's Focus Group Participant**)

> My band comes from Melbourne. There are two Kooris and an Indian, and our token 'whitefella'. And the owner thought we'd get really good numbers on the night. But there were ten Koori fellas from my immediate family, and a few people that worked at the bar and a few random walk-ins … They usually get sixty to seventy people to these events. The poster had been up for two months with our heads on it, so they are actually seeing that we are Aboriginal, and there's an Indian. … He (the pub owner) was pretty devastated by it. … It's a reality check in the community to say, racism is still alive. (**Shepparton Men's Focus Group Participant**)

5.2.3 Discrimination and Legal Advice

Figure 5.8 shows that just over one tenth (or **11.6%**) of focus group participants who had identified discrimination as an issue also sought legal help for it. Indigenous women and men were about equally likely to have sought assistance (12% of women and 11.1% of men) (see also **Table 5.12: Appendix C**).

Figure 5.8 Participants Identifying Discrimination as an Issue Who Sought Legal Advice



These figures indicate that discrimination is not often formally challenged, despite its relatively high incidence. There are likely to be a number of reasons for this.

Resignation, fear, distrust, lack of knowledge

Aboriginal people have had to deal with racial discrimination (in particular) for many years and in so many different ways that there are levels of exhaustion associated with, and a certain resignation towards its occurrence.[95]

> Over generations, that's the point of it. … We all get discriminated against at one time or another. We're Aboriginal. We might not always see it, but it's still there. They're always looking at me as if I'm going to steal something. You take it as it comes, you just move on. You got no choice. (**Heidelberg Men's Focus Group Participant**)

> I think they just give up and they are used to being discriminated against. They just sort of accept it here, whereas sometimes I would encourage them. 'You are entitled to everything that everybody else is entitled to. You are entitled to quiet enjoyment. You are entitled to live peacefully. You are entitled to a property.' … And I think it's just accepted here that people discriminate against you and it's a part of life and you just accept it and get on with it. **(Indigenous community organisation worker)**

Frequent and long-standing discrimination can leave people feeling disempowered, and can undermine the capacity to initiate action in response to it. This same sense of disempowerment means that Aboriginal people may also be fearful that complaining will only lead to further problems, including further discrimination. They may be worried about complaining to or about an organisation or service they depend upon, in particular (for instance, a housing provider or an employer).

[95] For further discussion of issues of access to justice in this area in the NT, see Allison, F, Cunneen, C and Schwartz, M (2013) '"That's discrimination!" Indigenous peoples' experiences of discrimination in the Northern Territory' 8(5) *Indigenous Law Bulletin* 8-12.

> Discrimination is big for us too. I don't think that I've ever heard in all the years that I've lived in Shep(parton) anybody taking legal action against discrimination…and in the intake I often get the answer of 'I should but I don't want to because I want to get the help'. It's ever present. I had a conversation the other day that kind of started a little bit like, 'I'm not prepared to make any formal complaint because I believe that the service would not be there for me if I did'. It's the general thought… It's entrenched through the community that if you complain it will disadvantage you in some way. (**Community organisation worker)**

It is difficult for some to trust that mainstream agencies, organisations and service providers, including government or quasi-government agencies (such as VEOHRC or the Australian Human Rights Commission (AHRC)), will respond appropriately to a complaint of discrimination; whether they are assisting with the complaint *or* they are the subject of complaint. Part of the issue here relates to distrust engendered through both past and present relationships between Indigenous people and relevant agencies, organisations and service providers, especially where government-based.

> But there is a sense as well I think that people don't feel able to take on the system around some of these things, particularly if you are already in contact with government somehow. Like, if you've already had contact through DHS or something, people are wary of bringing a complaint here about the Education Department. There is a notion that it is one government. **(Statutory Authority staff)**

> We've talked about (taking legal action against it) several times but again you need to do that through a mainstream organisation so that follow up step is just a bit too hard. So they don't tend to do that. **(Indigenous community organisation worker)**

People may prefer to deal with discrimination *without* the involvement of any agency. A male participant in Heidelberg suggested that 'You're better off dealing with it yourself' rather than complaining to a body such as VEOHRC. Given the difficulties associated with initiating any sort of formal action, there may be a sense that there is little point in complaining to such an agency, as there is no guarantee that the allegations will be believed or that the alleged perpetrator will be dealt with appropriately. Remedies can also be seen as inadequate.

> People don't go through the process of reporting discrimination because it's an onerous task. They see that there is no way that the perpetrator, the person that did the discrimination, is going to be dealt with. (**Indigenous Legal Service staff)**

> The law at the moment is too soft. We would like to see harsher penalties, especially when you are wanting to take someone through the process of racial vilification. It's a soft option—mediation. … We say 'keep at it' but like I say, when the penalties are so soft ... **(Indigenous Legal Service staff)**

Accessing help and information

Individuals also appear to feel under-equipped and at times unsupported when trying to work out how to respond to discrimination. It may be beneficial or indeed essential to have an advocate walk a complainant through the complaints and dispute process, including at VEOHRC or at VCAT. At the very least, complainants need increased access to information about the law, their rights and the process of taking formal action.

> Discrimination issues go to the Commission (VEOHRC). I went to the Commission and got good results. People I represented were ill at ease if not represented… If discrimination is alleged against a school, police or any government agencies, (the respondent will) be represented by a solicitor or union and usually I support the complainant. (**Indigenous Legal Service staff)**

> The idea that the Commission is going to work for a person with a strong story of racism without a lawyer is vastly impractical. It's not going to work, in my experience. I believe in the Commission, but people need to have someone with them over there. There are moves to establish a Discrimination Legal Service and to put a duty lawyer at VCAT. A person is needed to prepare a case and argue it. (**Indigenous Legal Service staff)**

> There are cases of people taking their employer through the process but it hasn't got anywhere—only because the person has lost faith in the process or the energy of being able to do it. What we do need is someone who is going to be an advocate around people to be able to say 'Look, keep at it'. (**Indigenous Legal Service staff)**

> People generally need help with the process. We don't let them do it on their own. If we can't refer them somewhere it's about getting support or advocacy. (**Legal Aid staff)**

It is sometimes difficult, however, to access the help required. Focus group participants report not knowing where to go for information and advice.

> Someone had got the key and had been told that it was his, then when they found out where he was working [at an Aboriginal organisation] that changed everything. And the agency said, 'Yes, we know why they won't give it to you', but then going through the process, equal opportunity, legally nothing could be done. People get sick, they hit brick walls, and they don't know their resources, we're not up to date with where things are at and what resources (to challenge such things) are available to us in the community. (**Shepparton Women's Focus Group Participant)**

An agency as significant to this area of law as the VEOHRC may not be sufficiently visible, so that when people *do* wish to lodge a complaint, they know both that they can do so through this organisation *and* they will feel comfortable enough to do this.

> (In terms of Aboriginal complainants, VEOHRC has only had) a couple of employment matters and a couple to do with the police. (Lack of complaints by Indigenous people is) a significant issue. I think the first year I worked over here there were none (1st speaker). And maybe the first year I got here there was one (2nd speaker). (**Statutory Authority staff)**

For Indigenous people, however, the VEOHRC may be just one of a number of 'systems' and bureaucratic processes that they need to deal with (including DHS).

> I think it's also visibility with this. People look for you when they've got a problem or when they can link you to a particular problem. You have actually got to be within reach when they have a problem or when they've decided they want to do something about it. Because … there are so many things going on (and) … they are engaging with so many systems. (**Statutory Authority staff)**

It is also apparently difficult to find lawyers who have specialist knowledge in this area, although it is worth noting that VLA and some CLCs do offer specialist assistance in relation to discrimination. Discrimination law can be quite complex, but may be often misunderstood as being relatively simple. This is evident in the way in which it has been identified in the ILNP research—largely as direct discrimination and as racial discrimination. There may also be misconceptions about what an agency such as VEOHRC actually does, including the levels of proof required to bring parties to the table for conciliation. This lack of understanding creates barriers to accessing justice, including where lawyers make an ill-informed decision about whether there is sufficient merit to lodge a complaint.

> So, people (at) VALS don't know a lot about what (VEOHRC does) and they've got perceptions about what (it does). … With people that go through or talk to CLCs as the first point of contact … (they might be told that) unless you can prove it in court it's not going to happen and … that's not true. And (if the complainant has been) saying it (happened) but 'I can't prove it'. It's like … (VEOHRC) just need(s) to get them around the table (to) … try to sort it … This is an agency (which) … can get them around the table. You (CLC) can't do that. So, give (VEOHRC) a go. (**Statutory Authority staff)**

> VALS want to do the work but clearly do not have capacity. And also they don't have the knowledge. … And in terms of priority it's way over here (motion). (**Statutory Authority staff)**

> We are trying to get some traction around the education stuff because in my mind it is fundamental but again, trying to get advocates and lawyers who understand discrimination in the area of education is … It's a tricky area. (**Statutory Authority staff)**

An example of this relates to police complaints.

> It's also that they don't bring complaints about police treatment because it might get to VCAT. And it's like—you've never tried it! You haven't tried to get them around the table. You are automatically locking off people's rights before they even had a go. … And discrimination complaints are not the best way to deal with police and racism. But it's a way to get visibility with the Police Commissioner. And my theory is to use everything available to you. Don't pick one (avenue only). … So, I guess there has been (an attempt to)… shift some of the lawyers around (discrimination by) police. 'At least give it a go'. Because at the moment nothing is happening as opposed to 'Try it and see'. Community are also scared of making complaints against the police. (**Statutory Authority staff)**

One particular misconception amongst some is that a complaint should only be brought if it will have some sort of systemic or strategic outcome (that is, for the broader community, rather than for an individual).

> I think there is a pressure on people that they do need to get an outcome that is community-based, not individually based. Certainly that was my experience with some of the matters I dealt with—that it then does become an issue not just for them but for a whole bunch of people who have got an opinion about how you fix the whole system. When actually what you are trying to do is to address this one thing that happened. It's actually okay to address the one thing and not try and fix the whole health system at the same time because unless you do that you've failed. I mean, it's lots of people's story but particularly it happens in disability and it certainly happens in Aboriginal communities around discrimination and that sort of stuff. (**Statutory Authority staff)**

Identifying and Proving Discrimination

There are also problems in actually identifying instances of racial discrimination. Discrimination can be very difficult to confront directly where it is anything less than overt. As one male participant in Heidelberg suggests - at least with overt racism you know 'who you're dealing with'. When discrimination is more covert, it is more 'dangerous' because it is difficult to name it (and therefore to confront) as discrimination.

> Racism comes in all sorts of shapes and sizes. It can be the way that the shopkeeper gives you the money back in your hand. Racism has become more covert, it's not more overt, which in a sense is really much more dangerous because you don't know who you're dealing with. At least with someone who's an overt racist person you can deal with them 'cause you know where they're coming from. But someone who smiles at you to your face then calls you a 'nigger' behind your back … (**Heidelberg Men's Focus Group Participant)**

This same participant provides an example of government practice that to him is clearly racist, but which to government is just 'the way things are done'.

> I've had a problem with DHS. I've gone to the courts and the first thing they want is that they want me to do drug and alcohol counselling. I'm not a drug addict! They're just assuming that because I'm an Indigenous person, I'm a drunk and a drug addict—and yet there's no proof of that in my history. And yet the government says 'No, it's not racism, it's just the way that they're approaching it'. … It's in your face the way you get treated. (**Heidelberg Men's Focus Group Participant**)

There is also some suggestion that because of the prevalence and long history of discrimination in Aboriginal communities, everything starts to look like unfair treatment, and this, again, might make it hard to know what you should take on in terms of discrimination, and what you should ignore.

> So, they see (something) as discrimination. 'We can't do anything because we get discriminated against'. It's a big thing here because there are a lot of people who walk around with chips on their shoulders so this is a really, really hard community to work in. Each community is different. … I think my boss would give me a million dollars a year if I said I was going to quit because nobody else would work with the community every day. It's very hard. (**Indigenous community organisation staff)**

The difficulties in identifying discrimination, including in a legal sense, mean that people may not come forward to complain about it *or* that they can't pursue it as far as they might if they do come forward. One woman in Shepparton commented, in this context, about discrimination in the private rental market.

> I think a lot of things don't get resolved because if it is a race issue it seems to be difficult to identify, so legal procedures virtually say, 'You can't identify it, so nothing we can do about it'. So nothing gets resolved, and people tend not to follow up and not pursue it. (**Shepparton Women's Focus Group Participant**)

So when an Indigenous application for a private tenancy is declined, 'are the issues to do with race or are they to do with some other variables that go along with … financial capacity (of the prospective tenant), for example?' (**Statutory Authority staff**)

Taking action and escalation to criminal law issue

Discrimination is a good example of an issue that has potential, when left unaddressed, to spill over into criminal law problems. There were instances discussed by focus group participants where they or another had taken things into their own hands in responding to racism.

> That man was filming us in the street, without us knowing. And then he comes over and spits at us, so I (inaudible) some moselle in his face and I got charged with assault, and he spat, spat at all of us. (**Fitzroy Women's Focus Group Participant**)

And yet despite all of the difficulties, it *is* possible to have positive outcomes from a formal complaint about discrimination, as the following example relating to discrimination in the workplace shows.

> It depends if you want to take it to the next level. I've had discrimination in my workplace and I've taken it to management, who's taken it to the next level, next level, next level. There's been an investigation … that was a government agency I worked at. … After I came forward, so did about eight other people. They were too scared to come forward and be the one that did it. … You can't change people's attitudes … but you can change … it's not accepted, it's not alright to be racist or put people down for their sexual orientation and stuff like that. The more people stand up to it… (**Robinvale Women's Focus Group Participant**)

5.3 HOUSING AND TENANCY

Housing, and in particular tenancy, emerged as *the* predominant legal issue in focus groups. It was also noted as a significant issue during stakeholder interviews. We identify it as a priority legal issue in Victoria.

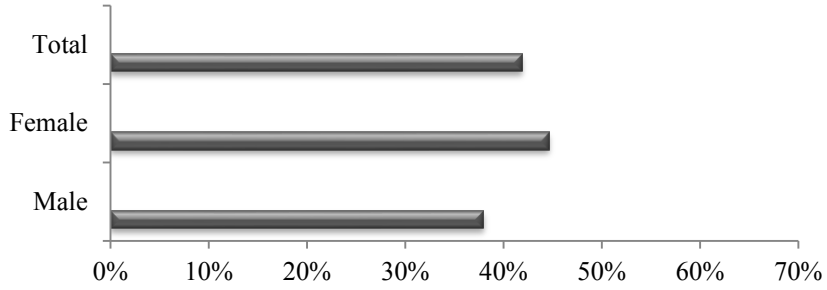
Focus group participants were asked whether in the last couple of years they had experienced a problem or dispute (i) with their landlord over issues such as rents, repairs, evictions, relocations, bond or overcrowding or (ii) involving supported accommodation (such as hostels or nursing homes) in relation to fees, services or standards; or (iii) any other housing related issue for which they had sought legal advice or assistance, including buying or selling a home or seeking council approval for building applications.

Participants were also asked if they had sought any legal advice or help in relation to a housing or tenancy-related dispute or problem.

5.3.1 Disputes with Landlords – Tenancy

Figure 5.9 shows participant responses to the question asking whether they had experienced problems or disputes with a landlord. This graph shows that overall, **41.8%** of all focus group participants identified disputes or problems with landlords. The percentage of Indigenous women identifying such disputes was 6.7 percentage points higher than for Indigenous men (44.6% of women compared with 37.9% of men) (see **Table 5.13: Appendix C**).

Figure 5.9 Participants Identifying Housing Issue or Problem



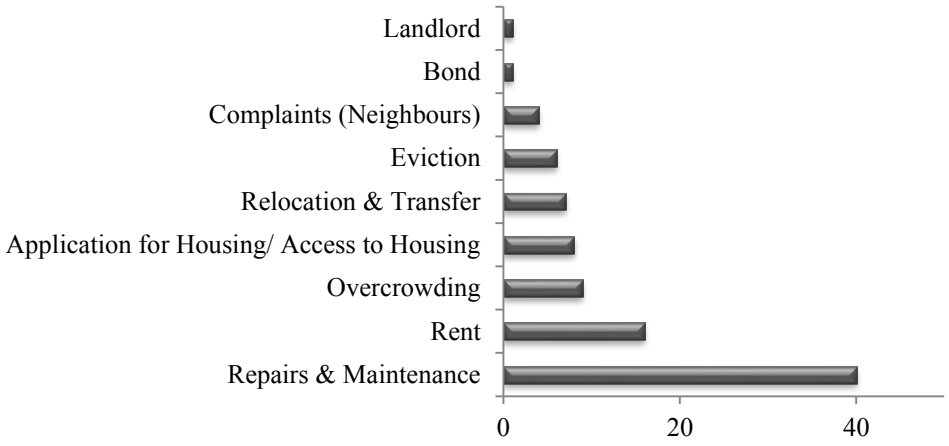
We note that the ABS data provided in **Section 1.4** indicates that although Indigenous people do rent privately, in all ILNP focus communities in Victoria tenancies are, in the majority of cases, managed by a public or (to a lesser extent) community-based housing authority. Most commonly, therefore, tenancy disputes or problems identified in stakeholder interviews or focus groups concern public or community-based housing rather than private tenancies.[96]

5.3.2 Nature of Tenancy Issues

Figure 5.10 indicates that repairs and maintenance were identified in focus groups as the primary area of dispute or problem arising in relation to tenancies. Of the 92 responses provided to this question by 64 individuals, 40 (or nearly 50%) responses identified repairs and maintenance as the reason for their tenancy dispute. Rental payments (16 responses) and, to a lesser extent, overcrowding (9), access to housing (8), relocations and transfers (7) and evictions (6) also emerged as issues of some concern. Note that participants may have identified in their responses more than one problem or area of dispute (see **Table 5.15: Appendix C**). Problems relating to neighbours, identified by participants as a housing issue, are dealt with in Section 5.4: Neighbours.

[96] For discussion of issues relating to public housing in Victoria, see material gathered as part of the Victorian government's 2012 consultation: 'Pathways to New Victorian Social Housing Framework'. Go to: http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/housing-and-community-building/Pathways-to-a-new-Victorian-social-housing-framework. Material includes discussion papers (including Department of Human Services (VIC) (2012), *Pathways to a Fair and Sustainable Social Housing System-Public Consultation Discussion Paper*, Melbourne VIC: http://www.dhs.vic.gov.au/__data/assets/pdf_file/0006/709053/housingframeworkdiscussionpaper_27042012.pdf) and submissions by stakeholders organisations, (including VEOHRC (2012) *Submission on Pathways to a Fair and Sustainable Social Housing System*, Melbourne VIC): http://www.humanrightscommission.vic.gov.au/index.php/submissions/item/186-submission-to-the-pathways-to-a-fair-and-sustainable-housing-system-discussion-paper-jul-2012).

Figure 5.10 Reason Identified for Housing Dispute or Problem



Repairs and Maintenance

Overwhelmingly, repairs and maintenance issues were the most frequent area of complaint for tenants. Tenants spoke of moving into and of having to live in substandard housing because rental properties are not being adequately maintained over time by housing providers. Tenants also complained of having to pay rent, despite the lack of repairs and maintenance being carried out.

> You're struggling a great deal even to get maintenance done on your home. I just moved into a unit (and the carpets were badly stained) and I went and complained. I was told very clearly there's a ten-year waiting period… We've identified the stains and the damage to the unit, (but) nothing will be done with it for another ten years. And I'm still paying top rent, but this means that no repairs can be done. **(Bairnsdale Men's Focus Group Participant)**

> The back fence is leaning (about to fall over) and I've got a really bad leakage in my kitchen. I've been in the house for about two months. I don't have the glass right in the shower to stop the water coming out. **(Heidelberg Women's Focus Group Participant)**

Another participant spoke about an elderly relative living in public housing and potential safety issues that arise when repairs and maintenance issues are not addressed promptly. 'She's still got flyscreen doors that don't lock. Now if I went away for the weekend or whatever, I'd be more concerned about her safety than anything else. (**Shepparton Women's Focus Group Participant**)

Other comments provided in relation to delay by landlords in completing repairs and maintenance are as follows.

> (Aboriginal Housing) haven't got people out there to do the damages (repairs) anyway. You have to wait until next year to get everything done because they haven't got workers out there. (**Bairnsdale Women's Focus Group Participant**)

> A young girl was involved in (one housing issue). She got her house broken into by small kids and they completely wrecked everything, turned the water on and flooded everything. (Office of Housing said) they were going to come and clean up and do stuff, (but) they've

> done nothing. They were s'posed to rip the carpet up. That's about 12 months ago, the carpet's still there. (**Bendigo Men's Focus Group Participant**)
>
> (The house) was being painted so they were told to get all their gear outside and the house was being painted on Monday or Tuesday and they had nowhere to put their belongings and it actually ended up getting wet. And we saw it all damp and wet and wrecked and the painters didn't come for about another month so I wrote to Housing… I haven't followed it up again but I wrote to them about getting rid of all (the stuff), because obviously it's a health issue … and then obviously she needs some help with new furniture and stuff … I don't know how it's actually panned out but I did write to Housing and they got back to me but it is such a slow process isn't it? Forever - if you ever hear back. (**Community Organisation worker)**

There was general consensus in the Shepparton women's focus group, for example, that where possible, tenants are undertaking repairs themselves rather than waiting for their landlord to complete them. One participant in this same focus group claimed to have repainted her house before moving out and that Aboriginal Housing had then told her that she didn't have permission to do that. 'I then said to them, "I've been in this house five years, and you haven't done one thing to it"'.

This raises another problem discussed in the focus groups, with participants complaining that landlords were requiring tenants to take responsibility for repairs and maintenance, which, in certain situations, did not seem appropriate. 'My mum, she's an elder, she's 67, she's only got a letter recently saying all the repairs, she's got to fix them herself now' (**Shepparton Women's Focus Group Participant**).

One female participant in Heidelberg said, 'We've also got the problem that someone else breaks a window and they (landlord) try to bill you'. Other participants commented similarly.

> There was a burnt out car in a laneway beside my house. (Housing) charged me for that. The young ones had dumped it down a laneway. … We had to get out of there in a hurry (due to domestic violence) and I have a fair bit of maintenance (to pay for) for stuff that wasn't my fault. This wasn't on my property, that's why I tried to fight it. It was in a laneway between two houses. That's wrong. (**Heidelberg Women's Focus Group Participant**)

Stakeholders confirmed that responsibility for repairs and maintenance was an issue for community members. A comment by an Aboriginal housing provider indicates how difficult it might be to ascertain the cause of damage to rental properties.

> There are a lot of issues that come back as to 'Why?' … There is a long, long 'why' as to why the house's damaged. And if there's been community violence and that sort of stuff … it's difficult to say. (**Indigenous community organisation staff**)

One stakeholder organisation that assists Indigenous clients with tenancy-related problems felt that in some instances housing providers were being disingenuous in claims that they were making in relation to maintenance, knowing (or assuming) that Indigenous tenants would not be likely to challenge such claims. Tenants might, in some cases, incur sometimes quite substantial debts for damage for which they should not have been liable.

> There are heaps of maintenance (issues). … We are finding that our officers for Aboriginal Housing are … looking for opportunities to take people for maintenance. Whether they owed it or not, they'll charge them and I think it's optional … The Aboriginal Housing body knows

> that people won't represent themselves at the Tribunal. Which means it will automatically go through. I have a lot of tenants that have past debts (on this basis). So, I've taken (on) a number of ones (where) … the tenancies were terminated five years and more ago. But I still take them back for review hearings. And we've got (them)…. down from $8,000 down to $2,000, $6,000 down to $300. And they are just the ones that we know about. So, it's heaps of maintenance and they are just absolute bullshit! … These bullshit claims and they put people in these positions (with large) debts. … Some of the claims are just really unfair and they are the ones that we are trying to address. (**Indigenous community organisation worker**)

This same organisation continues with the following allegation.

> The policy actually is that you have a set budget for maintenance. But if you take someone to the Tribunal and the Tribunal grants you that money back that money goes back into your budget. Whether or not it gets paid to you by the client it goes back into your budget. So we have housing bodies which are … actively taking people to the Tribunal for maintenance … so that they can boost their maintenance budgets. Unfair! That is the policy and practice that needs to be changed. (**Indigenous community organisation worker**)

As a final point relating to repairs and maintenance, repairs were also reported as being inadequate when they are completed. One focus group participant complained, for instance, that her roller door needed replacement, but that the landlord kept replacing only the rollers. 'The door fell out of the frame a couple of times, and they (Aboriginal Housing) don't do nothing about it. … I pay rent. I've been there for nearly 13 years. And that frame is still the same frame.' (**Shepparton Women's Focus Group Participant**)

Rent

Issues with repairs and maintenance are sometimes connected with those relating to rent. It is suggested that tenants are required to pay their rent and to pay it on time. A male participant in Shepparton suggested that housing providers were very quick to chase up rental arrears, stating that 'as soon as you're a week late with your rent or a couple of days late, they are straight onto you about how you are doing something wrong …'. But there are complaints that repairs and maintenance are not getting done by landlords, in return. As one male focus group participant in Shepparton stated, repairs and maintenance are just 'not happening.' 'You pay your rent and they can't even repair your home. Where's the money going mate?' Another male focus group participant in Shepparton also asked at what point you can stop paying rent (in this case, to a private landlord) if repairs and maintenance are not being carried out.

> (One issue is) … not knowing how far you can push them to do the repairs. Especially when you can stop paying rent because at the moment at home there we've got a gutter that leaks water right at the front door. And we've rung up a number of times, they've sent people out but they haven't fixed it up. All they've got to do is pull the old gutter off and put a new gutter on. But I don't think they are prepared to do that. But you know, we are still paying … you know, $300 worth of rent a week … That's a lot of money. We can't even go out through the front door when it's raining because of the water that showers down there. We can't leave our shoes at the front door because they'll be wet. (**Shepparton Men's Focus Group Participant**)

> I've been paying rent but they won't do repairs. The problem is getting legal advice. I was hoping it would sort itself out. (**Framlingham Women's Focus Group Participant**)

Other issues relating to rent include focus group participants' perception that rents are simply too high. There were a number of comments on the impact of relevant policies of housing providers in this context. A man in the Swan Hill focus group, for instance, claimed that Aboriginal Housing 'is charging full market rent, and they take your rent assistance (too). (The organisation is) making extra money'. People who wanted to work also felt harder done by when rent was increased according to their salaries, compared with those that didn't have employment or were otherwise solely reliant on Centrelink benefits and whose rent therefore did *not* increase. There did not appear, for some, to be much motivation to earn money, as wages only led to higher rent.

> It's wrong. … In the private sector, you can make a million bucks a week, but the rent's still only $200 a week. Soon as you earn $10 more, your rent goes up. … Where's the incentive for you to go forward (and work)? (**Robinvale Men's Focus Group Participant**)

Focus group participants also commented on the increase in rent when relatives come to live with them when these relatives have been forced out of other housing (including due to eviction) and have nowhere else to go. The fact that rental payments are increased in such situations puts tenants in the difficult situation of having, in some instances, to turn family away.

> Our rents are sky high. We can't have family come to stay with us unless our rent goes up even more … It's all privatised now, so we're under Aboriginal Housing. We're all welfare families here. … And you can't have members of family stay with you 'til they get a house 'cause your rent goes straight up. … Since this Aboriginal Housing started they've put a lot of tenants in, but they've also evicted a lot of tenants. And where do those tenants go? Back to family, then the rent goes up again! (**Bairnsdale Women's Focus Group Participant**)

Rental issues may be connected with problems around poor communication or engagement with tenants by housing providers. An Indigenous stakeholder organisation in Melbourne indicated that it was difficult for clients (and their advocates) to get information on Aboriginal Housing's relevant policies, and hence on tenants' rights and responsibilities.

> Aboriginal Housing's policies are not on their website. They are not publicly accessible. … We cannot get their policies to be able to figure out what to do … (We) use the Office of Housing policies and we say 'Office of Housing says this' … What they've done is they just send us a statement with all these different rent calculations and we are, like 'No, no, no, we want you to send us (details on) each time you changed the rent, (and) how you calculated that so that we can see if that is actually in line with what her income is.' Oh, my God! This is like pulling teeth! ... Go and have a look at their website: 'Under Construction'. Under construction for, I don't know, what—two years! (The) fact is, their policies and procedures about how they go about this are *not* on the Internet so people can't empower themselves. **(Indigenous community worker staff)**

Accessing Housing and Overcrowding

According to some, the most significant housing problems for Indigenous people revolve around *access* to housing and associated issues such as overcrowding, rather than those that arise *within* a tenancy. An Indigenous legal service provider comments as follows.

> Housing is an issue because homelessness is an issue. … Tenancy issues, we deal with some, but no, I don't see (this as) as big an issue (as homelessness). Certainly not coming from our clients. Getting them *into* housing is a big issue (**Indigenous Legal Service staff**)

Issues of access arise, in part, because of significant shortages of public or community housing stock. The shortage of houses is said to be a long-standing issue. One male participant in Swan Hill suggests, quite simply, '(We need) more housing. We say that all the time but it doesn't get anywhere' (**Shepparton Men's Focus Group Participant**).

There also appear to be problems with the way in which available properties are allocated to or prioritised for Indigenous community members. Questions were raised in relation to the basis upon which allocations are being made. A community-based health service describes some of the problems arising in this context.

> Aboriginal Housing is really difficult to get. They have limited housing stock… (It is also) not very transparent. It is very difficult to get a house unless you know somebody or are related to somebody. It's very difficult to get a transfer. Once you get offered a house the process is quite straight forward, (just) fill out the paperwork. The issue is to *get* the house. (**Community organisation worker**)

For certain groups of people, including employed persons or single men, access to housing might be particularly difficult.

> Once your name comes up they'll say, right, we've got a place for you. (But) once you mention you're working, you go back to the back of the list. It's all set up for the people on the dole and pensioners. Single men … I've been single for a few years. I've had three offers for different units, then, when it came to the money situation I've said I'm working. (They ask) 'How much are you earning?' If you're earning more than what the unemployed are earning, they just kick you in the ass. (**Robinvale Men's Focus Group Participant**)

Another male participant in Bairnsdale also spoke of problems of access to housing for both (older) single men *and* women. He himself claims to have been buffeted from housing provider to housing provider, with nowhere left to go.

> I pressured (named housing organisation) … either they get me emergency accommodation or … (It's only when) I'm homeless on the streets that they then decided to house me after 12 years. That's for single males. … And as you get older there's no housing authority that wants to house you (as a single man). … Of course we understand (that) … we (must) give priority to families to be housed, young couples to be housed, young single mothers … but there should also be somewhere in housing allocation that gives the opportunity for single males (and females) to be housed. (**Bairnsdale Men's Focus Group Participant**)

Similarly, a housing advocacy agency identified single Indigenous males as one 'group of (Indigenous) people (who) … might come in' to their service because they are homeless. (**Community organisation worker**)

As an illustration of how housing issues may cross over into other civil and family law issues, participants also noted the situation of fathers who are trying to maintain contact with their children post-separation. 'There's single men that have been with their partners but are separated (and they) have children that come into their care during holidays, but (they) don't have housing', according to a female focus group participant in Bairnsdale.

Indigenous tenants compete for public and community housing as they have few other housing options. Stakeholder and focus group participants indicate that Indigenous tenants are priced or

otherwise effectively locked out of *private* tenancies due to high rents and discrimination by real estate agents and landlords (see Section 5.2: Discrimination). An Indigenous community organisation in Shepparton suggests that 'trying to get people back into housing or into housing in the first instance (is a significant problem). So there are a lot of barriers around that. Discrimination in the private rental market—I've witnessed it—it's so wrong!'

Further, a male participant in Robinvale noted that the private rental market is both competitive and expensive. 'There are (some private rentals), but they cost you half an arm and most of your leg and then you've got to beat the Tongans and Asians to it, as well' (**Robinvale Men's Focus Group Participant**). A community-based health service also commented on the heavy dependency of Indigenous tenants on public housing because of their exclusion from private tenancies.

> (Priority issues include) tenancy from a broader community issue around discrimination—the private housing market being closed to Aboriginal people in our community …Access to public housing is sometimes the only access to housing that they have. Real estate is a private business and if they don't want to rent to you, they don't … I've lived in this town long enough that I would understand that that would be quite an issue. (**Community organisation worker**)

As a further point, and as another example of how different civil and family law issues intertwine, there is some suggestion that housing providers may also impose a form of racial segregation in the way that they allocate housing to Indigenous people, including because non-Indigenous people do not want them in their neighbourhood. This is discussed in the context of neighbourhood disputes, but is also an issue of relevance to the problem of accessing housing (see Section 5.4: Neighbours).

Issues of access to housing lead to what appear to be *very* serious levels of overcrowding in Indigenous households, which appear to effectively 'absorb' those in the community who are unhoused. As one example of this, a female focus group participant in Fitzroy stated that 'housing is the main issue' in her community. She explains further that there are many young people in Melbourne who 'have nowhere to live. The hostels are too expensive for them. Young people paying $300 a fortnight. It's a lot when you are young.' With temporary accommodation being costly and a 'long waiting list' for more permanent accommodation, she provides a home to those in need.

> I've got a one bedroom flat and I've got people all the time, bodies on the floor all the time. … They sleep in the laundry and all (in my place). Sometimes you get three, sometimes you get 15, sometimes you get one. I'm never alone. A lot from out of town… (**Fitzroy Women's Focus Group Participant**)

This may not be unusual within the Indigenous community. A housing advocacy agency in Melbourne suggests, 'In terms of tenancy … to house one Indigenous person is really not the reality.' Generally, 'it will be more than one person that will be accommodated in that one bedroom. So, (Indigenous households) are slightly different from the mainstream'(**Community organisation worker**).

There is some suggestion that 'homelessness' in Indigenous communities may, in this sense, become 'invisible', but that it certainly does exist.[97] As one housing advocacy organisation explains, homeless Indigenous families are rare as clients as they are generally taken in (including upon eviction) by others in the Indigenous community because of Indigenous cultural and family obligations—meaning that 'people usually get themselves into (a) massively overcrowded situation.' This agency continues:

> I found that the definition of homelessness in the Koori community is slightly different. You don't find that many on the street, not that many. But they are on someone else's couch or somewhere. And it's still homelessness, but because of this community type of relationship that's why they end up with some cousin or uncle. So, that's slightly different. And also there is strong community stuff with them, say if there is someone sick. … They are working as a group. And I don't see that much in the general ... community but (it's) very strong in the Indigenous community. If you are going to visit someone you probably help that person, plus five other people in that place. And for us if we are out and about, if there is a funeral or some event… the service we provide is likely to go up a bit because there are a lot of people in town coming from different (places). (**Community organisation worker**)

In this way, Indigenous communities are providing much-needed housing to community members, which arguably should be provided by government and/or other agencies funded to do so. As a solution to the significant problems relating to Indigenous access to housing, this is far from adequate. Those that are taken in remain effectively homeless and, in many ways, vulnerable. According to a community-based organisation, these people 'overburden the current tenancies. They couch surf, which increases their risk of everything' (**Community organisation worker**). There is also significant cost to those who are providing the shelter. Indigenous households taking in the homeless suffer the stress of overcrowding, which may lead to further serious problems (debt, eviction, homelessness, arguments or disputes with neighbours), as this same community organisation explains below. This illustrates the clear connections between housing and other legal and social problems and is one of the reasons for prioritising housing issues in this research.

> Overcrowding in legitimate accommodation … runs the risk of it falling over as (they are) breaching the tenancy rules with that arrangement. So someone might get a house, it might be a 2-bedroom house and they have five members of their family (living there) that are currently homeless. They are not going to have them sleep in the street when they can have them in the 2-bedroom unit, (but) it places the tenancy at risk. … No one will allow their mother and their little brothers to sleep in the street, but there is no understanding placed around that tenancy to support the family to stay together or look for a better, bigger accommodation. So there are all sorts of problems and once accommodation falls over you are often left with a huge debt, which then … makes you ineligible (for further housing). Unless you participate in a repayment plan, which enables you to get back onto a housing list, (and) you are blacklisted on 'normal' real estate, so it's just a growing problem. (**Community organisation worker**)

> I guess the other thing too is that there is a really strong sense of community connection too. Whereas the vast majority of clients we work with tend to really be quite isolated and they may have similar experiences and similar issues, when we get a Koori client or a contact often

[97] For discussion of Indigenous homelessness nationally, see Birdsall-Jones, C (2010), *Indigenous homelessness: place, house and home*, Australian Housing and Urban Research Institute (AHURI), Western Australian Research Centre, go to: http://www.ahuri.edu.au/publications/projects/p80368

> they've been in a state of crisis for some considerable period of time but they've been supported by other members of the community. So often those issues are probably far more significant when they do come to our attention or they do put their hand up for assistance. Because they do get propped up, which in some respects is fantastic, but that obviously leads to some other complications because it also places other people's tenancies in jeopardy and it can heighten their health issues. It can have a whole lot of negative consequences. (**Community organisation worker**)

Further, it is sometimes the more vulnerable members of the community, elderly relatives, who provide the required shelter and bear the brunt of the negative impacts of doing so, as one community-based organisation suggests.

> We have a lot of elderly people whose families have grown up and (these family members) have their own families and then their house has fallen down and so they go back to grandpa or grandma or both and you have multiple generations living under the one roof with overcrowding—it's just not working very well. (**Community organisation worker**)

> There are family members that come in for counselling for financial abuse. The elders get abused because they won't turn away family. They'll come in, they will use it. They will take … they'll use all the power and eat all the food. And they walk away and they'll come back again in three days' time. I see that a lot. Really, really, really high utility bills because they haven't been able to afford to pay them. No-one's contributing to the household. (They) are coming in and using all the resources. They don't contribute. Their money is their money but if it's a community thing it's, you know, 'The elders need to look after us'. But they can't! If they are not on disability support pension, they are on Newstart, which is absolutely nothing. They won't turn them away because they are family. They would rather put their housing at risk and their power at risk than to say 'no.' (**Community organisation worker**)

> In the last couple of weeks I've had an Aboriginal woman who is a grandmother ring up because of their 24/25 year old grandson … using their home and stealing from their home. And the grandmother is actually leaving the home, as they don't feel safe. And then that grandson brings in their family and then it just spirals and then the grandparent ends up leaving their home and going couch surfing while the kid takes over. It just spirals. And the emotional stuff that comes with that—feeling rejected, no one to care for them—you know it comes with its own issues as well. The spiral just keeps on going. (**Community organisation worker**)

Finally, the lack of available housing means that Indigenous people may feel pressured to accept any property they are eventually offered, regardless of whether it is appropriate for them. As the following comment illustrates, tenants may perceive that appealing against a decision allocating them (inappropriate) housing is not a viable option, regardless of their legal right to do so.

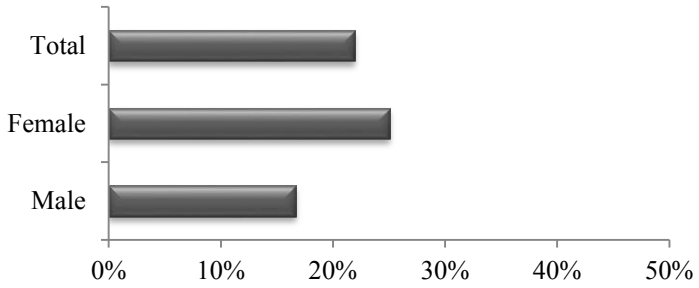
> You know how they say if you're offered a place you've got to take it otherwise you can appeal it, but it takes so long? … I had a problem that they wouldn't go into my history. Where they had housed me was just not appropriate for where I'd come from. … Basically, if I didn't accept it… I knew I didn't want the house because of the area and I know the area

and there was nothing I could do in the end. You can appeal, but (I was told by Housing that) an appeal could take up to 12 months so I had to live there anyway. If I didn't live there I'd end up back at the bottom of the list and homeless. Even though you know that area is a bad area and that street is a bad area. I think it's just that they didn't want to take on the (appeal), more paperwork for them. (**Heidelberg Women's Focus Group Participant**)

5.3.3 Legal Advice for Tenancy Issues

Figure 5.11 shows participant responses to the question asking whether legal advice or assistance was sought for a dispute or problem with a landlord. Only just over a fifth (or **21.9%**) of those who had identified a tenancy-related dispute or problem sought legal advice. Indigenous women were 8.3 percentage points more likely than Indigenous men to seek legal advice (25% of women compared with 16.7% of men) (see **Table 5.16: Appendix C**).

Figure 5.11 Participants Who Sought Legal Advice for Tenancy Dispute or Problem



Avoidance, Delay and Disempowerment

There is some indication that Indigenous tenants may not be accessing legal advice or advocacy in relation to housing issues at all or at least as early as they might. This means that problems have a tendency to escalate, including to the point of being listed for hearing and/or finalised at VCAT prior to legal or other advice being sought and provided.

> We've been called up at the very last moment (saying) that this is going to VCAT tomorrow, can you help this client, then there is a mad run around. A lot of them don't understand what this paperwork means. So they may have had quite a bit of correspondence prior to being given the summons. That is a problem … They might have had three or four letters and they don't tell us and we could have headed it off at the pass way back when. Sometimes it's the day after the Tribunal hearing (and) you will be talking to someone and they say 'I've been kicked out my house this morning, yesterday they told me to get out'. We say 'Why didn't you come and tell me before?' Then we have to apply for the re-hearing and start all over again. (**Community organisation worker**)

> And it's hard because I haven't worked in a non-Aboriginal community for, like, so long that I do not know what to compare it to. But I do know that a lot of my clients just do the 'head in the sand'. … (Housing) sends things registered post and our clients don't go down. They see the registered post letter in their letterbox and they go, 'That's got to be Housing and I don't want to know what that is.' So, they don't even get the mail because it's not sent as normal mail. (**Indigenous community organisation worker**)

This delay or avoidance in dealing with a housing issue directly, including by making contact with an advocate or agency for advice or information, may be due (in part) to tenants not knowing where they stand and what their rights are. Access to legal advice and information as early as possible may assist with this issue. As one Indigenous community organisation suggests, 'I'd be interested to know how we can look at people getting representation earlier and knowing their rights earlier, you know.' (**Indigenous community organisation worker**)

It may also be due to the perception that landlords have all the power and can make life difficult for tenants if they chose to, including where a tenant asserts their rights. Landlords might, for instance, exclude you from your current property and/or affect your capacity to access housing in future. Just as people may feel that they cannot challenge housing allocations given the fierce competition for rental properties, they may also feel that they need to be model tenants and keep quiet, or face the prospect of homelessness.

Another important point raised during the research was that shame and fear may prevent Indigenous tenants from tackling housing problems head on; fear, in particular, that government agencies other than Housing may get involved in such a situation (such as child protection), leading to all sorts of other problems. This fear, distrust and shame arises in areas other than housing, according to the following Indigenous community organisation - inevitably compounding disadvantage and disempowerment.

> A lot of people will not ask for help in any area whatsoever because it's shame. They are ashamed and they don't want to bring it on. They don't want to bring any services into their family. I've got a tenant down in (named place) who has a son who has really bad aspergers or autism, and he damages the property. $30,000 was the last damage that he had done to the property. Because it's Office of Housing they were going to fix it and she would get charged for it. I went down one day and said to her, 'Look, I know it's not you. I know it's such and such and I know that he has got problems.' But the reason she had not worked with anyone … the reason she would not say anything before was because she thought that as soon as someone comes in they are going to ring child protection. So she had it (in mind) that if I let someone in they are going to take him away. They are going to ring child protection and take him away. So, that's their interpretation. They won't ask for help because they are scared of the consequences. That's the sort of thing. They feel like they are discriminated against all the time and that's why they don't ask for help, they don't follow things through. (**Indigenous community organisation worker**)

All of these issues also mean that when a tenancy dispute does end up at VCAT, Indigenous tenants may also be unlikely to make an appearance, meaning that they have very little control over the way in which such disputes are ultimately resolved.

> I know that it has been raised with VCAT here in Mildura, how we improve Koori attendance a VCAT hearings, which is poor. It is very poor, which means VCAT is making decisions based on the evidence provided by one side. So that Kooris attending the hearings, understanding the process around tenancy disputes - there is quite a bit that needs to be resolved. (**Indigenous community organisation worker**)

Where people *do* appear, there is said to be a lack of representation currently available to assist tenants. This simply exacerbates existing power imbalances in tenancy disputes. Legal representation for housing matters is quite limited, according to some stakeholder organisations. 'And they will raise

that issue down in Robinvale as well. … (I)n the sense of appearing in court, we just don't have anyone', an Indigenous community organisation suggests (**Indigenous community organisation worker**). Another Indigenous community organisation based in Melbourne also stated, 'I don't know anybody else that represents Aboriginal people at the Tribunal apart from me' (**Indigenous community organisation worker**).

And yet, the difficulties that Indigenous tenants have in representing themselves and in taking on housing authorities in the *absence* of legal representation, including at VCAT, are very apparent. As an Indigenous community-based organisation states, 'I absolutely think that people should be having fair representation at the Tribunal, that there shouldn't be an expectation that all people have the capacity to self-represent, because they don't!' (**Indigenous community organisation worker**). Another health-based organisation also suggests that more representation is needed.

> Housing is a mess really. Housing is also like DHS. There's a tendency to now go straight to vacate for any issues at all. The tenant just gets a summons to the Tribunal over rent that is one week late, then you get a summons to vacate. Any damages, repairs, arrears - everybody just gets sent to vacate. …There is no representation, they just rock up and cop it and often get evicted**.** (**Community organisation worker**)

Need for greater advocacy, information and advice

The availability of effective advocacy at *all* stages of the dispute process, as well as increased information about tenancy rights, is clearly needed in the area of housing given the huge impact that eviction, homelessness and other housing stressors have on Indigenous families and communities. The fact that more participants report being assisted by *non*-legal advocates for housing issues may possibly be an indication of this lack of legal representation and advice.

There are obvious benefits, for instance, for Indigenous tenants where advocates, including lawyers, are able to step in on their behalf to try to resolve issues directly with housing authorities and landlords, well before they become full-blown disputes referrable to VCAT. A number of community-based organisations undertaking such work for their clients had positive comments about the way in which the Department will attempt to resolve problems in relation to tenancies without recourse to eviction and other more punitive outcomes.

> I could talk about particular tenancies that are really, really problematic. There were a couple of clients who I work with and it's very, very difficult because there is significant overcrowding, there is significant damage internally to properties. The carpets had been ripped up, there had been fires lit, windows had been broken, etcetera, etcetera. But the Office of Housing had really … engaged with us rather than (taking) … punitive action. They are generally pretty good. They see that people need support and they don't need to be evicted. They are not looking for the more punitive approach. They are supporting people who are having issues with their tenancy. (**Community organisation worker**)

> (In terms of being able to resolve things relatively quickly and easily, what helps) … is not only … the intervention (by services such as this one, a community-based housing advocacy body), but also the established relationships that we have with key people in the Office of Housing. I think it's flagged a lot earlier and I think there is a real desire to work through some of those issues so it doesn't get to that stage (of a VCAT hearing). Rather than it being more of a bureaucratic process where they just follow the set guidelines, I think there is some leeway and there is a genuine understanding that these particular issues need to be addressed.

> There are certain constraints that the Office of Housing has to work within but there is a degree of leeway and there is a desire to come up with a flexible answer. It's not always seen in relation to mainstream clients but certainly I've … seen it in relation to Koori community. (**Community organisation worker**)

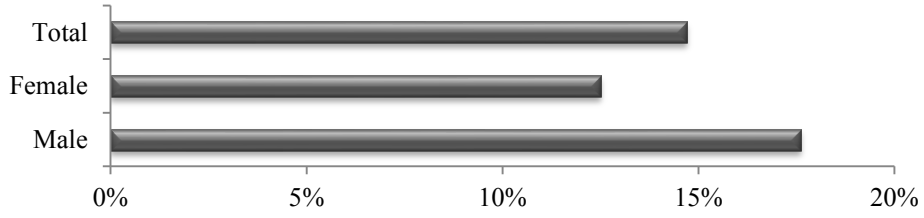
This same organisation provided a specific example of how early intervention and strong relationships between advocacy bodies and housing providers serves Indigenous tenants well.

> I've got one particular client at the moment. He has been (waiting for) … priority housing for four years and recently he's got an offer and we inspected the offer. And we were quite concerned because he is Indigenous and he is somewhat isolated from the local community, but that's through his own choice and a range of other things. His primary companion is a dog and he's had this dog since he was sleeping in the streets, so for six or seven years. We inspected the property and I thought it was going to be okay, but unfortunately he decided that it wouldn't be. The Office of Housing subsequently became aware that he had a dog and it was the reason that he was knocking back this offer. The officer could have technically said, 'We've made a legitimate offer. We can actually remove him from the list.' But they haven't done this. And the worker that I've been dealing with and myself have been trying to come up with a solution. … We are hoping that we may be able to angle something so that we actually can get him an appropriate offer. (Housing has) actually said 'On the basis that he technically didn't get into the property, it's not a legitimate offer. So, we are not going to count this.' … They have a sense of understanding without saying this one is off the list and now we go to the next one. That's because we have those established relationships. Generally, we have those established relationships at a higher level and as individual workers we've got those established relationships with the individual housing workers too, which tends to work really well. (**Community organisation worker**)

5.3.4 Disputes Related to Supported Accommodation

Figure 5.12 provides baseline data for participant responses to the question asking whether they had experienced a dispute or problem in relation to supported accommodation. Overall, **14.7%** of all participants identified a dispute or problem of this nature, with Indigenous women 5.1 percentage points less likely than Indigenous men to have had an issue arise in this area (12.5% of Indigenous women compared with 17.6% of Indigenous men). Of those who had identified a problem in relation to supported accommodation, only three male participants and three female participants had sought legal advice (see **Table 3.17: Appendix C**).

Figure 5.12 Participants Identifying Supported Accommodation Issue or Problem

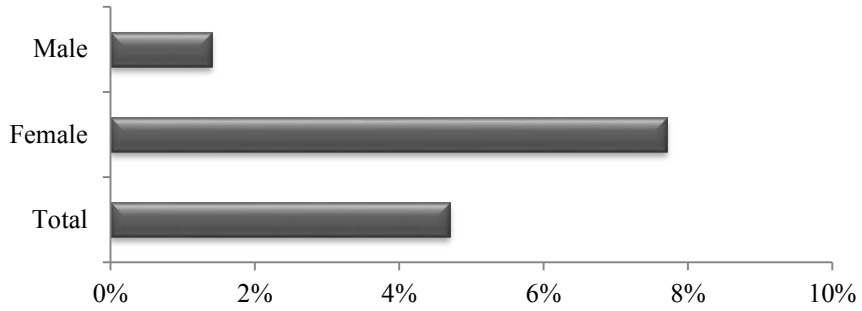


The predominant issues causing concern in this area were 'general issues' relating to supported accommodation, poor standards and fees (see **Table 5.18: Appendix C**).

5.3.5 Other Legal Needs Relating to Housing

Figure 5.13 shows participant responses to the question asking whether they had sought legal advice or assistance in relation to another housing issue (such as sale or purchase of a house). Overall, **7.1%** of all participants identified having sought advice or assistance for other housing issues. Indigenous women were more likely than Indigenous men to have done so, with some 9.2% of Indigenous women compared with 4.4% of Indigenous men seeking advice (see **Table 5.20: Appendix C**).

Figure 5.13 Participants Who Sought Legal Advice for Other Housing Issue



There is some suggestion that Indigenous people may benefit from advice provided by an Indigenous-specific organisation when purchasing a home. The fact that Indigenous people may not be as likely as non-Indigenous people to have previously purchased a home was also discussed by an Indigenous community organisation.

> Home loans, home purchasing—this has all been part of Closing the Gap, which is a good thing, but I guess it would be great if they could come here to the Aboriginal Legal Service rather than going main stream for the conveyancing because I think that they would feel a lot more comfortable with the questions that they were being asked and perhaps (they'd get) a greater education about the process. For some people it's the first time anyone in the family has every purchased a home before, so it would be good if they had someone who would just sit there and go through all the pro and cons … I guess someone that they feel comfortable with that they can go back and talk to if they had questions later. (**Indigenous community worker organisation)**

5.4 NEIGHBOURHOOD DISPUTES

Neighbourhood issues emerged as priority legal problems for Indigenous participants in ILNP focus groups. Focus group participants were asked whether they had experienced a dispute or problem with neighbours over such things as fences or boundaries, noise, privacy, animals; and if so, to briefly describe the nature of the dispute or problem. Participants were also asked if they had sought any legal advice or help in relation to a neighbourhood dispute or problem.

5.4.1 Nature and Extent of Neighbourhood Problems and Disputes

Figure 5.14 shows participant responses to the question asking whether they had experienced a problem or dispute with neighbours. This graph shows that overall, **26.7%** of all focus group participants identified neighbourhood disputes as an issue. Indigenous women were more likely than Indigenous men to identify problems in this area. The percentage of Indigenous women identifying

such disputes was 8.7 percentage points higher than that of Indigenous men (see **Table 5.22: Appendix C**).

Figure 5.14 Participants Who Identified Neighbourhood Dispute

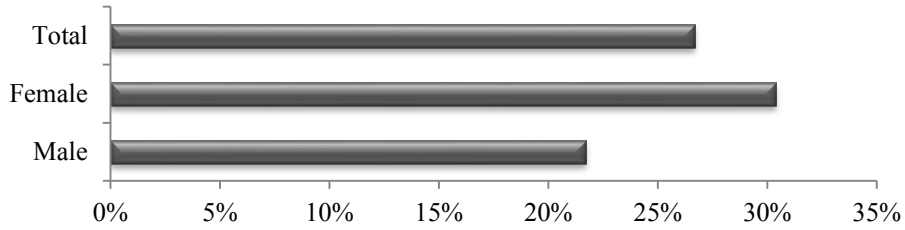
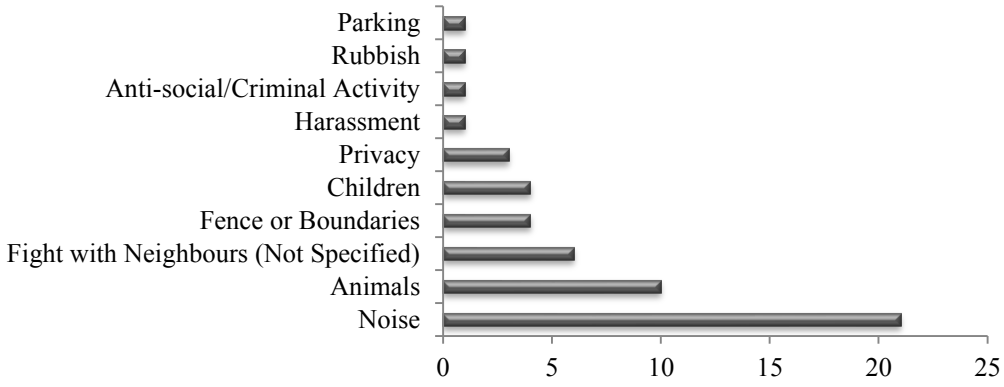


Figure 5.15 provides baseline data for participant responses to the question asking what the nature of the neighbourhood disputes in question had been. Of the 42 responses provided to this question, noise was most commonly identified as the cause of the dispute or problem (by 21 participants), then animals (10), fights with neighbours (not specified as to nature) (6), and fences and boundaries and children (both by 4 participants) (see also **Table 5.24: Appendix C**).

Figure 5.15 Reasons Identified for Neighbourhood Disputes



Focus group participants provided some examples of neighbourhood disputes or problems arising in these areas.

Notably, focus group participants frequently identified in their comments having had a formal complaint in this area initiated *against* them by a neighbour/s, rather than initiating a complaint themselves against a neighbour. This can have serious ramifications for preserving a tenancy. Further, as a common theme arising in relation to neighbourhood issues in Victoria, police were often called to try to resolve disputes, as the following example indicates. A man and woman participating in the Shepparton focus groups recounted what had occurred as a result of a neighbour's concern over kids and fences.

> We try and mind our own business but the lady that we had, she is renting the unit next door. She used to row with my twelve year old son and his little cousin who is twelve as well. They've got a friend who lives over the fence and they would be up talking to him and he's come out and said 'Get off my fence!' and we'd say 'But that's not your fence, that's in Nan's yard and we are talking to our friend'. She ended up ringing the police and everything, on these twelve year old kids, and I just laughed at the police, I said, 'Are you serious? She could

> have approached us about it, but she has never come and talked to us about the kids.' … The kids weren't in her property. They weren't doing any damage to her place. (**Shepparton Women's Focus Group Participant**)

> (The neighbour) kept complaining about the kids being on her fence. They weren't even on her fence. She rang the police and the real estate agency and all that too, trying to get us in trouble. She was even swearing at the kids, and I went out the back yard and … I said something, and then she rang the police and the police came round and I had a talk to them, and said, 'That's just a bunch of bullcrap'. And then her real estate agent wanted to put up a new fence. … But it was on my land. … She ended up moving out of there because she didn't like it when I gave her a rippin'. (**Shepparton Men's Focus Group Participant**)

Stakeholders also commented on the nature of neighbourhood-type disputes.

> It happens all over Australia but in this region we get a lot of families coming from over the border staying with other families so there is a lot of overcrowding, you get a lot of drink problems and the neighbours get upset. The state of the property … some people hoard rubbish, some people's lawns are six foot long, and then there is the general one is that they don't want Aboriginal people living next door. (**Indigenous community organisation worker**)

In other instances, stakeholders spoke of disputes or problems in this area as constituting *community-wide* tension amongst Indigenous community members, erupting at times into community violence.

> There is an article that was written here in the Bairnsdale advertiser. The police were actually attacked over there. … Twelve police officers go over there and it's community violence and of course they get in and they get attacked. It's a pretty big thing over there. … It's gone down for probably eight months but now it's starting to pick up again. (**Indigenous community organisation worker**)

In some instances, focus group participants and stakeholders indicated that there may be a discriminatory element flowing through neighbourhood issues. This might arise in a number of ways. We note that some of the experiences participants have had with neighbours may well constitute discrimination (including racial vilification), but as the participants identified them within the context of neighbourhood disputes, they are included in this section.

Complaints may be directed against an Indigenous person by a non-Indigenous person, with at times an overt racial element.

> A few weeks ago I was out the front of my sister in law's house with me step-kids. … This (man) come out of his flat because I was kicking a football around … I had me shirt off and I don't look Aboriginal. (He) started calling me a 'black c—' and started swearing at the kids and I actually lost my temper and tried getting him, but he ended up getting the police, and the police come to me first. I told them what happened, and he said to the police, 'This is what he done' and he went up to his window and punched it and smashed the window in front of them. (**Shepparton Men's Focus Group Participant**)

> We've got some units … and they are determined to get our tenant out, they are discriminating against them. One girl … there is a bush out the front and they want it clipped back. And you go 'Hang on, you have a resident gardener.' And they'd go 'No, we are not

> doing that property. That's your property.' 'Well hang on, the rules of the Body Corporate are that you need to take care of the grounds and that is included in the grounds.' 'Oh no. We are not doing that. You need to do something about that.' So, that's the sort of thing that we face. (**Indigenous community housing organisation**)

Further, complaints made by neighbours concerning Aboriginal people may also (appear to) be dealt with differently by relevant housing authorities because of the race of those who are the subject of complaint.

> And as soon as that person rings up, that Housing Officer is out on the street then interviewing all the white neighbours in the street. They don't go in after 'darkie'. They get all that information first. They don't bother to come near you. They have all that information ready to battle in court. That's discrimination. And it's still goes on. The least bit of noise in the street my kid gets blamed for it. (**Bendigo Women's Focus Group Participant**)

Sometimes, it may not be clear whether an incident is discriminatory, but as the following comment suggests, in certain instances where non-Aboriginal neighbours complain about their Aboriginal neighbours there may be no basis to the complaint other than the fact that the non-Aboriginal neighbour does not like the way in which the Aboriginal neighbour lives.

> It could go to VCAT and then a member would say, 'I think this is just nasty. I am sorry, but you are just racist more or less.' The tenant down in (area named), this complaint has been going on for three years and it's escalated to the local Member of Parliament and the Local Member knows it's just racist but we have to follow through with that. … So, if the tenant behaves themselves it generally goes away but this one down here, we are in a bit of a predicament at the moment because she won't clean up the property and stop a hundred and one people from staying there and so unfortunately this one has gone to VCAT and I've got statements from the police and from the neighbours to say this has been happening and that's been happening. Whether these people will come to court or not is another story but it's up to the (VCAT) member to say, 'Ok, I am giving you a compliance order which means you comply otherwise we have to repossess the property, and you get evicted.' So, I generally try and talk the tenants into moving. If there is something like that I just say 'I'll get you transferred out of here and you can go somewhere else because you don't have to put up with this'. It's not very often that it's racist, generally it's the tenant. But the ones that are, it does escalate up to Parliament (**Indigenous community housing organisation**).

It is also noted by service providers that conflict within neighbourhoods is inevitable when Indigenous people are all 'crammed' together in particular localities by housing providers, without them having any choice in terms of where they are housed *and* regardless of the inappropriateness of that housing for particular families (where there are pre-existing tensions between families, for instance). Further, Indigenous people find it difficult to access private tenancies (including because of discrimination by estate agents and landlords) through which they might have more choice about the location of their housing (see Section 5.3: Housing; Section 5.2: Discrimination).

> Just across the river there they've just slapped eighteen to twenty houses and called it the 'Namitjira Mission', and thrown eighteen to twenty Aboriginal families in there that might not necessarily be from around here. … And the government then saying to the poor police officers out there 'Reduce crime there' and 'Reduce law problems that are in there'. Well, that's going to be hard to do. We talk about neighbourhood disputes, you know, and then

you've got the other end of society saying well I don't want them living next door to me though. (**Community organisation worker**)

You need to know what's called the 'mob map' here. ... So, you need to put this family near this family and don't put this family near this family, and a lot of other services around here don't get it. They just think the house is available and we just whack them in there, which causes this sort of stuff (community violence, neighbourhood disputes and problems). (**Community organisation worker**)

There appears to be an element of racial segregation, according to some stakeholders, in housing providers' decision-making around where to house Aboriginal people. Indigenous households may be deliberately kept together away from non-Indigenous households because non-Indigenous people complain about having to live alongside Indigenous people. As noted above, sometimes non-Aboriginal people just 'don't want Aboriginal people living next door'.

Like I said, we'll have the person (neighbour) ring up and say 'Oh, you know … you are not putting the black fellas in there, are you?' Or on the phone again, someone will ring up and speak to me and they'll think 'Ok, you wouldn't know what it was like.' And then the minute you say 'Actually, I am Aboriginal and to me it's discrimination'. And they would go 'Oh, I didn't think you were because you spoke properly.' And I used to work for the Office of the Public Advocate and the Dispute Resolution Centre and we used to have a lot of this sort of stuff in there. (**Indigenous community organisation worker**)

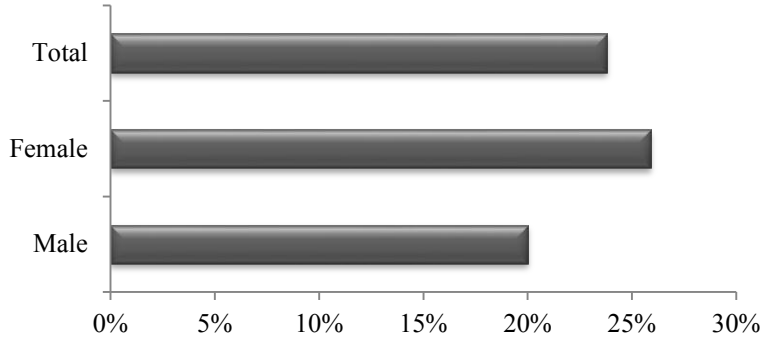
I was actually the housing manager at the time for another organisation that I worked for, (and an Aboriginal woman) was evicted because the whole neighbourhood signed petitions to get her out. … (S)he got dragged out actually through the front window. She was nine months pregnant and she got dragged out through the front window because she could not be removed. … And she was out the front on the road and it was a busy road at 2 o'clock in the morning, on her hands and knees, very drunk with a 2-year old running around the street. (**Indigenous community organisation worker**)

I pulled up and there was a guy next door in the driveway and I got out of the car and he goes 'I hear a black woman from Churchill is moving in here.' And I had one of my daughters with me and she is pale and she's got blond hair. And I said, 'Yeah, actually. That would be me.' And he sort of looked at me. And I said 'This is my daughter Montana.' And he looked me up and down at me and said 'I hope you are not going to be as bad as the last one here.' And I said, 'Actually, you won't recognise the place in a couple of months time, and you won't hear from me'. And he goes 'We'll see about that.' A month or two went past and because my house looked nice and neat and tidy, we didn't play loud music and our dogs didn't bark all night and we didn't terrorise the lady next door, that man would bring me after five months a Sunday paper, he would drop vegetables at my front door from his vegetable garden. The bloke across the road mows my lawns at the front, the lady on that side would water my garden if I am not around. … They never had anything to do with these (other) tenants, they wanted them out. And now they are thinking, even though they know I am Aboriginal, if we treat you right then you might stay there and we won't have to put up with another family moving in. … You get a lot of it here at Lakes Entrance, which is really, really hard. (**Indigenous community organisation worker**)

5.4.2 Neighbourhood Disputes and Obtaining Legal Advice

Figure 5.16 indicates that **23.8%** of all participants identifying an issue with neighbours had sought legal advice or assistance. The proportion of Indigenous women seeking legal assistance for such disputes was 5.9 percentage points lower than that of Indigenous men (25.9% of women compared with 20% of men) (see **Table 5.25: Appendix C**).

Figure 5.16 Participants who Sought Legal Advice for Neighbourhood Problem



Despite the relatively common occurrence of neighbourhood disputes or problems, these figures indicate that roughly only a quarter of such problems are resolved through formal avenues.

Public or community housing providers spoken to as part of the ILNP indicated that they spend a fair amount of time trying to resolve such problems informally, by talking with neighbours or by negotiating a transfer to a new house, for example. Other services, including legal services, may not know that this is a problem for a client until it 'accidentally' comes up in discussion in relation to other issues they are having.

> Neighbourhood disputes, yeah, get a little bit of that, but most of the time that's probably not gonna —most of the time that hasn't really caused us to see a person, not about that. We'll be already engaged with a client and counselling them and they'll tell us that their pain in the neck neighbour has done this. (**Community organisation worker**)

Neighbourhood disputes are one type of legal problem that may be resolved effectively through mediation, but only at a certain stage of the dispute in question. The DSCV reports dealing with issues of lateral violence and other problems for Indigenous communities in Victoria.

> I had one three weeks ago. It was three units in a block. Black fellas in all of the three units and they all hated each other. So I got Dispute Settlement (DSCV) to go out and try to resolve and mediate. And it worked quite well. (**Statutory Authority staff**)

> By the time the Koori community gets referred to our service things have escalated too far, like there's high levels of violence … so it's not something we want to get involved in because we don't want to put peoples' safety at risk when it comes to a mediation. (**Community organisation staff**)

This last comment suggests that neighbourhood disputes and problems can quite possibly escalate to criminal offences, evident also by the number of occasions when police were called as a response to this type of dispute. There are a number of comments by stakeholders and focus group participants above relating to police intervention, including as a response to 'community violence' and at times, at first instance, before any attempt has been made by a complainant neighbour to resolve the issue directly with their Indigenous neighbour.

> Well in a community like this, we always go through stuff like that in our neighbourhood, neighbourhood disputes. At the end of the day, that's the only way that it can be resolved (through the cops). It is a big problem. (**Robinvale Women's Focus Group Participant**)

5.5 CREDIT AND DEBT

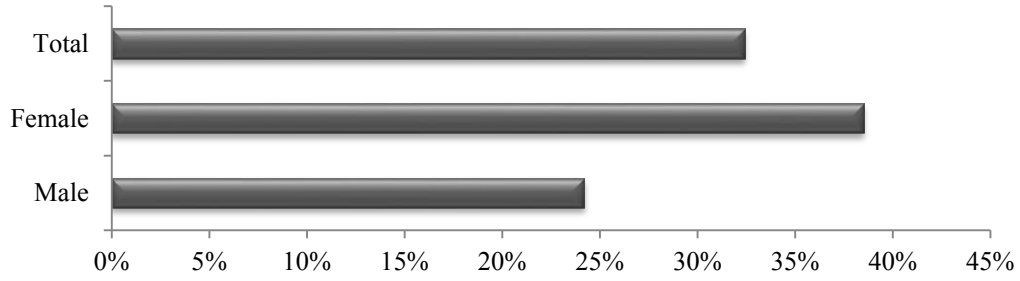
Debt emerged as a significant issue for focus group participants, with almost one in three having had a legal issue in relation to debt in the last couple of years.[98] Coupled with the pervasiveness of debt issues was a feeling that it was a difficult matter to overcome.

> I have debts. I want to pay them, but I don't know how to go about getting them all together and paying them. I don't know where to start. I kept getting letters but I just put them over there, because I just don't know how to deal with it. I hope that it will go away. I know if I wanted to go and get a loan I couldn't. (**Framlingham Women's Focus Group Participant**)

> Everyone's in debt, somehow **(Robinvale Women's Focus Group Participant)**

Almost one third (**32.4%)** of focus group participants said that they had been in a situation where a lender had threatened legal action due to their failure to repay a debt. The dynamic was particularly pronounced for Indigenous women, 38.5% of whom reported having had this problem in the last couple of years, compared with 24.2% of men (see **Figure 5.17** and **Table 5.26: Appendix C**).

Figure 5.17 Participants Identifying a Problem with Paying a Bill or Loan Where Lender Has Threatened Legal Action



Although debt can create significant legal issues, if it is not presenting an immediate crisis it often does not take priority.

> My (client) with all these fines, she was actually abducted. She was pulled off a street into a car and held for three days against her will, so to try now after that experience and her recovery time. … It's really hard to be trying to press someone, 'Hey hey hey, you've got this to do.' … I couldn't get her head into it - ... (only) when I got a phone call from the man who said, 'Hello, I've got (the client) with me at the moment and I am from the Sherriff's office and I've got a warrant and I've got to be taking her with me.' And that's the only thing that they got her to say, 'Ok, let's do something about it.' **(Indigenous community organisation worker)**

> As an example, we've got one woman (client) at the moment … She's got an intellectual disability and she is illiterate. She's got a $10,000 phone bill from her ex-partner in her name!

[98] For further research into unmet need in the area of credit and debt, see Povey (2011).

> And for her it's absolutely no priority. And it's really hard to kind of get some people to prioritise those things. (**Indigenous community organisation worker)**

In addition, there is an issue of attribution of debts, whereby vulnerable individuals are coerced into taking on the debt of another person. 'Debts that are signed up for by the victim under duress… Those sort of related family violence type issues' (**Community organisation worker**). This was said to particularly be the case in relation to driving fines.

> Infringements are a priority area … When you tease out debt that is one of the major components of debt. So, the common driving fines, parking fines … have been inherited from the perpetrator (of family violence, by victims of that violence) (and) because of the fear, have never been transferred, have never been dealt with. … We do quite a lot of these. I think currently we probably do about 5-10% (of our work) in that broad civil area. (**Indigenous Legal Service staff)**

Figure 5.18 shows that 36 participants nominated 40 categories where debt problems had occurred, with the most frequent being the non-payment of bills in general (10 participants), followed by non-payment of phone bills and general loan repayment (seven participants for each). The use of credit cards is a contributing factor.

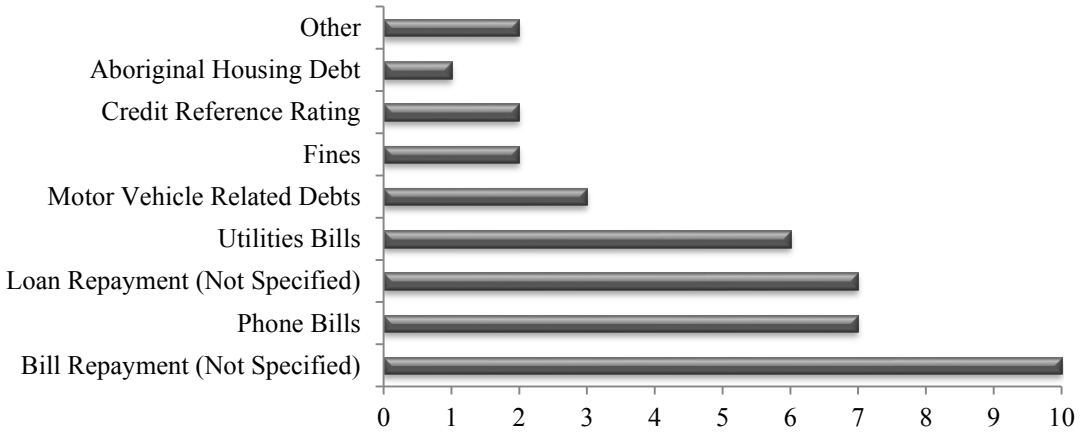
> With the credit I just think that it's a little bit too easy to get it still for the mob, and a lot of these credit providers I don't know whether they exercise judgments properly, with caution, but a lot of our mob get credit cards that they just can't handle. They prey on the vulnerable people and that's how they get their money. I've heard a lot of people talking about credit cards, what they can do about it and things like that. (**Indigenous Legal Service staff)**

One participant spoke of debt that followed the death of a family member.

> We were lucky. My dad was a bit of a miser and he left all his money before, when he knew he was passing. He drew all of his money out the bank and he put $15,000 in his favourite Collingwood jacket. We were very lucky that he had sort of set up something there for us to clear everything and pay funeral expenses. I know a lot of people aren't lucky (enough) to be in that situation and they're threatened by debt collectors. And you know, that's the last thing … I don't think there is enough information because death is quite common in all of our communities and debt is right behind it. (**Shepparton Men's Focus Group Participant)**

The participant's understanding of the liability of family members for the debts of a deceased is not a correct statement of the law, in that debts are recovered from a deceased estate but recovery cannot be sought from family members. This misunderstanding is one that arose elsewhere among Indigenous community members. It shows the need for and importance of community legal education in this area. As is stated above, the (mistaken) notion that one takes on the debts of deceased kin is a source of stress and anxiety in already difficult times.

Figure 5.18 Nature of Credit/Debt Problem



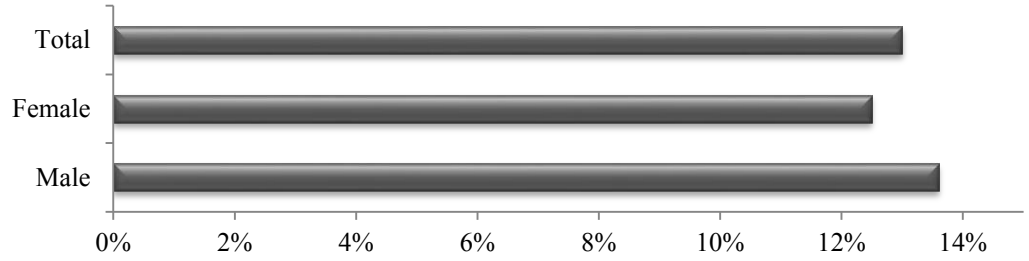
Issues such as payday lending and book up also emerged as areas of concern. These issues relate to both credit and debt and consumer law. They are problematic for a number of reasons, including where they charging debtors high rates of interest. But they are seen as a necessity for some Indigenous people because of their poor access to alternative forms of credit. Thus, they raise issues of financial inclusion (see also Section 5.6: Consumer).

> We've got a lot of payday lenders and they have been employing a lot of Indigenous workers, which then spreads word of mouth through the community. Everyone feels comfortable going in there as they are dealing with someone from their community, but the interest rates are horrific - 48% upwards and they keep ticking them over the fifteen days. It's actually so that they get around all the rules... (**Indigenous community organisation worker**)

> It's also those underlying issues of breaking that poverty cycle. The study's been done in India (showing) that the richer you are, the easier access you have to good finance with low interest rates, and the poorer you are the only access you have to finance is high interest rates. So you never break the cycle of poverty. From an organisational perspective … book-up and payday lending are put up as extremely concerning issues. … On the other side, they have their benefits … Our role (is) in advocating for greater access to financial services so that communities don't need to rely on these systems. (Currently), there aren't any alternatives (for people on low incomes). (**Indigenous community organisation worker)**

Figure 5.19 shows that **13%** of all focus group participants said that their debt issues had led to problems with their credit reference rating or to bankruptcy.

Figure 5.19 Participants Identifying a Problem Relating to Credit Reference Rating and/or Bankruptcy Problem

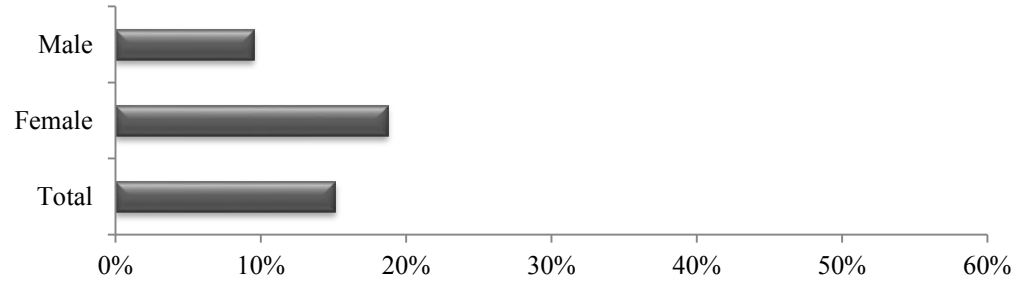


Several organisations spoke about encouragement from DHS[99] (here referred to as the Office of Housing) to file for bankruptcy:

> The Office of Housing were trying to clear all their books of all the old debt so they were wanting people to go bankrupt when they had quite large amounts so they could wipe that and continue on with the tenancy. Whether its right or wrong we had to do it just to get people housed.
>
> ... The Office of Housing … don't have any time limits so if that debt is 30 years on, then that debt is still there - whereas in a lot of other circumstances after a period of time you shouldn't have to put somebody through (this) to wipe that debt. … For someone who is extremely vulnerable, it's pretty much hell to try and negotiate around. (**Indigenous community organisation worker**)

Figure 5.20 shows that only **15.1%** of people who had had legal action threatened for a debt, or who had experienced problems with bankruptcy or their Credit Reference Rating, had sought legal advice. As **Figure 5.20** shows, women were twice as likely to have seen a lawyer than men (18.7% compared with 9.5%) (see **Table 5.30: Appendix C).**

Figure 5.20 Participants Identifying: (a) Debt Problem Where Lender Has Threatened or Taken Legal Action; (b) Problem with Credit Reference Rating, Guarantor for Another's Loan; and/or in Relation to Bankruptcy, Who Sought Legal Advice or Help



In terms of providing assistance in getting debt under control, several services spoke about the success of in-community outreach initiatives like 'Bring Your Bills' days. Here, people can get assistance with resolving unpaid debts through a range of services provided on the spot at the time of the event.

[99] DHS (the Victorian Department of Human Services) is sometimes used as shorthand to refer to child protection. However the Department also is responsible for public and community housing.

However, another legal service provider emphasised that debt issues can touch on a range of personal issues that might require a level of trust between practitioner and client.

> It is not something that our clients will immediately talk about. There has to be a relationship. So, to run a clinic or run a service that has a lawyer who is available to do debt and tenancy may be somewhat naïve. To start talking to a service about financial issues, and all the complex issues that underlie them, is quite difficult. Both in terms of shame, and the shame that attaches to family violence and just generally talking to any organisation. (**Indigenous Legal Service staff**)

There was a sense from the same interviewee organisation that without a sound prior relationship, a service might not pursue the best course of action for the client.

> Financial counsellors, what they will often do is arrange payment plans. That's always the easy (way). And because of all the issues … clients will agree. They'll say ok, but they won't stick to it. Those things then become offences, become criminal records. (Debt) can be dealt with by making legal arguments about the special circumstances of that person, to actually have the debts or have the infringements dismissed. If you've got $10,000 of debt behind you and that stays with you and someone signs you up to a payment plan … you have this for 20 years! That's another gap that I see that I get passionate about. A lot of our clients, we find out have had payment plans. That's really frustrating, that services will sign up without any question, without trying to find out how those fines accrued. (**Indigenous Legal Service staff**)

Debt is one of the areas of civil law which, if left unresolved, can escalate to become a criminal law matter. There can be a connection between high levels of debt and feeling trapped in a domestic violence situation, as the following comment concerning credit and debt problems interconnecting with that of family violence illustrates.

> They couldn't just up and go to a rehabilitation centre. They couldn't just up and get professional psychiatric counselling, stuff like that … Because of financial limitations … and so, in the whole cycle of domestic violence, they just kept going around and around. Because it was almost near impossible for them to fix. (**Community organisation worker**)

In cases where people enter prison with debt, the issue often becomes further compounded by the time the sentence expires.

> (Things) like driving fines and defaults are escalating to the point where people were looking at prison time and then also going to prison. The process is not there to hand over bills, credit cards, existing financial commitments so by the time people got out of prison, even if it was only a couple of months later, those had escalated to the point where they had even further issues facing them when they came out. So, it's a really bizarre cycle of people actually being unjustly punished for smaller issues and the proportion of that at the end of the day was huge compared to what they had actually done wrong in the first place. Financial issues were actually compounding while they were in prison, and reducing the likelihood of them re-integrating back into society effectively at the end of that cycle. There were a number of recommendations that we were looking at but one of them is improving communication between utilities companies, between financial institutions and prisons, to avoid that building up while they are in, and helping the prisoners when they come out. And there is a ripple

effect as well on their families and children and their relationships with the families when they come back out of prison. (**Indigenous community organisation worker**)

5.6 CONSUMER ISSUES

Focus group participants were asked about the types of consumer-related problems experienced in the last couple of years. These included:

- problems accessing or finding superannuation;
- a dispute with bank or other financial institution;
- a dispute over insurance; or
- problems with contracts, commercial scams or other situations where a person paid for goods or services that they did not receive.

The responses can be broken down for each focus group as shown below in **Table 5.35.**

Table 5.35 Consumer Issues by Community

Location	Financial Institution	Insurance	Commercial Scams	Other Consumer Issues	Total
	No	No	No	No	No
Bairnsdale	1		4	1	6
Bendigo	4	1	2		7
Fitzroy	2		1	1	4
Framlingham	4		2	1	7
Heidelberg	3		5	5	13
Robinvale	2		5	2	9
Shepparton		1			1
Swan Hill	4	1	2	1	8
Total	**20**	**3**	**21**	**11**	**55**

NB This is the total number of consumer issues identified by participants in each focus group. It is not the total number of individuals identifying consumer issues as some individuals may have identified more than one type of issue.

Although there were a relatively large number of responses indicating consumer-related problems (55), there were fewer responses on the focus group questionnaires when participants were asked to specify the particular problem experienced. Of the 24 responses across all focus communities specifically identifying types of consumer problems, telephone contract disputes was the most frequent (see **Table 5.36**).

Table 5.36 Type of Consumer Problem

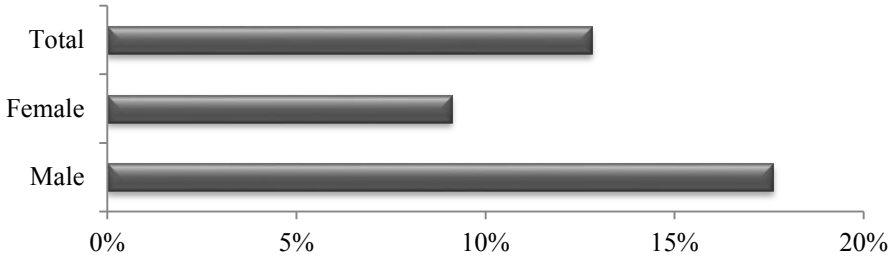
Type	No.
Telephone Contract Dispute	5
Door to Door /Telephone Sales (Not specified)	4
Superannuation – Access and Entitlements	3
Funeral Fund	2
Dispute with Bank (Balance, Fees, Other)	2
Vehicle Repairs/Sales	2
Rent / Purchase Contracts	2
Other Faulty Goods	2
Insurance (Claim Declined)	1
Pay TV Dispute	1

5.6.1 Nature of Consumer Issues

Superannuation and banks

As shown in **Figure 5.21**, some **12.8%** of all focus group participants said that they had experienced a problem accessing or finding superannuation or that they had had a dispute with a bank or other financial institution over the last couple of years. Men (17.6%) were significantly more likely to identify this issue than women (9.1%) (see also **Table 5.31: Appendix C).**

Figure 5.21 Participants Identifying a Problem with Superannuation &/or Financial Institution



As more Indigenous people become eligible for superannuation, having effective access to it (both during your lifetime and upon death (see also Section 5.8: Wills and Estates)) is becoming a more common issue.

> Superannuation is a huge one. You get your super at a certain time/level or when you are going to retire. We don't even get to that age to be able to enjoy having the super in a retirement fund. If you have a good lawyer you can negotiate (access). (**Indigenous Legal Service staff**)

Superannuation also arose as an issue in relation to employment, particularly for casual workers (see Section 5.10: Employment).[100]

In terms of banking issues, there were suggestions that Aboriginal people do not understand bank fees, which may accumulate before an account holder identifies them or works out what they are about.[101] As the following comment suggests, more comprehensive information being provided at the opening of an account might assist consumers to better understand fee structures.

> I've come across many years ago a guy who … had money coming out of his account (and who) showed me a statement of all his overdrawn fees. It was just a simple thing that he didn't (understand). I do not know how much education actually is out there about banks and what fees mean. They certainly don't explain that a lot when they start an account. (**Statutory Authority staff)**

Another issue that arose in the area of banks and other financial institutions/services is the lack of formal identification Aboriginal people generally have, and what impact this might have; for instance,

[100] Mohan-Ram, V (2011) 'Super and Indigenous Communities', *Superfunds* (October 2011) 38: http://www.fnf.org.au/uploads/6/3/1/1/6311851/super__indigenous_communities_-_vmr_-_oct.pdf

[101] For some discussion of Indigenous consumers of banking services, see Connolly, C, Georgouras, M, Hems, L and Wolfson, L (2011) *Measuring Financial Exclusion in Australia*, *Centre for Social Impact, UNSW* for National Australia Bank, available at: http://www.csi.edu.au/assets/assetdoc/3c1698bd3334ed55/NAB-Financial-Exclusion-Report_Final.pdf

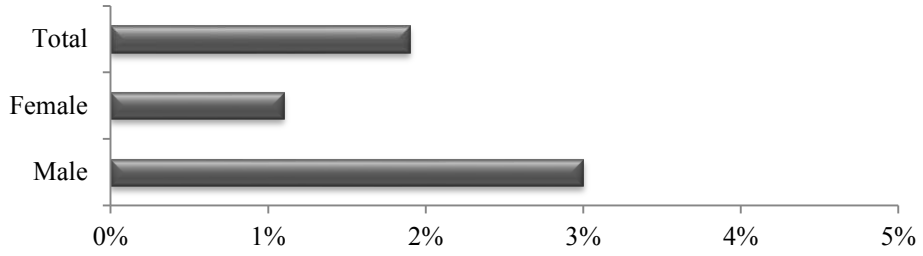
it may mean that sometimes only a single family member (the family member with ID) is able to open a bank account on behalf of a whole family (see also Section 5.14: Other Legal Issues). As the following comment suggests, a different form of identification should be able to be used as an alternative to a birth certificate.

> So, we've done identification for those community members, for example, that for a number of reasons don't have identification. They weren't registered at birth. Or they are fleeing domestic violence. It's not about creating a dual system. It's about addressing vulnerability. In some families there is only one person with identification, so all the money is going into one account. So, how do we work with banks to get a standardised template that can go to the Aboriginal Co-op and the Co-op will say 'Look, I know this person. This person is such and such.' And then (this document is) recognised by the Australian Banks Association. It's a legal document. It's a legally binding document. But it (makes) getting access to financial services a bit easier if you are vulnerable. (**Indigenous community organisation staff)**

Insurance

As shown in **Figure 5.22**, a small percentage of participants **(1.9%)** said that they had had a problem with insurance. Although the numbers are very small, nearly three times as many men as women identified this as an issue (1.1% compared to 3.0%) **(**See also **Table 5.32: Appendix C).**

Figure 5.22 Participants Identifying a Problem with Insurance



Poor access to insurance because you are a 'low-income earner', and therefore financially unable to prioritise the purchase of insurance, may mean that where there is loss of property (such as a vehicle, a 'lifeline' to some) existing socio-economic disadvantage is compounded.

> We are currently looking at good insurance policies that people on low incomes don't have access to. The essential services are more important (to them). Feeding my kids is more important than having insurance. Having a funeral plan is more important than insuring my home contents. We are looking at what insurance will look like for low-income earners. We need to come up with a range of financial service products that don't disadvantage both black and white. There are a lot of non-Indigenous people in the same boat with that continuous cycle of poverty who should have access to that service that we take for granted. A $5,000 commodore is your lifeline and if they lose that they are further disadvantaged as a result. (**Indigenous community organisation staff**)

Issues were also raised around accessing insurance payouts effectively, particularly where legal advice is absent.

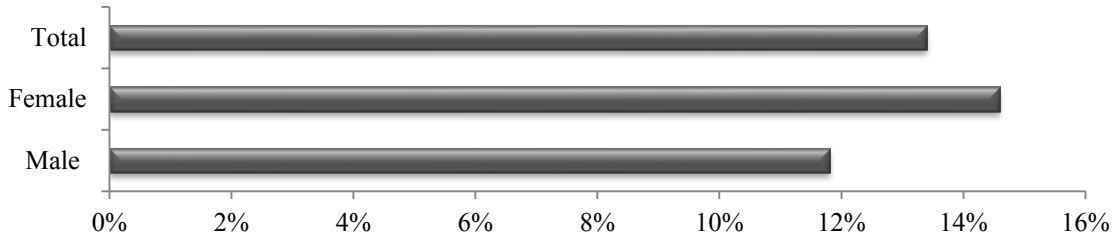
> The other thing is (life insurance or injury) insurance claims. I'm doing a lot of that through superannuation. People are unaware that they had it. Some people have $50,000 or $100,000

> in super. I find the union funds very dodgy to deal with when I am trying to make a claim. They always try to shortcut it or try to get people off the income protection and try to throw in a quick offer to save themselves money, which is actually less money if you calculate the time period. They are better off taking the income protection and the other lump sum later. I'm guessing that a lot of people would fall through the gap and miss out on what they are getting there. I don't know if that is something that legal services could look at. No one that I have met would have gone mainstream to source a lawyer to chase an insurance claim. (**Indigenous community organisation staff**)

Scams/Contracts

As shown below in **Figure 5.23**, some **13.4%** of focus group respondents reported a problem with scams or contracts in the last couple of years. Problems in this area had been explained to participants as including things like funeral funds, used car sales, photographic (portraiture) sales, door-to-door or telephone sales or other high-pressure sales. Men (11.8%) were marginally less likely to report a problem in this area compared to women (14.6%) (see also **Table 5.33: Appendix C)**.

Figure 5.23 Participants Identifying Problem with 'Scams' or Contracts



(a) Types of Scams/Contractual Issues

Scams and contractual issues appear to take on various forms for Koori people, some of which are as follows.

(i) Door to door/phone sales

Focus group participants complained of door-to-door (and phone) traders, ranging from the selling of first aid kits to the marketing of utilities (such as gas, electricity).

> I've had a few door salesmen that have been pushy. (**Framlingham Men's Focus Group Participant**)

> He came around with a little booklet. I still have the little booklet thing, the pamphlet thing and his phone number and my order form. I'm paying like $600 all up, $700, for a first aid kit … $50 a week and I haven't received the kit yet. When I go through my pile of papers, I keep thinking 'Don't chuck this out', 'cause I'm going to ring up about this. (**Robinvale Women's Focus Group Participant**)

The issue of marketing of utilities appears to be a prevalent one, with Indigenous people sometimes entering into numerous contracts, simultaneously, with different companies through door-to-door or phone sales. As one statutory authority remarks, 'One of the areas that our research has shown up in the community (as the) biggest area of concern is that energy marketing space … That is one of the

predominant issues' (**Statutory Authority staff**). Note that the *cost* of utilities is a separate issue, dealt with below as 'goods or services not received'.[102]

One woman in Fitzroy provided an example of having had a number of utility contracts entered into on her behalf but without her knowledge by persons staying at her home, temporarily. 'You know those door-to-door sales people, … people signed me on (to contracts) when I wasn't home, family, cousins or something, drunks. I've been cut off (utilities) that many times because of those sales people' (**Fitzroy Women's Focus Group Participant**). A lack of understanding about contracts and of their legal effects renders many Indigenous consumers particularly vulnerable in this context.

> (Issues include) emergency assistance referrals, utility relief grants—lots to do with utilities because you (of)… all the door knockers in the area and getting people to sign (up for utility contracts) and causing a difficulty. (**Indigenous community organisation worker**)

> It's just that a lot of the mob don't understand their rights when it comes to consumer stuff and contracts. Ok, one of the Uncles, he signed about six contracts with the electricity mob, then he got given a letter from some Commissioner's name—you know they come around knocking on the door. He had contracts all over the place. But like I said there is a lack of understanding about contracts and the legal effect as well. (**Indigenous Legal Service staff)**

There is some question as to whether scams, high-pressure sales and similar activities, including in the area of utilities, deliberately target and thereby discriminate against Indigenous communities. It is clear that some traders *do* target the most vulnerable consumers, which includes Aboriginal consumers. Door-to-door sales people, for instance, may take advantage of this vulnerability by concentrating their trade in certain communities or amongst certain groups, including the elderly.

> A lot of door-to-door sales people will focus on a particular area and it's not only Kooris but the most vulnerable people in our communities and… they can be public housing estates because there is a good chance there will be a high rate of acceptance from Aboriginal (people) if there are free offers. So, we've seen that in the past already. You'll find that a number of people in the same street would have the same issue. … I don't doubt that they do target communities. (**Statutory Authority staff**)

There was a suggestion by one stakeholder that overall, door-to-door sales are not as much of an issue in Victoria as they might be in other jurisdictions. The following comments indicate that this is an issue Australia-wide, and that the itinerant nature of this type of trade makes it difficult to address it without effective collaboration between States and Territories.

> We do a lot of work in relation to itinerant traders … generally what we call 'travelling conmen'. … We are, in most areas, probably a little bit different to the rest of the nation. We don't have that targeted … or the heavy concentrations (of it) in most of our areas. It's a bit different to the NSW experience where there are large Indigenous communities where people can go in to target … In (Mildura or Shepparton), I think it's a little bit different … either one or the other, with regards to being targeted. … But apart from that we don't have those specific, large concentrated areas with lots of trade. And so we find that the prevalence of

[102] See Consumer Utilities Advocacy Centre (CUAC) (2011) *Wein, Paen, Ya ang gim: Victorian Aboriginal Consumers of Energy and Water*, CUAC Melbourne VIC

travelling conmen or scam artists targeting communities is a bit more limited than in the rest of the country. (**Statutory Authority staff**)

But also in the tri-state area that we've got, who is responsible for these types of (consumer-related) injuries? Is it Victoria or is it NSW Consumer Affairs, or also there is the Commonwealth with regards to the recent scams, which have been 'to'ed and fro'ed' over the two states and also the Commonwealth. Who is responsible for a scammer who has come through a Koori community up here in the north, who has got the responsibility for enforcing…(and) who is going to prosecute? (**Indigenous community organisation worker**)

The itinerate traders … are generally non-nationals. The strategy for many years has been forcing them out of NSW into Victoria, and out of Victoria into South Australia and out of South Australia into Queensland and then they went into NSW and so it goes. About October we met with Queensland and NSW nationals and they had their own meeting, and we signed an accord that we would stop pushing them from state to state. We'd actually find them, catch them and kick them out of the country. And we are having a big impact in that space at the moment. So, that's the scams stuff. (**Statutory Authority staff**)

(ii) Mobile Phones

Consumer issues relating to mobile phone contracts also appear to be relatively common. As one Indigenous community organisation states, 'Mobile phones contracts is another big issue for our community. Yeah, this comes up everywhere' (**Indigenous community organisation worker**). Issues in this area provide a good example of Indigenous consumers entering into contractual arrangements without any comprehensive understanding of rights and obligations and of legal and other problems that arise as a result.

Mobile phone contracts (are an issue). The people that call up over the phone and sign people up, they give people a phone that's worth $80 and they'll sign them up to a contract where they have to pay $80 a month for the phone. And they direct debit it out of your bank account. A lot of our people, once they are signed up to that contract, they don't really question it. (**Shepparton Men's Focus Group Participant**)

(Consumer issues) could be the usual mobile phones and pay TV stuff. That's huge in the community. They are not really informed about the payments and then, you know, you get it all the time … (payments that end up being much more than expected). (**Statutory Authority staff**)

The phone bills that accumulate in such situations are at times very substantial, according to one Indigenous community organisation. There is a suggestion that Indigenous consumers need to be better informed, including with respect to what often complicated phone contracts really mean so as to avoid accumulating sometimes massive debts.

Telephone contracts are a doozy. This week I've seen the biggest phone bills I've ever seen in my life and everyone I spoke to went 'Ohhhh'! A lot of those contracts are just too difficult. (It's) mobile phones and using the internet on the phone and then changing their address so they are not getting the bills for up to three or four months. And by the time they do it's in the thousands. It's easy if it's just one and then I could challenge that and say 'vulnerability' and all that. But they often take another phone and another contract somewhere else and then have the same thing happen and that makes it more difficult to argue (a case). … So I wish that

> there was more education with the kids in the schools around contracts. … (Or) even if you are linked in with a choice, where somehow they could look at the schemes and contracts that are available where there was a rating or something. (**Indigenous community organisation worker**)

(iii) Funeral Funds

There was also some comment in relation to funeral funds. Funeral funds may have some benefit.

> Some people are involved in (funeral funds) and some aren't. And it's a big issue when we have a community member who dies and you've got the family trying to get together the money (for a funeral). (**Statutory Authority staff**)

A man in Heidelberg indicated that his cousin had been paying into a funeral fund for years, but had difficulties.

> When they went to bury him, they had to pay an extra $5000. They were paying so much. This is the Aboriginal Funeral Fund, and when they went to get him buried, they … still had to put down extra. So we moved our (funeral fund) account to another one. (**Heidelberg Men's Focus Group Participant**)

Similarly, an Indigenous community organisation also highlighted funeral funds as an issue for Indigenous consumers; not necessarily as a 'scam', but on the basis that Indigenous people may not understand the relevant contractual arrangements and the total amount of money they are going to end up having to pay—an issue previously discussed in the context of phone and utility contracts.[103]

> … I think it's a growing issue. … I am not sure whether or not it's been a huge issue to date with scams but I think it's more (certain communities) recognising that they want access to (such plans), but they don't understand how it works and what the options are. ... It is an issue that has been in communities for quite a long time. People are just paying and paying and paying and paying. And it's a never-ending story. (**Indigenous community organisation staff**)

However, this same organisation notes that there *have* been scams relating to funeral funds, where companies have passed themselves off as 'Aboriginal' in order to attract Indigenous clientele. 'There was a company … that was passing themselves off as an Aboriginal company. … So ASIC (Australian Securities and Investment Commission) has taken them (on) … for some unscrupulous behaviour and also for misleading information. So all their brochures (now) have to include they are not an Aboriginal organisation. (**Indigenous community organisation staff**)

(b) Scams/Contractual Issues: Link with Credit and Debt

Problems that arise for Indigenous people as consumers are often very closely linked to other civil and family law issues, including credit and debt. It is worth having a closer look at how this connection arises and also at how it increases the complexity of relevant problems for Indigenous people. Door-to-door sales, for example, are 'a huge source of debt.'

[103] For a discussion on problems with funeral finds see also Vines, P (2013) 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Culturally Appropriate Wills' 16(2) *Australian Indigenous Law Review* pp. 23-24.

A further good example of this connection would be the use of credit to purchase a motor vehicle, which may then end up to be a 'lemon' and worth nothing.

> (With motor vehicles, the main issues include) broken down (cars), out of warranty, things like that. Or I might have problems getting credit. I just saw this place that says that I can buy a car with no worries about credit. But the issue might be that I end up spending $10,000 more to actually purchase that car than I would have, and now the car doesn't work anymore and it's got a write off value of $0 and I've got a $20,000 debt. (**Statutory Authority staff**)

Other areas clearly demonstrating the link between these two areas of law include book up and payday lending as well as rent-to-buy schemes, with a number of concerns raised around these issues.

(i) Book Up and Pay Day Lending

Whilst one organisation indicated that book-up 'is not a particular problem in Victoria … I only ever had one book-up complaint over twenty years that I have been here' (**Statutory Authority staff**), others indicate that as part of their interactions with traders, Indigenous consumers may have little option but to engage with such activities or practices due to poverty and their difficulty in accessing alternative forms of credit (see also Section 5:5: Credit and Debt).[104]

Indigenous people may not be raising complaints in relation to book-up, but it appears to be, in some instances, both common practice and potentially problematic, including where consumers are releasing pin numbers along with cards to traders and due to high rates of interest. The dependency that the practice creates and the intimidation of consumers that may be associated with it are discussed as follows.

> There is a woman up here who gives credit out to us mob and she has about 60 or 70 key cards behind the counter. You just sort of wonder what interest she is charging for our mob. I went in there one day to get some bait for fishing and my key card was on the other side of the counter! I'm looking at it and I said 'Where did you get that from. That's mine?' I didn't realise someone had taken my key card so I said 'Pass that back here'. … (She) has a lot of our mob in a cycle that they can't get out of. They want something and it's easy access. They know that they will get it. They don't seem concerned about the interest. They probably don't understand how she is making her money and the fact that she has taken their key cards. Anyone can give anyone a loan but it's a case of how much control does she have of their pension or their youth allowance. From my understanding and what I've heard in the community she has quite a lot of control now on these individuals because they get locked into a contract that they can't get out of. They have substance abuse issues that they are dealing with and she knows that and she is taking advantage of that. These are the things that are concerning. How do people get out of that? … I don't think that they are (even asking questions around the interest or their rights in this). Why would you hand your card over? Legally, it's yours, your identity. It's got everything on it. There are a lot of key cards back there. Mine was back there! She's having them all on! (**Indigenous Legal Service staff**)

> I remember (travelling with) Elders once and we were going past the shops and one Elder hid in the back of a car because she didn't want to be seen by the shop owner. The shop owner had seen her and came out and leaned in the car, 'You owe me money. You owe me money.'

[104] See discussion, McDonnell S (2003), *Money Talks: Overcoming the financial exclusion problems faced by Indigenous Australians*, paper for Australian Social Policy Conference 2003, UNSW.

> And it was quite intimidating. They were just trying to buy bread and milk and she had a few grandchildren she was looking after. (**Indigenous community organisation worker**)

These practices may not be *all* bad.

> I've seen (book up) for years. I worked with community for years and for me it's a two-edged sword. My original opinion was that it should be outlawed. But the opinion I heard is that if we do that people might starve. They may not make it stretch from payday to payday. (**Indigenous community organisation worker**)

However, if Aboriginal people had increased capacity to access a broader range of financial services then they would perhaps not have to rely so much on these forms of credit. Book up and payday lending thus appear to be caused by, and also to increase financial and consumer dependency and vulnerability.

> In some instances, the storeowners hold the key card. For me that's not acceptable because I think it's a breach of the law. If you have a contract already with a bank and that contract is between you and that bank, (it's) not between you and the bank and the local shop. … But then people are in debt for up to $2,000. I think it reflects a broader lack of access to financial services that needs to be remedied. It's a breaking of the poverty cycle. This is inter-generational. Grandma did it and auntie did it, mum did it and now daughter is doing it. Cousins are doing it. It's just that it's become one of those nasty behaviours that we as community are falling into. I reckon it's a lot like what's going on with the justice system with kids and young fellas that are in prison. Dad was there, uncle was there, grandfather was there and that's where I am going to be. (**Indigenous community organisation worker**)

(ii) Rent-To-Buy Schemes

Another very significant problem area is identified as that of 'rent-to-buy' schemes, particularly as they relate to the purchase of whitegoods. These schemes are, in a sense, serving as a form of credit. Indigenous consumers may not be likely to have financial capacity to purchase goods up front, and so may enter into this type of contractual arrangement, perhaps to their detriment.

There is some suggestion that Indigenous communities *are* targeted in relation to whitegoods rent-to-buy schemes, as follows. 'The main issue that's targeted the Indigenous community had been the white goods (issue)' (**Statutory Authority staff**). Further, these issues also do not appear to be particular to Victoria.

> (One problem is) scam artists, especially the white goods area and the credit area. (One example is the) white goods organisation targeting the Mildura community.[105] And it's got links through the northern part of South Australia and the south-western part New South Wales, so it's across borders. So, it's really (moved) into an ASIC area because of the national jurisdiction. A similar campaign was run up in Queensland. They managed to shut that down. We are trying to get some information out of them now where they are with this

[105] See media on the Zaam Rentals case in Mildura: ABS 11 February 2013 http://www.abc.net.au/news/2013-02-11/asic-cancels-rental-company27s-credit-licence/4512342; ASIC, 11 February 2013 http://www.asic.gov.au/asic/asic.nsf/byheadline/13-021MR+ASIC+takes+action+against+Zaam+rentals,+cancelling+its+licence+and+banning+its+directors?openDocument

> current one. We are trying to keep that national focus on it. Obviously, as with any scam, we don't know about it till we know about it. (**Statutory Authority staff**)

One problem in the context of rent-to-buy schemes is that consumers may not understand the 'real' cost associated with purchasing goods through such arrangements. Further, these arrangements may not be all that they appear to be. Low levels of consumer and financial literacy cause a myriad of problems in this context.

> The rent-buy schemes are pretty popular here. … (It) can be not the most cost effective way of purchasing goods. So we did have a financial literacy program that touched on that and talked about the real costs but people are just not reading the contracts and just signing and not fully understanding what the true price was. (**Indigenous community organisation worker**)

> There was one guy I know who bought a … I think it was a $200 couch and in the end he paid $4000 for it. The interest free (payment scheme) is a big problem there. (T)hey are not really informed about the risks involved with that. (**Statutory Authority staff**)

> (You) pay on a fortnightly basis, depending on what they do, (and) … then you make an offer at the end of the two or three years to purchase the products. They think that they are purchasing it. They are not totally understanding that it's a lease agreement. … I've had some that I represented who actually thought that if they've paid, you know, 12 months or 2 years worth on a 3 year contract that they get to keep the items and that they've paid enough. (**Community organisation worker**)

(c) Scams/Contractual Issues: Links with Social Security

Consumer issues also have a direct connection with the civil law area of social security—and with Centrepay, in particular (see Section 5.7: Social Security).[106] The primary issue in this context is that Centrepay may be enabling deductions from Centrelink benefits for what appear to be, at times, highly questionable contractual arrangements, including those that form part of rent-to-buy schemes.

> (The Centrepay issue is) … happening here as part of our scams for the whitegoods, people deducting from their disability pension or whatever it might be just to simply pay for whitegoods that are worth nothing, 200 bucks. And some are paying thousands for them and it comes down to the credit scam, the scammer coming to the door and providing a washing machine or a TV—not really thinking through the actual costs of the thing, you know what I mean? **(Indigenous community organisation worker)**

Concerns are being raised as to why Centrepay is failing to effectively screen out unscrupulous traders, including those connected with rent-to-buy schemes, but also those who are engaging in door-to-door sales. It appears to be relatively easy for such traders to use Centrepay to set up direct debits from welfare benefits. Given the size and number of the deductions in question, this may leave Indigenous people with virtually no income, putting at risk their capacity to pay for essential goods and services (such as rent, food and utilities), contrary to the purposes for which the Centrepay

[106] See recent report of independent review of Centrepay: Buduls, A (2013) *Report of the Independent Review of Centrepay, Report to the Secretary of the Department of Human Services, Australian Government*, http://www.humanservices.gov.au/spw/corporate/government-initiatives/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf

scheme was originally established, which include to assist vulnerable people with management of finances.[107]

> (The) radio rentals, Mr Rental, seems to be a big thing for them and they will, from what I see, use half of what they get in their pensions to go to Mr Rentals or Radio Rentals, one of those mobs, and then their housing is at risk and their power is at risk, there is no food. (**Community organisation worker**)

> There has been some predatory behaviour. Some of the organisations that are registered are rolled out into community with a truckload of stuff, booklets, and (they are) getting people to sign up. … The most extreme case we heard of was a salesman knocking on an Elder's door and saying, 'You are an Aboriginal. You must be on Centrelink. I can arrange to have this for you now. Give us your CRN (Customer Reference Number) number', and actually walked into the house. … Very unscrupulous behaviour! … ASIC works as a regulator and actually some organisations have been prosecuted over (such) behaviour. … We currently work with (Department of) Human Services about what *is* Centrepay, what it looks like, where are the holes, where are the gaps and where things need to tighten up and also pointing out to them why it's a good scheme and we don't want to see it taken away from community. But actually you are contributing to disadvantage by letting these organisations operate. (**Indigenous community organisation worker**)

The latter organisation suggests that something needs to be done to bring about greater accountability and effective action, as this problem is both long-standing and widespread.

> (People from) Queensland, NSW, Victoria (have) … all reported examples of (problems with Centrepay). Those people who are actually working on the ground delivering either financial counselling or some other services have reported (problems). It was nominated as one of the three key projects for us to look at this year, so I think that indicated that it was pretty widespread. And the issue was I think that people have talked about this for a couple of years now. … Because there has been a lot of complaints and anecdotal evidence but it hasn't been enough to really push (Centrepay) to make some structural change. (**Indigenous community organisation worker**)

Further, Indigenous people's capacity to alter or contest relevant arrangements, once established, is compromised by the same issues that create the problem to start with-those relating to consumer and financial literacy; and because they are likely to have difficulty in asserting their rights with a government agency such as Centrelink.

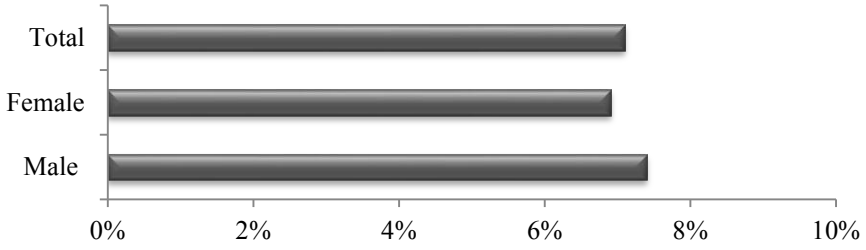
> That's why I am interested in seeing what the level of complaint is from Indigenous as compared to non-Indigenous (people), but I suspect it will be fairly low because I am fairly meticulous but some pensioner out there who has somebody pushing their way into her door isn't going to complain. We also have these Elders, particularly, that have had officers coming to them and saying 'I am from Centrelink.' So I think it's government, you know, to an extent as well. They are not going to buck (against it) because of their history with government and government being able to intrude into their life so much. (**Indigenous community organisation worker**)

[107] Department of Human Services, *Centrepay Policy*, http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf

Goods/Services Paid For

Figure 5.24 shows that **7.1%** of participants reported a problem with not getting goods or services they had paid for. Women were slightly less likely (6.9%) to have an issue of this nature than men (7.4%) (See also **Table 5.34: Appendix C**).

Figure 5.24 Participants Identifying a Problem with Goods/Services Paid For



We have included utility bills in this section as many people we have spoken to talk of feeling that they are paying *much* more for utilities than they should be, considering their usage; that is, they are not receiving goods or services paid for because what they claim to have received in return for payment is seen as inadequate.[108] This is also a further example of a consumer issue likely to be connected with that of credit and debt.

There was a significant amount of comment about the cost of utilities in Victoria, including in relation to apparent overcharging, but also around the way utility companies may deal with non-payment or late payment of bills. A legal service provider states, for instance, that utility bills, especially for electricity are 'a big pressure, especially on mums. Usually the mums are the leaders of the household and usually these types of utility bills fall upon them and these fine payments as well' (**Indigenous Legal Service staff**). One focus group participant claims she was bullied into paying more than she could afford in order to pay off an electricity bill. 'They tried to tell me that I'd used, I don't know how—they tried to tell me that my fortnightly usage was $140 (in a 2 bedroom unit). I live in a 2-bedroom unit and I'm hardly ever home. … They said if I didn't pay $70 a week, they'd disconnect me' (**Heidelberg Women's Focus Group participant**). A stakeholder organisation in Bairnsdale provides further comment in this context, which also illustrates the importance of effective advocacy in challenging the practices of utility providers.

> I had one client who was Koori and who had her gas disconnected for a month and a half in Bairnsdale over winter. Gas did the heating, cooking in hot water. And of course they (the clients) don't act straight away. She was going to see family and get it sorted that way. So, she lands on my doorstep and we lodge a wrongful disconnection with the Ombudsman. And she tried to connect to another supplier, but the supplier ended up putting a pin in her gas pipelines so nobody else could connect up. And they can't legally remove that pin. So, we contacted the Ombudsman. In 24 hours, her gas was connected but two weeks later the original supplier … It was a bill over $800. So, they waved the $800 bill and they've all completed a wrongful disconnection and awarded this woman with $2,500 in compensation (for) having wrongful disconnection take place. They didn't follow the correct disconnection process. (**Community organisation worker**)

[108] See CUAC (2011).

What looks like overcharging may be difficult to challenge, however, given the perceived or actual power of utility companies, according to the following organisation.

> Electricity is just going up and up. It's just unreal. I have one Koori lady who was … working and had a pay-rise for electricity for $50 a fortnight and electricity just came in and started taking $247 a fortnight out of her account. They said they did their calculation and that's the usage, $247 a fortnight … I asked the client if she was growing weed, she said no. {Laughing} You know, it's the standard question. And if she's got any snakes with heat lamps and all that sort of stuff. She said no. And it's hard to battle with those sorts of companies, isn't it? It's hard work because …(they) often win, don't they? (**Community organisation worker**)

Sometimes, the issue of not understanding contracts arises in this area as it does in other consumer areas, too. It is clear that people need more 'information and advice around contracts … and maybe utilities as well', according to a female participant in the Shepparton women's focus group. But an organisation in Bairnsdale also provided an interesting comment in relation to some of this organisation's clients, indicating that these individuals genuinely felt that they should not have to pay rent *or* for electricity, on principle-which inevitably led to problems, including disconnection of services.

> I know a couple of clients that don't see that they have to pay the rent or electricity because … they call it the white man's world. And so they are living in this world but they don't see that they should be paying for it and that creates an abundance of issues. I can't fix that. I can fix the problem but I can't change that pattern of behaviour. I can't change the rules. But I do have a few clients like that. Then their tenancies are at risk. So then they need to call the support services to save the tenancy and they are always in arrears and they'll be OK with that for a bit and then they'll just stop paying and they'll stop their arrangement, same as with a utility. And if it gets disconnected they'll just ring up another supplier and get that connected. But they don't think that they should have to pay. (**Community organisation worker**)

The area of utilities also provides an example of how people and families involved in the criminal justice system have particular civil and family law needs. The following comment speaks of families affected, in a consumer sense, by the incarceration of the family's father figure.[109]

> (There are) a lot of financial inclusion needs of prisoners going into banks. Going into prison and exiting prison. So, Dad gets locked away but all the bills are in his name, the phone, the rent, the gas and electricity. And Mum can't arrange a payment scheme or do anything. So she has it all cut off. So, how do we make that process a bit easier for people? (**Indigenous community organisation worker**)

5.6.2 Responses to Consumer Issues

Only three individuals (two men and one woman) had sought legal help or assistance for consumer-related problems. As indicated in focus group discussions and interviews with stakeholders, there are numerous barriers inhibiting effective access to justice in a consumer law context for Indigenous people.

[109] First Nations Foundation (2011) *Financial Inclusion for Indigenous Australians in Custody*, for Indigenous Financial Services Network, http://www.fnf.org.au/uploads/6/3/1/1/6311851/financial_inclusion_for_indigenous_australians_in_custody.pdf

Acceptance, Prioritisation, Shame

Shame, along with other emotions, may prevent people from responding effectively to consumer problems. In this area, 'Sometimes there are a lot of issues with regards to Kooris in regards to shame and coming forward' (**Indigenous community organisation worker**). Indigenous people may also have other more pressing issues to deal with, and consumer problems inevitably take their place at the back of the queue, so to speak. The following stakeholder was asked if they had ever seen any action taken in relation to rent-to-buy schemes.

> Not in my world, because it's a matter of getting Indigenous community to engage with me (as an advocate) … As much as I try and explain it to them or whatever … they have other priorities, such as juggling the rent or juggling the family members that come in and out of the household. Because they've got a lot going on. (**Community organisation worker**)

> There is a local fellow that sells cars in this area and one of our clients is saying … because they are Indigenous he sells them dodgy cars. He is like a local 'Mr Wizard'. … It's terrible. The same deal, you follow it up a bit and then it just gets lost. Too big … It does … involve *them*. I can put in the work but it involves work from them. And they don't … they go along and there is the crisis of the tenancy or the utility and we fix it and then they drop the ball. Or something else, another crisis rolls up, doesn't it? (We do refer them to lawyers). But they don't (follow up). Like, I've got one client at the moment, there is a motor finance … deal and the client is Indigenous, and I referred them onto the Consumer CLC (Consumer Action) to assist. And I am just waiting … All the client needs to do is to write a story of what's happened and I am still waiting. You know, then I follow up but I can't be harassing. (**Community organisation worker**)

People may be reluctant, or find it difficult, to step forward and challenge as a consumer, too. 'A lot of the mob they are not assertive of their rights as a consumer, they are a placid type of consumer. There's bullying in there too.' (**Indigenous Legal Service staff**)

Identifying a legal problem and improving literacy

Low levels of financial and consumer literacy may also mean that it is difficult for Indigenous consumers to identify a legal problem, for which they may seek legal help. This applies not only in wider society, but it also means that the level of consumer problems reported by focus group participants during the ILNP research is likely to be significantly higher than our data indicates.

As the following comments illustrate, and as noted earlier, it is important to improve consumer and financial literacy—not only so that people will be more empowered to respond effectively to a legal problem when and as it arises, but also so that problems can be avoided before they even occur. If, for instance, there was greater understanding about contractual rights and obligations, people may have real choice in terms of whether and how they enter into contractual arrangements with traders and service providers.[110]

[110] See First Nations Foundation (2011) *Enhancing Indigenous Financial Capability Programs*, for Indigenous Financial Services Network, http://www.fnf.org.au/uploads/6/3/1/1/6311851/ra_indig_financial_capability_web_1.pdf.

> It comes back to that knowledge again - trying to empower our community so that when things are wrong, '(this is) … where to go'. And getting that information out is the challenge, and education is power. (Speaker 2) Absolutely! Educating not only to know what your right are but how to exercise them. (Speaker 1) Education that is relevant to Koori consumers and tenants. (**Statutory Authority staff**)

> Sometimes people don't know if they've been the victim of (a scam) until afterwards, so we work on prevention as well. (**Statutory Authority staff**)

> With regards to scams, it happens all the time. Early this year, I had a friend of mine that was (contacted) by one of these Nigerians with regards to getting a life inheritance, 'You've gotta' give money'. He just thought that he would get money out of it, because he said 'Ah well, it had the common seal of this …' But I said 'It doesn't matter that it has the common seal of that, what are you doing?' So, just those sorts of things where they thought that they had an inheritance coming to them… Well, these things work logically you know, the guy was saying he had given out a lot of money. I know it wasn't substantial, but he gave out the money to get the paperwork done and then they would wire him … $20,000. And all I could say was 'Tear it up'. Those types of scams happen all the time where some of the Koori families are just vulnerable to believing certain things and documents they get … And if there was a centre here in town where they could go to for simple questions. (**Indigenous community organisation worker**)

Need for more advocacy and support

According to stakeholders, more advocacy and support, including that which is Indigenous-specific, is required in this area, given the vulnerability of Indigenous consumers.

> In the sense of support, whether it be around credit issues, scams, those sort of issues, there is nothing … There is just nothing at all. It could be quite simple issues around the mobile phones, signing up for contracts … scams as well. That happens up here quite a bit with regards to signing up for white goods and other things with just exceptional fees and the prices for those white goods. (They) are not (getting) what they paid for… (**Indigenous community organisation worker**)

> The other thing about consumer (issues is) not only rights but also … obligations. From a legal perspective, we need a lawyer to be able to tease out and know exactly how to get the best for you as a client for whatever problem that you have under consumer law. (**Indigenous Legal Service staff**)

Increased advocacy and support in this area should also include *systemic* advocacy around consumer-related issues, which can be very effective, as the following comments suggest. These comments also points out that specialist organisations such as the CLC Consumer Action Law Centre (Consumer Action) are so important in this area, including in terms of the assistance that they can provide to *non*-legal organisations. In this regard, the access clients have to financial counsellors at Consumer Action is also said to be a positive thing.

> I like the advocacy that groups such as Consumer (Action) are doing with Wizard Finance loans—where people are being stuck in a small office for up to 5-6 hours sometimes with a small baby and after it's closing time and they will say 'Oh, here's a contract that you can sign'. By that stage the person is obviously so vulnerable that they will sign. Under duress,

> who is going to read this contract? They just want out of there so what they don't realise is they think that it's a loan but it's not, it's a lease and they actually might be paying something like $24,000 for a car if you do the calculations. So that was really good in that (Consumer Action) did a group advocacy and asked who had those types of cases. We did have three come in late and they missed their closing times. At least (the CLC) then gave me all their legal information and research and told me how best to challenge it. It was great being able to go 'Ok, I'm about to send this off, is this complete?' Yes, it was invaluable. (**Indigenous community organisation worker**)[111]
>
> The best feedback from referrals is from Consumer Action Law Centre. They're well resourced. They've got a good two-tier process where they get a financial counsellor to talk to client and then provide representation. (**Indigenous Legal Service staff**)

The work of non-government organisations and non-legal professionals in this area (including financial counsellors) is very important. Indigenous consumers may be more likely to seek information and advice from such organisations and professionals than from a legal service or government agency. There may be particular hurdles for Indigenous people in terms of bringing a complaint to government agencies such as Consumer Affairs Victoria (CAV) due to perceived links between various government departments. A staff member from CAV suggests '(W)ith CAV coming under the banner of the Department of Justice, we are not that attractive … because there hasn't been a lot of positive interaction with the Department of Justice (generally)' (**Statutory Authority staff**).

This is but one of a number of cultural issues which increase the vulnerability of Indigenous people as consumers (alongside issues relating to willingness to challenge in general, shame etc.) - both in terms of how they respond to relevant issues and the extent to which they experience them. As one staff member working in a relevant government agency suggests, one solution is to work closely with non-government organisations. 'We are trying to reach out and educate not only Indigenous consumers, but also organisations they trust (so) that the information can flow through from trusted sources.' (**Statutory Authority staff**)

5.7 SOCIAL SECURITY AND CENTRELINK

Problems relating to Centrelink payments emerged as a priority legal issue in Victoria.
Focus group participants were asked to identify if they were currently in receipt of any type of allowance, and if so, (i) whether their Centrelink payments were subject to Income Management and (ii) whether they had experienced any problems or disputes with Centrelink in relation to payments in the last couple of years, such as underpayments or overpayments, incurring a debt, income management or being cut off benefits.

Figure 5.25 shows that overall, **75.5%** of all participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits 18.7 percentage points higher than that of Indigenous men (82.2% of women compared with 66.7% of men) (see **Table 5.37: Appendix C**).

[111] See Consumer Action's casework in this area at: http://consumeraction.org.au/motor-finance-wizard/

Figure 5.25 Participants Identifying Receipt of Centrelink Allowance

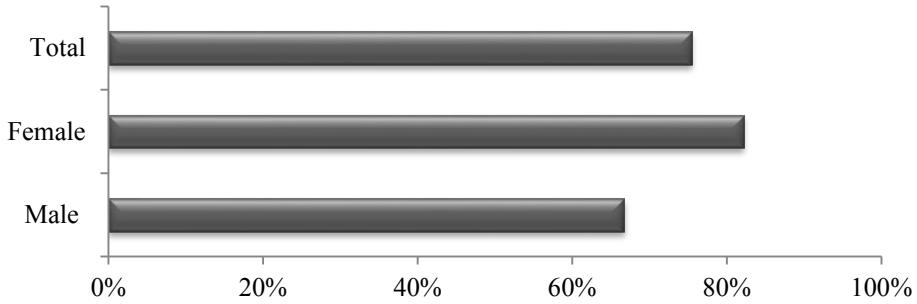
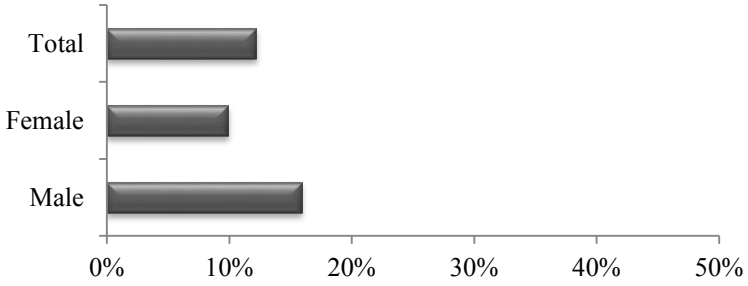


Figure 5.26 shows that overall, **12.2%** of all participants in receipt of benefits were subject to income management. Although the numbers were small, the proportion of Indigenous men subject to Income Management was 6 percentage points higher than for Indigenous women (15.9% of men compared with 9.9% of women) (see **Table 5.38: Appendix C**).

Figure 5.26 Participants Identifying Centrelink Payments Being Subject to Income Management



The proportion of people subject to income management seems high, and may well indicate some misunderstanding of the question. While there were some participants in the focus groups from the Northern Territory who are now living in Victoria and still subject to income management, the Victorian pilot of income management in Shepparton had only recently commenced at the time of the ILNP research. The focus group participants who indicated they were income managed were not from a single focus group community but spread relatively evenly across all groups.

5.7.1 Extent and Nature of Centrelink and Social Security-Related Issues

Figure 5.27 shows participant responses to the question asking whether they had experienced a dispute or problem in relation to Centrelink payments. This graph shows that overall, **22.7%** of all participants receiving Centrelink payments identified having experienced a dispute or problem in this area, with similar proportions of Indigenous men and women experiencing problems in this area (23% of women compared with 22.2% of men) (see **Table 5.39: Appendix C**).

Figure 5.27 Participants Identifying a Problem With Centrelink

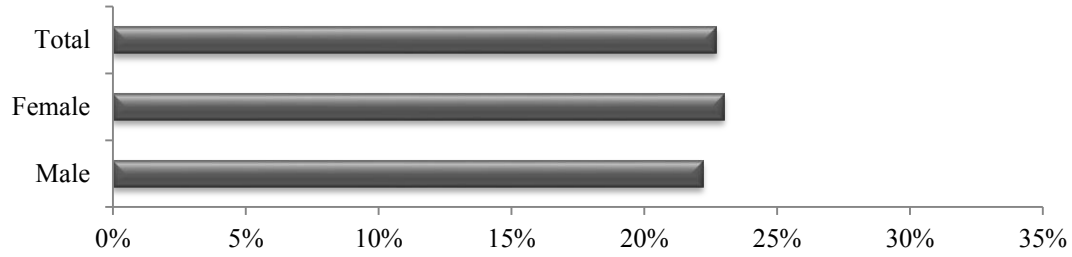
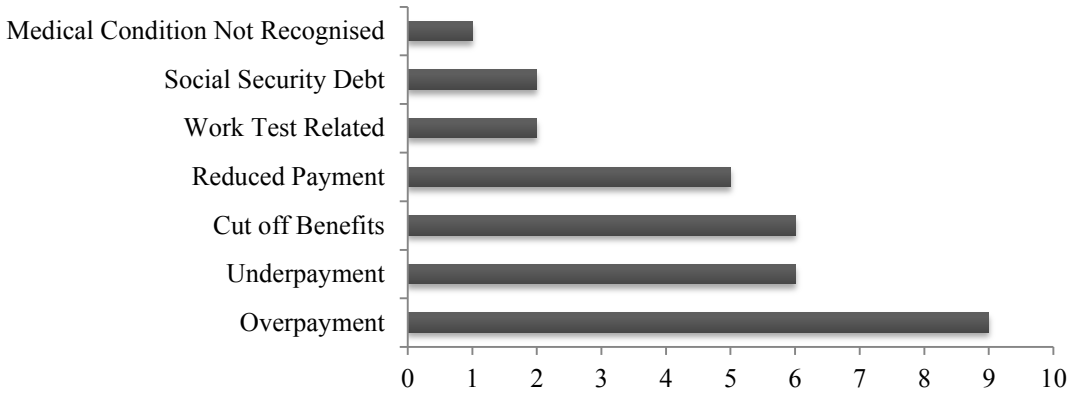


Figure 5.28 shows participant responses to the question asking them to identify the nature of their dispute or problem with Centrelink. Of the 31 responses provided to this question, the most common issues identified related to overpayments (9), underpayments (6), reduced benefits (6) and being cut off benefits (5) (see **Table 5.41: Appendix C**).

Figure 5.28 Reasons Identified For Problem With Centrelink



Access to Centrelink and Engagement with Clients

Problems relating to access to Centrelink were raised, as the following comments suggest.

> You feel a bit cut off because it's a remote town. There's no Centrelink office here. We only have a Centrelink agent. All the paperwork has to get faxed to Swan Hill, which is the main office. (**Robinvale Women's Focus Group Participant**)

While the importance of employment of Indigenous staff in Centrelink was recognised a further point was also raised, as follows.

> I believe that we should create more Aboriginal positions in there because the ones that do get into there, you've only got one or two people. … That makes it hard to cover a community that's got 250 families. You need more workers in there to help the workload of those people that are in there. We seem to be burning our people out no matter where they are. **(Bendigo Men's Focus Group Participant)**

Income Management

Income management was introduced into the NT during 2007. It was seen by the Commonwealth Government as a way of controlling how welfare recipients spend their money (and was directed towards preventing child abuse and neglect, in part). The income management scheme included

introduction of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth),* which provided for the quarantining of a proportion of government allowances payable to welfare recipients initially located on 73 Indigenous communities. The quarantined portion of benefits could only be expended upon priority items such as electricity bills, food and health. From 2008, recipients were able to use a Basics Card (similar to an EFTPOS card, but without capacity to make cash withdrawals) to spend part of this quarantined portion at specified stores.[112]

Income management started outside of the NT on 1 July 2012 as part of a trial in Victoria, South Australia, Queensland and NSW. The five trial sites include the Greater Shepparton local government area. As we noted previously Shepparton has **the largest Victorian Indigenous population outside of metropolitan Melbourne**. Income management applies to the following groups of people in Shepparton Local Government Area:

- people referred for income management by Victorian child protection practitioners where they assess that a child is at risk of neglect. The child protection practitioner will discuss participation in income management with the client as part of the case plan, and obtain their informed consent prior to making a referral;
- those assessed by Centrelink social workers as being vulnerable to financial crisis; or
- people who volunteer for income management.

Voluntary Centrelink-referred individuals will have 50 per cent of their income support and family assistance payments income managed to spend on essential items. People referred by child protection practitioners will have up to 70 per cent of their income support and family assistance payments income managed.[113]

There were varied levels of awareness about income management in Shepparton.

> I heard it was coming to Shepp(arton) but I haven't seen anything about it (**Shepparton Women's Focus Group Participant**)

> It's not just voluntary, I don't know what their criteria are but anyone that they consider vulnerable. … (**Shepparton Women's Focus Group Participant**)

Income management had only just been introduced at the time of the focus group discussions and stakeholder interviews in Shepparton. One stakeholder organisation noted the added complexity to Indigenous people's lives with the introduction of income management.

> Social security (is a priority area). All that's just a given. They are constantly trying to cope with the children, the money, the financial (stuff) and getting through on their own … We aren't seeing any mandatory or vulnerable families come through yet, but I expect to see more … when Child Protection start wielding sticks and so they start putting people on non-

[112] For further discussion, see for instance Sutton, J (2008) 'Emergency welfare reforms: a mirror to the past?' 33(1) *Alternative Law Journal* 27; see also Commonwealth Ombudsman (2012), *Review of Income Management Decisions in the Northern Territory,* available at: http://www.ombudsman.gov.au/files/review_of_centrelink_income_management_decisions_nt.pdf and Buckmaster, L, Ey, C and Klapdor, M (2012) *Income Management: an overview*, Parliamentary Background Note, Parliament of Australia, 21 June 2012, available at: http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1727168/upload_binary/1727168.pdf;fileType=application%2Fpdf

[113] FaHCSIA (2012) *Place Based Income Management in Greater Shepparton*, http://www.fahcsia.gov.au/sites/default/files/documents/11_2012/ims_pbim_shepparton_v6.pdf

> voluntary (management)—so I think that will lead to some issues. (**Community organisation worker**)

There was also a perception that income management would be introduced more broadly than in Shepparton. 'They are rolling out the intervention program in Shepparton at the moment. I think that will come to most of the communities in Victoria' (**Indigenous Legal Service staff**). Another stakeholder noted that there was little support for the introduction of income management and a great deal of fear (**Statutory Authority staff**).

Stakeholders expected problems, including legal problems, to increase once income management became more entrenched.

> I can't find the connection they're trying to make rhetorically or otherwise between income management and helping people get a job. The line about the assistance to people to get back to work, which the Government is using as a selling point for the scheme, is not washing with the locals. There's the vulnerable people category. Centrelink makes that decision on a number of fronts. Child Protection can refer people on and in those cases, Centrelink have no decision-making power, they simply execute. There are so many legal issues. … (It means that) social security status is public not private. There's this idea of getting people's lives 'back on track', so empowering people by taking away their power. Having to teach people to spend wisely by taking away their ability to spend money. (**Indigenous Legal Service staff**)

The potential for increased demands on the resources of legal services was also raised as an issue.

> If we were to get assistance for income management complaints, we would have to be getting assistance from Legal Aid …We want to be able to offer people help for when it hits the ground … The appeal process would be two tiers of reviews within Centrelink and then there'll be another process outside of Centrelink. From that you go to the Commonwealth AAT (Administrative Appeals Tribunal). (**Indigenous Legal Service staff**)

Human rights issues were also raised in the context of people being able to be released from income management after they had been subjected to it.

> They are saying it's a Federal system and we are saying you are putting people into it and you have no pathway out. So … there is a decision-making process there and let me tell you that is a limitation on their rights. [So, how might the Charter be used to think about not just a particular decision but about the pathway?] Not just in, but out at the other end, and you need to have a think about what advice people are getting… These are Victorians that you are saying you are referring (for income management) so there is a decision-making process there, and let me tell you that is a limitation on their rights. So, how you are using the Charter in that framework to think about not just that decision, but about the pathway? Not just in but out at the other end…(**Statutory Authority staff**)

Finally the issue of Indigenous people who were placed on income management in the NT and had relocated to Victoria was identified.

> We just had a client from Darwin come here and it's followed her to here so the payments are all being (managed). We have got a couple of clients here from interstate. And it's followed them across the state. … They're great girls … high-achieving young people. One of the women is pregnant and, you know, God help her if she wants to buy stuff where *she* wants to

> buy stuff … Partners are going to be angry because the parents, the mothers can't provide the cash anymore because they have women's cards. And that's just going to open a new can of worms. (**Indigenous community organisation staff**)

Debts, Underpayments and Being Cut Off Benefits

Issues around communication between Centrelink and welfare recipients referred to above may lead to some of the legal issues that arise when individuals incur debts without understanding the debt in question and how it arose.

As one focus group participant, who had to repay a Centrelink debt, explained:

> I got a month's payment taken off me for nothing. … (My ex-partner) can only afford to pay $5 a week. He hasn't seen his daughter since she was six months. (She is now over four years old), but he rang Centrelink and said that he's had her for a couple of years. And Centrelink gave him the payments. He rang and said he had full custody, and the daughter's there. And then he done it again, but it was only for one week, they let him do it again. (**Heidelberg Women's Focus Group Participant**)

Stakeholder organisations identified a number of issues leading to debt, including people having casual work for short periods and failing to contact Centrelink about it, or issues arising when family members come to stay for a period of time.

> With payments for some of our young ones, they are receiving a certain amount, and then mum or dad or aunty will come and stay for a week or two and then Centrelink will say, 'No, they're living with you' and they'll cut them off the payment but they won't reinstate them. (**Shepparton Women's Focus Group Participant**)

Another issue is the problem of understanding and accessing Centrelink systems.

> There is a case going at the moment for an older lady who has a Centrelink debt and because they are all online now with Centrelink and the education level is not high, she's actually put in her income because she was working. But Centrelink wanted a yearly amount and she put in weekly amounts, so now she's got a massive, massive, massive debt just because she didn't understand how it was. … She'll never pay this debt off. And that's going to happen more and more and more. (**Community organisation worker**)

The change from parenting payments to the Newstart allowance for single parents with children over the age of seven was also seen to have the potential to create debt.

> And now I am seeing the ones that were on parenting payments getting switched over to the Newstart allowances. … Okay, I've only seen a couple of cases because the payments have really only started in June. So it's not 'til tenancy is getting threatened six months down the road or they haven't paid the power bills. It's about, I reckon, half way through the year. It depends on how many children, (but) I've seen some drop down to $280 a fortnight. And that's a lot! That's massive. … Say, when they are stealing clothes off the next door neighbour, they are not stealing them because they want to do it, you know what I mean? It's because they need clothes on their back or they need food. I've got one young couple and they've been banned from Coles in town, for shoplifting. (**Community organisation worker**)

Centrepay[114]

The operation of Centrepay was raised as an issue in both focus groups and by stakeholders, and in relation to both consumer and credit and debt-related issues *and* to Centrelink-related problems (see also Section 5.5: Credit and Deby; Section 5.6: Consumer).

Some of the issues simply suggest poor administration of the scheme, with sometimes serious consequences for social security recipients. Focus group participants noted such errors. 'They were taking Centrepay, it was for my electricity and gas, and I rang my electricity and they're like no, we're not getting no payment but it was coming out of my Centrelink payment' (**Heidelberg Women's Focus Group Participant**).

At a broader level, there was considerable disquiet among stakeholders concerning the failure of Centrelink to meet its own objectives. The objective of the Centrepay scheme as stated in Section 3 of the *Centrepay Policy* document is 'to enhance the wellbeing of its Customers by improving their social capacity and encouraging their movements towards financial self management'.[115] The Centrepay Scheme achieves this through, *inter alia*, 'providing Customers with a means to budget and plan for their household and living expenses'.

In establishing the approval criteria, Centrelink notes the following:

> When considering whether an eligible applicant should be approved as a participant in the Centrepay scheme, Centrelink's primary consideration will be, in Centrelink's opinion, allowing the applicant to participate in the scheme will further the objective of the Centrepay scheme.[116]

Stakeholders noted that the purposes for which Centrepay were established are important, but that they do not appear to be adhered to. For instance, Centrepay '…is about managing your money and paying for essential services such as your rent, your gas and electricity. But of late, it's been expanded out to Cash Converters and we really have to question how that is an 'essential service.'' (**Indigenous community organisation worker**)

Another issue is that Centrepay is now seen as 'just a payment system. There is no face-to-face, there is no follow up, there is no case management approach. It's really, they say, just a bill paying system. They are not involved in people's day-to-day money management' (**Indigenous community organisation worker**). The failure of the scheme to offer any type of case management approach is seen as a major failing, including because in some instances people are left with very little money remaining to pay for essential services, contrary to the original intent of the scheme.

> There are situations where people have set up so much to pay they've got very little to live off. So, there are no checks or balances by Centrelink or Centrepay to say 'Hang on a minute! Before you go in, before you actually agree to all of this we need to review what's happening here and maybe you need to get some financial counselling around what's happening in your life.' There needs to be a kind of warning system where if a client approaches … putting aside more than 60% of their income, there needs to be a case management approach where there is some follow up about it. (**Indigenous community organisation worker**)

[114] See Buduls (2013)
[115] Department of Human Services, *Centrepay Policy*, 3. http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf
[116] Ibid, 5.

> (Of particular concern is the) proportion of people's income that they are actually deducting, because you can deduct up to 90% or something. So, that's been another specific thing about people putting on this deduction thing and being left with nothing. (**Indigenous community organisation worker**)

Another point of concern is that where any problem or error arises, the onus is placed on the *client*. Centrepay appears to place the onus on the more vulnerable party—that is, Indigenous welfare recipients—to ensure that the Centrepay system is working for them as it should and to raise a complaint when it does not.

> And they [the clients] are the most vulnerable person in the partnership. If there is a fault by Centrepay or Centrelink or if there is a fault by the organisation that's registered, the client wears that. That's the difficult part of it. (**Indigenous community organisation worker**)

As stakeholders note however, it is, for a start, extremely difficult for people to keep track of money being deducted through Centrepay. 'I mean you know there are any number of companies that are taking money out of peoples pay, it was unbelievable. Some had nothing. At the end of the week there was $2 left.' (**Indigenous community organisation worker**). Another noted:

> And Centrepay is saying it's voluntary, they can just cancel (their contracts). But the fact is they can (sign on) sometimes to contracts (and) they don't know even what's going on with them. (**Indigenous community organisation worker**)

Failure to Recognise Medical Conditions

Several focus group participants noted issues with proper recognition of medical conditions and disabilities.

> The Centrelink office here is not too good. I've just found out that I've got scoliosis—a mild case of it. But it does hurt, and I have applied for disability, me doctor doesn't want me working or doing any sport, and I went in there are they are telling me they can't help me because it's not a bad case of the disease. And I reckon that's a bunch of bullcrap. If you've got something, they should be able to help you straight away, you know what I mean? But no, you've got to be half dead to go in there. (**Shepparton Men's Focus Group Participant**)

> I've got a couple of crushed cushions in my spine, I used to be a boundary fencer in New South Wales/Queensland. I got a medical certificate to say that I was really unable to work for at least 24 months. They've overlooked that medical report, I've taken it back to the doctor, he sorted something out, he said well this is what we'll do. For the couple of years when you can't work you come back to me every three months and I'll give you a certificate. … I'm buggered when I walk up these stairs here! They were unable to assist me with disability. I just poke along, and that's what I've been doing. It kills me every day, it kills me, me back. It's pretty hard actually. (**Shepparton Men's Focus Group Participant**)

5.7.2 Centrelink and Legal Advice

Of the 27 focus group participants who identified a problem with Centrelink, only a small percentage (**11%)** sought legal advice or assistance (see **Table 5.35**).

Whilst Centrelink engages with some rural communities quite effectively, according to one stakeholder, the need to have independent legal advisors in addition to, or in order to connect community members with Centrelink is important.

> Centrelink does go out to communities and that can be quite useful, especially if they are in the community at the same time as you are. Then you can refer to them and they can go over and then come back to you, and quite a lot of things can be ironed out. But there are problems with Centrelink. (**Legal Aid staff**)

While VLA does have a Commonwealth Entitlements team who can specifically help people with social security issues, it would appear there is little community knowledge of this, or how to access assistance more generally.

5.8 WILLS AND ESTATES

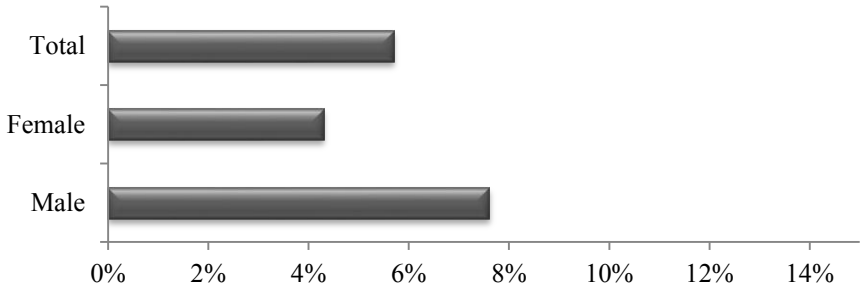
Participants were asked if they had completed a will and if so, whether they had received legal advice to do so and who had provided that advice. Participants who had not completed a will were asked if they would like legal advice to do so, and if so, who they would prefer to approach for such assistance.

Participants were also asked if they had ever had to take charge of someone's estate after that person had died (that is, acted as executor for a will) or if they had ever been involved in any disputes over a deceased estate.

5.8.1 Completion of Wills

As the following data indicates, very few participants had completed wills. **Figure 5.29** shows that overall, only **5.7%** of all focus group participants (9 participants in total) had completed a will. Indigenous women were 3.3 percentage points less likely than Indigenous men to have completed a will (4.3% of women compared with 7.6% of men) (see **Table 5.43: Appendix C**).

Figure 5.29 Participants Who Have Completed a Will



The data above corresponds broadly to other research on wills which indicates that between two and six per cent of Indigenous people make a will compared to 55%-59% of non-Indigenous people.[117]

Comments by stakeholders also suggest that not many Indigenous people appear to have completed wills. According to stakeholders, the drawing up of a will may not be a priority task for many of their clients. In the absence of a will, matters arising after death are likely to be dealt with informally, by community or by family.

> Another interesting thing and especially for our clients is the wills. Not many do have any wills. And we do go to a lot of funerals and some of (the deceased) would have houses and

[117] See Vines, P (2013) 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Culturally Appropriate Wills' 16(2) *Australian Indigenous Law Review* p.19

> for our clients they just take it that if one dies, it goes on to whoever. (It's) very, very informal. Actually, I haven't seen one will completed. (**Community organisation worker**)

> In ten years I don't think I have ever done a will. … even Aboriginal people who are in professional roles who are on good wages, I've never done a will. … They talk sometimes about advanced care planning and … about how they would like things to be, but unless the plan is actually written down or given to a support worker … (**Community organisation worker**)

One legal practitioner suggested that the lack of wills in Indigenous communities 'might be personal preference or it might be a cultural thing. It's not prioritised' (**Community organisation worker).** One community-based organisation attributes low rates of will completion to Indigenous people not wanting to talk about death.

> Well, I always say to people … we should do a will: 'Oh yes, we will do that'. A month later, 'We haven't done your will yet'. 'Oh yes we must do that'. I don't know why, I don't know whether because it's something about death, I don't know, but it doesn't matter how much you encourage them I have never done one (for clients)… (You could put instructions about burial) … in advanced care planning, if you don't want to put it in a will … but there is a hesitation about talking about that kind of stuff. (**Community organisation worker**)

Although the comments above suggest that even those who own property may not have completed a will, many Indigenous people may understand wills as only useful for clarifying posthumous wishes related to property rather than for other matters such as specifying wishes in relation to a burial place, guardianship of children or transfer of intellectual property rights.[118] This may account, in part, for the very low numbers of participants with wills. One male focus group participant in Heidelberg stated, 'Most of these mob are travelling with their possessions', meaning that the reason that they do not need a will is that they have no property to speak of.

The connection between property ownership and wills is also demonstrated by the following comments from men participating in the Bendigo focus group. These comments suggest that as Indigenous peoples' economic opportunities have increased through work (including access to superannuation) and home ownership, so has their awareness of the need for a will. Again, this suggests that in the mind of these participants, having a will is clearly linked with having money and property.

> We weren't entitled to all the benefits that mainstream (society) had. We got jack-shit to leave behind for our children because we didn't know anything about super and all this and that. So what 'will' have we got to talk about, you know? You were only a child yourself, turned out to work for a pound a week or something. (**Bendigo Men's Focus Group Participant)**

[118] See discussion of intellectual property rights and wills at Ayres, R (2011) 'Arts Law Update: Indigenous Wills Project; 7(22*) Indigenous Law Bulletin* 5 http://www.austlii.edu.au/au/journals/ILB/2011/2.html. See also discussion in a NSW context in Vines, P (2011) 'Making wills for Aboriginal people in NSW', 49(8) *University of NSW Faculty of Law Research Series 2011*: Working Paper 33, available at http://law.bepress.com/unswwps-flrps11/art33/.

Stakeholders also commented on the need for Aboriginal people to ensure that superannuation passes, upon death, to specified beneficiaries. This is a particularly important point as more Indigenous people are becoming eligible for superannuation.[119]

> I think areas worth mentioning around (wills) is superannuation and what to do with that now as there is a growing number of Aboriginal people who have superannuation. Well I always say to people, 'nominate your trustee, nominate your beneficiaries on your superannuation'. (**Community organisation worker**)

The usefulness of wills for issues other than asset inheritance may be realised only once a family member is deceased, including when disputes occur amongst remaining family members in relation to such issues. For those that *had* completed a will, they were seen as an effective means of resolving issues that arise when family members pass away. According to an Indigenous man participating in the Shepparton focus group, 'It pays for everybody to have a will because a lot goes on when you pass on'. Having a will may bring greater peace of mind, as another Shepparton focus group participant suggests.

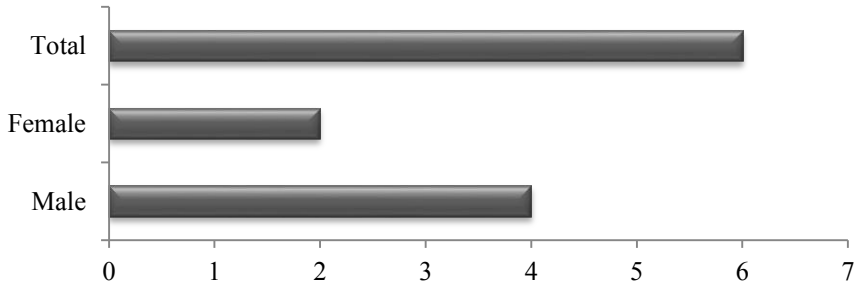
> When the wife died—when she was alive we went to make the will. And now I've told the kids, when it happens to me, they know where to go and the will will be made out. So they shouldn't have any trouble. (**Shepparton Men's Focus Group Participant**)

Other research has indicated that the major area of concern for Indigenous people was around the issue of the burial: 'Every single group had such disputes and most of these have had devastating effects on community harmony'.[120]

5.8.2 Legal Assistance and Completion of Wills

The majority of participants who had completed a will had done so in collaboration with a lawyer. **Figure 5.30** indicates that of the nine participants who had completed a will, six participants (four women and five men) had received legal advice to do so (see **Table 5.44: Appendix C**).

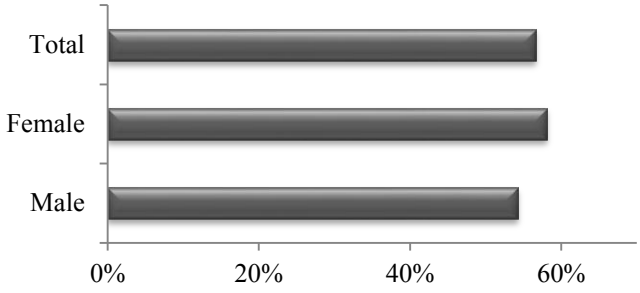
Figure 5.30 Participants Who Have Received Advice in Completing a Will



The fact that so few Indigenous participants indicate that they have completed a will does not mean that there is little need for assistance with drawing wills up. On the contrary, as shown in **Figure 3.31**, **56.6%** of those participants who had not completed a will *would like legal advice to do so* (58.2% of Indigenous women and 54.2% of Indigenous men) (see **Table 5.45: Appendix C**).

[119] See Mohan-Ram (2011)
[120] Vines (2013), 23.

Figure 5.31 Participants Who Would Like Legal Advice to Complete a Will



These statistics, along with comments provided by stakeholders and focus group participants, indicate that there is substantial unmet legal need in this area—both for increased legal information about wills *and* for assistance in their preparation. This unmet legal need has been noted in other research. Vines notes in her research that there was 'strong interest in having wills made'.[121]

As discussed above, there appears to be some lack of awareness about the range of issues other than property that wills might feasibly cover. Given this, Indigenous people may not identify an existing need for a will, and so may not seek assistance to complete one. Without further (legal) education and increased awareness about the utility of wills, this situation may be unlikely to change. Indigenous people may be more likely to access legal help *after* a family member has passed away (rather than in order to complete a will prior to death) when they are trying to access superannuation of the deceased, for instance, or to deal with a dispute relating to burial or who will look after children.

There were also significant numbers of Indigenous participants who identified wanting legal help to prepare a will, and most of those who had prepared wills had done so with legal assistance. The latter point, in particular, indicates that improved access to legal advice and assistance in this area may increase the likelihood of Indigenous people completing a will. It is worth noting that problems have also been identified with being able to access appropriate and affordable legal advice in this area.

These issues are reiterated by comments from stakeholder organisations. Some stakeholders identified wills (along with powers of attorney) as a priority legal area for Indigenous people. Wills 'are a perennial issue, especially for older Aboriginal people,' according to one legal service in Shepparton. They identified that more community education is required in this area of law, as well as access to more affordable legal assistance.

> Don't know where to go (to get a will). ... I keep hearing, 'just get your will done', but then there is also who do you pay to get your will done and the cost of it, say like 150 bucks or 120 bucks? For me it is a good investment, but for a community member, finding 150 bucks is a lot of money to get a will done and to use those ones from the post office—it's not worth the paper it is written on (but) it is always better than nothing. … If there was somebody to provide that support for wills it would be fantastic (due to) the cost of the anguish post a death. That would be fantastic for our community up here … or across the state. (**Indigenous community organisation worker**)

> I have had a few clients, probably only four, but they were wanting estate planning and so we referred them to the solicitors and they did go mainstream. I would attend the initial

[121] Ibid, 18.

appointment with them and speak to the lawyers and use someone that I trust and know to be good. One of those families set up a protective trust, which is really good and has come into force now. I think there would be value if there was someone like the Aboriginal Legal Service doing it. There would be a lot more education and a lot more people would take it on. Plus you have to pay mainstream and that's a big hurdle. (**Indigenous community organisation worker**)

5.8.3 Deceased Estates

Figure 5.32 provides baseline data for participant responses to the question asking whether participants had had to take charge of a deceased estate. This graph shows that overall, only **8.5%** of all focus group participants had been required to take on this role. Indigenous women and women were roughly similar in terms of whether they were likely to have to have taken charge of a deceased estate (9.4% of women compared with 7.4% of men) (see **Table 5.46: Appendix C**).

Figure 5.32 Participants Identifying Having to Take Charge of Estate After a Death

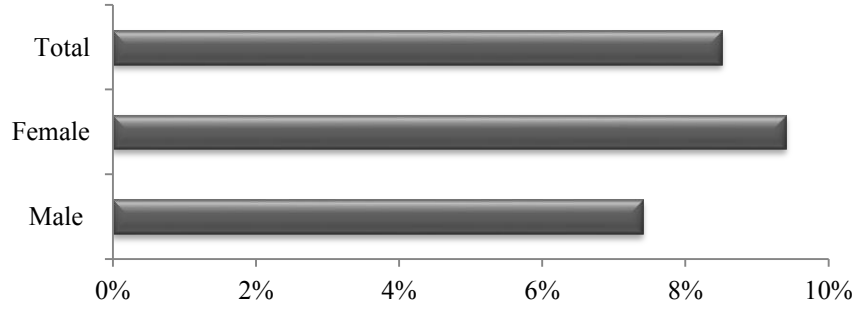
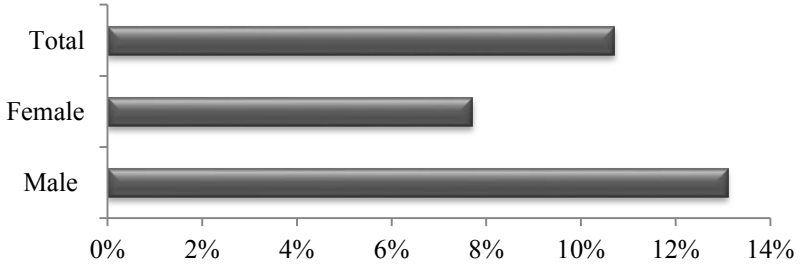


Figure 5.33 shows responses to the question asking whether participants identified a dispute over a deceased estate after death. This graph shows that overall, **10.7%** of all focus group participants had identified a dispute in this context. Indigenous men were 5.4 percentage points more likely than Indigenous women to identify such a dispute (7.7% of women compared with 13.1% of men) (see **Table 5.47: Appendix C**).

Figure 5.33 Participants Identifying a Dispute Over Deceased Estate After a Death



Disputes upon death of a relative can cause considerable stress, which can be particularly difficult given the inevitable grief and distress arising at the passing of someone close. Issues that arise upon death may relate to property, or even to debt:

> My aunty just went through that (an argument over a deceased estate). It took five years off her life, five years in six months, because her brothers and sisters just stressed her out. Wanted the money, money, money … (**Fitzroy Men's Focus Group Participant**)

> (My partner) was only 21 (years old and died intestate), and the super had me (as beneficiary). And then when he passed we went to his mother's uncle who was a solicitor … And then I fell out with (his mother), moved out, moved away, and went back looking for it and it was gone. But it was in my name, in a trust. I just figured that it was her uncle (who did something) … (and) his mother got it. It was mine, all in my name, and she took it. Five or six years I was gone. She said 'Oh well, you were gone'. (**Heidelberg Women's Focus Group Participant**)

> That (deceased) person may have accumulated debts, whether it's utility companies, contracts, and then the debt carries on to the spouse or family members. I experienced this myself when my dad died. He had had a car accident and owed a couple of grand, which he was paying off week by week. When he passed I made a phone call out of courtesy to let them know, and their thing was, well, the bill normally goes to the family. (**Shepparton Men's Focus Group Participant**)

It should be noted here that this understanding of the liability of family members for the debts of a deceased is an incorrect statement of the law in that recovery of debts cannot be sought from family members (see also above Section 5.5 Credit and Debt). This is both an issue to be addressed through community legal education and here, also presents a consumer protection issue.

In the absence of wills, disagreements after a death are generally handled internally. A man participating in the Shepparton focus group indicated that the dispute he had been involved in was 'just with the burying, where they are going to bury'. The dispute 'impacted on everyone else who was around, the family'. In the end, it was resolved internally amongst family members. As another example, a housing advocacy body based in Melbourne commented as follows.

> We've seen disputes coming up after someone has passed away about burial and where people wish to be buried (and) … where families want to bury somebody … We've had a couple of those recently actually. It hasn't actually escalated to the point where it's been a dispute, but there have been conflicting wishes (and) it's been resolved through discussions. (**Community organisation worker)**

> (Where there are disputes), it tends to be the family sort it out. Disputes might be over who might take the property the car, the art work, the personal belongings, (about) the actual burial, where and when. (**Community organisation worker)**

Issues potentially or likely to be the subject of dispute after death may be more effectively clarified *prior* to death through the drafting of a will, although as noted below by some stakeholders, there is no guarantee that having a will lead to conflict free settlement of issues post death.

> I don't know how much a will would be recognised by some of our clients. Take the recent case, for example—the person who died told her partner that she wanted to be cremated. It was only the partner who knows about it. When the person died, the rest of the children decided to bury her and the partner was really, really angry about it. So if the person who died put it in a will I don't know what difference it would make. It would be legally recognised if they went to court. There still would be a bit of an argument but the wishes would have been clear. So, part of our role ... because the partner is a client of ours … is to try and work with him to accept. He eventually accepted because he didn't have a choice I suppose but then we took him to the burial and it was a really good traditional cemetery and he eventually

accepted that she was laid down but it could be a point of dispute. (**Community organisation worker)**

The impact of disputes arising when people die intestate, and the need for and benefits of increased awareness within Indigenous communities of the positive aspects of having a will, is well illustrated by the following comment by a stakeholder organisation:

> There is a good DVD (on wills) … produced at Swan Hill … I think the money came out of the family violence group (to produce it) showing if a will is not done, the actual conflict in the family after the death. One family wanted one thing and another family wanting another thing and the flow-overs, such as interests of the child, that may not be looked at, the property issues and then the ongoing fight and disputes between families that go on for years and years and years purely based on the fact that there is no will. … They spoke (in the DVD) about the fact that the husband and the de facto partner weren't married and he had a stepchild, but the wife, the house was in her name, but he was her partner. They had been together for 20 years or whatever it was, ten years or whatever. Anyway, she passed away from a sudden heart attack or car accident and then the family just assumed the house was theirs, but then the husband was enforcing his rights from his legal advisors. And then they've got the stepson, thirteen to fourteen or younger—what happens to him, all that sort of stuff. So it was a really good example and it struck at the conflict, and a lot in the Swan community talked about it—simply (about the) need for community members to get a will and if you don't get a will this is what happens. And (it) basically shone high that for many, many years in our communities' families have been fighting because of a simple thing that wasn't being done. **(Indigenous community organisation worker)**

5.9 VICTIMS COMPENSATION

Focus group participants were asked whether they had been the victim of a violent crime over the last couple of years. As **Figure 5.34** shows, just over **20%** of participants reported having been victimised in this way. The proportion of women victimised (23.9%) was higher than men (16.2%) (see **Table 5.48: Appendix C**).

Figure 5.34 Participants Identifying as a Victim of Violent Crime

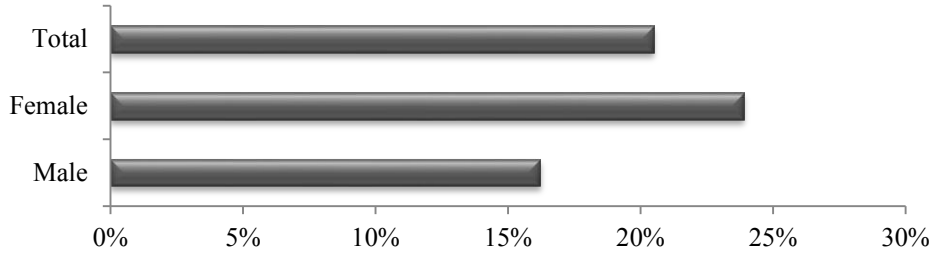
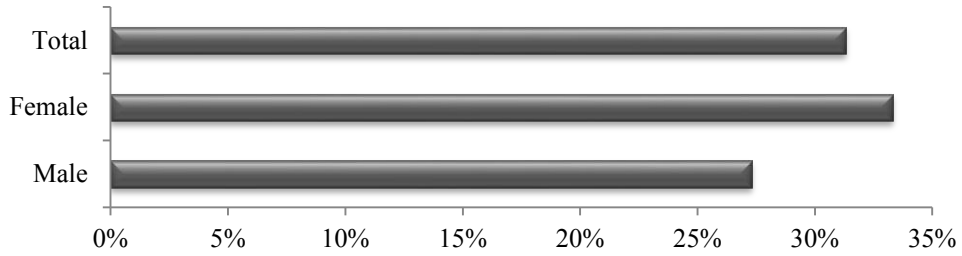


Figure 5.35 shows that levels of awareness of the victims of crime compensation scheme were relatively low: just over a quarter of men (27.3%) and one third of women (33.3%) who had identified as a recent victim of violent crime had heard of the scheme (see **Table 5.50: Appendix C**).

Figure 5.35 Participants Identifying as Victim of Violent Crime Who Knew About the Victim's Compensation Scheme



Lack of knowledge of the existence of the scheme was commented on by focus group participants.

> I don't think there is enough information out there, I know families that have been victims of crime when there has been a death, and I don't think they've known whether they can access money for counselling, grief, or trauma, or even towards medical expenses. (**Shepparton Men's Focus Group Participant)**

> What's the severity of an assault, like, can it be anything? Any level? (**Shepparton Women's Focus Group Participant)**

> I think that's another community awareness thing—I don't think people know that if they have been to a hospital to get medical assistance that they may be eligible. (**Shepparton Women's Focus Group Participant)**

The high level of unmet legal need in this area was commented on by stakeholders.

> If we were to go out to the regions with a bunch of VOCAT forms and we had a public meeting in each of those regions, we would be able to sign up stacks and stacks of clients. There is a vast majority of people with unmet needs who are unaware of their rights. (**Indigenous Legal Service staff)**

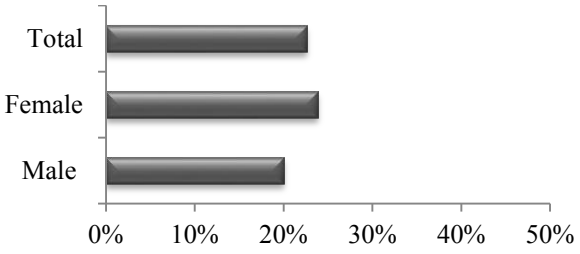
> There needs to be something better - at least some actually appropriate adequate resources put into it because the community doesn't know about it, to be honest. If there was a legal centre here or there was a VALS presence here, any assistance with those types of applications ... if there was someone dedicated to doing that sort of stuff that would be fantastic, whether it would be the CLCs or the VALS or some sort of admin assistance or support. (**Indigenous community organisation worker)**

Community members may also not be aware of the way that the scheme functions in terms of who is liable for paying the compensation and the degree to which the offender is involved in the process. One Indigenous legal service provider put it as follows.

> They'll go 'Oh, no, we don't want … any more trouble with him.' And we go 'Well, it's got nothing to do with him.' A lot of women think that victim's compensation means that he gets sued and so they think 'If we get any money then he has to pay it.' And we go 'First of all, he'll never know that you got the victim's comp. It's the government that pays, not him'. And as soon you tell them that they go 'Oh-h-h …'. (**Indigenous Legal Service staff)**

Of the 32 people who had identified as a recent victim, only seven (two male and five female) focus group participants had sought victim's compensation. This is depicted in **Figure 5.36,** which also shows that a total of 22.6% victims sought compensation (see also **Table 5.51 Appendix C).**

Figure 5.36 Participants Identifying as a Victim of Violent Crime Who Sought Victim's Compensation



Reasons for failing to make a claim in the scheme, apart from lack of knowledge of its existence, often centred around being informed of their right to seek compensation too long after the incident to be eligible.[122] There was anger directed at police personnel for failure to give timely advice on this.

> The coppers only tell you this stuff a few months after it has actually happened. Because you have to apply for it within a period of time. (**Shepparton Men's Focus Group Participant)**

> Me and my brother got mobbed by a group … about 5 year ago, 4 year ago. And they've only just told me brother now, because he had to go to court—because when we got mobbed he split his head open on the corner of the house, and the courts actually told him to go and get a CAT scan on his head because there might actually be something wrong with his head that is triggering his angriness and all of that sort of stuff. The lawyer actually said to him that he could put in for criminal compensation. The coppers didn't say to him nothing. Then when he was in court the coppers said well, yeah, you could have applied, and it's like, well mate, why didn't you say that before? (**Shepparton Men's Focus Group Participant)**

A perception of failure by police to give advice about compensation was echoed by stakeholders.

> I think in family violence matters I'd be very surprised if many Indigenous women actually firstly are aware (of victims compensation). I reckon police wouldn't be forthcoming and tell them. And even if they did, I don't know if they can give out good referrals to places. (**Community organisation worker)**

Poor relationships between police and community—particularly in a family violence context—can contribute to a decision by a victim not to access the scheme in other ways.

> If you want to have full victim's comp you must make a report to the police. Given the inconsistency in (the police approach to family violence) … I'd be very surprised if there'd be many victims actually that would make a step forward and make a statement in the first place, to turn to that process. (**Community organisation worker)**

[122] Generally, an application must be made within two years after the occurrence of the act of violence. However the Tribunal can matters out of time when certain conditions apply. See s. 29 of the *Victims of Crime Assistance Act 1996* (Vic).

> It's also the process you need to go through … to have a win. Say for example the victims of family violence, because they are not prepared to follow through with an actual report with the police, we can't even access that service for them. (**Indigenous community organisation worker)**

Fear of reporting specifics about the violence was also said to be a factor.

> I got flogged pretty bad a couple of years ago. They rushed me to the children's hospital. They wanted to do an MRI and a back scan. I just got up 'cause I wanted to get out of there because I was scared. Anyway, the cops come in and I didn't make a statement, I just didn't say nothing. I just said it was somebody else, just was a girl and whatnot, 'cause I was scared. (**Heidelberg Women's Focus Group Participant)**

Stakeholders spoke of other obstacles to accessing compensation, relating to the willingness or capacity of legal practitioners handling such matters.

> (Victims compensation matters) are not done very well. (It) is done by the private sector, and they wouldn't touch our clients where it's not straightforward. Where there is no conviction, there is often no reporting of a crime and so there is a lot of work that has to go into creating the evidence to go before the court as well as all the forensic evidence in relation to the impact of injury. That I see as a real gap that isn't picked up … There are quite legal and technical issues of evidence. … I've seen where other community agencies do victims' compensation and there is so much that is missed. **(Indigenous Legal Service staff)**

> You can refer them to a private lawyer. If the person has special needs … I know that we retain some of those matters if the client has particular disadvantage or has special needs that might mean it's a bit tricky to persevere, like if they are hard to contact or things like that. I know where English has been the second language I just think a private solicitor is not going to persevere with this client but it's important and we'll retain it. **(Community organisation worker**)

The sensitivity and competence of legal practitioners whose clients have suffered violence and who may be eligible for compensation was said to be a key factor in determining whether individuals exercise this right. This is closely linked to lack of awareness or understanding of the scheme. As one legal practitioner stated, 'We do have some victims. It's actually that they don't know that they are even eligible. We are the ones that pick up on that.' (**Indigenous Legal Service staff)**

One Indigenous legal service provider commented on the degree of resilience that is required to pursue a compensation claim, and the fact that it may, like most civil law matters which are client initiated, simply not be among the most pressing concerns for clients.

> A lot of our women have experienced childhood sexual assault. They just don't want to. … Some things are just so intense they just don't want to. … But I think that the other thing that is really important to know is… there is, like, this pyramid of priority. And it's just not out there. It's like the fines and the rest of it, what's out there is … I don't have a house. (**Indigenous Legal Service staff)**

However, for some Indigenous clients, support and persistence from their legal practitioner can lead to good outcomes in this arena. One Indigenous service provider commented from their own experience, as follows.

> It really takes a lot of work to get someone to actually claim … I've got a cousin in (a nearby location) who's got her face smashed … she went to family violence legal service. They started convincing her it could be 18 months, you know, and we've got to do something now because you've only got a certain period of time to put your claim in. And she's got compensation out of that and they sent her daughter to a boarding school in Geelong, with that money. But a lot of them won't go in. (**Indigenous community organisation worker)**

These results are consistent with other research in the area in terms of unmet needs and the requirement for better more targeted assistance.[123]

5.10 EMPLOYMENT

Focus group participants were asked whether they had experienced disputes or problems in the area of employment in the last couple of years (for instance, in relation to matters such as bullying, working hours, unfair dismissal, or pay) and if so, what the nature of such disputes or problems had been. Participants were also asked whether they had sought legal advice or help in relation to an employment-related issue.

Figure 5.37 provides baseline data for participant responses to the question asking whether they had experienced an employment-related dispute or problem. This graph shows that overall, **16.9%** of all participants identified having experienced a dispute or problem of this type, with Indigenous women more likely than Indigenous men having experienced problems in this area (19.8% of women and 13% of men) (see **Table 5.52: Appendix C**).

Figure 5.37 Participants Identifying an Employment Dispute

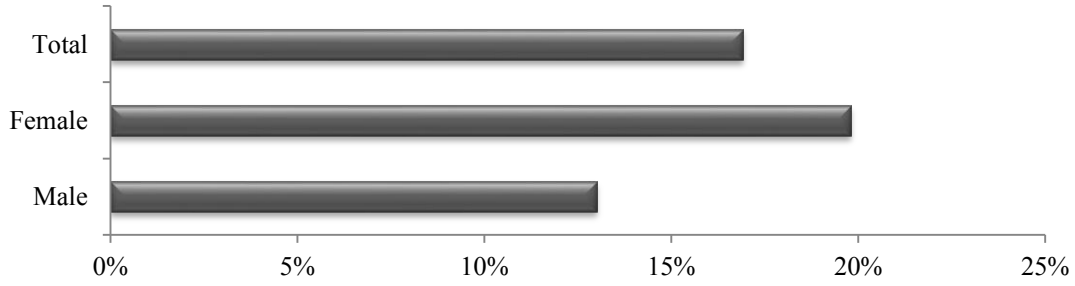
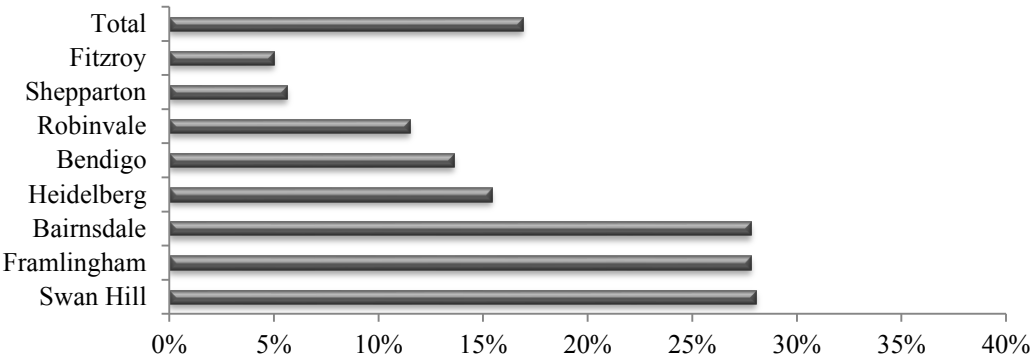


Figure 5.38 shows that Indigenous focus group participants in Bairnsdale, Framlingham and Swan Hill were more likely to identify an employment-related dispute or problem (around 28% of focus group participants in each of these three communities) (see also **Table 5.53: Appendix C**).

[123] FVPLS (2010).

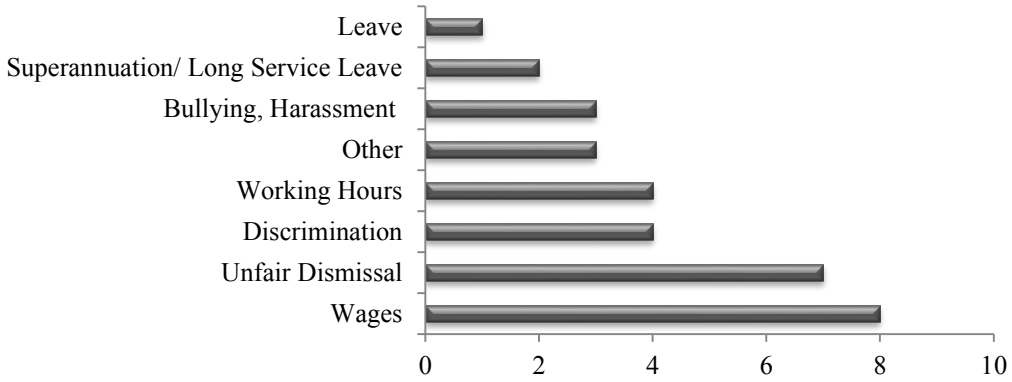
Figure 5.38 Participants Identifying Employment Dispute by Community



5.10.1 Nature of Employment Issues

Figure 5.39 shows participant responses to the question asking them to identify the nature of their employment-related issue. Of 32 responses provided to this question, wages and unfair dismissal were the most frequently cited employment-related issues (see **Table 5.54: Appendix C**).

Figure 5.39 Reason Identified for Employment Dispute



Unpaid wages were raised by focus group participants. One participant noted that he was yet to receive compensation for an Industrial Relations Commission unpaid wages claim determined in his favour in 1990.

> The excuse was that it was not a State matter, it was a Commonwealth matter—so it's unclear who is responsible for payment. There's a lot of passing the buck between departments and government agencies and even some employing authorities. They tend to … not accept responsibility for their own actions and as a result of that any claim for compensation can be disputed … I get very concerned when you talk compensation from an employee's point of view. You need to be very aware that it's so easy … to pass the buck and say no it's not, we are not solely responsible for this payment … they pass the buck, they pass the buck and like myself you are sitting here 13 years later… that money would have come in handy many years ago. **(Bairnsdale Men's Focus Group Participant)**

Others claimed they were underpaid given their qualifications and their work hours.

> I'm just hitting a brick wall with my wages. I'm well underpaid for my qualifications. I've been with the service (employer) nearly ten years … I just feel like I'm smothered at the moment. I'm ready to walk out … the way I'm paid. Because I'm not well-educated with mathematics, you go into the accountant and say this doesn't seem right for the hours I do, I'm well underpaid. But I don't get paid for certain hours … I'm starting to slowly find out my rights after so long. The amount of hours I do. I'm doing 92 hours per fortnight, but I only get paid for probably fifty of them… The way they jot it all out on paper, but in a way I don't understand, but they're telling me it's right. So I'm just on the border of calling Wageline… I'm being wrongly treated for someone whose worked for the service for so long … I'm the most underpaid there, but I've got more qualifications than the other workers. **(Heidelberg Women's Focus Group Participant)**

Other issues raised by stakeholders including unpaid superannuation particularly for casual workers, and unfair dismissal particularly in the context of the lack of knowledge of legal rights and problems of access.

> When people are sacked from an organisation, they need to know where they can go to. They can't go to the Aboriginal Legal Service and it would be great if we could have someone who is a specialist in that area—not only about getting sacked but the whole health and safety stuff as well. (**Indigenous Legal Service staff)**

Accessing paid employment generally was also a major issue raised in focus groups and by stakeholders. Whether access to paid employment constitutes a legal issue, again, is not always clear. Certainly many stakeholders saw the problem as a lack of available jobs or lack of skills and job readiness.

> Employment seems to be a problem all round for Indigenous people in a mainstream area basically. It's just a huge area because a lot of the Aboriginal people don't have the skills for resume writing. Those sorts of things to lead them up and get them out into the workforce, that's the problem that we have. There're not Aboriginal people that get jobs around here. We hoped that the council would lead by example. They did have an Indigenous specific job there at one stage but didn't get any Aboriginal workers in at all. (**Indigenous community organisation worker)**

> There's just a really, really high level of Aboriginal unemployment here. I think there are probably more Aboriginal people here in this particular community than there are non-Aboriginal people. I don't know whether it's self-confidence. They don't have enough self-confidence or whether they don't have the education. (**Indigenous community organisation worker)**

> I still think that it comes back to that skill base. If Aboriginal people had somewhere that would teach them how to be ready for the workforce. There seems to be a gap there … the way that a lot of the jobs are advertised puts people off because they think 'oh I can't do that'. But I think that if they advertised it in the right way and offered the training on the job then it would be much easier for people. A lot of Aboriginal people get put off by the ads**. (Indigenous community organisation worker)**

Many focus group participants saw the issue of unemployment as related more to discrimination.

DHS here in Shepparton, and Centrelink and the hospital—these are the institutions with the biggest number of employees. And at each of those institutions, there's one or two Aboriginal people working there, out of 800 or 900 at the hospital. We're the biggest population outside of metropolitan, and we have one or two workers in each of those institutions. (**Shepparton Focus Group Participant)**

How much a year would we spend in their supermarkets? They've made millions (out of us). These mainstream stores need to open their doors to our kids and give them an opportunity and also pay for training. (**Bairnsdale Men's Focus Group Participant)**

There are some employment programs in place but it's a slow process and it's not happening fast enough for our people to be up front… I think there's a lot of issues around mentoring people—when young ones go in, there's a lot of institutional racism that goes on (in the workplace), so the young ones, it has an impact on them, and then they leave. (**Shepparton Focus Group Participant)**

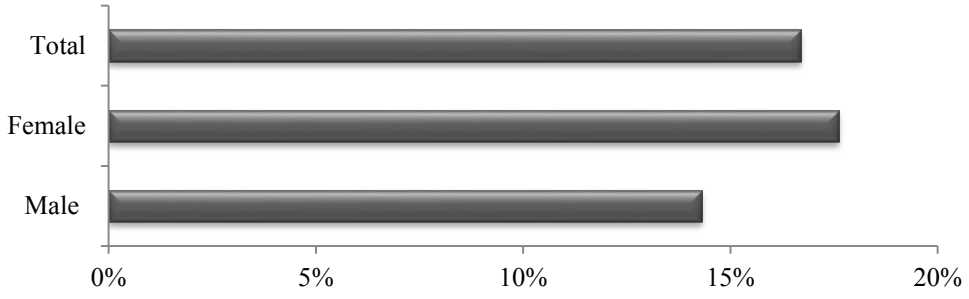
You've got supermarkets like Coles and Safeway that are not even looking at our people. (**Bairnsdale Women's Focus Group Participant)**

Where the decision to deny an Indigenous person a job is discriminatory, including if employment is *unreasonably* denied on the basis of race or other factors such as a criminal record or under-qualification, this may be a legal issue with a legal remedy (see further Section 5.2: Discrimination).

5.10.2 Legal Advice and Employment Matters

Figure 5.40 shows that only **16.7%** of all participants identifying an employment-related dispute or problem had sought legal advice or assistance. Although the numbers were very small—only 4 individuals indicated they sought legal advice—Indigenous women were more likely to seek advice than men (see **Table 5.55: Appendix C**).

Figure 3.40 Participants Who Sought Legal Advice Regarding Employment Dispute



Problems accessing legal assistance for employment issues were noted by stakeholders.

> People can't get through on the telephone. It's often engaged for long periods of time. I have not received any reports from anyone stating (that a particular advice service) has acted on anything on people's behalf for an industrial dispute. Aboriginal people in the workplace are often discriminated against and it comes up a lot. **(Indigenous Legal Service staff)**

5.11 EDUCATION

Participants were asked whether in the last couple of years they were responsible for a young person attending school, TAFE or university, or had attended themselves. Those that answered in the affirmative were then asked whether they had encountered any problems with issues such as expulsion, bullying or harassment, HECS or other fees. Participants were also asked if they had sought legal advice or help in relation to issues in this area.

Figure 5.41 shows that overall, **45.9%** of participants said that they themselves attended, or were responsible for someone attending, an educational institution. Indigenous women were 21.6 percentage points more likely than Indigenous men to be responsible for someone attending or themselves attending an educational institution (54.9% of women compared with 33.3% of men) (see **Table 5.56: Appendix C**).

Figure 5.41 Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Attending Themselves

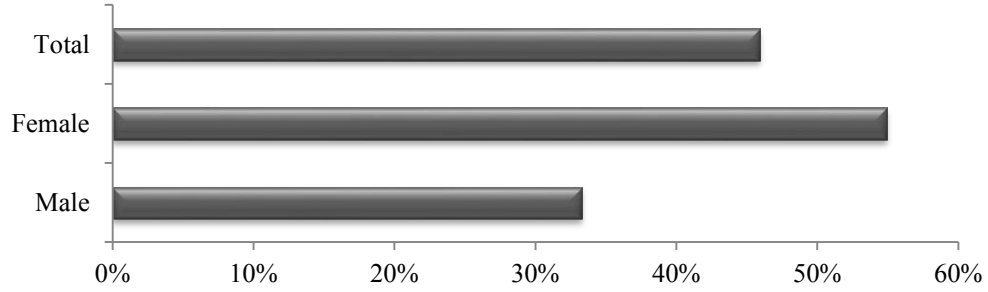


Figure 5.42 provides baseline data for participant responses to the question of whether they had experienced an education-related dispute or problem. It shows that overall, **36.6%** of all participants who positively responded to the question on educational attendance also reported having experienced an education-related dispute or problem. Indigenous men were 6.2 percentage points more likely than Indigenous women to have experienced such an issue (34.7% of women compared with 40.9% of men) (see **Table 5.57: Appendix C**). Education related needs thus emerged as a major legal need amongst Indigenous focus group participants who were either attending an educational institution, or were responsible for a young person attending.

Figure 5.42 Participants Identifying Education-Related Issue

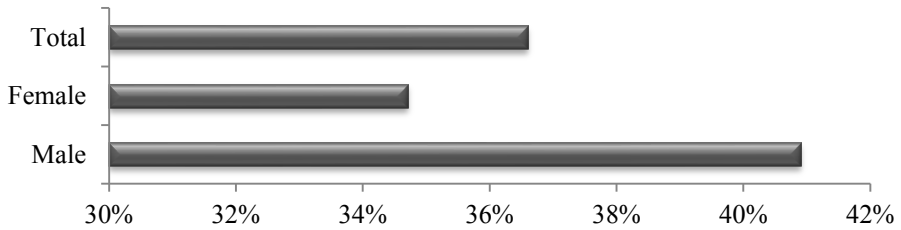
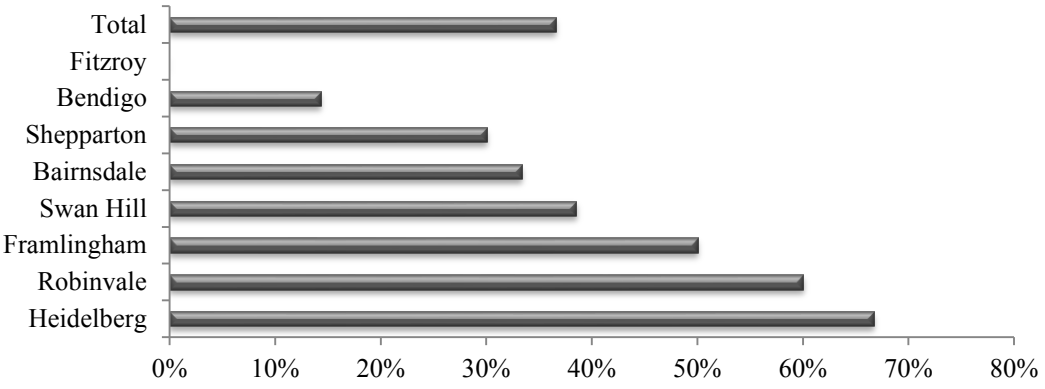


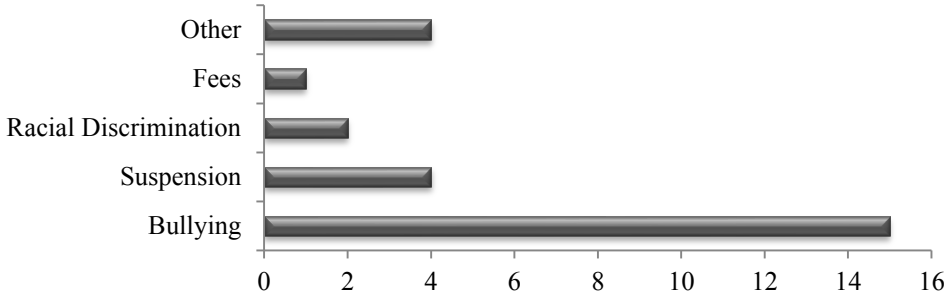
Figure 5.43 shows that of Indigenous focus group participants who were either attending an educational institution, or were responsible for a young person attending, participants in Heidelberg, Robinvale and Framlingham were most likely to identify an education-related issue. An issue of this type was identified by 66.7%, 60% and 50% by participants in these three communities, respectively (see **Table 5.58: Appendix C**).

Figure 5.43 Education Issue by Community



Participants were asked to identify the nature of the problem or dispute experienced. A single participant may have identified more than one issue. **Figure 5.44** shows that of 26 responses provided to this question, bullying was identified as the main cause of the problem or dispute (see **Table 5.59: Appendix C**).

Figure 5.44 Type of Education Issue Identified



Legal services also identified a number of issues in relation to education, not all of which are likely to constitute a legal problem for which there is a legal remedy. Some, however, may constitute direct and/or indirect discrimination:

> I think a lot of our kids have been put in the naughty corner or disengaged from school completely. That's only because the environment itself is not friendly or sensitive, but also young kids with Facebook and sexting if it's part of the (school) bullying process. If they text someone or if they have a photo of one of the kids they can use that as a tool against the kids. (**Indigenous Legal Service staff)**

Focus group participants also identified assaults, bullying and what they perceived as racial discrimination.

> At any one time at the school there's only two teachers in the yard. For the amount of kids at the school I think that's pathetic… You can get seriously hurt, and he could've been… He got a broken nose. The bottom line—it shouldn't happen. What's the use of having cameras there if they're not going to be recording anything? I asked them 'Can I see the footage?' Maybe they're not allowed to show me the footage. But then the police officer that's taking care of it all said that there is footage. The school straight out lied to me, said there was no footage in

there, the camera's only there as a deterrent… If they sent them two Koori boys home… they had every right to send them Tongan boys home too because it wasn't just the two Koori boys that was involved, it was the Tongan kids there as well. So they send the Koori boys home, then them Tongan boys kicked the shit out of my son. I reckon that is, that's discrimination, straight up! (**Robinvale Men's Focus Group Participant**)

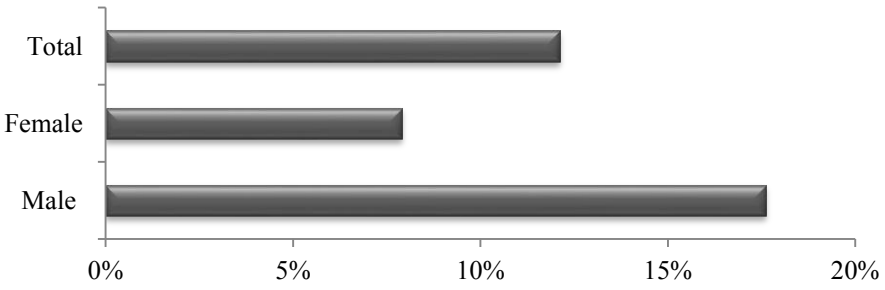
I dropped him off at the gate every morning, and little did I know he was not attending classes. I didn't get a letter from the start of the year until the end of May … and I'm thinking to myself, 'Where is the communication there?' And I'm one of the parents that if the kid mucks up, I'm straight down there. … It made me wild because they sort of like stereotyped him because he was a black kid … the quietest kid, you know, and no behavioural problems, there was no issue there, you know. And yet, they still had the cheek to brand him. With that there I ended up removing him from that school. (**Shepparton Women's Focus Group Participant)**

Only two of the 24 participants (**8.3%**) who responded to the question on legal advice had sought legal help. Both were women. Although Indigenous men were likely than Indigenous women to identify a problem, none had sought legal assistance (see **Figure 5.44** above; and **Table 5.58: see Appendix C**).

5.12 STOLEN GENERATIONS AND STOLEN WAGES

Focus group participants were asked whether they were a member of the Stolen Generations. **Figure 5.45** shows that overall, **12.1%** of all participants identified as members of the Stolen Generations, (with a further 2.5% being unsure—see **Table 5.61: Appendix C).** More men identified as members than Indigenous women (17.5% of men compared with 7.9% of women).

Figure 5.45 Participants Identifying as a Member of the Stolen Generations



Participants sometimes expressed dissatisfaction with their understanding of what had been done to achieve compensation for the Stolen Generations.

You know, I am a Stolen Generation person … there are a lot of people here. My Mum is one of them. There are a lot of people from Stolen Generation here … I think the compensation recently was a park in Stratford that they gave to them as compensation for that. (**Indigenous community organisation worker)**

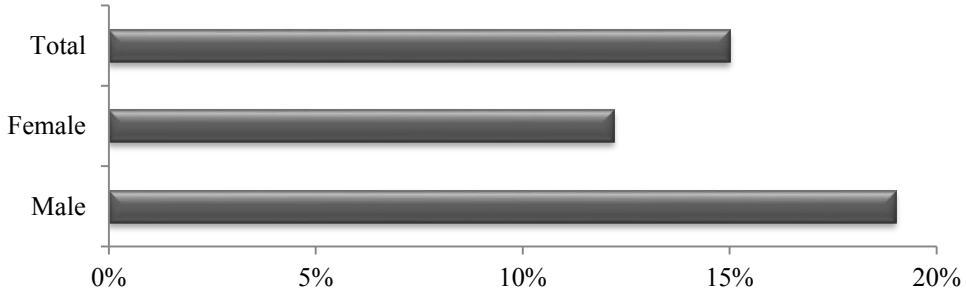
There was particular concern with the costs associated with pursuing a claim for compensation as a member of the Stolen Generations.

There is often the 'no win no fee' offer being put forward (by legal practitioners). But what a

lot of people find is that once they are engaged in that process, that they are still up for funding any psychological reports that are required, and there is all this sort of hidden fee if you like, and I don't think that its fair if people get themselves to the point where they are saying 'Yes I'm going to pursue my case—no win no fee', and then there is all this hidden fee—it's all really unfair. There should be some sort of funding or something that can support people and that because they sort of feel like they gone this far and now. Sometimes it can be a $1000 bill for a psychological report. (**Indigenous community organisation worker**)

Figure 5.46 shows that **15%** of respondents believed that they were entitled to money held in Aboriginal Trust Funds or as 'stolen wages'.[124]

Figure 5.46 Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation



There was some feeling that there was not enough information available about how to undertake a claim for stolen wages.

Stolen wages - my grandmother, that was a bit of a debacle, because, I forget the government department that was handling that, and my mother's endowment, you had to apply for it, but if you weren't aware of it, it got distributed among other siblings. And you had to apply within a certain time period too I don't think it got out there enough among people it was left up to families to be responsible, and I don't think that was very successful, that program. (**Shepparton Women's Focus Group Participant)**

The long term implications of not having access to entitled wages or employment benefits was canvassed by some focus group participants.

We didn't get any pay. We worked there for twenty years and they got everything. And in our cases, when you're twelve years of age right up until you're old, we didn't have those benefits and things, we knew nothing about super and stuff. It really upsets me to see white people in the street jumping in their beautiful little cars, they can sit back and relax and really enjoy life, whereas old blackfellas still gotta battle on. (**Bairnsdale Women's Focus Group Participant)**

All those old people that used to work on railway lines and everything like that, they never got no super or anything like that. We've only just come into the stage where we're actually able to be accredited for our work like apprenticeships and that. ... We've only had 20 years, you must admit, to gather ourselves from a horrible history. So we've had 20 years to try to

[124] We use the term 'Stolen Wages' as a general term to refer to the failure to pay moneys held by governments on trust for Indigenous workers, the underpayment of Aboriginal workers, and the failure to make other payments. See Senate Standing Committee on Legal and Constitutional Affairs (2006).

> pick ourselves up … that's only one-tenth of 200 years of hatred that we've had to try to pick up. Once we are starting now, and understanding that we need to leave nest eggs for our babies … but it's just hard, we're just starting to get to these issues. We weren't allowed to own homes and stuff. We're just starting to get there. (**Bendigo Men's Focus Group Participant)**

The intersection between the Stolen Generations and abuse in care or in state institutions was strongly highlighted by one service provider.

> We work with a lot of Stolen Generation members. I don't know if you have had much feedback from the Stolen Generation members but when you are talking about other needs of Aboriginal people, certainly (that would include) the legal advice and in some cases the representation for the Stolen Generation members who have been abused in care or have a case against the state. I don't think there is enough of that looked at by legal services—any legal services—there's certainly no systematic way that an Aboriginal Stolen Generation member knows—'you go here and this is what you do'… FAHCSIA (Department of Family, Housing, Community Services and Indigenous Affairs) has actually funded each ALS $100,000 especially for working on the Royal Commission which will be great for this period, but some of the Stolen Generation stuff goes beyond that. … I think if you're writing something up about the needs of the Aboriginal people beyond criminal law issues, then that's a really significant issue. (**Indigenous community organisation worker**)

5.13 ACCIDENT AND INJURY

Focus group participants were asked whether in the last couple of years, they had been involved in a car accident where there was damage to either their own or another's vehicle; and whether they had suffered an injury outside the home (as part of medical treatment, a work-related injury or due to an accident in a supermarket, for instance). Participants were also asked to briefly describe the nature of the accident or injury in question, and whether injuries suffered required medical treatment. Participants were further asked to identify whether they had sought legal advice about to compensation or insurance for an issue of this type.

Figure 5.47 shows participant responses to the question asking whether they had experienced an accident or injury-related issue. This graph shows that overall, **14.7%** of all participants identified an issue of this type, with the proportion of Indigenous women identifying such an issue at 4.6 percentage points higher than that of Indigenous men (16.7% of men compared with 12.1% of men) (see **Table 5.63: Appendix C**).

Figure 5.47 Participants Identifying Accident or Injury-Related Issue

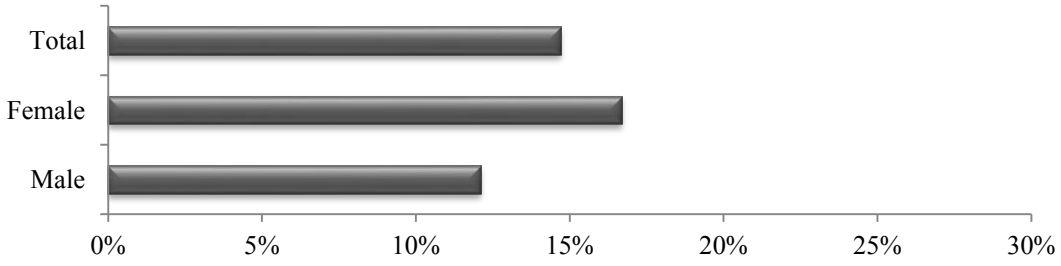
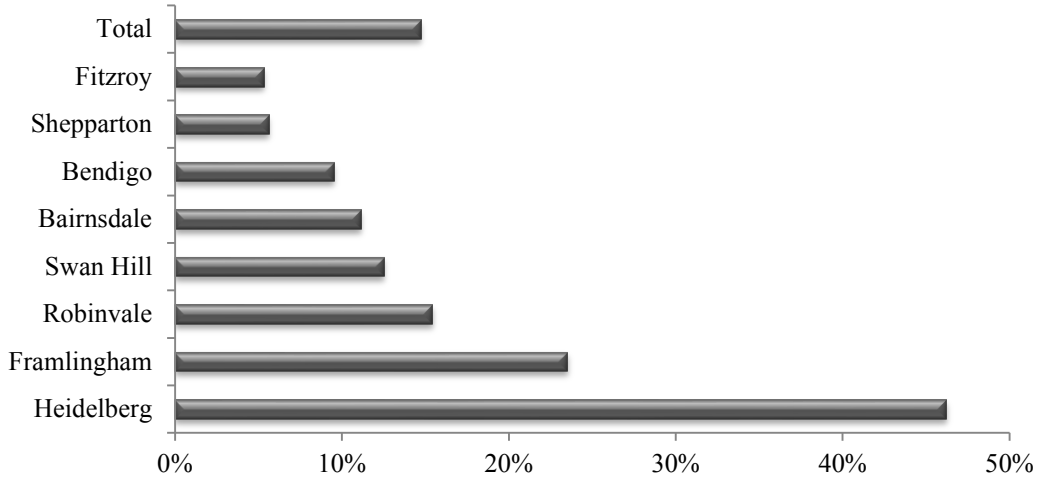


Figure 5.48 shows that Indigenous focus group participants in Heidelberg and Framlingham were more likely to identify an accident or injury-related issue. An issue of this type was identified by 46.2% and 22.5% of all participants in these two communities respectively (see also **Table 5.64: Appendix C)**.

Figure 5.48 Participants Identifying Accident or Injury-Related Issue by Community



5.13.1 Nature and Seriousness of Accident and Injury-Related Issues

Figure 5.49 provides baseline data for participant responses about the nature of their accident or injury-related issue. Participants identified that issues of this type most commonly related to motor vehicle accidents and work injury. Of the 21 responses to this question, the most frequently identified (10) related to a motor vehicle accident (see **Table 5.65: Appendix C**).

Figure 5.49 Type of Accident/Injury-Related Issue

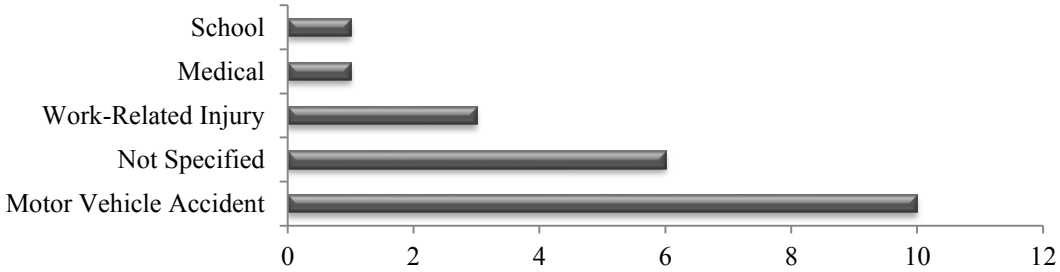


Figure 5.50 identifies the degree of seriousness of accident and injury suffered by participants, measured in terms of whether the latter required medical treatment. In response to the question asking participants whether they had required medical treatment for an accident or injury-related issue, **78.3%** of those who had an accident or injury-related issue also sought medical treatment. Indigenous men were substantially more likely to have sought treatment than Indigenous women (87.5% of men compared with 73.3% of women) (see **Table 5.66: Appendix C**).

Figure 3.50 Participants Requiring Medical Treatment for Accident/Injury-Related Issue

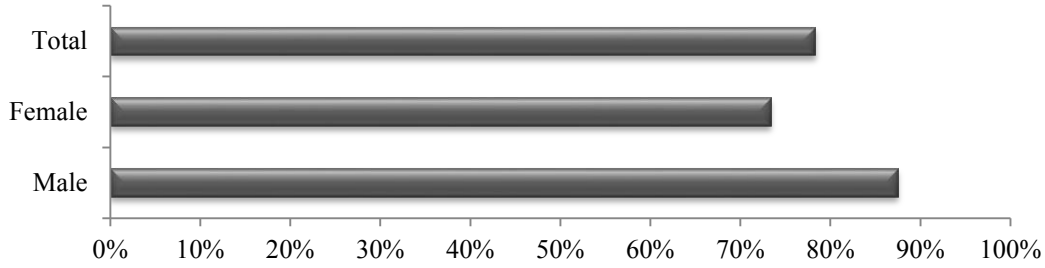
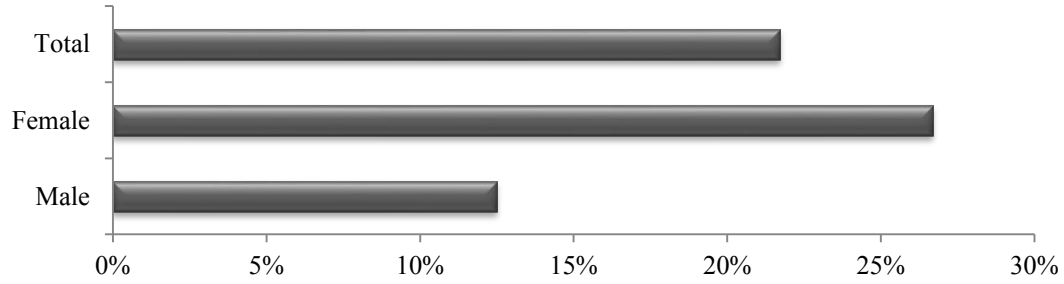


Figure 5.51 shows that almost a quarter (or **21.7%**) of those who had identified an issue of this type sought legal advice or help. Although the numbers were small, Indigenous women were twice as likely to seek assistance (26.7% of women compared to 12.5% of men) (see **Table 5.67: Appendix C**).

Figure 5.51 Participants Who Sought Legal Advice Regarding Compensation and/or Insurance for Accident/Injury-Related Issue



5.14 OTHER CIVIL AND FAMILY LAW ISSUES

As noted in the introduction, the areas of civil law covered by the focus group questionnaire were limited to 14 major areas that have been commonly used in legal needs analyses, with some additional areas added including Stolen Generations and stolen wages. The list does not claim to be comprehensive. Additional civil law issues were raised by stakeholders and in focus group discussions. These are addressed in this section.

5.14.1 Health

Problem with access to services, being put on the bottom of the waiting list, discrimination, rudeness, insensitivity, communication failures, breaches of confidentiality, wrong treatment and wrong diagnosis were all raised as issues affecting Indigenous patients in health care provision. A stakeholder noted that most complaints from Indigenous patients were against mainstream hospitals, but that this was not always the case.

> We get complaints from Indigenous people under the *Health Records Act*. Confidentiality is a huge issue because the communities are small, everybody knows everybody. Even when you de-identify (records), people are going to know who it is and we've had complaints that Aboriginal health workers have inadvertently given out information that they've gained as part of their job that they shouldn't have. So, they can be very complex to unravel as well. **(Statutory Authority staff)**

From 1 July 2012, Aboriginal and Torres Strait Islander health workers are required to be registered under the national registration and accreditation scheme with the Aboriginal and Torres Strait Islander Health Practice Board of Australia and to meet the Board's registration obligations and standards in order to practise. The role of accreditation was raised in the context of the complex issues that Aboriginal health workers have to negotiate in their work.

> Let's say there's SIDS (Sudden Infant Death Syndrome). The Coroner here in Victoria has just done four SIDS cases all together and they go the Coroner's Prevention Unit to do a whole lot of research (to see) what was causing these deaths. All four deaths were in the context of co-sleeping —not in the same room, but in the same bed—and so the message from the Coroner is that co-sleeping is a 'no no'. Aboriginal people say to the Aboriginal health workers, 'That's bullshit, we've been sleeping with our kids for 60,000 years'. It's really very difficult for them culturally to follow the evidence-based stuff in the face of that kind of opposition. (**Statutory Authority staff)**

Prisoner access to health services was also raised as a significant issue and prisoners are recognised as being 'at the very high risk end of the Victorian health spectrum'.[125] A range of issues arises in prisoners' health; for example, accessing dental treatment can require transportation to a prison that has those services. This can impact on other aspects of prison life, causing provision of health services to be an ultimately punitive exercise in other spheres.

> They can't get to services locally and if you have to get back to Port Phillip to get your treatment, you will lose all your privileges in the prison. You lose your room, your bed, your job, you're feeding the horses. A lot of these guys, it's the first time they've had real stability in their life is when they're at somewhere like Fulham. (**Statutory Authority staff)**

The Victorian Ombudsman has noted that prisoners will decline medical treatment because they do not wish to lose their places in prison employment and programs. More generally the Ombudsman noted a range of problems for prisoners in accessing health care, and also in accessing and utilising health care complaints processes.[126]

Legal issues in relation to incarcerated mental health patients were also raised, particularly in relation to being able to provide legal assistance.

> When mental health patients receive their one phone call, they call us and we often cannot get the full story. Often they just end up there and they don't know why and they're suddenly in a crisis situation and become angry…. Clients who ring the (Aboriginal) Legal Service are often angry ... It's imperative that advice that is given is credible. Mental health problems are compounded. All the advice I can give to those callers is to phone the Mental Health Legal Service. We rarely receive feedback on this. We are unsure how well resourced the Mental Health Legal Service is. (**Indigenous Legal Service staff)**

The Aboriginal Liaison Officer (ALO) of the Office of the Health Services Commissioner (OHSC) has provided a number of de-identified case studies to the ILNP to demonstrate the type of complaints that arise with Indigenous people accessing health services.

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[125] Victorian Ombudsman (2011) *Investigation into Prisoner Access to Health Care*, Victorian Government Printer, Melbourne. http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_prisoner_access_to_health_care.pdf

[126] Ibid.

Attitude of Hospital Staff

An Aboriginal man attended the emergency department of a public hospital during a weekend, with a sudden onset of severe flu like symptoms. He had a history of lung disease and given the context of the swine flu outbreak, he felt he had no other option but to attend the hospital.

The man contacted the ALO and complained that he had found triage staff to be abrupt and disparaging and medical staff to be cursory in their investigations. He was advised to visit his medical practitioner the following day but subsequently became seriously ill, requiring hospitalisation in the intensive care unit of another hospital.

A verbal complaint was taken while the man was in hospital and concerns promptly raised with the hospital. All discussions between the parties were facilitated by the ALO.

Family Access in Hospital

A young Aboriginal man had been critically injured and was receiving treatment in the Intensive Care Unit of a public hospital. The young man had a large extended family and friends who were very worried about his condition and visited him en masse at the hospital. A number of incidents occurred between staff and family members, with family members complaining to the ALO that some of the incidents were racially motivated, including the making of racist comments. The ALO immediately arranged a meeting with the hospital. The hospital responded to the concerns, saying the major issue was that it could not accommodate such large numbers of people in the Intensive Care Unit and that the situation was unprecedented. On asking about available room in the hospital for family and friends to meet, the hospital agreed to make arrangements for the family to congregate at another part of the hospital and that this area would be cleared with security so the family would not be bothered. Apologies were given by the hospital for the treatment that some family members had received from staff and an undertaking made to prevent it from happening in the future.

Communication

The ALO received a complaint from an Aboriginal woman about communication issues at a medical clinic in a rural town. She complained that reception staff would speak to her loudly in the waiting area as though she was deaf and would reveal personal information that other people could hear. She complained that reception staff did not speak to other people in this way. The woman also complained that family members were given information about her condition in the course of their appointments with the doctor. The woman was only interested in bringing these matters to the attention of the clinic and wanted to ensure that there was a change of attitude and procedure. The ALO organised a meeting with the medical clinic. The woman received an apology and an undertaking to ensure better service and she was satisfied with this outcome.

Access to Transport

During an outreach visit, the ALO received a complaint about a community rift which the person claims has impacted on their ability to gain health services, i.e. access to transport by one of the drivers at the local Co-operative has recently been difficult and limited. The person ultimately decided they wanted to raise the matter with the CEO first, but was given an OHSC Indigenous complaint brochure and will be in touch should they want to make a complaint through this Office.

Treatment/Communication

A woman contacted the ALO to discuss a concern regarding her cousin's experience having a baby in a Melbourne hospital. The Aboriginal unit of the hospital is in the process of assisting the woman with her concerns. The woman has agreed to pass on the OHSC Indigenous complaint brochure to her cousin and contact the ALO should they decide to go further.

Racially discriminatory communication issues with paediatrician

An enquiry was received by the ALO about a consultation a woman and her three year old daughter had with a paediatrician. They had been referred on the basis the child had been refusing to eat over a period of three weeks. On first meeting the specialist asked if they were Aboriginal, referring to media reports that Aboriginal people molested their children. He then accused the father/grandfather of molestation without any examination and ordered the mother to remove her underwear. On the basis of his threatening manner the mother refused and claims that he warned her that he would have the child removed if she did not follow up with him.

The ALO provided advice to the family about their options including the role of the Medical Board. The family are in discussions with the Medical Board of Victoria and may lodge a complaint with this Office regarding communication issues. They are aware of the mandatory obligation on professionals to make notifications to DHS where they believe a child is at risk.

Health Records Act 2001 (Vic)

An Aboriginal woman complained about the accuracy of health information in her medical file at an Aboriginal community controlled health organisation. She only became aware of this when she read information contained in a referral letter. She approached the service to have the information corrected and contacted the OHSC to ensure corrections were made in accordance with requirements under the *Health Records Act 2001.*

The ALO organised a conciliation meeting between the parties and the health service apologised for mistakes that had been made. Arrangements were made for the woman to go through her entire record with a staff member present and for her to be present when amendments were made to her record. It was important for all parties present that the relationship remain amicable and that the woman felt she could continue to use the service and this was achieved as a result of the conciliation.

Mental Health

A family complained about the services their mentally ill son received from a number of agencies prior to his death and also complained about the circumstances surrounding his death in a hospital. The family contacted the OHSC, distressed and unsure of how to navigate the hospital complaints process or how else they could have their concerns addressed. The ALO organised meetings with the family to discuss their options with advice and referrals given. The family requested that the Coroner investigate their son's death with an undertaking to pursue a complaint through the OHSC once those investigations were complete.

Privacy concerns in Aboriginal Community Controlled Health Organisation

The OHSC received an enquiry from a Social & Emotional Wellbeing Worker. The ALO visited the worker at an Aboriginal health service where she was informed the service, despite assurances in their collection statement, does not keep very sensitive information confidential. Staff who aren't directly involved in the care of the clients have access to the information and it isn't adequately stored.

Patients are members of the Stolen Generation who are part of a project that assists them to utilise appropriate services given their special needs such as medical care, counselling, legal advice, community activities etc. Information they divulge to the worker include details of general personal details but also highly sensitive information including personal relationships, sexual abuse, and domestic violence amongst others. In the context of such a service being provided in a very small community and by people who are often immediate/extended family and friends, the assurance of the strictest confidentiality is of an extremely high importance

Information was provided to the officer that the OHSC needed a complaint from a consumer or a person on their behalf. The worker was given OHSC brochures and spoke to five of her clients who all agreed to make complaints.

5.14.2 Intervention Orders and Family Violence

Issues concerning family violence have been raised in the context of other civil and family law matters throughout this report[127] and it is an issue that can be closely connected to a range of civil law problems. Several stakeholder organisations noted that there was a direct connection between civil and family law issues and family violence.

> I could tick every single one of these (on a list of civil and family law issues) and say all of them in some way will affect family and domestic violence. Inconsistencies in responses from Centrelink about child support could escalate the danger in certain circumstances. Things like civil property damages (or) debts that are signed up for by the victim under duress. (**Community organisation worker)**

A stakeholder service raised the problems with failure to report domestic and family violence.

> They don't tend to tell us about family violence. We might know about it through the community or through the elders about what's going on behind closed doors, they don't tend to come out and talk about it. I think that is a bit of a barrier to them coming through (the domestic violence service) because they would have to admit there's family violence and sometimes you might work with a family for 12 months before they actually start to tell you about the family violence, it's not an upfront conversation you have with Aboriginal people. (**Community organisation worker)**

Negative court experiences and a lack of confidence in the domestic violence protection system were also noted by stakeholders.

> Women just gave up any desire to go back and do it again … I was there on call when the Magistrate there was going (to the perpetrator), 'We know you've had a tough life… take this as a lesson and go away and be a good boy.' That woman would never go back to court again.

[127] For example, see the discussions above of issues involving social security, discrimination, family law and child protection, victims' compensation and credit and debt.

> She was so let down by this system, and I find this is particularly in regional areas… And that makes things really hard for us because then we have these women that we are trying to say to them, we are trying to convince them, 'Please go to the police. Let's proceed with this.' And there is not a lot of faith in the system. Intervention orders aren't being served… You don't want to put that face out there but we kind of totally understand why (they wouldn't complain of domestic violence). (**Indigenous Community organisation worker)**

Another example of a negative court experience was provided as follows.

> One Aboriginal woman in Echuca was prone to revoke and police had taken her order out for her. She was going to revoke and the Magistrate was just tearing strips off this woman, who I think had appeared before her a number of times trying to revoke orders. Tore strips off her while the alleged perpetrator was sitting there in court as well, blaming this woman for it. And basically she said to her, 'I am making a note on file. I am going to tell Child Protection that you don't have any protective capacity.' It was a pretty horrific situation to see a Magistrate who just showed absolutely no understanding. (The woman was unrepresented) … no-one could assist her. As a result she just had this terrible experience. I am sure that if there is a next time that she is a victim of family violence that she won't be calling the police. (**Community organisation worker)**

The issue of legal representation was also raised by Indigenous legal service staff.

> There is a duty solicitor out there at the court but it's first in best dressed. If you get your name down on the duty solicitor list that solicitor is obliged to assess that person first before another party. It's literally a foot race to the front counter. Mum has to take their kids to school and do all that but before she has done that the bloke has come in and put his name on the duty solicitor list and mum comes in none the wiser that she has no legal representation so she has to go and talk for herself.
>
> There is a huge gap (in representation around family violence) in Swan Hill. Most of the services for family violence are located (elsewhere). There is a community legal centre that has got some money recently but they are based in Bendigo as well. Sometimes we have a couple of solicitors from Bendigo that can handle each party, but it's quite unfair when you have a perpetrator with legal representation before the victim just because they have come in and put their name on a duty solicitor list first. So really with that area there is a very big problem.
>
> Once that person is on the list of the legal law firm, if it's the perpetrator, the woman can't get access to any service at all. That's a conflict of interest issue. So even if they have been on the list for ten years the woman can't get access… Shocking that is. That's probably the biggest issue at the moment. (**Indigenous Legal Service staff)**

Problems with police not initiating orders were also raised.

> A lot of women go to police stations to report a family violence matter—serious ones like assault. Common practice here is the police will just refer them down to the court house, 'Go and take out your own intervention order'. I think that they walk away from the police station thinking that they are not being treated properly. Lucky we have a good Registrar here who we can ring up. The police should be taking that out for the woman so when it comes to court day the police prosecutor actually speaks for that woman. But it undermines everything when

> they don't treat it properly and just send the woman down to court—that's bad. What do you have to do? Get killed? (**Indigenous Legal Service staff)**

The failure of police, including prosecutors, to refer Aboriginal witnesses to services, including counselling, was also raised.

5.14.3 Police

We discussed in Section 3.2: Discrimination issues raised in relation to policing and racial discrimination. A number of problems were also raised in relation to lodging complaints against police. Some focus group participants noted the lack of knowledge of the complaints system and the process of complaints.

> You're just told to get over it anyway. Coppers, they punched the shit out of me but charged me with assault. I'm the one standing there with broken arms and black eye and busted lip and they're standing there, knights in shining armour. There's a lot of Kooris out there that don't bother 'cause they know they're not going to get a fair run. (**Heidelberg Men's Focus Group Participant)**

> There's not enough assistance (as) to how to go about it. How do you complain about cops? They look at the background of your behaviour and say it's justified. We can't really trust you 'cause you're a criminal. … So a lot of people just don't (complain). (**Heidelberg Men's Focus Group Participant)**

In relation to police complaints, a stakeholder noted the following.

> If we have evidence of an assault by police, we can go to VOCAT and make a claim for compensation. There are two authorities you can complain to—Ethical Standards Division and the Office of Police Integrity. The latter only looks at police corruption. I have not found one single one in the Ethical Standards Division that has been satisfactory. VOCAT is the preferred option. They will let the police know and allow them the opportunity to come and give evidence to counter it. Police generally don't do well outside the criminal setting. When in a civil setting, the bravado, the ability to get their story straight along with their colleagues doesn't go down well. (**Indigenous Legal Service staff)**

One focus group participant referred to poor police response to recording problems.

> You go to the police and record your child missing and they'll say there's nothing we can do, but that kid's been missing for a week. (**Bairnsdale Women's Focus Group Participant)**

The issue of police policies and problems of communication were also noted by an Indigenous community organisation worker.

> A perfect example is the police protocol around Aboriginal family violence. We've been trying to work out what that is for the last eight months. The police in general here use the non-Indigenous protocol. And we've been asking them to develop an Indigenous protocol and there was a woman employed for it and we still don't have one. What do you do? Do you call Child Protection in this case? Because it is managed through Child Protection if there are kids involved and there is family violence. And that's the white protocol. So, is that what we do when it happens? When there is Aboriginal people, is that what we do with them? Just little things like that, you can't get answers. (**Indigenous community organisation worker)**

5.14.4 Fines

One stakeholder raised the issue of fines in relation to council fines, which can relate to a range of different issues including animals, rates, parking infringements and so forth.

> An Indigenous man had the dogs of his relatives dumped on him. He would say that he didn't have the ability to care for himself let alone animals. That becomes a public nuisance issue. Council were sick of it and they commenced civil proceeding against him. So he was fined and the fines were unpaid and then these civil proceeding were brought against him to enforce those fines. The end game of that could have been a warrant that would have been catastrophic for him but also so very stupid. The client had no prospect of paying the fine - let alone costs, therefore it was a meaningless exercise. From the council's perspective they appeared as though they were being tough. (**Legal practitioners)**

The most frequently raised issue in connection with fines was motor vehicle-related infringements and offences.

> Fines are (often) related to cars and parking, which sometimes is their responsibility but on the other hand I also find out it's their ex-partners or their partners or their mothers or their family members or their friends and they are stuck with the fine. **(Indigenous community organisation worker)**

> We've noticed drivers' licences being suspended and all these little things accumulating to court sentences and huge fines that don't get addressed. And that's really been… one of the key issues. (**Indigenous community organisation worker)**

> One of the major issues that I find with my clients is the re-offending in regards to no license. No access to driving lessons to get a license and no one with a license whose car that is registered with their real plates, not false plates, that can take them for driving lessons. So the amount of times that you attend for drivers suspended or disqualified from unlicensed driving, unlicensed/unregistered vehicle or false plates—if I had a dollar I would be a multi-millionaire! And they are things that are really preventable. (**Community organisation worker)**

> Last I heard there are more Aboriginal women on remand at the moment around fines and around some of those really low level types of offences. That's on the increase and it's gone up substantially in the last two years. But then that has an impact on family and community and there is no support. (**Statutory Authority staff)**

Motor vehicle fines show the intersection between criminal and civil law problems. Fines can compound into a range of further issues including imprisonment, family relationships and other debts (see Section 5.5: Credit and Debt). They can also be related to problems in accessing birth certificates (dealt with more fully below). One stakeholder noted as follows.

> There was an issue of a lot of young fellas who had been locked up for driving without a license, and these are small fees. There is a lot of that are traffic infringement and young fellas are going to prison. And a lot of it because of birth certificates…it's as simple as that. To get a birth certificate you have to come all the way to Melbourne and stay in the Births, Deaths and Marriages Registry virtually all day and if you don't have all the paperwork you don't get it. So you just go home and you think 'Why did I even bother?' And if you don't

have a birth certificate you couldn't get a driver's license and you couldn't get a job, you couldn't open a bank account. You couldn't do any of that. It's a simple as that. And (it's) a $40 issue … It's costing the state $50-60,000 a year to put that young fella in prison. (**Indigenous community organisation staff)**

5.14.5 Birth Certificates

We noted above the problems of fines arising from unlicensed driving and its link to the issue of birth certificates. Stakeholders noted that the non-registration of births and the absence of birth certificates was still a major issue for Indigenous people in Victoria, particularly given the range of associated problems which arise, including accessing Centrelink payments and other government services and benefits, opening bank accounts, marrying, obtaining a passport, gaining employment and paying taxes. A statutory authority stakeholder noted that without a birth certificate,

> …they can't get Centrelink. There was this young girl who is nineteen now. For the last three years she's been living with her sister-in-law without getting any income whatsoever. And we wouldn't have known but we had this youth event happening in Swan Hill and her sister-in-law came to me. Her sister-in-law realised that she didn't have any income whatsoever and she'd been supporting her. So, I was then able to contact Centrelink in Bendigo and the Aboriginal Housing Officer who I met with yesterday…This young girl, who I wasn't aware of at the time is an orphan, is now on Centrelink and is getting some benefits. So, it's about people coming in and feeling comfortable.
>
> [Without the birth certificate they also] can't get their learner's (licence). 'I want to get a learner's but Mum and Dad don't have a birth certificate for me. I've never been registered.' They can't open up a bank account. So there are lots of things that this prevents them from being able to do.
>
> The schools seem to be lapsing… kids are getting through [without birth certificates]. To walk into somewhere and you are 18 and saying 'I don't have a birth certificate'… That's a pretty big thing. (**Statutory Authority staff)**

The Indigenous Access Fund was established through the Koori Justice Unit to assist Indigenous people who hold a Centrelink Health Care Card or Pensioner Concession Card with the costs of obtaining a birth certificate. It has been effective in assisting Indigenous people with this issue.

> We are often tapping into funding to get a birth certificate. It's amazing that this generation is still dealing with unregistered births in 2012. (**Community organisation worker)**
>
> We now have the Indigenous Access Fund… And the word is definitely getting out. In Swan Hill the other day I had one lady and she had five children that had not been registered. So people now are coming forward saying 'I haven't registered my child'. And so quite a few are coming forward. I had a nine year old who was from Echuca attending the Information Day. His father came to me and said 'This child has never been registered.' An 18 year old came in the other day, and he had never been registered and he had a child. It's a huge problem. (**Statutory Authority staff)**

Until recently there was a requirement for Victorians to attend a police station for identity documentation certification prior to applying for a certificate. This requirement was recognised as a major barrier to Indigenous people applying for a certificate.

> The biggest issue was you had to go into a police station to get it certified. So, now you don't have to. Now you can go to a Justice Officer. Or to myself and I can go out to their house and certify. So, that is alleviating some of the problems. Knowing that people aren't comfortable going to the police station. (**Statutory Authority staff)**

There appears to have been an uptake of the changes to allow easier access to obtaining birth certificates.

> When I went to Robinvale's Co-op there were just lines of people and we were there longer than we intended … because people were going and bringing other people back. In Swan Hill there was one that went to the schools and they did I think about 48 (birth certificates) in a day… But even now people in the community are not feeling comfortable. There is one lady who in the last 8 months has been trying to catch up with me to register her kids and I know she's got 6 children and she is waiting for me but we keep missing each other. But they want to know when *I* am in there so that I can assist them. (**Statutory Authority staff)**

However there is also a need to ensure that Justice Officers provide the type of assistance which Indigenous people may require.

> I've had to work with the Justice Officers to say, 'Don't just give people an application and assume they can fill it out.' They are not going tell you (when they need help) and that's why they are going to walk out the door. Sometimes I'd say, 'It might be quicker for me to do.' Especially on the Information Days I've had to say, 'I'll come and sit down with you and we will fill it out.' A few of them will say they are comfortable filling it out. But the majority will say, 'You can fill it out.' (**Statutory Authority)**

Despite the changes to the process for document certification and the Indigenous Access Fund, there are still identified problems. In a recent submission to the Victorian Law reform Commission[128], the Law Institute of Victoria noted that despite the initiatives of the Registry of Birth, Deaths and Marriages in training Justice Officers these changes appear to be limited in scope and availability. They further noted that the Registry's fee waiver power for issuing certificates is rarely granted. The Law Institute recommended that criteria for fee waivers be made explicit, a fee waiver application form be developed and made available electronically, and that fee waiver categories should include those receiving a Youth Allowance or Abstudy or in receipt of a Health Care Card, as well as for those individuals otherwise demonstrating financial hardship.[129]

5.14.6 Guardianship

Guardianship is the appointment of a person (a 'guardian') to make decisions for an adult with a disability when this adult is unable to do so. All adults over the age of 18 years, regardless of disability, are entitled to make their own decisions. This is the case unless, when they were competent, they appointed a person to be their guardian under the enduring power of guardianship and

[128] For Victorian Law Reform Commission review see: http://www.lawreform.vic.gov.au/all-projects/birth-registration-and-birth-certificates

[129] Law Institute of Victoria (2012) *Submission to Victoria Law Reform Commission's Birth Registration and Birth Certificates Community Law Reform Project*; http://www.lawreform.vic.gov.au/sites/default/files/Submission_6_CP_Law_Institute_of_Victoria_01-11-12.pdf. For further discussion of the difficulties faced by Aboriginal people in obtaining birth certificates see http://www.law.monash.edu.au/castancentre/events/2009/indigenous-birth-registration-symposium.html

have now lost capacity to make the types of decisions they appointed the enduring guardian to make for them.

Alternatively, a guardianship order can be obtained by making an application for guardianship to the Guardianship List of VCAT. VCAT then hears the matter and, if necessary, appoints a guardian to make specific types of decisions. Where there is no suitable family member or friend who can act as guardian, VCAT can appoint the Public Advocate as an independent statutory guardian. In some cases the Public Advocate delegates the role to a community guardian.[130]

A key stakeholder noted that there were very few Indigenous people in Victoria under guardianship. While this may reflect the relative size of the Indigenous population in Victoria, it was also noted that there was fear within Indigenous communities relating to the potential appointment of a guardian.

> One can't underestimate the intergenerational effect of the removal of children. And that is there in the back of people's subconscious even if they weren't part of the Stolen Generation. One looks at guardianship laws, which act as a protective jurisdiction, but what are people's fears? They are afraid we are going to take the old people away, people who have already been stolen. So, the bureaucracy still is something where people can be quite afraid of the powers of the bureaucracy. Look at the Intervention in the Northern Territory—the bureaucrats can have enormous power still over people's lives. **(Statutory Authority staff)**

This same stakeholder referred to the complexity of ensuring services for people with disabilities.

> It's complex. For somebody in the community who may have had less education, may feel intimidated by the bureaucracy and may not understand what the powers of the bureaucracy are… Trying to navigate around and then to be an advocate… You have to be an advocate (if you have a child with a disability) and if you want to have access to disability services you have to fight for those services. And you have to be a very powerful advocate. And quite often parents with children with disability often relinquish them, usually as adults because their needs are complex and their parents are aging and they can't care for them. And they go into care but for an Indigenous family relinquishing a child into care, that's often a breach too far even as an adult. **Statutory Authority staff**

By way of explaining reasons why guardianship arises for Indigenous people, one stakeholder gave the example of a recent case where an elderly Indigenous man had his eyes and his ears filled with super-glue by a non-Indigenous person.

> Guardianship usually occurs for two reasons. One is the person is so damaged in terms of either alcohol or substance abuse that they really cannot be maintained by the family. (They are) usually homeless, unable to be maintained in a particular community. This Aboriginal man was an Elder but he was in some very strange relationship with two white people, probably sucking the life out of his money in exchange for alcohol and other things. (The second reason is) generally when they are separated from community. The majority of people under guardianship are over the age of 65 and usually have some form of dementia. Generally the Aboriginal people we would see are also in the older age group rather than a younger person with a mental illness. They are often isolated from their family either by choice or because they just simply can't be managed. This man who had his eyes and ears super-glued, he had a daughter who wanted him to live with her so there were some options but he was

[130] Office of the Public Advocate, http://www.publicadvocate.vic.gov.au/administration-&-guardianship/167/

> wanting to go back to this very dependent relationship. … (He) was kept within the hospital until suitable accommodation could be found. But he wanted to go back to this very dysfunctional relationship. **Statutory Authority staff**

5.14.7 Other Issues

Several other issues were mentioned in passing by stakeholders. These included intellectual property (specifically in relation to the establishment of an art gallery); environmental law in relation to the relative absence of Indigenous voices in consultation and debates around the Murray Darling Basin Plan; and the impact of native title disputes on internal division in Indigenous communities.

6. OBSERVATIONS ON SERVICE DELIVERY

6.1 RESOURCING ISSUES AS A BARRIER TO ACCESSING JUSTICE

6.1.1 Gaps in Civil and Family Law Service Delivery

Legal services suggest that they are doing the best they can with very limited resources. Problems arising in relation to service delivery are due, in part, to a lack of financial and other resources.

> Well a lot of them like Legal Aid in my view are a bit under-funded (and) the same as Aboriginal Legal Services. … It's based a lot on finances—whether the money is actually there to service the community and the courts. It comes down at the end of the day to the dollar. (**Indigenous Legal Service staff)**

> I am not criticising those lawyers, it's the pressures they are under. That's the nature of duty lawyer services and that's what VALS is, as Legal Aid is. Their core business is to provide a duty lawyer service. I know that's not what is in their proper funding agreement but it's acknowledged that that's what they are doing. I can see it's a complaint about the way organisations are funded. (**Indigenous Legal Service staff)**

Available resources are generally directed towards meeting criminal law need in Indigenous communities, rather than civil and family law needs. This prioritisation of criminal law is due in part to funding and service agreements. Civil and family law problems may also be seen as not so 'urgent' and therefore as less of a priority in terms of service delivery.

> (It's) also looking at what is the priority legal issue to deal with. So I imagine, and that's usually the case, that the financial and consumer issues slip in the face of more urgent priorities… It would be difficult to (deal) with crime crisis and important immediate concerns, and then try and address the underlying things as well. (**Indigenous community organisation worker)**

> (Aboriginal Legal Services are) so constrained in what they can do. And the issues they are dealing with are so profound that this sort of stuff (civil law matters) I don't think gets (so much attention)… compared to all the criminal stuff they have to do. (**Statutory Authority staff)**

We note however in this context the clear connections between unmet civil and family law need and offending and criminalisation of Indigenous people, as identified throughout this report. It is suggested that meeting need in civil and family law areas is likely to contribute to a reduction in offending, as well as being an important goal in its own right.

Overall, the amount of assistance available to Indigenous people for civil and family law problems is inadequate. Legal services and some focus group participants commented on the limited service available in these areas of law.

> We've got four to five lawyers in the area that we use that are Koori friendly that do a really good job for us. But the area that we really struggle with is civil and family law. There just aren't enough (lawyers) … (**Shepparton Men's Focus Group Participant)**

> There are pretty tight reins on the civil law work that's done by Legal Aid or legally- aided lawyers. (**Legal practitioners)**

> It's because of their (VALS') funding issue. … They are doing what they can with what they've got at the moment. (**Legal Aid staff)**

Lack of resourcing also means that many legal services are not able to 'seek new business', as they only (barely) have capacity to keep up with existing demand. In this sense, the level of unmet need across communities is an 'unknown quantity'.

> We are under-funded. Because the services tend to be under-funded generally, lawyers are at peak capacity and we are not seeking *new* business. We are not going out of our way, even though we are doing outreach and we are trying to identify priority groups, I think generally are not working to get more clients. (**Legal Aid staff)**

Further, non-legal services report having to assist clients they are not funded to work with because of existing gaps in current legal service delivery. While improving access to civil and family law justice may involve agencies and organisations other than legal services or justice institutions, non-legal services should not be doing legal work. Taking on this additional work may also stretch services beyond capacity.

> Aboriginal housing has actually referred to me a woman yesterday—no family violence at all (needing help with a tenancy matter)… And even when I spoke to her I couldn't send her away. She's got so much going on. Like, she is potentially about to be homeless and I just thought 'Ok, she is not 'family violence', but… I have the capacity to. … This service can actually stop her (eviction) …' She just doesn't fit actually into anyone else's box -so then nothing happens to her (in terms of being assisted)? So, it's like—fine, it's going to take me half a day's work. You get to keep your house. I'll buy you a new fridge. You know, we get in touch with the financial counsellor. (**Indigenous community organisation worker)**

> You'll find that a lot of support services around here are actually doing legal stuff because there is nowhere else that they could go. **(Indigenous community organisation worker)**

There is some suggestion that legal services might build in more flexibility around interpretation of restrictions on the type of matter or client they can assist.

> Maybe there is room there for the legal service provider to be a bit more flexible with their policies about these civil matters and that would encourage some of our mob to come forward. (**Indigenous Legal Service staff)**

This, however, is always going to serve as a limited solution to meeting existing need. What is really required is increased capacity to expand the type of issues and numbers of clients that services can take on.

6.1.2 Funding Aboriginal Legal Services

At the time of the ILNP Victorian fieldwork, VALS was only able to employ a single civil solicitor to service the whole of Victoria, with CSOs generally the organisation's sole permanent presence in the regions. As one legal aid staff member stated, 'as one lawyer on your own (doing civil law work at VALS), there would be a real limit to what (you) … could achieve' (**Legal Aid staff)**. The VALS civil solicitor also commented on the vast impracticality of running a civil practice in this way, which severely limits service delivery both within and outside Melbourne.

> In brief, we offer very little to people. There are serious problems with the way the practice is run. It could be run far more efficiently… My assessment is there's a vast amount of unmet need. My general experience is that people have very negative attitudes towards what is offered to them in Victoria. There's a large population of Aboriginal people and all that's offered is one person—me. Time is limited and our ability to act is circumscribed. There is a lot to be done. What we need to function efficiently are three lawyers, plus a dedicated secretary. (**Indigenous Legal Service staff)**

> In the past, I had appeared a number of times in court for people (for discrimination matters) but I became so overwhelmed with the vast number of people demanding this, it became impossible to sustain. I have no secretarial support. I do it myself. When it comes to advising people, anyone has direct access to me at any time during business hours. It's difficult to manage file load of 40-80 files with an 'open door' policy. (**Indigenous Legal Service staff)**

Whilst all legal services are under-funded, there is some suggestion that as the principal provider of legal services to Indigenous communities, Aboriginal legal services in particular need to be better funded so as to more effectively meet Indigenous legal need. It should also be noted however that not every Indigenous person will choose to access an Indigenous-specific service (see Service Segregation below).

Mainstream legal services state that they want to be able to support Aboriginal Legal Services, including FVPLS Victoria, in the assistance they are able to offer to communities through secondments, provision of specialist legal advice in certain areas of law (social security, discrimination) for Aboriginal Legal Service clients (through warm referrals) and advocating for increased funding for Aboriginal Legal Services. Current funding disparities between Indigenous legal services and Legal Aid were commented upon: '(Legal Aid) wages are much more at a higher level and yet our lawyers and our staff do twice as much' (**Indigenous Legal Services staff).**

> I think it's important to get on the record that we will do whatever we can to help (Aboriginal Legal) Services to grow their practice and to get funding to do that. We have to maintain that commitment, while also acknowledging the funding reality. They may not be as present as they would like to be. (**Legal practitioners)**

> I think that they just need to expand (VALS' service capacity). They are the service that Aboriginal people are going to. And I think that they need to be expanded. …That's the place that is going to attract the clients. Service them. In many ways we put a whole lot of effort and even money into our cultural training or cultural awareness and posters and pamphlets, but in some ways we might be better off putting all that money into the Aboriginal Legal Service… or second more lawyers over there**. (Legal Aid staff)**

6.1.3 Funding Law Reform and Policy Work

Lawyers working with Indigenous communities also need to have capacity to offer genuine assistance to clients; that is, to be able to 'go the whole way' rather than just offering advice, for instance.

> Depends on how big the case is and whether it can be dealt with on a lower level. If you challenge, you need to go all of the way, not just part of the way. It's no good saying 'Oh yes, we will go to VCAT and do the housing thing and get that done' and you aren't going to go further than that. You have to go the whole way. (**Indigenous Legal Service staff)**

> We are hardly looking at the big picture. … We need to get stuff into higher courts … In the event people call in with an issue I cannot deal with, I contact the senior lawyer at (a private firm who does pro bono work) and speak with him. Almost always, they will take the matter over and advise. Rarely, they will take it over to get it into a court room**. (Indigenous Legal Service staff)**

Having capacity for a full range of legal service provision includes an ability to undertake effective law reform and policy work alongside individual casework. Resourcing issues, again, prevent legal services from working as they might in these areas.

> One of the biggest gaps in the FVPLS programs is the lack of policy research and capacity or funding from the Attorney General's Department to enable us to participate in law reform. And policy and advocacy work. And our organisation has been pushing for that for many years. (Lack of funding means not having) the ability and the time to actually identify the gaps (in service delivery). (**Indigenous Legal Service staff)**

As an indication of the importance of undertaking lobbying, policy work and other more strategic work, FVPLS Victoria provided the following example.

> The Legal Aid funding, their grant system had some holes in it in terms of they didn't fund, since they are not child protection, they didn't fund the presence of lawyers in family decision making. They changed that I think. And that was partly through our lobbying. **(Indigenous Legal Service staff)**

The importance of more strategic work being undertaken by legal services and advocacy bodies, including policy work, was noted by non-legal stakeholder organisations, including the following.

> For me, I think challenging some (policies) at their source—for example, someone who is skilled enough to actually challenge the Office of Housing policies around debt, around those things. That then means that we are not spending heaps of time trying to negotiate using their (problematic) policies. (**Indigenous community organisation worker)**

6.2 MELBOURNE – CENTRIC SERVICE DELIVERY

A number of focus group participants and stakeholders identified significant problems in legal service delivery, again due to resourcing and funding, because of the Melbourne-centricity of legal service provision.

One stakeholder organisation located in regional Victoria suggests that unlike other jurisdictions, where a larger geographical area means remoteness impacts upon access to services, 'that's not such a problem with Indigenous organisations or people in Victoria, I don't think. We don't have the more remote areas'. (**Statutory Authority staff)**

Whilst it is true that Victoria does not have very remote communities like the NT or WA, those who reside and work outside Melbourne often identify feeling isolated and under-serviced, including by legal services. As a female focus group participant in Robinvale suggests, 'It's sort of isolated here (to get legal help)'. Focus group participants in Bairnsdale made further comment about the utility of sending Melbourne lawyers out to assist them, as they would be unlikely to know much about the community. 'The city is totally different to any country area. I lived in the city for years', stated one

of the women. Another woman in Bairnsdale commented, 'We have to use (Legal Aid) because we have no lawyer that comes down from Melbourne anymore'.

VALS itself has noted that 'not having a presence specifically in the regions is difficult'. While VALS criminal lawyers 'go out there (to regions) all the time', civil service delivery 'is not necessarily so immediate', with the organisation's civil practice located in Melbourne and CSOs staffing offices outside Melbourne, as noted above. A VALS staff member asks, 'How are (people) going to access the service if they're (living) out in a region?' VALS staff members interviewed suggest that, 'within the regions, there needs to be a presence. Even just letting people know what VALS does—dispelling myths about what we can and cannot do'. We note that the services that VALS is unable to effectively deliver due to the location of most of its resources in Melbourne are not limited to casework and advice, but include other important work, such as CLE.

> (We only have) one full time community legal education officer (to work across) the entire state. This has proven to be difficult. We are trying to (get) CSO's doing a small amount of CLE out in their region. However, it is in the very early stages of development. (**Indigenous Legal Service staff)**

A solicitor who had previously worked at VALS also commented on the service's capacity to work across a whole State.

> I wanted to say that (VALS is) … a great service but not resourced enough. And at one stage I was the *only* family lawyer (at VALS) for the *whole* of the State! And I had something like … It's ridiculous, the amount of files, maybe 300 or something. … Even if there is more than one there now they still have got to do the State. That's why they don't see them in Mildura, because they just can't do it! (**Statutory Authority staff)**

Other non-legal stakeholders commented on the obvious gaps in legal service delivery for various communities outside Melbourne, noting that there is considerable need and disadvantage that needs to be serviced more effectively.

> I think that there are unique issues in this area that make it one of, if not *the* most needy regional area in Victoria, particularly with the cultural diversity of both newly arrived migrants Australians but also Aboriginal people. (**Legal practitioners)**

> Oh well, the barrier up here would be, for us in Mildura, would be the isolation and the distance. ... There is no presence of VALS here apart from the CSO… Even more for Robinvale, there is just nothing there. ... In Robinvale it is probably about one solicitor and he is mainly in conveyancing, does a bit of criminal law and stuff**…** It is important to provide the best possible legal service to the community of Mildura. A lot of the law firms provide that, which is fantastic, but they are laymen who are there to make a profit from their clients. (We need both VALS and Legal Aid)… The argument that you cannot find the capacity for Mildura is hogwash. **(Indigenous community organisation worker)**

> There's only one position here (in ALS) and that's part time and he has to cover basically the whole upper region, including Bendigo. That position is set up to fail. That person can't do that on their own. (**Indigenous community organisation worker)**

> VALS has limited capacity. You would be aware that Shepparton was identified as the sight for income management for Victoria. That's not by accident, it's because there is a significant need and disadvantage. For various legal issues, everything except Legal Aid—they have a basic capacity here—everything else requires a solicitor to come out from Melbourne. (**Legal practitioners)**

> In the civil area, where do I start? There is just nothing full stop… For here in Mildura in general, there is no Legal Aid centre, for a town this size… We are up over 50,000, if you take into account the surrounding communities… But for us here in Mildura, we really need to have a Legal Aid centre here… And the push back (against this) from the legal fraternity is purely around money, to be honest… (the idea that) if you put a Legal Aid centre here it is going to take away funds and resources from the (private lawyers). For me there is no valid reason as to why you wouldn't have a Legal Aid service here. (**Indigenous community organisation worker)**

> VALS don't have any sort of base here at all and we are probably one of the busiest locations in the state for VALS outside of Melbourne CBD, so there is no permanent VALS here. You've got the community legal centre and they provide limited advice. … You have the FVPLS, which provides a lot of support to women who are victims of domestic violence, but there is no support for the men… There is no Legal Aid office here in Mildura… Yeah and apart from that there are the private practices … . A lot of the private practices here, if you don't pay, you don't get advice. … So apart from those who charge a fee there is no legal representation… There is no Legal Aid that comes up here at all. You have junior workers who are on duty, solicitors, but that is quite limited. They turn up and hey (snaps fingers) and give advice and then they are gone again… (CLC work is) limited. A lot of their work would be around the domestic violence type stuff, intervention orders, but in regards to the other civil type stuff, whether it be debt recovery or those sort of things… very limited. **(Indigenous community organisation worker)**

Whilst it is possible to connect with VALS in Melbourne by phone, a more permanent presence in the regions, with direct client contact, is crucial.

> I haven't referred anyone to VALS just because I know that they don't have a regular presence in this region. And I think (a case) would have to be a… compelling matter for them to take it on. But that's my sense… that they are stretched and that they've only got one lawyer. They only had one lawyer doing civil work. (**Community organisation worker)**

> And down where I come from, the legal service obviously is never open. It's just around the corner from the courthouse and it's never open. …. There is the legal service down in Melbourne that you can go to but who has got the funds to go down there? **(Indigenous community organisation worker)**

There was some discussion about the difficulties of legal services employing lawyers in regions. These are likely to be junior lawyers, which raises time and other pressures for principal solicitors in supervision of lawyers who work away from a central practice. This was not viewed as a workable model for VALS.

> Can I just make a comment on how difficult it is to recruit lawyers (regionally)… We have pretty much a full contingent of young lawyers with less than a year's experience (at our

> service). Two who have located to that area, there is a lot of pressure on them to be part of that community. And then there is also turn over. So that concept that it's hard because they are not part of the community, and with the provision of the duty lawyer service where they are not having that connection I think it has to be tempered with the reality of how difficult it is. How hard it is to manage that supervision of lawyers out in the region… it places huge pressures on the principal lawyer and currently I am not running files but it's not an option for a principal lawyer at VALS. So, those are the ups and downs**. (Indigenous Legal Service staff)**

6.2.1 Private Practitioners

There was some suggestion that private firms may fill existing gaps in legal service delivery, particularly in the regions. According to one legal service, 'if there is not a (Legal Aid) office in a particular locality then by and large that space is filled by private lawyers' (**Legal practitioners).** But this does not necessarily work so well for Indigenous people, for a number of reasons. Because private firms are run as a business, they will generally only take on matters where they will be paid adequately. Funding provided by VLA for private solicitors to take matters on may be seen by them as insufficient payment for work undertaken.

> They are targeting a certain market and only your commercial clients make the best margins… some of them do pro bono work, but at the end of the day, the partners want to make money. (**Indigenous community organisation worker)**

> The private solicitors ask for money up front—where are our mob going to pull money out to go and see a private lawyer about an accident injury claim or a something to do with victims compensation? ... That's the other thing—you do need to have money to be able to go through the process and if you haven't got it then you put up with the injury… I know a lot of men and woman in the community who have issues with these things, but as soon as you mention lawyers it means money. As soon as you walk in the door you are being charged. (**Indigenous Legal Service staff)**

> Another issue is child protection matters in places like Echuca which are usually funded by Legal Aid, but just because there is not a lot of solicitors who do child protection work in Echuca, they aren't… There's not enough lawyers, and the Legal Aid funding is not enough to entice lawyers, say, in Bendigo to go up and take the matter on. (**Community organisation worker)**

There is also some suggestion that private firms are not always culturally appropriate in their service delivery to Indigenous clients. They often do not have much experience in working with Indigenous people. Even the physical surrounds of a private practice may be intimidating to an Indigenous person.

> You would walk into a law firm … and you walk into a place of lawyers who are surrounded by a beautiful oak reception area with a certain presentation, you've got these lovely law books, it is very quiet, no culturally appropriate paintings to welcome them in, you are told to take a seat… There are lots of barriers. And for a Koori community or a member to walk into one of those firms where they don't know anyone or they are not assisted when they go in… Yeah, you go into one of the largest law firms here in Mildura, its commercial, to civil, to criminal, to family law, you name it, they do it. Yeah… and you may be given the Articled

> Clerk or someone which has just come out of law school… it is just… it's not inviting. (**Indigenous community organisation worker)**
>
> The reluctance of briefing out to other firms is that we want to make sure that the person is culturally sensitive. There are a couple of firms that we have had a long standing relationship with and we use those firms. When we can't (assist) because of the conflict issue then we need to brief out and then you are not sure whether they are going to get a good service or not… It would be good if there was a policy on representing Aboriginal people so those legal firms have cultural awareness training and it's not just a one off training - they go through a proper course like an extra subject at law school… There is a huge gap—if you need to get someone in or get a quick legal response—depending on the availability of the legal firms in the area or if there is a specialist that you need. **(Indigenous Legal Service staff)**

6.3 INCREASING KNOWLEDGE TO IMPROVE ACCESS TO JUSTICE

6.3.1 Knowing More About Civil and Family Law and Where To Go For Help

Aboriginal people participating in ILNP focus groups tended to associate the legal system and legal services with the criminal law. The focus groups often provided a first opportunity for participants to consider their civil and family law problems as *legal* issues for which there might be a legal remedy.

A woman in the Framlingham group indicated that a significant hurdle preventing people from getting help for civil and family law matters is 'not knowing what you can get help for. I thought you just get help for criminal stuff'. In order to overcome this barrier, as a woman in the Framlingham focus group suggests, Aboriginal people need 'a lot more information about what you can get help for, what you can get advice on which is not just criminal.' (**Framlingham Women's Focus Group Participant**)

Comments of this nature were fairly common across the focus groups, and the fact that lack of relevant knowledge inhibited access to justice was something that was also acknowledged by legal services.

> In terms of civil, we do a big telephone advice and that's usually the first point of call for most clients and I have to say that… I don't think it is a really high percentage of Indigenous clients at all. And we do sort of think 'Where are they?'… I think it is lack of awareness of the services that we offer. **(Legal Aid staff)**

It is also worth noting that a number of focus group and stakeholder comments evidenced conflation of the roles of the duty solicitor and of Legal Aid – possibly indicating poor levels of awareness about other services (like advice and casework) provided by Legal Aid. The range of services provided by VLA may be an issue to be clarified through community legal education.

The way in which contact is initiated between a client and the legal system in a criminal law context is different, in some respects, from contact in a civil or family law context. The laying of criminal charges effectively forces an individual into interaction with lawyers, the law and courts. With civil and family law issues, however, there is a certain degree of choice in terms of whether and how a person responds to such matters. Thus, if someone is ripped off as a consumer or has incurred a debt to Centrelink, they may decide to just 'wear it' rather than challenge it. Unlike criminal law matters, it may be up to an individual to initiate action in these instances.

For an individual to make appropriate decisions around how to respond effectively to civil and family law problems, more knowledge of available civil and family law assistance and of civil and family law in general, including relevant rights and obligations, is essential. This would mean that Indigenous people could better identify a legal issue when it arises and what to do in response.

One woman participating in the Swan Hill focus group stated, for instance, 'I think it'd be good if the justice people in town organised community workshops and programs so you could learn a bit about this stuff'. Similar comments made in other focus groups were as follows, indicating that many Indigenous people often don't feel sufficiently empowered to tackle relevant issues. They want simple information setting out steps that need to be followed when a problem arises.

> We need a protocol system (education about rights) put into the community face so that people know what to go through. Not everyone's had… the same education as everybody else because the discrimination is right down into the schools, so kids don't want to go to school. So it's a negative circle, a big, big circle. (**Bendigo Men's Focus Group Participant)**

> We need some sort of cheat sheet with what your options are, how you tackle it… There is nothing really out there, I don't think, that tells you what your options are. (**Shepparton Women's Focus Group Participant)**

> It's just (about) not knowing your rights. You don't want to go into Legal Aid and feel like an idiot. (**Framlingham Women's Focus Group Participant)**

Stakeholders also commented on the need for more information for communities in these areas, including about available legal services. They indicated that knowledge of what your rights are is really an essential precursor to effective access to justice.

> I think the barriers that prevent our people from getting effective or best service … is knowledge… like which firm is the specialist in the area, the best lawyer for the case. …. I don't know whether it's a directory or more community legal education awareness type programs or what it is, but the biggest barriers are not knowing and not being aware of what your options are. (**Indigenous Legal Service staff)**

> (It's about) access to legal people, the whole thing with complaints and with the legal services is people having the opportunity to know their rights and how do we get the message out there and make sure people do know their rights... Then, they feel comfortable enough to follow through and do something about it. (**Statutory Authority staff)**

> Giving them as much opportunity as they can to get that information is very important because mainstream legal services are very expensive. So I know there is the legal service for Aboriginal people and there's Legal Aid, but do *they* even know about it? If they have a decision from Centrelink that they're not happy about, do they know they can appeal that? (**Statutory Authority staff)**

An Indigenous community-based stakeholder organisation suggested that Indigenous people want to be able to walk into a (preferably Indigenous) service which has relevant expertise to find out where they stand and what their options are. Establishment of regional 'Aboriginal Legal Advice Units' was suggested as a way of meeting this community need, which appear to fall somewhere between a legal practice and information service. Such a service might deal with applications for birth certificates, referrals, form-filling, and other tasks which might be non- or quasi-legal.

> I would say more kind of hand holding to manage the expectations, someone that can just sit down and say 'This is the process, these are the options, this is how it could go'. The person then can choose. Fair enough… they can't cater to all. But if they could just be first port of call and then support them to go to the first appointment if it must go mainstream—I think that would be a help. (**Indigenous community organisation worker)**

An important point to make here is that providing information in this way ideally empowers people sufficiently so that they can either avoid issues to start with, or deal with them themselves without having to rely upon lawyers. An example of this would be in the area of consumer rights. With greater knowledge about contracts, people might avoid signing up to arrangements that ultimately are not to their benefit.

6.3.2 The Importance of Advocacy and Assistance

A number of stakeholders commented on what a difference quality advocacy can make to a particular situation. Without the availability of some level of quality assistance, it is suggested, people may be deterred from initiating action or responding appropriately to a problem that arises. As one woman in the Shepparton focus group suggests, 'sometimes if it seems to be a long, drawn out process, you put that off too.' As an example of this, and of how advocacy can assist, a statutory authority provides the following comment.

> There was one man who'd been to that office to get unemployment benefits. They said 'go away and get a birth certificate' and whatever, so he went away for six months and then came back, then they gave him another bureaucratic hurdle to jump over and he went away and came back... This goes on for about three years until he finally gets an advocate who tells him about his right to appeal to us, the SSAT, and comes along with him. So, he won his case and got three years backpay. This was a really good outcome. So from my perspective, from what I've seen, the real need is advocacy, whether that be through Legal Aid or whatever, to guide people to services like the tribunals. (**Statutory Authority staff**)

Another example follows of the way in which connection with advocates and support persons keeps people going when they are dealing with difficult processes.

> This week I was amazed at how awkward the whole (housing) process is. I had a very vulnerable older person that had arrears, only because of a mistake, I believe. They had a domestic violence issue. They left the keys with a friend, who was to hand them in but somehow the Office of Housing didn't close off that property so they kept charging (rent). To clean that up you would think that it would be so easy to go back in and talk. As much as I had two really good staff in the Office of Housing, they could do (only) so much. They could send them to a housing network. But they get sent to somewhere else and told 'You have to come back in six weeks' time when the new placement comes up'. I was just thinking 'How does this person ever deal with this if I wasn't here helping them through it?' And I just think with the all the new technology that we have, Skype and all that, why aren't these systems more efficient? It takes half a day for something that should be just a simple process. The community member, it's easy for them just to give up. It's too hard for them. I could see this lady getting frustrated on three occasions and each time I was able to go 'No, it's good as they are helping us in this way and that way'. I was able to bring them around and keep them

> motivated but I thought 'I can understand why people get frustrated'. So it would be great if the legal teams could challenge some of these things and make it easier, use technology more and just do a Skype, with the three parties so it's all sorted in one hit instead of all this to-ing and fro-ing. **(Indigenous community organisation worker)**

So, whilst it is absolutely imperative that Indigenous people are better informed about their rights, including so that they can enforce those rights on their own and avoid legal issues to begin with, there is likely to always be a place for advice, assistance and other advocacy around disputes and problems—someone who can 'stand next to the person and help'.

> For some people no matter how things are going with them they still won't be able to do things for themselves (and they will need advocacy). But everyone wants to do things for themselves. That's how we learn and become stronger, by dealing with these issues every step of the way. … But at the same time there still needs to be a lot more community education in all these forms and what this means. (**Community organisation worker)**

> There sort of needs to be more face-to-face time with them. There is definitely not enough time given or effort or money supplied for there to be more workers on the ground so people can have the support that they need to access information, someone to see you from start to end. That's where I see it. So someone can come along and say 'I don't understand, what do I do?' And to be able to have someone who they have a rapport with and build that trust with who can then go through with them from start to end. (**Community organisation worker)**

6.4 COMPLEXITY OF NEED AS A BARRIER TO ACCESSING JUSTICE

Indigenous people's legal problems may be complex, for a number of reasons. As one health-based organisation states, 'We do find that for Indigenous people, they are some of the more complex situations that we do have to deal with' (**Statutory Authority staff).** There are a number of likely reasons for this. Indigenous people may only engage with services when problems have become more seriousness or more complicated, for instance. They may also have a *number* of legal (both criminal and non-criminal) and other issues that they are dealing with at any one point in time, often inter-related.[131] Literacy may also give rise to an additional layer of complexity. These issues impact upon the way in which services need to be delivered to Indigenous people.

6.4.1 Literacy

Stakeholders spoke of literacy as a barrier to Indigenous access to civil and family law justice. Though it is important to note that low levels of literacy are not exclusive to Indigenous communities, organisations identified literacy as being an issue for a number of Indigenous people. Literacy issues may change the way in which information is shared with Indigenous communities.

[131] The results of the Legal Australia-Wide Survey also indicated that Indigenous people had a high prevalence of multiple legal problems: Law and Justice Foundation of New South Wales (2013) 'Legal Needs of Indigenous People in Australia', Updating Justice No 25, http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_25_Legal_needs_of_Indigenous_people_FINAL.pdf, accessed 30/9/13.

> The number of young to middle-aged Aboriginal people that are nearly completely illiterate in our community means that the normal ways of information distribution are no good. (**Community organisation worker)**

> Literacy is often… and I just pick up on that going through reports with them, it's not high. I haven't encountered an absence of it entirely but it's certainly not high standards of literacy. (**Legal Aid staff)**

> (Literacy) is an enormous issue… There is functional illiteracy, there is print disability…. (There is an) ABS study, which states that basically (some of) these people (are at the level of) Grade 5. (**Statutory Authority staff**)

Literacy issues feed into levels of unmet civil and family law need in a number of ways. In a legal context, literacy might include skills required to fill out forms in order to initiate legal action or to apply for legal assistance or to understand written information (including correspondence) about the law, legal rights or ways to get assistance. Poor literacy impacts upon capacity to access justice. A man in the Bendigo men's focus group, for example, identified problems for Indigenous people in responding to civil or family law problems because of 'paperwork' required in order to use the legal system. 'We've got to go through the system using paperwork (to deal with these problems)… We need all the paper trail'.

Stakeholders similarly identified literacy (and indeed 'paperwork', specifically) as a barrier. They also speak of some of the methods used to address this issue, including use of audio material to communicate.

> (One issue would be the) … normal bureaucracy, you know, having to fill out forms, which would annoy anybody I would imagine. And specifically would annoy disadvantaged people. (**Legal Aid staff)**

> Well, we are paper-driven to the sense that if we are running a case that's going to involve litigation and court processes, we often require application forms and supporting documents … But it's not just the Indigenous clients, it's (something) a lot of our clients struggle with. Not just literacy, but just 'self-organisation' I suppose is a good way of putting it. (**Legal Aid staff)**

> One of the things that we've been trying to do is put our information out in more and more acceptable formats. That might mean doing it in audio as well, recognising that people might not have literacy in any language they might be speaking… To fill out a form we give them assistance or we send them to someone who'll assist them to fill out a form. … (This is why we are using) easier English and making sure that 50% of the population that can't read and understand a newspaper article can read and understand what we write. … And we are actually finding that our advocates are the ones who are really appreciative (of this), the people that are intermediaries … because they are time-poor and it's easy to digest. (**Statutory Authority staff)**

A female participant in Swan Hill noted that media, including social media, might also be used to reach connect with Indigenous people.

> There needs to be advertised where you can access someone like that [lawyer's name] fella, and I think we don't see enough advertisements on TV for Aboriginal people. Everyone

> watches TV, so if you want people to know where to go or who to see, (use) TV or Facebook. (**Shepparton Women's Focus Group participant**)

An Indigenous community-based stakeholder also referred to Facebook as a great tool to use in this way. This same stakeholder suggested that TV had worked in the past to engage people around problems of family violence and sexual abuse. Whereas a workshop only gathers certain people together, the majority of Koori people watch TV, it is suggested. Further, the days of the written brochure, it seems, are past:

> Facebook goes viral through the Koori community. That is something we need to try and use to promote as well, so we are sitting down and working through those sorts of things now. (**Indigenous community organisation worker)**

> You can provide someone with the brochure, but you know, who is going to read a brochure? So probably the best promotional material we ever had was with the family violence stuff. We had a TV ad, a commercial, using local community members, elders, respected persons, kids acting—issues around family violence and sexual abuse—and that was the best promotional material. Short, 10-15 second commercial on TV on prime time that just went through the roof in terms of the community knowing about it, because you had word of mouth saying 'I was on TV—did you see me?' So that is something we are looking at now, but it is costly. We are looking at that (for) our health promotion, preventative type stuff, whereas the days of a brochure or pamphlet ... (**Indigenous community organisation worker**)

> You hold a community meeting, but you are looking at a certain section of members turning up, whereas your TV audience … When you talk about the newspaper, not everyone reads the newspaper, whereas the majority of Koori people watch TV and at the right times. (**Indigenous community organisation worker**)

Significantly, literacy also impacts upon interactions between Indigenous people and government agencies or institutions, including courts and tribunals. Thus, according to one stakeholder, 'A lot (of unaddressed need is) because most of the communication (by services and agencies) is done by mail and they don't read their mail or collect their mail' (**Community organisation worker)**. Not being able to understand formal written correspondence may lead to or exacerbate civil or family law problems. Centrelink or DHS correspondence, for instance, may advise clients of their relevant obligations - but how can they respond effectively if they cannot understand the correspondence itself? Court documents can be similarly difficult to interpret.

Shame about not being able to read and write may deter people from asking for help, creating further problems:

> With Centrelink payments and social security, I get so many people just ringing up saying 'I don't understand this form, what do they mean when they say this and this?' They have all this pressure from, for example, Centrelink to get it back in time, but they really don't know what they are signing. … They don't know everything from just one letter that they receive. **(Community organisation worker)**

> They are given a piece of paper with their legal rights in it and they can't read it. And they are not going to ask someone to read it for them. Eviction notices or information about their rights

> to go into VCAT, all that information is never issued verbally. It's always written, given as letters. They then lose all right to reply because they don't understand. Well, it's not that they can't understand it. They just can't read the information. I constantly get asked 'What's this say?' Some *can* read … but it's the terminology they don't understand. So unless I tell them to bring it into me, and we go through it bit by bit, which takes many hours as well—it's the simple understanding of it all. … It's just a lack of understanding when it comes to receiving letters and court documents. (**Community organisation worker)**

Literacy may also mean something other than the capacity to read and write. Different *types* of literacy are required in order to avoid, identify and respond to legal problems. Poor financial literacy, for instance, might lead to misunderstandings in relation to bank accounts, debt and loans. These 'misunderstandings' may well end up as legal problems. In a different context, the following comment speaks to this issue, but in this instance refers to both health literacy and 'conventional' literacy as being of equal relevance to issues of service delivery.

> There's ordinary literacy and there's health literacy and they're both problems. Health literacy is people understanding what health services are available for them so that they can actually participate in decision-making. … (This) is not an Indigenous example, but it's an example of where health literacy was a problem. A woman said her husband was dying and she swore she would not let him get anywhere near palliative care. She would keep him home, she would look after him herself, she'd fight tooth and nail... He, of course, got so ill he had to go into Emergency and then he was hooked up with palliative care, which she said was fabulous, her absolute saviour. So, because of her lack of health literacy, not understanding what palliative care actually did, she was using all of that extra emotional energy and time and effort, fighting off the people who turned out to be her saviour. So, it's not just reading and writing, it's much more than that. **(Statutory Authority staff)**

6.4.2 Interaction of Different Issues: Criminal and Non-criminal, Legal and Non-legal

The following account of challenges that one Indigenous woman had to cope with is provided by a statutory authority stakeholder from community corrections. It illustrates well the multiple issues and stressors that Indigenous people may be dealing with, as well the connections that arise between civil, family and criminal law matters.

> (There was a) Koori woman that I had (as a client) who was on … (a now defunct community supervision order). So pretty much she had to report to us four days a week. So, you know, for her it was nearly impossible. Like, she had housing issues. There was a lot of domestic violence going on. And people knew and would ring DHS as soon as there was a fight. You know 'We need them out!…' Her children were in and out of foster care and there was a lot of contact that way. And there were a lot of financial issues. She had lost her license. She had unpaid fines. You know, there were all these other civil matters that were going on and here am I trying to say to her 'You have to be here at 9 o'clock two days a week and work full days. And the other days you have to come and see us. And then you have to come and see the Drug and Alcohol worker.' It was extremely difficult to navigate that order. And all of those things were civil that lead to a breach of a (community-based correctional) order… It is hard when there is so much … I was exhausted. And she was living it! (**Statutory Authority staff)**

Complexity arises where Indigenous people are caught up in the criminal justice system, but then have civil or family law issues that *also* need to be addressed, whether these issues belong to them or to an incarcerated family member. This 'interface' between civil and family law need and criminal law gives rise to particular issues of access to justice. In the first place, incapacitation within the prison system reduces capacity to access relevant assistance and advice.

> There would be a lot of Koori consumers and tenants who are caught up in criminal matters who still have civil law needs. So we'll go into prisons and help a wide range of prisoners, especially the ones who are coming up for release, with getting ready for being savvy consumers and also knowing their rights and responsibilities as tenants … and how they set up their phone account and how they set up their utilities and how they manage those things and how they resolve issues (like getting) their phone cut off when they went to jail for 18 months. How do I foot this bill when I get out? There is that interface there… You might have the hubby going into custody for whatever reason and the wife not being aware of certain bills or certain parking fines or speeding fines… Just trying to assist that. To involve their partners in custody around their consumer issues or civil law issues. **(Statutory Authority staff)**

Further, for Indigenous communities legal need often travels alongside non-legal issues. Dealing with poverty, dispossession, substance addiction and trauma, for instance, and the difficult emotions associated with these and other issues (including anger), may take precedence over or impact upon people's capacity to effectively address civil and family law problems.

> I see sometimes a lot of anger, a lot of anger. And sometimes that anger clouds… the issues or how to deal with the issues… So, I don't know how to solve that. I don't know what could be put in place for that. (**Community organisation worker)**

> People ring in by phone, by far the greatest contact, in a 'Lifeline' like crisis. People call in angry, abusive and threatening over the phone, emotional. It's a question of trying to sort out exactly what the legal problem is. (**Indigenous Legal Service staff)**

> (Aboriginal people's needs are) very complex, a lot more time consuming, a lot more ... It's hard getting the balance and that's what the doctor was saying too. He's … dealing with Aboriginal patients all the time. He works in an Aboriginal Health Service, so he's got a lot of those people. One minute, they'll come in and abuse him and walk out the door and another time, they'll be quite nice and happy, and all the time he's just trying to get the treatment provided. **(Statutory Authority staff)**

6.4.3 Disability

Disability was also identified as impacting upon Indigenous capacity to access justice effectively. Similarly to low levels of literacy, disability is not something that Indigenous people alone deal with, but levels within Indigenous communities are comparatively high.[132] It is suggested that because of poor access to services, disability within Indigenous communities may be undiagnosed to a significant degree, which means that its true incidence is unknown, as the following comment highlights.

> Now, across Australia most jurisdictions do not screen well for levels of impairment. And for many Indigenous people that means you've got the double disadvantage of disability, which

[132] See, for instance, discussion in Australian Institute of Health and Welfare (AIHW) (2011) *Aboriginal and Torres Strait Islander people with disability: Wellbeing, participation and support,* Canberra: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418952&libID=10737418951

> often is not treated well, not recognized, not diagnosed, not taken into account. … We certainly know (levels of impairment are) high. (**Statutory Authority staff)**

> I've talked about the double disadvantage of people who are both Indigenous and have a disability and I do think they are very high rates. But even within community itself they are probably not well recognized and well understood. When you don't have routine access to health screening then you may not be aware (of a disability) … and you might not understand developmental delay (for example). (**Statutory Authority staff)**

The comment by the following stakeholder points to the ways in which disability might impact upon access to justice. 'Where is the justice for people with a disability?' they asked. In this instance, the criminal justice system is at issue, where a person with a disability may be either victim or offender. But such impairment also hinders access to civil and family law justice.

> So, a person with a disability, in order to have equal access to justice, needs support and this is true whether a person is Indigenous or non-Indigenous. And so many people with a disability are unable to access justice for a whole range of reasons. So, in the first instance if you have a disability you may not be aware that what's happening to you is in fact a crime, that the level of abuse is unacceptable. The first (issue) is understanding around what is a crime and *then* you may report it… If you have a disability you are going to be less likely to be believed, less likely to be able to give consistent and reliable evidence and as a consequence less likely to have your case go to court. If you do go to court and you are a person with a disability then you may in fact be cross-examined by a barrister, who has no concern that you have a disability and there are some really appalling ways in which people with a disability are treated once they get into a court system… Where is the justice for people with a disability? And so you go all the way through and then if you are convicted and go to prison then… you are not going to get screened. You might have some kind of screening in the allocation of appropriate programs and prisons. (In) terms of (numbers of) Indigenous people with a disability in the prison system, it is higher… So, all the way along people with a disability are denied access to justice… But that's the court system across the board, it's not just in criminal matters. (**Statutory Authority staff)**

There was some discussion about the incapacity of the legal system to respond effectively to the needs of persons with disabilities, including because of a failure to understand what those needs are.

> Is the case framed in such a way that it takes into account the person's disability or (is there) an understanding of what that disability is or how it might operate and affect their behaviour? And all too often courts are partly overwhelmed… Across the board you've got these people with disability coming through the court system and lack of understanding on how to deal with it… So, there is that whole framing of the civil law case around or taking into account the disability. In England they have what's called 'intermediaries'. … (It's) in legislation, to operate in civil and in criminal matters, although they are only using it in civil matters, (this) is (not just) a communication assistant saying, 'Do you understand?' An intermediary plays a far more active role at the other end of the continuum and says 'This person has a disability. I suggest you talk to them in this way.' They… say, 'This person has an acquired brain injury. They are not going to be able to answer this sort of question. However, if you are asking questions in relation to this, you might frame questions in this way or the person's likely to be

agitated and to stand up or…' So, the court actually has some understanding. (**Statutory Authority staff)** [133]

The above points regarding effective legal responses to disability highlight the fact that complexity of need has important implications in terms of service delivery. It is important, for instance, that Indigenous people are able to access help and advice at as early a point to avoid escalation (and hence increased complexity) of relevant problems. It is also vital that complex needs are identified and dealt with as holistically as possible in preference to some being left for someone else to deal with. This might be termed 'compartmentalisation' of need. Both of these points are discussed immediately below.

6.5 ACCESSING LEGAL HELP EARLIER: AVOIDING ESCALATION

Indigenous people need to get legal and other help much sooner than they appear to be in order to avoid the escalation or problems into more serious issues (such as eviction, repossession of goods, accumulation of debt or criminal offending).

6.5.1 Why the Delay?

There are a number of reasons for delay in accessing assistance, support and advice. According to some stakeholders, Indigenous people may avoid or 'put off' getting help or otherwise dealing with civil or family law problems because the problem in question might seem 'too hard', they may be reluctant to engage with the legal system and legal matters, they may feel shame, fear repercussions or believe that their situation will not be dealt with in confidence. A number of comments on these points follow.

> There are a lot of people (who) have a lot of mistrust. They don't trust anybody. Say, if I was a solicitor and they were coming to me and they'd think, 'She is going to go back and tell such and such …' There is a lot of mistrust. Because there isn't a lot, and it's sad to say, but there isn't a lot of confidentiality here, especially with the big services, child protection people, and the community. **(Community organisation worker)**

> It does escalate because it's left alone. And then you are seeing them again in three or six months' time for an issue that could have been resolved and saved, but because they weren't engaged, because it seems too hard, it doesn't happen. So, then it escalates to being vacated or getting an eviction note or MR Rentals is taking their stuff. (**Community organisation worker)**

> I don't know if you're speaking to anyone in the courts but there is a general frustration about the point at which the client engages with matters and whether they can be resolved at an earlier date. So for example, fines escalate to a point where they can never be repaid and end up with warrants being issued rather than payment plans. (**Legal practitioners)**

> I am here and I am available and it's just they don't always engage. They don't. They just don't. I don't know how else to explain it. You can ask them to do this. Sometimes it seems too hard. They need to drop down some paperwork and it can happen three weeks later. Their timeline differs from our timeline. And it doesn't matter if I say this is actually quite urgent, I

[133] For information on intermediaries, see http://www.theadvocatesgateway.org/intermediaries

need it. I think sometimes they'd rather put their head in the sand. **(Community organisation worker)**

They don't want to be involved in any of the process so everything is left to the last minute until they get dragged into court kicking and screaming. They're very reluctant to access anything prior to the day... run in, do what they have to do, get in and get out again. (**Community organisation worker)**

6.5.2 Mediation and Koori Court

Another point raised in relation to accessing help earlier or seeking to resolve or address problems or disputes before they escalate to full-blown, serious legal issues is that mediation might be used more frequently (for instance, in relation to family law or neighbourhood disputes at DSCV) and particularly where the mediation in question has an Indigenous focus and is culturally relevant.[134] Mediation might be a more prominent part of legal service provision, with appropriate resourcing, it is suggested.

I think that if there were greater staff in the local legal service (things would improve). So then if the staff could go and see what extra things they could do and start in the areas like … mediation … that could be the first port of call. So then people in the community all knew that whatever the issue was they could walk in there first, sit down and just chat with someone and get an idea of how things could go, and they could begin at the mediation stage before it escalated into a legal thing. I think that more things could get settled. There is plenty of data around...There is the method used by the Koori Court, the methods used by the family decision making models, where it brings significant people together (to) resolve issues or situations. I've seen it here. I've seen it happen around Australia … New Zealand and in Canada, so it does work. (**Indigenous community organisation worker)**

There needs to be some type of mediation (for family or neighbourhood disputes). There is Department of Justice mediation and they are trained. Do they have trained Aboriginal mediators? Interestingly enough the Department of Justice don't use those mediators who they have trained. I don't know why. Well I was starting to think that perhaps all that training (of Aboriginal mediators), hope and capacity in the community was purely tokenistic. We have (done mediation) and as I say we did one last week and a couple of weeks ago, but sometimes you find that because it's not instant or they have to make a time before they actually meet (within DOJ) …What ends up happening is that we try and do it ourselves to a degree but we use the Department of Justice as a consultant. We find that communities don't want to use that mainstream mediation. (**Community organisation worker)**

By extension, there was some comment made in relation to the expansion and use of Koori Court, as noted elsewhere in this report, as an alternative forum for resolving civil and family law matters, in contrast to more adversarial, mainstream forums. Stakeholders suggested, for instance, that 'Koori Courts are a fine example of an alternative process … that could extend into other (legal) jurisdictions'. (**Legal practitioners)**

[134] See for example, National Alternative Dispute Resolution Advisory Council (2006) *Indigenous Dispute Resolution and Conflict Management*, ACT

A number of stakeholders queried what Koori Court does when non-criminal issues emerge. How are they dealt with in the context of criminal law matters?

> Koori Court is for criminal law. … It's really just a crime-based … it doesn't have a lot of programs outside that. (But) (o)ften the crime will be the iceberg of other issues. But I don't know if they are referred (to services for non-criminal issues). (**Legal Aid staff)**

6.6 COMPARTMENTALISING OF NEED AS A BARRIER

Legal services are also, in some cases, failing to recognise and respond effectively to clients' issues as early and as comprehensively as they should. Thus, during contact with clients, legal (and other) services may not always be asking the right questions to reveal the full range of issues clients need assistance with. They are also not seeing certain matters as a priority or as something that they are tasked to look after, leaving them instead to another service to deal with. Or they might also fail to see the connections between different types of problems.

One example of this within legal service delivery is where criminal law and civil and family law problems are separated for a client, even where there is an obvious connection between them. It is noted that it is during contact with a client around criminal law issues that *non*-criminal legal problems might also be picked up and addressed, but this does appear to always occur.

> Things like criminal charges, how that would then affect things like a VCAT claim, the (Aboriginal Legal Service) solicitors don't see the connection. So there are the gaps. (**Community organisation worker)**

> Indigenous people … come in (to the Aboriginal Legal Service), do what they have to do and get out. … There is no follow up with them (about civil and family law problems), they just get lost in the system, then come back when they have done something wrong again. (**Community organisation worker)**

As suggested below, compartmentalising clients' needs in this way may mean that problems are left unaddressed, only to emerge later as more serious matters. The clients of the following organisation are said to be 'perpetually in crisis' for this reason, as issues which might have been dealt with earlier by services but which are pushed aside do not disappear; on the contrary, they just gather steam as time passes.

> These other things aren't being picked up, which then just means (they) become a crisis in the future. So, our clients are in perpetual crisis because nobody is dealing with this stuff in the beginning. I think people need to start working on the little stuff too because it's just going to become big stuff. … I think that people should be provided with assistance at an early stage…. because a lot of people don't access it (then). You will find that a lot of my clients had been to lawyers but this has not been resolved. Something has not been resolved. And I don't like the thought of everything going back on the client. … I think legal services have to take some responsibility as well. And it's not about opening and closing a stat. … As I say, I can have a client who effectively had been in the system for 20 years and they are still. … They'll come to me with all of this stuff. … So, I think there are gaps in services in asking the questions. And I think there are gaps in the people in terms of actually prioritising it as a case item. (**Indigenous community organisation worker)**

Dealing with issues in this way also means that people generally have to locate, contact and use a range of different services. Significantly, cold rather than warm referrals are made to services, which then may not be able to assist clients after all. Services need to invest more time into promoting and using warm referrals, in particular. Without this type of engagement with Indigenous people, they may give up altogether, they are 'bounced around so often' that they just 'stop' and legal needs might remain unresolved, as the following comments suggest.

> (VALS are) … not holistic … Because (of funding and) the rest of it … they can't do family violence, they can't do fines. And the fines get accumulated …. But they don't do housing either. … You know, he has smashed holes in your walls, they are not representing you for that either. You can be sent … they can give you a telephone number for the Tenants Union, who would then say that you can represent yourself. (**Indigenous community organisation worker)**

> We have the same issue with VALS. VALS telling us they are referring people to us and it's like … there was no evidence that anybody was ringing us so we went back. And it's fair enough. When you get bounced around so often that you stop. … So we've put in place practices around 'Don't you do the bouncing, send us the information and we'll do the calling', so the onus is not on them to make contact with yet another bloody agency that they've got to explain their story to. **(Statutory Authority staff)**

Clients are also likely to have a range of workers assisting them, which creates difficulties when coordination between workers is poor, including coordination between legal and non-legal services. There is again the possibility that clients will 'drop off', skip appointments and tire of the process altogether.

> And we find it really hard to get feedback from the legal services. … And it's just like … 'Well, we don't have to talk to you'. … Yeah, dude. We know that you don't have to talk to us (but) … just keep us informed of what's happening. Just talk to us. … No, I think (service provision for clients is) not being coordinated. … And then my client would tell me 'Oh, I've got an appointment to see a psychologist on Thursday with my three kids.' And I am just, 'Well, how are you getting there?' 'I don't know.' …. But I think that we are really different because we are really holistic. We are 'How are you getting there? Do you need a wake-up call?' All these other types of things whereas the legal service just says, 'You need to be there at 10 o'clock.' … So, we have women that aren't from Melbourne. And you've got to get yourself to South Bank! And so that's when we've got to call the legal services. 'You've got to tell us these things so that we can help coordinate transport and all the rest of it.' It will never happen! It doesn't happen. (**Indigenous community organisation worker)**

6.7 WORKING HOLISTICALLY AND ENGAGING EFFECTIVELY WITH CLIENTS

Given the complexity of Indigenous legal need and problems of compartmentalisation of need, it is important to consider how capacity to assist clients more holistically might be increased, whether that be within a single legal service (for instance) or across different legal and other services. As one Indigenous organisation stated, 'I think, as well, when people go to legal services, they often have a myriad of problems. … And they are looking for a service that will solve all of their problems' **(Indigenous community organisation worker**).

Stakeholders noted a number of ways in which legal need might be more holistically met. Having a 'primary worker' to liaise with different services on behalf of a client can be helpful, for a start. The

following service has taken on the role of 'primary worker' because it saw a need to coordinate service provision for its clients.

> We generally are their primary worker. We are the worker that they see every other day or speak to every day. … (We have) to coordinate all the different services, as no service is fully holistic. These people would often say to me 'What do you do? What do you do?' And I always tell them 'I am the organiser!' … And that's what makes most sense … It does (make things harder for us), because it means that we are always at capacity. And we can't meet the needs of the women that are out there… (If a service refers clients to other services) … our women will not remember who it is. … So many people have got so many workers involved. (**Indigenous community organisation worker)**

Another way of working holistically is to have a 'one-stop-shop', where an individual can go to a single location and have different questions and problems dealt with, to some extent simultaneously. The Billabong BBQ that operates in Melbourne is a good example of this type of arrangement, where various services meet in a park and provide breakfast to community members in a range of areas.[135]

> I also participate in a program called the Billabong Barbeque. … And there are a number of agencies that all contribute to that service and we offer a holistic support service, (with both) mainstream community service organisations as well as local Indigenous services. (**Community organisation worker)**

6.7.1 Effective Collaboration Between Indigenous, Non-Indigenous, and Legal and Non-Legal Organisations

Something that appears to work particularly well is to combine legal and non-legal, mainstream and Indigenous service provision together, including (but not necessarily only) under the one roof. Thus, in speaking about seeking funding for a social worker to work alongside lawyers, one legal service provider suggests that an arrangement such as this should be seen as 'best practice because it works'. Despite this, it is noted that government still seems to prefer to give 'money to (legal services such as Legal Aid) for *legal* issues (only)' (**Community organisation worker).**

One reason that collaboration of this type appears to work so well is because Indigenous people may be more likely to approach *non*-legal, *non*-mainstream (Indigenous or community-based) services rather than legal services with their problems. This is due to barriers that deter people from accessing legal and mainstream services. As the following health organisation notes 'I know that Legal Aid is an advocacy organisation, but there's a need for something between which is hard on the ground to actually *get* people to Legal Aid.' (**Community organisation worker)**

A couple of initial points might be raised in this context. It is firstly important in this regard to acknowledge the vital work that non-legal services are currently providing to Indigenous communities around civil and family law issues. This might include financial counsellors, housing advocacy bodies or women's refuges – to name only a few. Further, agencies like VEOHRC, CAV, DSCV and others are also important services that can provide information and assistance, including conciliation and mediation of disputes. It is important to consider ways in which access to such services can be improved, alongside access to *legal* services.

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[135] For an evaluation of this initiative, see North Yarra Community Health (2013) *Billabong BBQ Evaluation,* Melbourne VIC http://www.nych.org.au/publication/pdf/research/Billabong%20BBQ%20Evaluation%20Report.pdf

There are well-documented difficulties mainstream organisations, including legal services, commonly face in trying to engage effectively with Indigenous communities. This is to an important degree due to the historically negative interactions between such organisations and Indigenous people, leading to feelings of distrust and fear, as noted above in the context of contemporary child protection workers and Stolen Generations. Given this problem, one statutory authority stakeholder acknowledged that an Indigenous person will be likely to look upon government service delivery (in this instance provided by an agency such as Consumer Affairs Victoria) and ask, '(W)ho is to say government organisations would ever help me?' (**Statutory Authority staff).** A further stakeholder comment continued along the same lines.

> I think one of the barriers is being part of the Department of Justice. … (People do come up and ask) 'Where does the information go? Where is it stored? Who else has access to it?' Which are fair enough questions, you know. So, that confidentiality in what happens with this information and where it goes, when you are clearly bannered as Department of Justice, is a barrier. (**Statutory Authority staff)**

To overcome these barriers, the importance of mainstream organisations connecting with Indigenous communities through trusted and well-known organisations, particularly where they are Indigenous (including RAJACs and LAJACs), is emphasised by a range of stakeholders. Partnerships of this type have worked in the past, and continue to be beneficial. Stakeholders emphasised that they are key to effectiveness of service delivery.

> I think the focus at the moment is to provide that kind of information to RAJACs, who are linked into existing communities. … You know, so that there is someone there who knows what we do, who knows who I am, or who is our conciliator here, who comes and has conversations as well. So, that's kind of the focus. (**Statutory Authority staff)**

> One of the things that the Sheriff's Office has been trying once a year or something, they would come out here (to our organisation). People could come here and speak to the Sheriff about any outstanding warrants. They have done that a couple of times and it worked ok. The person felt safer to come here and see them than to go into the Sheriff's Office, which is straight across the road from the Police Station and Court House, and that worked but it worked only in partnership with us. We had to do some strong advocacy in the community and tell the people that it was okay to come here, that they won't be arrested, etcetera. (It) would be good (if Legal Aid also set up a clinic here). (**Indigenous community organisation worker)**

It is often during contact with a recognised, *non*-legal organisation that Indigenous civil and family law problems may be picked up, at which point they can either be referred - through a warm referral - to a legal service or other organisation for assistance *or* dealt with directly by the non-legal organisation, if appropriate, to a point and depending upon capacity. Of particular importance, a non-legal service will be better able to meet client need in this instance when they have adequate knowledge to do so, derived through connections they have established with legal services, for instance. As one community-based health service, states, they 'work a lot with (an Indigenous Legal Service, which is) really helpful … because I get a lot of advice with the law stuff that I wasn't aware of' (**Community organisation worker).**

However, more work needs to be done in this area, including to ensure that non-legal organisations know what help legal services and other agencies such as VEOHRC, DSCV or CAV can and cannot

provide so that they can make appropriate referrals to them, and have a good enough understanding of the law so that they are able to initially identify, and then to assist with or refer relevant legal issues. As the following stakeholder notes, for instance, it would benefit from knowing 'more about what (Legal Aid) can do for you and the criteria on how to get it' (**Indigenous community organisation worker).** Further connections also still need to be made, as failing to make them creates gaps in service delivery.

> I think the other gap (in service delivery) is not really something to do with legal (services), but it's just the networking between the mainstream and the Indigenous- specific services. I think it has to be continued to build a little bit closer and closer. It's not us against them. (**Community organisation worker)**

6.7.2 Collaboration Through Outreach

Cross-service relationships and partnerships may be established through outreach, which has been identified during the ILNP research as being an essential part of effective engagement with Indigenous communities. The following comments demonstrate that legal services might improve service delivery by establishing such services, in particular, at Indigenous community-based organisations. This is another way of working holistically with clients and of offering assistance and support for a range of issues effectively under a single roof. Barriers hindering access to advocacy and assistance are reduced or removed. Use of outreach is also relevant to the discussion below on flexible service delivery.

> We do have appointments on the afternoon … that we are in court, and my experience is that the Indigenous clients don't access those appointments. They just don't. I don't know… I mean, I think it's something that we need to think about and perhaps we need to think about having appointments scheduled at the Aboriginal Co-op or something like that. (**Community organisation worker)**

> Every Monday morning staff members from (named organisation) are sitting out on that couch out there waiting to see people. So if (Legal Aid) can … come to us instead of expecting Aboriginal people to go to them it would probably work a lot better. … That's right, that would be ideal. We could advertise it in the newsletter and things like that, get the word out and about that they would be here every Monday morning with those other two guys. **(Indigenous community organisation worker)**

> (Legal Aid) has to realise that's it's a different way of working to get the Aboriginal clientele. You have to get out from your office and get out from behind your desk. **(Indigenous community organisation worker)**

As this last comment suggests, mainstream organisations need to be seen as coming to the community, rather than requiring the community to come to them. According to an Indigenous stakeholder organisation, government agencies may 'have Aboriginal staff in there now but they don't basically come out of the office. They don't come out into the community setting' and so are not going to engage as they might (**Indigenous community organisation worker)**. By way of contrast, there was some positive comment in relation to government outreach work, including the Department of Justice's mobile services.[136]

[136] See http://www.justice.vic.gov.au/utility/service+locations/mobile+justice+service+centres

The significance of conducting outreach through an established and trusted *Indigenous* organisation, as discussed, was also emphasised in the following comment.

> We had a similar thing with (another organisation). They started coming (here) once a fortnight … but that was actually stopped with a decision from their bosses in Melbourne because they need to be able to service not just Aboriginal people but mainstream as well. Well, mainstream might be uncomfortable coming out to (our Coop) so therefore (this service) goes and sits at the mainstream organisation and (they say) 'Aboriginal clients can access us there.' Well they don't see many. They still come here (to the Co-op). We still get the phone calls. (**Indigenous community organisation worker)**

A couple of issues arising in this context, however, need to be highlighted. One Indigenous organisation states that they feel like they are doing all the chasing to build cross-cultural connections. Legal and other non-Indigenous services need to initiate contact and work to build relationships. 'It's always (the Coop) that is ringing all these services (like DOJ, Legal Aid), not the other way around' (**Indigenous community organisation worker)**. Further, according to same organisation, services need to persevere in the outreach work that they do, mindful that relationships with communities take some time to build.

> (One) of the issues was that if they were going to put a worker here all day then they need to have the outcomes. My discussion with them was that we couldn't guarantee that the first few times. They have to be prepared for the worker to sit there all day at first if that is what it takes. Part of it is developing a relationship with the community and becoming known. … They are quite happy with that now. (They are) starting to spend time (here) … just to get noticed. It's all a process and that's where it starts. They are supposed to have ten clients in five hours or something. We can't guarantee that. (**Indigenous community organisation worker)**

6.7.3 Collaboration Between Legal Services

Collaboration between different *legal* services also needs to be improved, particularly given that the services often need to refer matters, again ideally through warm referrals, across to each other due to conflict or limitations on the type of matters that they can take on.

> We fail (as an organisation) as we don't reach out to (Legal Aid) enough. They want to be involved with discrimination. They want to lend a hand and be involved. The Shepparton pilot project for the basics card, Legal Aid want to help. They've been contacting us and we've been popping over there. We're trying to figure out what can be done as an organisation in putting propositions to them because they're so well resourced. (**Indigenous Legal Service staff)**

One important issue in this regard is that at the moment, legal services may not know enough about each other's capacity and what they can or cannot assist with, which impacts upon the effectiveness of referral process. This is something that was raised by legal services themselves, with the suggestion that in order to improve that process they need increased financial and other resources. Legal services may assist their clients better if they were to develop more effective client referral strategies or agreements between themselves.

> And I think probably greater partnerships between, for example, family violence prevention legal service, VALS and our service (CLC)… I've never really seen a VALS face here in Bendigo… We don't have much to do with each other. … Maybe it's because of that tension… that VALS are often representing different clients or the other parties and we are representing the other side… It kind of is back to the bare bones. There is absolutely no meat on the bones to be able to do a lot of this networking (between services) and building up the relationships and this sort of stuff so you can actually best advocate for your client. In an ideal world, they would approach an agency and then be referred off to the most appropriate one according to their particular needs. … In fact I never made those referrals because on the one hand you know that they are full to the boots, sort of thing, and have got no capacity *or* you don't know who they are and what their work is *or* you've had other reports from other solicitors and other clients questioning their ability. (**Community organisation worker**)

6.7.4 Service Segregation

A related issue is that Indigenous people should have the right to make a choice about which services, including legal services, they seek assistance from, and this includes having an option to use Indigenous *and/or* non-Indigenous services. Stakeholders complained of widespread service segregation affecting Indigenous people, who were effectively forced to engage with Indigenous services because non-Indigenous services would not assist them—based on a perception that Indigenous people must access Indigenous services.

But for a number of reasons, including due to concerns around confidentiality or because of intra-community tensions, Indigenous people may *prefer* to work with a non-Indigenous agency or organisation.

> We have really good Indigenous specific services around here for health, for housing, for legal. And yet there is a mainstream service like us that's (a preferred service) for a number of (Indigenous people). And I think part of that is that's the downside of living in a community because they are not interested to go (to Indigenous services) because everyone else would know their business. They choose not to go to the Aboriginal (service). (**Community organisation worker)**

> It comes back to a community thing. If one person knows that person accessing that service and they can't access it, they'll tell everybody. And then no one else will go there. Because there is a lot of family feuding going on here and it's been like that for about 10 years. If one family accesses it then the other family will not go there. (**Indigenous community organisation worker)**

One woman from the Fitzroy women's focus group suggested that she had not been to the Aboriginal legal service 'because you've got to be family (to get help from them)'.

This form of segregation not only takes away capacity to make a genuine choice, it also means that the Indigenous services are working over-capacity as they take on clients they are probably not funded to assist.

> There is a notion that if there is an Aboriginal service, the community is expected to go to that. So there are very distinct issues around accessing mainstream services and not only is there an overload on the Aboriginal services, but often they are not supposed to be providing those services, they are not funded for it anyway… There is also on my mind the lack of

> choice around service selection, so if you've got VALS that's where you are expected to go. The rest of us sort of get to pick and choose where we go for support and for services… But Victoria is sort of (different) … because geographically (it) is really very small. So, you've got people in a small space competing for services alongside all these issues around family and community groups and all that sort of stuff. And it's not here like Broome or somewhere where… you actually can… go somewhere else (as) there is less people concentrated in a small place. I find that quite an interesting sort of issue here. (**Statutory Authority staff)**

> I am really passionate about the service segregation. A black face will walk in and they'll go 'Right-o, you are an Aboriginal. You can go across to (an Aboriginal-specific service)'. And (we would ask), 'Why can't you work with them?' 'Ah, because you get funded to work with Aboriginal people'… God, I don't know what time we would have been working 'til on those cases. And it's not fair to those people because they don't get a choice about what service they are being (provided with)… They are being told … you know this girl that recently has been referred to me … as I said, she is not even family violence. … And I said 'What other services did they tell you about?' 'None!' … She is an Aboriginal woman so she got referred to the 'Aboriginal women's service'. Not to a local housing provider. We are an hour away from where her house is. It's not anything but… It's just that it's clear—you are Aboriginal, you go to an Aboriginal Service. **(Indigenous community organisation worker)**

Of particular concern, as the following stakeholder suggested, is that there are a lot of barriers inhibiting access to services and yet when an Indigenous person finally does take the initiative and seek help they are referred away from a mainstream service *because they are Indigenous*. The Indigenous organisation to which they are referred may then not be funded to take on their particular problems, so they may also turn them away. The individual in question is likely to disengage at this point, according to the following Indigenous community organisation.

> Well, if they do get to the Aboriginal Service, they know the Aboriginal Service will go, 'We are not actually funded for this. Who sent you here?' And we do that too. (A woman from Mildura was sent to me from another mainstream service and) I had to go to them and say 'What do you want me to do for her?' (They reply) 'She is an Aboriginal.' 'Well, yes. Do you not work with Aboriginal women?' And they all get flustered when I ask that question. But, you know… The accommodation services, they will actually say to us, 'You are more culturally appropriate.' And I just think 'So, that just means that *you* need to look at your service, not make the client go somewhere else.' … I see it as hand balling because they still get to count those people as stats. That just shits me—they are referring an Aboriginal person away but they still count that as a stat. They'll (send them away but) they'll still be able to say 'Oh, 20% of our clients are Aboriginal.' And what percentage of that 20% did you actually refer away? That really gets me angry because, as I said before, this increases my workload. (**Indigenous community organisation worker)**

Without detracting from the need to better fund Indigenous-specific services (including Aboriginal Legal Services), which are generally well placed to provide culturally responsive, flexible and holistic services, able to meet Indigenous needs around service delivery, as this last comment suggests it is vital that non-Indigenous services look more closely at how they can work more effectively with Indigenous people, rather than assuming that all Indigenous people need to go to an Indigenous-specific service. Sometimes referral to an Indigenous service *is* the better option, but decisions about such referrals need to be thought through carefully, in consultation with the Indigenous person seeking help. The aim should not be to segregate, based on assumptions of a non-Indigenous service.

As one Indigenous stakeholder organisation says, 'It (is) about making everyone accountable and really making sure that mainstream service providers (are) providing access to Aboriginal people'. (**Indigenous community organisation worker)**

This is important in the context of legal services. Although non-Indigenous legal services have suggested that they should support Aboriginal legal services as the principal provider of legal services to Indigenous communities, it is also important that they work hard to engage effectively with those communities, as the comment below by a legal service provider attests.

> I think one of the big problems in health is that originally Aboriginal people wanted to do it for themselves, so you would have an Aboriginal nurse at somewhere like Lake Tyers trying to meet incredibly complex health needs, which was terribly unfair and risky for the nurse, but it also deprived the community of mainstream services. So the big need is to make mainstream services much more culturally aware because the lack of cultural awareness just amounts to no access and discrimination. And it has come a long way actually since I first started in this job. I've seen some really good changes on the ground. (**Statutory Authority staff)**

> And also there will be a proportion of the community that will want a mainstream service. So to the extent that we can and are required to deliver that service – my question is 'How can we do it in the best way? The most appropriate way?' That's where we develop a program going forward. We need to have our eyes on cultural competence or safety. (**Legal practitioners)**

The following comment speaks about more than issues concerning legal service segregation, but it reminds us that mainstream services and resources need to be provided to *everyone* in the community—Indigenous and non-Indigenous.

> People are sick of being 'programmed', they are sick of being talked at. They want something practical that is going to work. You know, we want to be included and involved in the white community here. And we're not, we're excluded. And then when we want to create our own football club or whatever, we're looked down upon. So the resources of the mainstream have responsibility for us as well as the others, or they should have. (**Shepparton Women's Focus Group Participant)**

6.8 ENGAGING MORE EFFECTIVELY WITH COMMUNITIES

There appear to be significant issues relating to community engagement for legal services communities around civil and family law need, which present barriers to access to justice in these areas. The following stakeholder makes a significant and appropriate point; that those *most* likely to need legal and other assistance due to vulnerability and disadvantage in their lives may also be *least* likely to access help required. Whilst the latter point may seem self-evident, it is also noted that particular attention needs to be paid to improving engagement with Indigenous people, in this regard.

> (We recognise) … that people (who) are in the most vulnerable and disadvantaged circumstances, the ones that are most in need of our services are the least likely to ask us and they are least likely to be able to make use of our services. …. (Which is why) … we try and make our services more accessible and relevant for people based on their circumstances. So for Koori (people) … we offer a different variety (of service) to try and open it up more and

> remove those barriers. But we still recognise that everything can always be improved. (**Statutory Authority staff)**

There is some indication that legal services, and in some instances Legal Aid in particular (as a non-Indigenous legal service, perhaps), are really not sufficiently engaged with communities. One office of VLA itself has said 'I think we are not connected to the Aboriginal communities. We are not there' (**Legal Aid staff).** Other community-based stakeholders commented on Legal Aid's level of active engagement as follows, referring to what is perceived to be their lack of CLE, law reform and outreach work in a particular community, as well as a lack of any other more strategic focus on Indigenous need. Whilst the reality may be somewhat different to this, perceptions are important.

> I've never seen Legal Aid do any outreach work to any Aboriginal communities. I've never seen them do any community legal education to the Aboriginal communities. I've never seen them do any law reform that was Indigenous-based. … I've never ever seen them actually actively involve themselves in the community. Perfect example, we had an issue going back 12 months. Motor Finance Wizard came out into this area, lent all this money to people to get new cars with massive balloon payments. A lot of the people didn't have the ability to understand the contracts. We had people who got into a lot of problems. We actually got the Consumer Action Law Centre to come to Framlingham and helped them get all the contracts wiped. Legal Aid wasn't involved in any of that, there was no assistance whatsoever. We've called in services from outside the area, but I've never seen Legal Aid actively do anything to engage the community. … I think you will find that the only time Aboriginal people head to Legal Aid is for their criminal matter because they don't want to use VALS. And not to the office, just to the duty desk. (**Community organisation worker)**

> I didn't think that Legal Aid has an Indigenous-focussed policy. I've never seen it or never heard anybody speak about it. Is there (one)? (**Community organisation worker)**

6.8.1 Staffing Issues

Indigenous staffing

One indispensable way of improving engagement with communities and ensuring a service is culturally relevant is to have Indigenous staff members working within legal and other relevant organisations. The work of CSOs at VALS was highlighted in this context, with a note that more involvement of these staff members in this service would be of considerable benefit. In particular, according to VALS, CSOs need more training around civil and family law issues, particularly as they are often the only staff operating in VALS' offices regionally.

> CSO's understand very well what's going wrong in the communities they're visiting and are also familiar with the court process. They are also involved in the organisation itself in meetings. (But) CSO's (need to be involved) far more fully in what's going on (in VALS). (**Indigenous Legal Aid staff)**

Stakeholders also commented on the need for Indigenous staffing, including as a vital link with or 'road' into Indigenous communities and as crucial support to non-Indigenous staff seeking to engage with those communities. As one Indigenous organisation suggests, quite simply, 'If you have the right worker there than you get people coming in' (**Indigenous community organisation worker)**. Further comments follow.

> I think that the records tend to show that if you have Aboriginal people employed in key roles in those places then you have a far better chance of engaging with individuals or the community in using them. (**Legal practitioners)**

> And I think more Aboriginal staff need to be involved, like Aboriginal workers working beside (non-Aboriginal workers) because they could be a good link for you, to help you. … I know my Aboriginal workers are an asset to me. They know what's going on in town, they know everything. If someone doesn't turn up for an appointment they know why. So, it's about having those links I think. You need … that middle person. (**Community organisation worker)**

This is a particularly important point for non-Indigenous organisations and agencies.

> My experience (is) that Indigenous people will not use a mainstream office unless you've got an Aboriginal person on your staff. And so, of all those organisations I worked at, the only ones I ever really saw many Indigenous people at was at the Mental Health Review Board because they (Indigenous people) had no choice … I noticed a huge difference (at the Social Security Appeals Tribunal (SSAT)) once they brought in Aboriginal advocates. We weren't getting any appeals (at the SSAT) from Indigenous people, even 'though there were some big problems with some regional offices of (Centrelink). Once the ALOs came on board, they brought Indigenous people along to the tribunal. **(Statutory Authority staff)**

Other staffing issues

Staff turnover is seen by services, too, as particularly problematic in terms of ensuring effective engagement. This problem is difficult to surmount, as the reality is that there will always be staff coming and going. It is, however, important to acknowledge that it is an issue, and to maintain continuity as far as possible.

> To maintain your core business, reach your targets and go out there and do your community engagement… is incredibly difficult for towns where we are on outreach. If you combine that with staff turnover, it's always a different face for some services, a different person. How long you are going to be here for? Or you may have moved from another location to another… I can see why the community doesn't engage. It's difficult… I think if it's the same face it's easier for the community. It's a reliable face and the person and it's that level of trust. (**Statutory Authority staff)**

> I know Legal Aid come down to Lakes but it's about the continuity. They are always different people. It's a nightmare. You are not building that (relationship)… And it's hard… you know they don't want to tell you the story because they don't get to see you next week so they just get sick of it and then it all falls of the perch and they don't follow it up. (**Community organisation worker)**

6.8.2 Flexibility in Service Delivery

As a further important point around improving engagement, services need to be more accessible in terms of how they connect with clients, whether by phone, or by appointment or through other face-to-face contact.

The necessity for outreach services is discussed above, but issues relating to lack of flexibility in service delivery and to adequate responses to them extend beyond that of outreach. A strict appointment system may not work very well for Indigenous people, for instance; just as set hours when the phone will be answered may also create barriers. Indigenous clients may find it difficult to keep appointments, particularly if those appointments are perceived as being somewhere too far down the track or where they have transport or childcare issues or no phone (with sufficient credit). Services are likely to be heavily booked and there will therefore be reasonable delays in actually getting hold of someone to assist. This is problematic as Indigenous people may not be engaging with services around civil and family issues, as noted, until the very last moment, so they may need assistance relatively quickly. A highly structured system of appointments may be perceived as effectively 'locking people out' from services. Some of the significant problems in this area are noted, as follows.

> (They need to) get rid of the appointments at Legal Aid. Have someone that can see people just on a walk in basis. Some of the mental health people, the drug and alcohol people, they are more likely to sit there for a couple of hours than come back for an appointment in two weeks' time. (**Indigenous community organisation worker)**

> Indigenous people haven't got their own transport and they rely on getting picked up by our organisation's bus… (Transport is something that)… we take for granted. You know, it's just not that easy. (**Indigenous community organisation worker)**

> And childcare is a gap. Because no one wants to see them when they've got six or eight kids with them… Dragging all the kids (to appointments) can be quite expensive. Like, we've got some women who've got eight children catching public transport, and it costs two zones… And having kids hanging around you all day. You just can't put them on a chair, these kids are going to draw on the walls or they trash the joint. There is stuff like that. So, the woman (client)… mum will be thinking about it all the time. (**Indigenous community organisation worker)**

> It's often basic things like getting clients to appointments, getting the clients to the same location as us at the same time. They often need a support worker that can help with transport and we send text reminders and reminders and ring and often it's simply having a telephone that is funded with credit. (**Legal Aid staff)**

Failing to make appointments causes frustration for services, and clients may be refused service in future if they do not show up as promised.

> And they also do dumb shit! Like making an appointment at nine o'clock in the morning. Well, how is she going to get kids to school and then get here? Women don't have cars. Clients don't have cars. Why make an appointment at nine o'clock? Why make an appointment before 10.30? They do what they like with clients all the time. Our clients are too ashamed to go 'I can't… I can't do it'. So, what they do, they just might not turn up and then not go back to that legal service again and you know what the legal service will say? 'Oh, you've missed your appointment? So, you won't be a client of ours anymore.' (**Indigenous community organisation worker)**

At one level, problems in this area can be improved through practical solutions, such as the provision of transport to attend appointments, or through greater understanding of the circumstances of clients and why they may not be able to make appointments. Services need to be more flexible in this regard,

as far as possible. One Indigenous organisation notes that it is not uncommon for clients to disengage at some point. 'You know, you may have a client who hasn't called for six months. Well, 'C'est la vie'. That's the way that it is' (**Indigenous community organisation worker),** but services should not then turn around and exclude them or otherwise give up on them, they suggest. Other comments are as follows, the first one directed towards Legal Aid, the second to VALS.

> Aboriginal people—if you've got an appointment and they don't show up, go out go and chase them up because there is usually a reason why they can't get there… A lot of people don't have credit on their phones for ringing and cancelling and things like that… The agencies that usually work are the ones that put a bit more effort into it. (**Indigenous community organisation worker)**

> And generally, you know, when I've rung… I've referred a family law matter down to VALS before and they did assist the client to an extent. I think he disengaged at some point and … he came back through our service. I thought this is a matter that really should be going back to VALS, but VALS just refused to take it on. So, he sort of ended up with us. And my experience with him was that VALS were reluctant because of the client's behaviour. But also because of the distance and the fact they are stretched with the family law area as well. (**Community organisation worker)**

Otherwise, services might consider implementing a different method of service delivery—one that is much more flexible and which avoids strict appointment times.

> It would be good if there could be more advocacy (when) mental illness or dependency issues… are linked to the fines. At the moment I refer to Legal Aid but they are so busy and they will have an appointment that's in two weeks' time. … These are the type of clients that are not going to keep an appointment, so it never gets anywhere. It would be great if they could have more staff at the Aboriginal Legal Service, even if it was only someone who floated every day and could just allow in whoever walks in on the street—they don't have appointments but they see them. I know it sounds a bit American but I think that it would work. (**Indigenous community organisation worker)**

6.9 QUALITY OF LEGAL SERVICE DELIVERY

There was a certain level of negative comment by focus group participants about poor quality of legal services currently being provided to Indigenous people, including by private practitioners. It was suggested that this may occur *because* clients are Indigenous and are therefore not treated with sufficient respect. A woman in the Bairnsdale women's focus group states, 'We just want to be treated like humans, and with respect, because that's what we are'. Other comments follow.

> What you need to look at is not giving us second-grade (legal) help because we are Indigenous. We should deserve the best like anybody else, the best in education, the best in housing. (**Bairnsdale Women's Focus Group Participant)**

> There is a theory out there in the community that if you are using a blackfella (legal) service you are downgrading. Some of the private practitioners that I've seen around here representing our people, my eight year old son could put up a better argument to the magistrate … some of them don't really care, too. (**Shepparton Men's Focus Group Participant)**

In direct contrast, one Indigenous organisation noted that its clients seem to be satisfied with VALS' services.

> As I said, I don't necessarily get feedback from clients about VALS. So, in terms of my overall happiness I am not giving them a ten out of ten. But my clients are happy. …My clients almost always get great outcomes. So, my clients would probably give them a nine out of ten. (**Indigenous community organisation worker)**

One legal service made an important point; that client dissatisfaction may be higher for those with civil or family law problems because expectations or outcomes may not be quite as narrowly defined as they are within the criminal law.

> Sometimes it's also about the expectations. I think if you break the law you might know you will be punished somehow. It's just the degree of punishment. (In family law), your expectation might be that you want to destroy your partner totally. And if the system doesn't do it for you, you are dissatisfied even though you might have gotten the best outcome. (**Legal Aid staff)**

6.9.1 Communicating With Clients

One area of service delivery that was commented on was quality of communication between solicitors and clients. Although the following comments are, in general, likely to be about criminal law representation, they illustrate broader perceptions about lack of attentiveness by solicitors to the needs of Indigenous clients, which at least to some extent clearly relates to under-resourcing and to problems inherent within legal processes and the legal system.

> The duty solicitor on the day … doesn't know anything about it and do you really think he cares? ... In the meantime you're made out to be dumb and stupid because (the solicitor) doesn't know what you're referring to on the day. … (Then they adjourn it) and when the next court day comes it's a different lawyer! ... They see you ten minutes before court—the story of your life (**Bairnsdale Women's Focus Group Participant).**

> Respect is the bottom line, having empathy for the clients that they are representing and giving their best. And whether it takes a whole day to put your argument across, unfortunately our lawyers have that many clients. You go down to court tomorrow and you see them and they have about twenty (clients), and it's amazing. They do the best that they can (but) people just rock up on the day and expect representation and the lawyer has to do the best that they can in 10 minutes. 'Give me your history, what are you being charged with?' (**Indigenous Legal Service staff)**

> The solicitors are poor on time. They really are under the pump, but with us mob we like to tell our story and be thorough with what happened. The lawyer is under pressure, the court is under pressure. (**Indigenous Legal Service staff)**

Being able to actively listen, understand and communicate effectively with and for clients (without using legal jargon) is an important component of showing appropriate cultural respect, according to the following stakeholder. This applies to private practitioners, as well as legal service staff—and private solicitors may be all that is available in smaller communities where, for instance, a person is conflicted out of accessing legal services or if there is no CLC, Legal Aid or Aboriginal Legal Service solicitor available.

> A lot of this is communication … in my experience over the years they just don't know how to communicate properly with our mob. A lot of the time they miss the mark and then the mob just leave the court dissatisfied with what's happened. They don't understand the outcome and a lot of that comes back to communication. There have been strategies put out by (VALS) in regards to solicitors communicating with community. That's a big one for me and I don't even know if some of these big private practitioners even have policies on communication with the Koori community. … They use these big words and it's like 'What's going on?' They really have to have a policy on communication or (for making sure) if (their clients) do really understand it. If they don't, they are not much use to us. We need someone who can communicate with us so they can go and tell the court. Not communicate the way they want to communicate either. They need to understand us mob and really be able to understand us. No lawyer has any social conscience anymore. There's a huge gap, the social divide, the poor people. You see them all lined up in court. Who cares? Not some of those lawyers. You have to have respect for the people that you are representing and listen actively. (**Indigenous Legal Service staff)**

6.10 AGENCY POLICIES THAT IMPACT ON SERVICE DELIVERY TO INDIGENOUS CLIENTS

Other than legal service policy relating to the type of civil or family law issues that legal services are able to take on, the following policy areas were also identified as problematic.

6.10.1 Merit testing

A legal service provider policy which stakeholders commented on was Legal Aid's merit testing, used to assess applications for assistance. Some felt that it was insufficiently flexible, as well as applied in such a way that cultural issues might not be taken into account—thereby disadvantaging Indigenous applicants. Legal Aid's policy is seen by some as being based on 'a mainstream approach'. In discussing Legal Aid's policy and to illustrate this type of approach, one community-based stakeholder drew a parallel between this policy and a condition imposed by DHS where there is an allegation of child abuse or neglect, as follows, as an example of a lack of understanding of Indigenous perspectives and experiences in mainstream policy.

> In a child protection matter DHS say you have to get an intervention order against that bloke who has got to stay away from that house and if he comes to that house you've got to dial 000. How many Aboriginal families are going to pick up the phone and call police and invite them into their house? They are not going do it. (**Community organisation worker)**

In the context of Legal Aid's merit testing, the same stakeholder then discussed in some detail the definition of 'successful outcome' in the relevant policy.

> The merit test says 'How likely are you to get a successful outcome?' What's the successful outcome? For DHS matters, is a successful outcome that you won't get an order or is it that you will get culturally appropriate conditions? Legal Aid says (you have merit if) you won't get an order. But there are other successful outcomes that are not necessarily that you didn't get an order. For some people, very rarely, it's actually a positive to have DHS involved. But that's not a successful outcome that's taken into consideration. (Merit means) that you're likely to *avoid* an order. For some people (though), it's a positive. You jump the cue and around here there's no housing, Child Adolescent Mental Health Services has got a huge

> waiting list, psych services—I think we are down to one psychiatrist for psych services at the moment—psych services have now got a neo-natal specialist. So a huge waiting list for that. So for anyone that has got a premature baby born, to get into the neo natal specialist … you've got criteria to get in. … I just think that there are organisations there that we could jump the cue with if DHS was involved, but then that's not a 'successful outcome' on a merits test for funding. (**Community organisation worker)**
>
> I think you have to be careful that your merits test isn't too generalised because you still have to go back and say 'In this case, this is why we should fund this particular case, I know what your rules are but in 'this particular case'.' We have got one lady here … she is an absolute 'nutter', but she is a beautiful mum and she is so affected by the stolen generation involvement with her family. Every now and then she needs to take her shoes off and go for a walk and she might go for a walk for quite some time, she might end up in Ward 9, which is the psych ward. When she is well she is the best mother you will ever find. To try and work with DHS and say 'Yes, you need an order for these children but it's got to be flexible because when she is well she has got to be able to see her children'. We had awful trouble with that particular lady with VALS funding because they just couldn't get the gist of every now and then she had to go walking and we had to let her do it for her own health. But they couldn't see past the fact that she was regularly in Ward 9, therefore she shouldn't have rights to her children. … There was all this mounting paperwork about how bad she was. Then there were problems with Legal Aid funding for her to get rights to her kids. I know that's an extreme, but their rules aren't flexible for situations like that. (**Community organisation worker)**

Legal Aid also commented on its merit testing in relation to inquests.

> With the inquests, it's an issue generally for clients…. There is more need for them to be represented because they feel quite powerless in the system but then it usually involves a systemic issue probably anyway. We can ask questions like how many people is this likely to benefit? That's part of the public interest test, and that's a very ugly question … very ugly. **(Legal Aid staff)**

6.10.2 Conflict of Interest

Conflict was mentioned by a number of stakeholders as presenting real barriers to accessing legal help. Services genuinely felt that there was no help for their clients because of issues of conflict, and that there were limited alternatives once a client was conflicted out of a legal service, especially in (particularly regional) areas without private practitioners or CLCs who might take on a conflicted matter. Where they do exist, private practitioners may be too costly to provide a genuine alternative to Legal Aid or Aboriginal Legal Services, although they may be able to work with clients through a grant of aid provided by VLA.

> I do find conflict really annoying. … It's just like evil for evil if there is a conflict. It's probably something that happened years ago. It's not a conflict regarding this matter. And, you know in places like VALS, it's one of the reasons why I don't try to refer to them anymore because everybody is in conflict. **(Indigenous community organisation worker)**

> I think that's the hardest thing where there is VALS and Legal Aid that whoever gets there first, gets there first. So then some of your other parties are really closed because of fees (of private practitioners). **(Community organisation worker)**

Both VLA and VALS agreed that this is a significant issue, the consequence of which was that there may be nowhere for people to go for help.

> The other thing is intervention orders are a huge problem and we can't deal with some of the cases because of the conflict. Most of the times you can't brief —same for family or child protection if the partner has been in the system already—you can't get access to any service. It doesn't matter if it's the Aboriginal Legal Service, one of the local legal firms or someone else. Because when we brief to somewhere else, next time around when the matter comes up you can't get access—it's a huge problem. (**Indigenous Legal Service staff)**

> (In) child protection proceedings and family law… when we run conflict checks … I am speaking hypothetically, but this is probably the case, where we may have already represented sometimes both parties unbeknownst to us in relation to criminal matters and therefore we can't act for any of those parties or the children in family law child protection proceedings so it can be that we are conflicted out, in particular to Aboriginal families. (**Legal Aid staff)**

6.10.3 Other Policy Issues

Other policy issues relate to a requirement for confirmation of Aboriginality in order to access Aboriginal Legal Services and cross-border recognition of grants of aid in Legal Aid matters.

> The requirement for confirmation of Aboriginality is a huge inhibitor because of sensitivity. The (Cth) Attorney General's Department want us to have a Certificate of Confirmation of Aboriginality before we can act for someone. This has caused our clients distress and we have since changed our internal policy. They used to have to go to an Aboriginal organisation and have a board certify that they're Aboriginal if we haven't acted before. There's a 6-8 week turnaround for this to happen. Our policy has been reviewed to say that if a CSO knows that they're a member of the family, it's alright. … It's not just our organisation—it's all organisations. It's huge in Victoria. Other organisations have it as well and it's just as frustrating for (them). … We hardly ever have to refuse people because of that policy (though). **(Indigenous Legal Service staff)**

> Some of the difficulties happen when the system doesn't recognise the movement of Aboriginal people between states. So, when you are applying for a grant of aid for a matter that's been run in another jurisdiction and so having to deal with, frankly, Tasmanian Legal Aid which is absolute nightmare. They have the most restrictive grants conditions. (**Indigenous Legal Service staff)**

BIBLIOGRAPHY

Aboriginal Family Violence Prevention and Legal Service Victoria (2010) *Improving Accessibility of the Legal System for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault*, Policy Paper Series, No 3

Aboriginal and Family Violence Prevention Legal Service Victoria (2011) *Submission to the Protecting Victoria's Vulnerable Children Inquiry*, Melbourne VIC

Allison, F, Behrendt, L, Cunneen, C and Schwartz, M (2012) *Indigenous Legal Needs Project NT Report*, Cairns Institute, JCU
http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_113496.pdf

Allison, F, Cunneen, C and Schwartz, M (2013) '"That's discrimination!" Indigenous peoples' experiences of discrimination in the Northern Territory' 8(5) *Indigenous Law Bulletin* 8

Australian Institute of Health and Welfare (AIHW) (2011) *Aboriginal and Torres Strait Islander people with disability: Wellbeing, participation and support,* Canberra:
http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418952&libID=10737418951

Ayres, R (2011) 'Arts Law Update: Indigenous Wills Project; 7(22*) Indigenous Law Bulletin*
http://www.austlii.edu.au/au/journals/ILB/2011/2.html

Birdsall-Jones, C (2010), *Indigenous homelessness: place, house and home*, Australian Housing and Urban Research Institute (AHURI), Western Australian Research Centre
http://www.ahuri.edu.au/publications/projects/p80368

Buckmaster, L, Ey, C and Klapdor, M (2012) *Income Management: an overview*, Parliamentary Background Note, Parliament of Australia, 21 June 2012
http://parlinfo.aph.gov.au/parlInfo/download/library/prspub/1727168/upload_binary/1727168.pdf;fileType=application%2Fpdf

Buduls, A (2013) Report of the Independent Review of Centrepay, Report to the Secretary of the Department of Human Services, Australian Government
http://www.humanservices.gov.au/spw/corporate/government-initiatives/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf

Commonwealth Ombudsman (2012), *Review of Income Management Decisions in the Northern Territory*, (Cth) Australia
http://www.ombudsman.gov.au/files/review_of_centrelink_income_management_decisions_nt.pdf

Connolly, C, Georgouras, M, Hems, L and Wolfson, L (2011) *Measuring Financial Exclusion in Australia*, *Centre for Social Impact, UNSW* for National Australia Bank
http://www.csi.edu.au/assets/assetdoc/3c1698bd3334ed55/NAB-Financial-Exclusion-Report_Final.pdf

Consumer Utilities Advocacy Centre (CUAC) (2011) *Wein, Paen, Ya ang gim: Victorian Aboriginal Consumers of Energy and Water*, CUAC, Melbourne VIC

Coumarelos, C, Wei, Z and Zhou, A.Z. (2006) *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas*, Law and Justice Foundation, Sydney

Coumarelos, C, Macourt, D, People, J, McDonald, H, Wei, Z, Iriana, R & Ramsey, S (2012) *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of NSW, Sydney

Cunneen, C and Schwartz, M (2008) *The Family and Civil Law Needs of Aboriginal People in New South Wales*, University of NSW, available at: http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/technical_report/jcu_083446.pdf

Department of Human Services (DHS) (2011), *Report of the External Reviews of CSOs against the registration standards under the Children, Youth and Families Act 2005*, Melbourne VIC

DHS (VIC) (2012), *Pathways to a Fair and Sustainable Social Housing System-Public Consultation Discussion Paper*, Melbourne VIC http://www.dhs.vic.gov.au/__data/assets/pdf_file/0006/709053/housingframeworkdiscussionpaper_27042012.pdf)

Department of Family, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2012) *Place Based Income Management in Greater Shepparton* http://www.fahcsia.gov.au/sites/default/files/documents/11_2012/ims_pbim_shepparton_v6.pdf

Ferdinand, A, Paradies, Y and Kelaher, M (2013) *Mental Health Impacts of Racial Discrimination in Victorian Aboriginal Communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey*, Lowitja Institute, Melbourne VIC http://www.lowitja.org.au/sites/default/files/docs/LEAD%20Report-WEB_0.pdf

First Nations Foundation (2011) *Financial Inclusion for Indigenous Australians in Custody*, for Indigenous Financial Services Network, Melbourne VIC http://www.fnf.org.au/uploads/6/3/1/1/6311851/financial_inclusion_for_indigenous_australians_in_custody.pdf

First Nations Foundation (2011) *Enhancing Indigenous Financial Capability Programs*, for Indigenous Financial Services Network, Melbourne VIC http://www.fnf.org.au/uploads/6/3/1/1/6311851/ra_indig_financial_capability_web_1.pdf

Law Institute of Victoria (2012) *Submission to Victoria Law Reform Commission's Birth Registration and Birth Certificates Community Law Reform Project*, Melbourne VIC http://www.lawreform.vic.gov.au/sites/default/files/Submission_6_CP_Law_Institute_of_Victoria_01-11-12.pdf

Law and Justice Foundation of New South Wales (2013) 'Legal Needs of Indigenous People in Australia', *Updating Justice*, No. 25 http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_25_Legal_needs_of_Indigenous_people_FINAL.pdf

Loddon Campaspe Community Legal Centre and Uniting Care (2010), *Working for Justice in the Goulburn Valley: Report of the Goulburn Valley Community Legal Centre Pilot (October 2010)*, Victoria

May, T (2001) *Social Research: Issues, Methods and Process*, Open University Press, Buckingham

McDonnell S (2003), *Money Talks: Overcoming the financial exclusion problems faced by Indigenous Australians*, paper for Australian Social Policy Conference 2003, UNSW

Mohan-Ram, V (2011) 'Super and Indigenous Communities', *Superfunds* (October 2011) 38 http://www.fnf.org.au/uploads/6/3/1/1/6311851/super__indigenous_communities_-_vmr_-_oct.pdf

National Alternative Dispute Resolution Advisory Council (2006) *Indigenous Dispute Resolution and Conflict Management*, ACT

North Yarra Community Health (2013) *Billabong BBQ Evaluation,* Melbourne VIC http://www.nych.org.au/publication/pdf/research/Billabong%20BBQ%20Evaluation%20Report.pdf

Ombudsman Victoria (2009) *Own motion investigation into the Department of Human Services Child Protection Program,* November 2009, Melbourne VIC

Ombudsman Victoria (2011) *Investigation into Prisoner Access to Health Care*, Victorian Government Printer, Melbourne http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_prisoner_access_to_health_care.pdf

Patton, M (1990) *Qualitative Evaluation and Research Methods*, Sage, Newbury Park

Povey, C and Tan, S (VIC) (2011) *Aboriginal Credit and Debt Clinic: Project Report and Evaluation*, Melbourne VIC, http://vals.org.au/static/files/assets/2677ed55/ACDC_Evaluation_Report_-_Final.pdf

Saratankos, S (2005) *Social Research*, Palgrave New York

Schwartz, M & Cunneen, C (2009) 'From Crisis to Crime: The Escalation of Civil and Family Law Issues into Criminal Matters in Aboriginal Communities in NSW' 7(15) *Indigenous Law Bulletin* 18

Secretariat of National and Aboriginal and Torres Strait Islander Children (SNAICC) (2013) *Whose Voice Counts? Aboriginal and Torres Strait Islander participation in child protection decision-making*, Melbourne VIC

Senate Standing Committee on Legal and Constitutional Affairs (2006). *Unfinished Business: Indigenous Stolen Wages*, Canberra: Commonwealth of Australia.

State of Victoria, Department of Premier and Cabinet (2012), *Report of the Protecting Victoria's Vulnerable Children Inquiry,* January 2012, Victoria

Sutton, J (2008) 'Emergency welfare reforms: a mirror to the past?' 33(1) *Alternative Law Journal* 27

Victorian Child and Adolescent Monitoring System, *The Family: Children in Out of Home Care*, Victoria http://www.education.vic.gov.au/about/research/Pages/203homecare.aspx

Victorian Equal Opportunity and Human Rights Commission (VEOHRC) (2011) *Submission to the Protecting Victoria's Vulnerable Children Inquiry*, Melbourne VIC

VEOHRC (2012) *Locked Out: Discrimination in Victoria's Private Rental Market* Melbourne Vic http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/150-locked-out-discrimination-in-victoria%E2%80%99s-private-rental-market-aug-2012

VEOHRC (2012) *Submission on Pathways to a Fair and Sustainable Social Housing System*, Melbourne VIC http://www.humanrightscommission.vic.gov.au/index.php/submissions/item/186-submission-to-the-pathways-to-a-fair-and-sustainable-housing-system-discussion-paper-jul-2012).

Victorian Law Reform Commission (2010), *Protection Applications in the Children's Court Final Report No 19*, Melbourne VIC

VicHealth, McCaughey Centre: VicHealth Centre for the Promotion of Mental Health and Community Wellbeing, the Onemda VicHealth Koori Health Unit and the VEOHRC (2009), *Building on Our Strengths: A framework to reduce race-based discrimination and support diversity in Victoria*, Melbourne VIC https://www.google.com.au/webhp?source=search_app&gws_rd=cr#fp=456c2186ba13fcc&q=)%2C+Building+on+Our+Strengths%3A+A+framework+to+reduce+race-based+discrimination+and+support+diversity+in+Victoria%2C+Melbourne+VIC.

Vines, P (2011) 'Making wills for Aboriginal people in NSW', 49(8) *University of NSW Faculty of Law Research Series 2011*: Working Paper 33, available at http://law.bepress.com/unswwps-flrps11/art33/.

Vines, P (2013) 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Culturally Appropriate Wills' 16(2) *Australian Indigenous Law Review* 18

APPENDIX A: FOCUS GROUP QUESTIONNAIRE

INDIGENOUS LEGAL NEEDS PROJECT

Focus Group Questionnaire

State:_____ Ct:_____ S: _____

This questionnaire is anonymous - we don't need your name on this form. Please ☑ the answers as required.

Age 18-24 ☐ 25-34 ☐ 35-44 ☐ 45-54 ☐ 55 and over ☐

WHEN YOU ANSWER these questions we would like you to think back over the last couple of years.

1. HOUSING AND TENANCY

Have you had any problems or disputes over your house involving your landlord (this might involve Territory Housing or State Housing Commission, the Shire Council, local community council or a private landlord)?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the dispute or problem about (eg rent, repairs, eviction, relocation or transfer between houses, bond, overcrowding)?

_____

Did you seek legal advice or get help? YES ☐ NO ☐

Who did you get help from?

_____

How did you resolve this dispute or problem?

_____

Have you had any disputes or problems with supported accommodation? This might involve a hostel (such as Aboriginal Hostel or shelter), aged care, nursing home or a retirement village? It might involve yourself or someone you care for.

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the dispute or problem about (eg fees, the service provided, standards, etc)?

_____

Did you seek legal advice or help? YES ☐ NO ☐

Who did you get help from?

_____

How did you resolve this dispute or problem?

_____

Over the last couple of years, has there been any other time you have used legal help or advice for housing (eg buying and selling a home or unit, applying for Territory or State Housing or priority housing, seeking council approval for building applications, etc)?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Who provided the advice or help?

_____

How did you resolve this problem or dispute?

_____

2. NEIGHBOURS

Have you had any problems or disputes with neighbours over such things as fences or boundaries, noise, privacy, animals?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

What was the problem or dispute about?

_____

Did you seek legal advice or help? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve this problem or dispute?

_____

3. WILLS and ESTATES

Have you completed a will? YES ☐ NO ☐

If yes, did you get any advice from anyone? YES ☐ NO ☐

Can you remember who it was? Was it a lawyer? Was it a legal centre? Was it a friend or a relative?

_____

If you haven't completed a will, would you like to get legal advice on completing one?

YES ☐ NO ☐

Who would you approach for that advice or help?

_____

Have you ever had to take charge of someone's estate after they died (ie as the executor for a deceased estate)? YES ☐ NO ☐

Have you been involved in any disputes over a deceased estate (eg have you had a problem getting access to a family member's estate)?

YES ☐ NO ☐

How did you resolve this problem or dispute?

4. VICTIMS COMPENSATION

Over the last couple of years, have you been the victim of a violent crime? YES ☐ NO ☐

If you answered YES, please complete the following questions:

Did you know about the victim's compensation scheme? YES ☐ NO ☐

Did you seek victim's compensation? YES ☐ NO ☐

Who did you go to for help and advice?_____

5. STOLEN WAGES, STOLEN GENERATIONS

Are you a member of the Stolen Generations?

YES ☐ NO ☐

Do you think you may be entitled to any money that was held in Aboriginal Trust Funds (eg Stolen Wages)

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Have you had any help or advice about making any claims?

YES ☐ NO ☐

Who provided the help?_____

Are you pursuing any claims for compensation?

YES ☐ NO ☐

6. EMPLOYMENT

Over the last couple of years, have you had any problems or disputes in your job over things like pay, superannuation, unfair dismissal, working hours, award conditions, leave, union membership, bullying, harassment or other working conditions?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem or dispute about?

_____

Did you seek legal advice or help? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve this problem or dispute?

_____

7. SOCIAL SECURITY AND CENTRELINK

Are you receiving any type of allowance specifically for Aboriginal people (such as ABSTUDY, CDEP or the Indigenous Cadetship program)? Are you receiving any other type of allowance through Centrelink (such as Youth Allowance, Newstart Allowance, Austudy, sickness or disability allowances, age pension, widow pension, Veteran Affairs pension, parenting payment, child care payment, baby bonus, carer payment)?

YES ☐ NO ☐

Are your Centrelink payments subject to Income Management? YES ☐ NO ☐

Have you had any problems or disputes over payments with Centrelink over the last couple of years (such as overpayments or underpayments, getting cut off benefits, incurring a debt, problems with the Basics Card)?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem or dispute about? _____

Did you seek legal advice or help? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve this problem or dispute?

_____

8. FAMILY MATTERS

Over the last couple of years, have you had any problems about residence or contact arrangements, such as custody or access, in relation to your children or grandchildren? Have you a problem with family members taking children away (and not returning them)? Have you had problems in relation to child support payments?

YES ☐ NO ☐

Have you had any problems in relation to children being taken into care, or problems about fostering, adoption or guardianship?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem? _____

Did you seek legal advice or help? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve this problem or dispute?

_____

Have you been through a separation or divorce over the last couple of years and, as a result, have you had a problem or dispute over property, money or superannuation?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Did you seek legal help or advice? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve this problem or dispute?

_____

9. DISCRIMINATION

Over the last couple of years, have you had any problems with racial discrimination or other types of discrimination (such as because of your age, your marital status, your gender or sexuality, religion, or because of a disability)? By discrimination: we mean being treated less favourably because of your race, etc

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly what type of discrimination was it and where did it occur (eg bank, real estate agent, your job, government service, club, etc)

_____

Did you seek legal help or advice? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve the problem?

_____

10. ACCIDENT AND INJURY

Over the last couple of years, have you been involved in a car accident where there was damage to either your vehicle or the other vehicle or suffered an injury outside the home (eg accident in shopping mall, or as a result of medical treatment) or a work-related injury?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the nature of the injury?

_____

Did any of these injuries require medical treatment? YES ☐ NO ☐

Did you seek legal help or advice about compensation and/or insurance?

YES ☐ NO ☐

Who provided the help?

_____

11. EDUCATION

Over the last couple of years, have you been responsible for a young person attending school, TAFE or university, or have you attended yourself?

YES ☐ NO ☐

During this time have you encountered any problems with issues such as suspension or expulsion, bullying or harassment, HECS or other fees?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem? _____

Did you seek legal help or advice? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve the problem?

_____

12. CREDIT AND DEBT

Over the last couple of years, have you had any problems with paying a bill or loan or other debt where the lender has threatened or taken out legal action against you?

YES ☐ NO ☐

Have you had any problems or disputes over your Credit Reference Rating or as a guarantor for someone else's loan, or in relation to possible bankruptcy?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem? _____

Did you seek legal help for any of these matters? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve the problem?

_____

13. CONSUMER

Over the last couple of years, have you any problems accessing or finding your superannuation? Or any dispute with a bank or credit union or financial institution (eg over your account balance, bank fees or other matters)?

YES ☐ NO ☐

Over the last couple of years, have you any problems with insurance (eg a dispute over a claim or premium, or not being able to get insurance in the first place)?

YES ☐ NO ☐

Over the last couple of years, have you any problems with any types of 'scams' or contracts involving things such as funeral funds, door to door sales, TV or mobile phone plans, used cars?

YES ☐ NO ☐

Have you had any other type of problem where you paid for something and didn't get what you paid for?

YES ☐ NO ☐

If you answered YES, please complete the following questions:

Briefly, what was the problem? _____

Did you seek legal help or assistance? YES ☐ NO ☐

Who provided the help?

_____

How did you resolve the dispute or problem?

_____

13. TAXATION

In what year did you last complete a tax return? _____

APPENDIX B: STAKEHOLDER INTERVIEWS

ILNP STAKEHOLDER INTERVIEWS CONDUCTED IN VICTORIA

Melbourne

Victoria Legal Aid
Victorian Aboriginal Child Care Agency
Aborigines Advancement League
Office of the Public Advocate
Victorian Aboriginal Legal Service
Elizabeth Hoffman House
Public Interest Law Clearing House
Consumer Action Law Centre
Women's Legal Service
Consumer Affairs Victoria
Fitzroy Legal Centre
Jobwatch
Tenants Union
Aboriginal Housing Victoria
Dispute Settlement Centre Victoria
Consumer Utilities Advocacy Centre
Victorian Equal Opportunity and Human Rights Commission
Neighbourhood Justice Centre
Aboriginal Family Violence Prevention and Legal Service Victoria
Office of the Health Services Commissioner
Social Security Rights
First Nations Foundation
Homeground

Bendigo

Victoria Legal Aid
Advocacy Rights Centre
Bendigo Family and Financial Services
Bendigo Community Health Services
Aboriginal Housing
Consumer Affairs Victoria
Dispute Resolution Centre Victoria
HAVEN
Centre for Non-Violence
Annie North Refuge

Mildura (for Robinvale/Swan Hill)

Murray Mallee Community Legal Service
Mallee Family Care
Centacare Family Services
Mallee Domestic Violence Service
Mildura Aboriginal Cooperative
Meminar Ngangg Gimba (Haven)
Mildura Justice Service Centre

Robinvale

Aboriginal Housing
Robinvale Resource Centre
Robinvale District Health Service
Mallee Family Care

Swan Hill

Swan Hill Justice Service Centre
Victorian Aboriginal Legal Service
Mallee Domestic Violence Service
Salvation Army
Centacare
Swan Hill and District Aboriginal Cooperative

Shepparton

Relationships Australia
Centacare
Rumbalara Cooperative
Rural Housing
Victoria Legal Aid
Primary Care Connect
Koori Employment Enterprises
Victorian Aboriginal Legal Service
Mallee Family Care

Bairnsdale

Victoria Legal Aid

Victorian Aboriginal Legal Service

Quantum Support Services

Uniting Care Gippsland

Gippsland and East Gippsland Aboriginal Cooperative

Gippsland Regional Aboriginal Justice Advisory Council

Berry Street Organisation

Lakes Entrance Aboriginal Health

Gippsland Community Legal Service

Framlingham (and Warrnambool)

Victoria Legal Aid

Emma House Domestic Violence Service

Gunditjmara Aboriginal Cooperative

Southwest Healthcare Service

Consumer Affairs

Worn Gundidj

APPENDIX C

FOCUS GROUP DATA TABLES

5.1 CHILD PROTECTION AND FAMILY LAW MATTERS

Table 5.1 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem in Relation to Children's Residence/Contact and/or Child Support

	Focus Group Participants					
Residence/ Contact and/or Child Support	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	8	11.9	21	23.1	29	18.4
No	59	88.1	70	76.9	129	81.6
Total	67	100.0	91	100.0	158	100.0

Excludes 3 missing case; N=158

Table 5.2 Number and Percentage of Focus Group Participants Identifying Children Being Taken into Care; Family Taking Children and Not Returning Them; and/or Problems Relating to Fostering, Adoption or Guardianship

	Focus Group Participants					
Child Removal, Fostering Issue	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	4	6.3	18	20.2	22	14.5
No	59	93.7	71	79.8	130	85.5
Total	63	100.0	89	100.0	152	100.0

Excludes 9 missing case; N=152

Table 5.3 Nature of Family Law Issue Relating to Children

Type	**No.**
Children taken into care	10
Residence/contact issue	8
Child support	5
Foster care	2
Other	2

Table 5.4 Family law and child protection matters relating to children by location

Location	Child Support/ Residency/Access	Child Removal	Total
Bairnsdale	5	3	**8**
Bendigo	4	3	7
Fitzroy	8	6	14
Framlingham	3	1	4
Heidelberg	5	4	9
Robinvale	2	2	4
Shepparton	1		1
Swan Hill	1	3	4
Total	**29**	**22**	**51**

NB. This is the total number of issues relating to children identified by community. A single individual may have identified problems with both family law and child protection.

Table 5.5 Number and Percentage of Participants Identifying a Family Law/Child Protection Issue In Relation to Children Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No**	**%**
Yes	3	50	14	63.6	17	60.7
No	3	50	8	36.4	11	39.3
Total	6	100.0	22	100.0	28	100.0

N=28

Not everyone who identified a problem in relation to children's residence/contact and/or child support, or a problem with children being taken into care, etc., responded to the question relating to whether they sought legal advice or assistance. A total of 28 individuals did respond to the question and of these 17 indicated they sought legal advice or assistance.

Table 5.6 Number and Percentage of Focus Group Participants Identifying Problem or Dispute in relation to Property, Money or Superannuation Post-Separation or Divorce

	Focus Group Participants					
Property	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	4	6.2	6	7	10	6.6
No	61	93.8	80	93	141	93.4
Total	65	100.0	86	100.0	151	100.0

Excludes 10 missing cases; N=151

Table 5.7 Percentage of Participants Identifying Problem or Dispute in Relation To Property, Money or Superannuation Post- Separation or Divorce

Location	Property Issue	
	Yes	No
	%	%
Bairnsdale	0.0	100.0
Bendigo	10.5	89.5
Fitzroy	5.0	95.0
Framlingham	6.3	93.8
Heidelberg	23.1	76.9
Robinvale	3.8	96.2
Shepparton	5.6	94.4
Swan Hill	4.5	95.5
Total	**6.6**	**93.4**

N=151

Table 5.8 Number of Participants Identifying a Problem or Dispute In Relation To Property, Money or Superannuation Post-Separation or Divorce Who Sought Legal Advice

	Focus Group Participants		
Legal Advice	**Male**	**Female**	**Total**
	No.	**No.**	**No.**
Yes	-	3	3
No	4	2	6
Total	4	5	9

Excludes 1 missing case; N=9

5.2 DISCRIMINATION

Table 5.9 Number and Percentage of Focus Group Participants Identifying Discrimination as an Issue

	Focus Group Participants					
Discrimination	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	20	29.9	25	28.7	45	29.2
No	47	70.1	62	71.3	109	70.8
Total	67	100.0	87	100.0	154	100.0

Excludes 7 missing cases; N=154

Table 5.10 Percentage of Participants Identifying Discrimination as an Issue by Community

Location	Discrimination	
	Yes	No
	%	%
Bairnsdale	26.3	73.7
Bendigo	19.0	81.0
Fitzroy	33.3	66.7
Framlingham	17.6	82.4
Heidelberg	76.9	23.1
Robinvale	23.1	76.9
Shepparton	22.2	77.8
Swan Hill	31.8	68.2
Total	29.2	70.8

Table 5.11 Reason Identified for Discrimination Issue

Location	No.
Shops	9
Workplace / employment	8
Clubs/pubs	6
On the street	4
Service providers	4
Aboriginality	4
School	3
Real estate agents	3
Police	2
Other (including media, sport, airports)	6
Total	49

Some 42 individuals identified 49 different types of racial discrimination.

Table 5.12 Number and Percentage of Participants Identifying Discrimination As An Issue Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	2	11.1	3	12.0	5	11.6
No	16	88.9	22	88.0	38	88.4
Total	18	100.0	25	100.0	43	100.0

Excludes 2 missing cases; N=43

5.3 HOUSING AND TENANCY

Table 5.13 Number and Percentage of Focus Group Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord

	Focus Group Participants					
Housing/Tenancy	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	25	37.9	41	44.6	66	41.8
No	41	62.1	51	55.4	92	58.2
Total	66	100	92	100	158	100

Excludes 3 missing cases; N=158

Table 5.14 Percentage of Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord by Geographical Location

Location	**Housing Issue**	
	Yes	**No**
	%	%
Bairnsdale	57.9	42.1
Bendigo	36.4	63.6
Fitzroy	45.0	55.0
Framlingham	23.5	76.5
Heidelberg	46.2	53.8
Robinvale	37.5	62.5
Shepparton	38.9	61.1
Swan Hill	48.0	52.0
Total	**41.8**	**58.2**

Excludes 3 missing cases; N=158

Table 5.15 Reason Identified for Housing/Tenancy Dispute or Problem with Landlord

Type	**No.**
Repairs & Maintenance	40
Rent	16
Overcrowding	9
Application for Housing / Access to Housing	8
Relocation & Transfer	7
Eviction	6
Complaints (neighbours)	4
Bond	1
Landlord	1
Total	92

Sixty four individuals identified a total of 92 reasons for disputes or problems.

Table 5.16 Number and Percentage of Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No**	**%**
Yes	4	16.7	10	25.0	14	21.9
No	20	83.3	30	75.0	50	78.1
Total	24	100	40	100	64	100

Excludes 2 missing cases. N= 64

Table 5.17 Number and Percentage of Focus Group Participants Identifying a Problem or Dispute with Supported Accommodation

	Focus Group Participants					
Supported Accommodation	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	12	17.6	11	12.5	23	14.7
No	56	82.4	77	87.5	133	85.3
Total	68	100.0	88	100.0	156	100.0

Excludes 5 missing cases. N=156

Table 5.18 Reason for Supported Accommodation Dispute or Problem

Type	**No**
General issues relating to access to supported accommodation	6
Poor Standards	5
Fees	4
Complaints about meals/food	3
Other service issues	3

Table 5.19 Number of Participants Identifying a Supported Accommodation Dispute or Problem Who Sought Legal Advice or Help

	Focus Group Participants		
Legal Advice	**Male**	**Female**	**Total**
	No.	**No.**	**No**
Yes	3	3	6
No	9	7	16
Total	12	10	22

Excludes 1 missing case. N=22

Table 5.20 Number and Percentage of Focus Group Participants Identifying Use of Legal Help or Advice for Other Housing Issue

	Focus Group Participants					
Housing	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	3	4.4	8	9.2	11	7.1
No	65	95.6	79	90.8	144	92.9
Total	68	100.0	87	100.0	155	100.0

Excludes 6 missing cases. N=155

Table 5.21 Source of Legal Advice/Help Provided to Focus Group Participants for *All* Housing Issues

Provider	No.
Community Organisations (including both Aboriginal and mainstream)	15
Family member	5
Aboriginal Legal Service (VALS)	4
Private solicitor	3
Family Violence Prevention Legal Service	2
VCAT	2
Human Services	2
Legal Aid	1
Equal Opportunity Commission	1
Consumer Affairs	1
Police	1
Other	6

5.4 NEIGHBOURS

Table 5.22 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem with Neighbours

	Focus Group Participants					
Neighbour Issue	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	15	21.7	28	30.4	43	26.7
No	54	78.3	64	69.6	118	73.3
Total	69	100.0	92	100.0	161	100.0

N=161

Table 5.23 Percentage of Participants Identifying a Dispute or Problem with Neighbours by Geographical Location

Location	Issue with Neighbour	
	Yes	No
	%	%
Bairnsdale	42.1	57.9
Bendigo	22.7	77.3
Fitzroy	35.0	65.0
Framlingham	11.1	88.9
Heidelberg	53.8	46.2
Robinvale	7.7	92.3
Shepparton	22.2	77.8
Swan Hill	32.0	68.0
Total	26.7	173.3

N=161

Table 5.24 Reason Identified for Dispute or Problem with Neighbours

Type	No.
Noise	21
Animals	10
Fight with neighbours (not specified)	6
Fence or Boundaries	4
Children	4
Privacy	3
Harassment	1
Anti-social/Criminal Activity	1
Rubbish	1
Parking	1
Total	42

Thirty one individuals identified a total of 42 issues relating to disputes or problems with neighbours.

Table 5.25 Number and Percentage of Participants Identifying a Dispute or Problem with Neighbours Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	3	20	7	25.9	10	23.8
No	12	80	20	74.1	32	76.2
Total	17	100.0	27	100.0	42	100.0

Excludes 1 missing case. N=42

5.5 CREDIT AND DEBT

Table 5.26 Number and Percentage of Focus Group Participants Identifying a Problem with Paying a Bill or Loan or Other Debt Where Lender Has Threatened or Taken Out Legal Action

	Focus Group Participants					
Bill or Loan	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	16	24.2	35	38.5	51	32.4
No	50	75.8	56	61.5	106	67.5
Total	66	100.0	91	100.0	157	100.0

Excludes 4 missing cases; N=157

Table 5.27 Number and Percentage of Focus Group Participants Identifying a Problem or Dispute in Relation to Credit Reference Rating; as Guarantor for Another's Loan; and/or in Relation to Bankruptcy

	Focus Group Participants					
Credit Reference, Bankruptcy	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	9	13.6	11	12.5	20	13.0
No	57	86.4	77	87.5	134	87.0
Total	66	100.0	88	100.0	154	100.0

Excludes 7 missing cases; N=154

Table 5.28 Focus Group Participants Identifying: (a) Debt Problem Where Lender Has Threatened or Taken Legal Action; (b) Problem with Credit Reference Rating, Guarantor for Another's Loan; and/or in Relation to Bankruptcy

Location	**(a)**	**(b)**	**Total**
	No	**No**	**No**
Bairnsdale	7	1	8
Bendigo	8	5	13
Fitzroy	4	2	6
Framlingham	2	2	4
Heidelberg	7	2	9
Robinvale	12	2	14
Shepparton	6	3	9
Swan Hill	5	3	8
Total	**51**	**20**	**71**

NB A total of 54 individuals identified 71 issues across both categories. 17 individuals identified both (a) and (b) above as issues.

Table 5.29 Reason Identified for Credit/Debt Related Issue

Type	No.
Bill repayment (not specified)	10
Phone Bills	7
Loan repayment (not specified)	7
Utilities Bills	6
Motor vehicle related debts	3
Fines	2
Credit reference rating	2
Aboriginal Housing Debt	1
Other	2
Total	40

Some 36 individuals specified a total of 40 credit/debt related issues.

Table 5.30 Focus Group Participants Identifying: (a) Debt Problem Where Lender Has Threatened or Taken Legal Action; (b) Problem with Credit Reference Rating, Guarantor for Another's Loan; and/or in Relation to Bankruptcy, Who Sought Legal Advice or Help .

	Focus Group Participants					
Legal Advice	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No**	**%**
Yes	2	9.5	6	18.7	8	15.1
No	19	90.5	26	81.3	45	84.9
Total	21	100.0	32	100.0	53	100.0

N=53

5.6 CONSUMER

Table 5.31 Number and Percentage of Focus Group Participants Identifying a Problem Accessing or Finding Superannuation, or a Dispute with Bank or Other Financial Institution

	Focus Group Participants					
Superannuation or Financial Institution	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	12	17.6	8	9.1	20	12.8
No	56	82.4	80	90.9	136	87.2
Total	68	100.0	88	100.0	156	100.0

Excludes 5 missing cases; N=156

Table 5.32 Number and Percentage of Focus Group Participants Identifying a Problem with Insurance

	Focus Group Participants					
Insurance	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	2	3.0	1	1.1	3	1.9
No	65	97.0	87	98.9	152	98.1
Total	67	100.0	88	100.0	155	100.0

Excludes 6 missing cases; N=155

Table 5.33 Number and Percentage of Focus Group Participants Identifying a Problem with 'Scams' or Contracts (Funeral Funds, Used Cars, Etc.)

	Focus Group Participants					
Scam	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	8	11.8	13	14.6	21	13.4
No	60	88.2	76	85.4	136	86.6
Total	68	100.0	89	100.0	157	100.0

Excludes 4 missing cases; N=157

Table 5.34 Number and Percentage of Focus Group Participants Identifying Other Problem Where Participants Didn't Get What They Paid For

	Focus Group Participants					
Didn't Get What Paid For	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	5	7.4	6	6.9	11	7.1
No	63	92.6	81	93.1	144	92.9
Total	68	100.0	87	100.0	155	100.0

Excludes 6 missing cases; N=155

Table 5.35 Consumer Issues by Community

Location	**Financial Institution**	**Insurance**	**Commercial Scams**	**Other Consumer Issues**	**Total**
	No	**No**	**No**	**No**	**No**
Bairnsdale	1		4	1	6
Bendigo	4	1	2		7
Fitzroy	2		1	1	4
Framlingham	4		2	1	7
Heidelberg	3		5	5	13
Robinvale	2		5	2	9
Shepparton		1			1
Swan Hill	4	1	2	1	8
Total	**20**	**3**	**21**	**11**	**55**

NB This is the total number of consumer issues identified by individuals. Some individuals may have identified more than one type of issue.

Table 5.36 Reason Identified for Consumer Problem

Type	No.
Telephone Contract Dispute	5
Door to Door /Telephone Sales (Not specified)	4
Superannuation – Access and Entitlements	3
Funeral Fund	2
Dispute with Bank (Balance, Fees, Other)	2
Vehicle Repairs/Sales	2
Rent / Purchase Contracts	2
Other Faulty Goods	2
Insurance (Claim Declined)	1
Pay TV Dispute	1

Three individuals indicated they had sought legal help for their consumer-related problem.

5.7 SOCIAL SECURITY AND CENTRELINK

Table 5.37 Number and Percentage of Focus Group Participants Identifying Receipt of Centrelink Allowance

	Focus Group Participants					
Allowance	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	46	66.7	74	82.2	120	75.5
No	23	33.3	16	17.8	39	24.5
Total	69	100.0	90	100.0	159	100.0

N=159

Table 5.38 Number and Percentage of Focus Group Participants Identifying Centrelink Payments Subject to Income Management

	Focus Group Participants					
Income Management	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	7	15.9	7	9.9	14	12.2
No	37	84.1	64	90.1	101	87.9
Total	44	100.0	71	100.0	115	100.0

Excludes 5 missing case; N=115

Of the 120 focus group participants who were in receipt of a Centrelink allowance, 115 responded to the question as to whether their income was subject to income management. 7 males and 7 females indicated their payments were subject to income management.

Table 5.39 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem With Centrelink in Relation to Payments

	Focus Group Participants					
Centrelink	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	10	22.2	17	23.0	27	22.7
No	35	77.8	57	77.0	92	77.3
Total	45	100.0	74	100.0	119	100.0

Excludes 1 missing cases; N=119

Table 5.40 Percentage of Participants Identifying Centrelink Problem by Geographical Location

Location	Centrelink Issue	
	Yes	No
	%	%
Bairnsdale	16.7	83.3
Bendigo	9.1	90.9
Fitzroy	21.1	78.9
Framlingham	11.8	88.2
Heidelberg	53.8	46.2
Robinvale	19.0	81.0
Shepparton	17.6	82.4
Swan Hill	25.0	75.0
Total	20.5	79.5

Table 5.41 Reason Identified for Dispute or Problem with Centrelink

Type	No.
Overpayment	9
Underpayment	6
Cut off benefits	6
Reduced payment (including for failing to secure child support)	5
Work test related	2
Social Security Debt	2
Medical condition not recognised	1

Table 5.42 Number and Percentage of Participants with Centrelink Problem Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	1	10	2	11.8	3	11.1
No	9	90	15	88.2	24	88.9
Total	10	100.0	17	100.0	27	100.0

N=27

5.8 WILLS AND INTESTACY

Table 5.43 Number and Percentage of Focus Group Participants Who Have Completed Will

	Focus Group Participants					
Completed Will	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	5	7.6	4	4.3	9	5.7
No	61	92.4	88	95.7	149	94.3
Total	66	100.0	92	100.0	158	100.0

Excludes 3 missing cases; N=158

Table 5.44 Number of Focus Group Participants Who Received Advice in Completing Will

	Focus Group Participants		
Advice	**Male**	**Female**	**Total**
	No.	**No.**	**No.**
Yes	4	2	6
No	1	1	2
Total	5	3	8

Excludes 1 missing case; N=8

Table 5.45 Number and Percentage of Focus Group Participants Who Would Like Legal Advice To Complete A Will

	Focus Group Participants					
Seek Legal Advice	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	32	54.2	50	58.1	82	56.6
No	27	45.8	36	41.9	63	53.4
Total	59	100.0	86	100.0	14554.2	100.0

N=145, including one person who had *completed* a will but also indicated she would like advice.

Table 5.46 Number and Percentage of Focus Group Participants Identifying Having to Take Charge of Estate After Death

	Focus Group Participants					
Take Charge of Estate	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	5	7.4	8	9.4	13	8.5
No	63	92.6	77	90.6	140	91.5
Total	68	100.0	140	100.0	153	100.0

Excludes 8 missing cases; N=153

Table 5.47 Number and Percentage of Focus Group Participants Identifying a Dispute Over Deceased Estate After Death

	Focus Group Participants					
Dispute Over Deceased Estate	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	5	13.1	11	7.7	16	10.7
No	60	86.9	73	92.3	133	89.3
Total	65	100.0	84	100.0	149	100.0

Excludes 12 missing cases; N=149

5.9 VICTIMS COMPENSATION

Table 5.48 Number and Percentage of Focus Group Participants Identifying as A Victim of Violent Crime

	Focus Group Participants					
Victim of Crime	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	11	16.2	21	23.9	32	20.5
No	57	83.8	67	76.1	124	79.5
Total	68	100.0	88	100.0	156	100.0

Excludes 5 missing cases; N=156

Table 5.49 Percentage of Participants Identifying As A Victim of Violent Crime by Community

Location	Victim of Violent Crime	
	Yes	No
	%	%
Bairnsdale	22.2	77.8
Bendigo	10.0	90.0
Fitzroy	31.6	68.4
Framlingham	0.0	100.0
Heidelberg	53.8	46.2
Robinvale	24.0	76.0
Shepparton	5.5	94.4
Swan Hill	24.0	76.0
Total	20.5	79.5

Excludes 5 missing cases: N=156

Table 5.50 Number and Percentage of Participants Identifying As A Victim of Violent Crime Who Knew About the Victims Compensation Scheme

	Focus Group Participants					
Knew of Scheme	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	3	27.3	7	33.3	10	31.3
No	8	72.7	14	66.7	22	68.8
Total	11	100.0	21	100.0	32	100.0

N=32

Table 5.51 Number and Percentage of Focus Group Participants Identifying As A Victim of Violent Crime Who Sought Victims Compensation

	Focus Group Participants			
Sought Compensation	Male	Female	Total	
	No.	No.	No.	%
Yes	2	5	7	22.6
No	8	16	24	77.4
Total	10	21	31	100.0

Excludes 1 missing case; N=31

5.10 EMPLOYMENT

Table 5.52 Number and Percentage of Focus Group Participants Identifying An Employment Dispute or Problem

	Focus Group Participants					
Employment	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	9	13.0	18	19.8	27	16.9
No	60	87.1	73	80.2	133	83.1
Total	69	100.0	91	100.0	160	100.0

Excludes 1 missing case; N=160

Table 5.53 Percentage of Participants Identifying an Employment Dispute or Problem by Community

Location	Employment	
	Yes	No
	%	%
Bairnsdale	27.8	72.2
Bendigo	13.6	86.4
Fitzroy	5.0	95.0
Framlingham	27.8	72.2
Heidelberg	15.4	84.6
Robinvale	11.5	88.5
Shepparton	5.6	94.4
Swan Hill	28.0	72.0
Total	16.9	83.1

Excludes 1 missing case; N=160

Table 5.54 Reason Identified for Employment Dispute or Problem

Type	No.
Wages	8
Unfair Dismissal	7
Discrimination (including racial, or not specified)	4
Working Hours	4
Bullying, Harassment	3
Superannuation/ Long Service Leave	2
Leave	1
Other	3
Total	32

Some 25 individuals identified 32 reasons for employment disputes or problems

Table 5.55 Number and Percentage of Participants Identifying a Dispute or Problem with Employment Who Sought Legal Advice or Help

	Focus Group Participants			
Legal Advice	Male	Female	Total	
	No.	No.	No	%
Yes	1	3	4	16.7
No	6	14	20	83.3
Total	7	17	24	100.0

Excludes 3 missing cases; N=24

5.11 EDUCATION

Table 5.56 Number and Percentage of Focus Group Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Having Attended Themselves

	Focus Group Participants					
Participation in Education	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	22	33.3	50	54.9	72	45.9
No	44	66.7	41	45.1	85	54.1
Total	66	100.0	91	100.0	157	100.0

Excludes 4 missing cases; N=157

Table 5.57 Number and Percentage of Focus Group Participants Identifying Responsibility for Young Person Attending School, TAFE or University Having Attended Themselves Who Encountered Problems with Issues Such As Suspension, Bullying or Fees

	Focus Group Participants					
Education Issue	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	9	40.9	17	34.7	26	36.6
No	13	59.1	32	65.3	45	63.4
Total	22	100.0	49	100.0	71	100.0

Excludes 1 missing case; N=71

Table 5.58 Percentage of Participants Identifying an Education-Related Issue by Community

Location	**Education Issue**	
	Yes	**No**
	%	%
Bairnsdale	33.3	66.7
Bendigo	14.3	85.7
Fitzroy	0.0	100.0
Framlingham	50.0	50.0
Heidelberg	66.7	33.3
Robinvale	60.0	40.0
Shepparton	30.0	70.0
Swan Hill	38.5	61.5
Total	36.6	63.4

Table 5.59 Nature of Education-Related Issue

Type	**No.**
Bullying	15
Suspension	4
Racial Discrimination	2
Fees	1
Other	4

Table 5.60 Number and Percentage of Participants Identifying a Dispute or Problem in relation to Education Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No**	**%**
Yes	-	-	2	12.5	2	8.3
No	8	100.00	14	87.5	22	91.7
Total	8	100.0	16	100.0	24	100.0

Excludes 2 missing cases; N=24

5.12 STOLEN GENERATIONS / STOLEN WAGES

Table 5.61 Number and Percentage of Focus Group Participants Identifying as a Member of the Stolen Generations

	Focus Group Participants					
Stolen Generations	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	12	17.6	7	7.9	19	12.1
No	55	80.9	79	88.8	134	85.4
Not Sure	1	1.5	3	3.4	4	2.5
Total	68	100.0	89	100.0	157	100.0

Excludes 4 missing cases; N=157

Table 5.62 Number and Percentage of Focus Group Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation

	Focus Group Participants					
Aboriginal Trust Fund	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No**	**%**
Yes	11	19.0	10	12.2	21	15.0
No	46	79.3	70	85.4	116	82.9
Not Sure	1	1.7	2	2.4	3	2.1
Total	58	100.0	82	100.0	140	100.0

Excludes 21 missing cases; N=140

5.13 ACCIDENT AND INJURY

Table 5.63 Number and Percentage of Focus Group Participants Identifying Accident or Injury-Related Issue

	Focus Group Participants					
Accident/Injury	**Male**		**Female**		**Total**	
	No.	**%**	**No.**	**%**	**No.**	**%**
Yes	8	12.1	15	16.7	23	14.7
No	58	87.9	75	83.3	133	85.3
Total	66	100.0	90	100.0	156	100.0

Excludes 5 missing cases; N=156

Table 5.64 Percentage of Participants Identifying Accident or Injury-Related Issue by Community

Location	Accident/Injury Related Issue	
	Yes	No
	%	%
Bairnsdale	11.1	88.9
Bendigo	9.5	90.5
Fitzroy	5.3	94.7
Framlingham	23.5	76.5
Heidelberg	46.2	53.8
Robinvale	15.4	84.6
Shepparton	5.6	94.4
Swan Hill	12.5	87.5
Total	14.7	85.3

N=156

Table 5.65 Nature of Accident/Injury-Related Issue

Type	No.
Motor Vehicle Accident	10
Not Specified	6
Work-Related Injury	3
Medical	1
School	1

Table 5.66 Number and Percentage of Participants Identifying Accident/Injury-Related Issue Requiring Medical Treatment for Injuries

	Focus Group Participants					
Medical Treatment	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	7	87.5	11	73.3	18	78.3
No	1	21.7	4	26.7	5	21.7
Total	8	100.0	15	100.0	23	100.0

N=23

Table 5.67 Number and Percentage of Participants Identifying Accident/Injury-Related Issue Who Sought Legal Advice or Help in Relation to Compensation and/or Insurance

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	1	12.5	4	26.7	5	21.7
No	7	87.5	11	73.3	18	78.3
Total	8	100.0	15	100.0	23	100.0

N=23

5.14 TAX RETURN

Table 5.68 Date of Most Recent Tax Return by Percentage

Date	Percentage
This year	19.7
Last year	16.7
2-5 years	8.3
5 years or more	26.5
Don't know or can't remember	7.6
Never	18.9
Other	1.5
Total	100.0

Excludes 29 missing cases; N=132

APPENDIX D
THE VICTORIAN SERVICE DELIVERY CONTEXT

The following information on current legal service delivery has been provided, to some extent, directly by the legal services listed below upon written request and specifically for the purpose of inclusion in this report. This has meant that the material included herein is not always consistent across the different services in terms of style, terminology or extent of information provided. All services were invited to provide information on their respective service delivery for this purpose, however not every service responded. Where information was not provided, material was drawn from publicly available sources (legal services' websites), where possible. Some of the material is also taken from interviews conducted with legal services as part of the ILNP fieldwork.

1 ABORIGINAL LEGAL SERVICES

1.1 Victorian Aboriginal Legal Service Incorporated (VALS) [137]

VALS was established in the early 1970s to meet the needs of Indigenous people, working to ensure that they enjoy their legal rights, are aware of their responsibilities under the law and have access to appropriate legal representation in courts. It is directed by an Indigenous Board of Management, chosen by the Indigenous community in Victoria.

VALS states that its effectiveness is, in part, due to a philosophy of taking services to the people and actively seeking out problems rather than waiting for clients to approach the service. For example, there is a longstanding protocol with Victoria Police that whenever an ATSI person is taken into custody VALS is notified. VALS also takes a preventative approach to issues faced by the ATSI community and is actively involved in community development, policy development, prevention and diversion and law reform to attempt to address systemic issues.

The activities carried out by VALS are:

- providing legal advice, assistance and representation in areas of criminal, civil and family law;
- providing community legal education to increase knowledge of rights and obligations before the law;
- conducting research and collecting data on legal trends that affect Indigenous Victorians;
- pursuing and promoting law reform to address the disadvantage suffered by the Victorian Indigenous community within the legal and justice systems;
- pursuing measures that aim to reduce the rate of imprisonment of Indigenous people; and
- increasing public awareness and understanding of the problems faced by the Indigenous community within the legal and justice system.

Service Delivery

In terms of staffing, at the time of the ILNP research VALS had eleven CSOs, thirteen criminal lawyers, three family lawyers, one civil lawyer, two paralegals and five volunteers. VALS also had

[137] Description drawn from website (http://vals.org.au/) and correspondence with the service, including by email dated 23 May 2013 and 9 October 2013.

two CLE staff members. VLA seconds a family lawyer to VALS. Client services are available 24 hours a day, 7 days a week, and service the entire state.

VALS has offices in eight locations in Victoria: seven in regional locations and one in Melbourne.[138] The majority of VALS' staff are located in the Melbourne office, but these staff members service all areas of the State. Solicitors from the Melbourne office travel to regional offices to meet with clients and on certain list dates, for instance.

CSOs (seven) are permanently located in each regional office. They provide a bridge between the client, the lawyer and the legal system. Their role consists of the following:

• to link communities to the legal system;
• to link clients with a lawyer;
• to be on-call to respond to calls from police on a 24 hour basis;
• to help clients with court appearances and seek adjournments;
• to visit clients at home before and after court if necessary; and
• to lodge court documents and visit prisons to minimise the alienation experienced by Indigenous people in the prison system.

In terms of areas of law covered, VALS assists with criminal matters (summary and indictable offences, most driving offences), as well as the following family and civil law issues. Family law includes family matters (not property matters), Department of Human Services (DHS) disputes, intervention orders, applicant or respondent, and general assistance completing forms. Civil law includes police matters, help with wills, discrimination, victims of crime assistance, motor car accidents, coroners inquests, difficulties in dealing with government, debt, stolen wages, prisoner's rights and general assistance completing forms.

In terms of CLE, VALS states that it offers a variety of 'events' to the Indigenous community to ensure that everyone knows what services are available to them and what their rights are. Examples include:

- *Youth Days:* linking young people back to their culture whilst building their understanding of what their rights are.
- *Wills and Bills days:* ensuring Elders know their rights and providing advice and support around wills and finances.
- *Income Management in Shepparton:* information sessions on how income management can affect families and community.
- *Know Your Rights: Warrants, What are They, What Happens, What should I do? Youth Days:* linking young people back to their culture whilst building their understanding of what their rights are.

Key Relationships

VALS continues to assist law graduates to fulfil their requisite practical legal training. Placements for the Leo Cussen Institute and College of Law allow for education of incumbent lawyers who are

[138] VALS offices are located in Melbourne, Mildura, Morwell, Heywood, Bairnsdale, Ballarat, Shepparton and Swan Hill.

provided with an opportunity to work within a committed team of practitioners across a broad cross-section of practice and across a variety of jurisdictions.

VALS continues to participate in training for the Victoria Police Prosecutions staff, Bail Justices refresher training or training for admission to the Office of Honorary Justice, and for Department of Human Services (DHS), VLA and a number of community organisations.

Collaborations with stakeholders are strong and include relationships with VLA, Victorian Legal Assistance Forum (VLAF), Centre for Human Rights of Imprisoned People, Flat Out, FVPLS, Office of Honorary Justice and Tarwirri, the Indigenous Law Students and Lawyers Association. Other activities include participation in government partnership groups, including the Aboriginal Justice Forum, the Indigenous Family Violence Forum and the DHS Forum. These forums enable VALS to be proactive in addressing systemic issues impacting on Aboriginal Victorians.[139]

Aboriginal Community Justice Panels

VALS works closely with the Aboriginal Community Justice Panels (ACJP), which was created in 1988 to address the needs of Aboriginal people in the criminal justice system. VALS has signed an agreement with the Department of Justice to administer the 14 CJPs across Victoria. The ACJP program has been running for more than twenty-one years. It is a volunteer based community initiative supporting communities and individuals needing assistance in justice-related matters. The ACJP seek preventative initiatives for community and individuals to participate in, as well as providing support through the call-out service. The call-out service is one of the major roles of the ACJP program. It assists Aboriginal people who have been involved in an incident and are being held in custody in a police station. The primary roles of the ACJP program is to:

- liaise with the legal and welfare agencies to assist in the delivery of services to Aboriginal people in the criminal justice system;
- assist to minimise the contact of Aboriginal persons with the criminal justice system throughout Victoria by working with the police and other agencies on appropriate diversionary programs;
- assist police in assuring the safety of Aboriginal persons in custody;
- increase awareness in the Aboriginal community about the criminal justice system and assist, where appropriate, to sensitise criminal justice agencies to Aboriginal cultural issues; and
- establish an ongoing working partnership to assist in improving the relations between the Aboriginal Community and Victoria Police.

1.2 Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria)[140]

The Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) was established in 2002 to provide assistance to victims of family violence and sexual assault and to work

[139] VALS' lawyers have presented papers for Monash University Just Leadership Program, Law and Criminology Schools at University of Melbourne, Latrobe University as well as at the Access to Justice Conference and human rights film festival.

[140] Description drawn from website (http://www.fvpls.org/), ILNP stakeholder interview with FVPLS and correspondence with the service, including by email dated 4 September 2013.

with families and communities affected by violence. FVPLS Victoria is an Aboriginal corporation managed by an elected Board of Directors.

FVPLS Victoria provides legal and other services to Aboriginal people who are victims/survivors of sexual assault or family violence or who are at immediate risk of sexual assault or family violence. FVPLS Victoria provides free legal advice, referrals, ongoing casework and court representation in relation to intervention orders, family law, child protection, victims' compensation and other legal problems arising from family violence.

FVPLS Victoria also assists non-Aboriginal parents or carers of Aboriginal children who are victims/survivors of sexual assault or family violence. It does not provide support to perpetrators of family violence or sexual assault. It can refer perpetrators to services that are able to assist them however.

FVPLS Victoria provides legal assistance through four offices. These are located in Melbourne, Bairnsdale (covering all of Gippsland), Warrnambool (coverage includes Framlingham) and Mildura (coverage includes Robinvale).[141] Specialist lawyers with experience in family law, family violence and child protection work in the Melbourne office, whilst individual lawyers in the regional offices cover a range of matters. FVPLS Victoria operates a 1800 toll free telephone advice line across Victoria.

FVPLS Victoria Paralegal Support Workers in all offices can assist with:

- information about family violence;
- information about legal and other options available following an incident of family violence or sexual assault;
- information about court processes;
- court support for attending court hearings;
- support when reporting crimes to the police;
- organising and assistance with accessing counselling; and
- referral to other local services that provide support for survivors of family violence or sexual assault.

As well as providing client assistance, FVPLS Victoria works to reduce the incidence of violence and abuse and to increase the recognition of the problem of violence and abuse in communities through community education and advocacy. The service is committed to working with families and communities through projects such as Sisters Day Out well-being workshops, as well as to longer-term systemic change in order to improve the way the community, legal system and authorities respond to family violence and sexual assault. This work includes policy development, law reform and participation in working groups and forums. FVPLS Victoria is represented on the Aboriginal Justice Forum and the Indigenous Family Violence Partnership Forum.

FVPLS Victoria also undertakes CLE work with a social and emotional well-being approach, covering areas of law where FVPLS Victoria assists.

[141] FVPLS Victoria also has a minor/major presence model, with Bendigo, Shepparton and Swan Hill in the minor presence areas; meaning that limited services are provided to these communities from the Melbourne office.

2 VICTORIA LEGAL AID (VLA)[142]

VLA is a state-wide organisation that assists Victorians with their legal problems, with a focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

Service Delivery

VLA has lawyers in VLA offices in most major metropolitan and country regions.[143] It also funds private lawyers to provide legal representation to people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances.

In the ILNP focus communities, VLA has an office in Melbourne (servicing Fitzroy and Heidelberg), Bairnsdale, Bendigo and Shepparton, providing assistance across both family and civil law matters. The VLA Warrnambool office services the community of Framlingham. VLA provides outreach services to Swan Hill on a monthly basis (from its Bendigo office), with one clinic for general legal advice and another clinic specifically for family law matters. As noted below, VLA also provides a number of duty lawyer services at most courts and tribunals across the State, including the Neighbourhood Justice Centre. VLA lawyers provide general and specialist legal advice and minor work assistance and legal representation, including for family and civil law problems.

- Preventative and early intervention services

VLA provides free telephone legal information, advice and referrals through its 1300 Legal Help number (available state-wide). VLA also provides legal information via its website and through CLE publications and workshops. It also has a free public access law library.

- Family dispute resolution services

VLA provides dispute resolution services through Roundtable Dispute Management (RDM) in family law matters. This involves helping parents who are going through a separation or divorce to resolve disputes about parenting or child support issues. VLA also provides RDM during court proceedings to help settle the dispute before a final hearing in appropriate matters.

- Duty lawyer services

VLA provides free duty lawyers in most courts and tribunals across Victoria to help people without their own lawyer on the day of their hearing. Duty lawyer services provide assistance in a range of civil and family law matters, including family law, family violence intervention orders, Victorian Civil and Administrative Tribunal (VCAT) matters, social security matters, Mental Health Review Board matters and child protection.

- Grants of legal assistance

[142] Description drawn from website (http://www.legalaid.vic.gov.au/) and correspondence with the service, including by email dated 20 February 2013.
[143] These locations are Bairnsdale, Ballarat, Bendigo, Broadmeadows, Dandenong, Frankston, Geelong, Horsham, Melbourne, Morwell, Ringwood, Shepparton, Sunshine and Warrnambool.

VLA provides grants of legal assistance for eligible applicants provided either by a VLA lawyer or a private lawyer. The grant enables a lawyer to give legal advice, help reach agreement, prepare legal documents and/or provide legal representation at court. These grants are subject to eligibility guidelines, which restrict grants of aid to certain legal matters and take into account the applicant's income and the merits of the case.

- Types of civil and family law matters

VLA provides advice and assistance for the following matters:

- parenting disputes
- child protection
- child support
- family violence
- anti-discrimination and sexual harassment
- Centrelink and social security law
- debt
- guardianship and administration disputes at VCAT
- infringements (fines)
- matters before the Mental Health Review Board
- some refugee and immigration matters
- some tenancy matters
- Veterans' Affairs
- compensation claims for victims of crime.

Key Relationships

As well as providing services directly to Indigenous clients, VLA also has a statement of co-operation with VALS. The purpose of the agreement is to foster collaboration between the two agencies and to develop an effective partnership to deliver high quality and culturally appropriate legal services to ATSI persons. The agreement allows for VLA and VALS to share resources, professional training and development opportunities. VLA lawyers are regularly seconded to VALS and the FVPLS.

VLA also works closely with CLCs and Family Relationship Centres (FRCs). VLA is part of the VLAF along with other key agencies, including VALS. VLA has attends the 'Sisters Day Out' program, run by FVPLS.

Each year, VLA offers winter clerkships for law students who identify as Aboriginal. The Winter Clerkship Program aims to support Aboriginal law students throughout the course of their studies and on to admission to practice. VLA provides this support by giving students the opportunity to gain work experience in the legal system, to develop practical legal skills, to identify areas of law in which they have a particular interest, and to develop relationships with legal practitioners who can act as mentors. VLA has been offering employment to Aboriginal students through this program since 2002. In 2003, VLA received a Victorian Public Sector People Management Award from the Commissioner for Public Employment under the category 'managing diversity' in recognition of the work done in providing employment opportunities for Indigenous people through this program.

Current initiatives

VLA is in the process of developing a *Reconciliation Action Plan* for VLA. The plan will include strengthening existing initiatives, such as supporting or training staff who are working with Aboriginal clients, working closely with Aboriginal legal services (including through staff secondments) and promoting student opportunities and our new lawyer program to Aboriginal people, as well as promoting new initiatives designed to ensure our services are culturally appropriate and accessible.

3 COMMUNITY LEGAL CENTRES

3.1 Generalist CLCs

Advocacy and Rights Centre[144]

The Advocacy and Rights Centre (ARC) is located in Bendigo. It is a non-profit community organisation dedicated to human rights and social justice advocacy. Its programs include the Tenant Advocacy and Support and Loddon Campaspe Community Legal Centre.

Tenant Advocacy and Support provides a tenancy advocacy service to tenants in social housing through the Social Housing Advocacy and Support Program, funded by DHS. It provides information, assistance and support to vulnerable public housing tenants and assists and represents social housing and private rental tenants through VCAT. Consumer Affairs Victoria (CAV) funds advocacy in relation to private tenancies. The program operates across the Loddon Mallee region, with offices in Bendigo and Mildura and outreach provided across the region. An Aboriginal-specific support project (three years in duration) commenced in Mildura in September 2012. This project provides support to Aboriginal families and individuals wanting to rent in the private rental market. It is designed to offer effective liaison between real estate agents and Aboriginal tenants while addressing issues of access and equity. It is hoped that advocacy and education on the rights and responsibilities of tenants will lead to better outcomes for Aboriginal people in the private rental market.

Loddon Campaspe Community Legal Centre (LCCLC) provides legal information, referral, advice, advocacy, casework and outreach services across the Loddon Campaspe region. It is based in **Bendigo**. LCCLC operates a family violence prevention legal program, providing assistance to victims of family violence in a number of courts and participating in numerous regional and local mainstream and Aboriginal networks and local activities (including White Ribbon Day (men saying no to violence)). The Family Violence Legal Assistance Service is delivered in cooperation with workers from the Centre for Non-Violence and Annie North, Njernda, the Bendigo and District Aboriginal Cooperative and the Swan Hill and District Aboriginal Cooperative. LCCLC also undertakes community development work, legal education (including with respect to homelessness) and law reform projects. This work has included a focus on the introduction of income management in Shepparton and access to justice for persons with disabilities. As a partner in the Seniors Rights Victoria consortium, legal assistance, education, policy development and participation in relevant local networks has also been part of LCCLC's work. Through a partnership with Shepparton/Bendigo FRC, LCCLC also provides family law advice. LCCLC has also spearheaded a campaign to establish a legal centre in Shepparton, piloted as the Goulburn Valley Community Legal Centre (see below).

[144] Information taken from ARC's website (http://advocacyrights.wordpress.com/) and from an ILNP stakeholder interview with the service.

Goulburn Valley Community Legal Centre[145]

The Goulburn Valley CLC (GVCLC) was founded in **Shepparton** as a permanent CLC in mid-2012 after a concerted campaign lobbying government for its establishment, conducted by community members and organisations (including ARC and Uniting Care). Significant levels of unmet need in the community of Shepparton were documented as part of this campaign.[146] GVCLC provides free legal advice and assistance to residents of the Goulburn Valley region. Areas of law covered include family law, complaints about government, consumer, credit and debt, family violence, motor vehicle accidents, discrimination, employment, victims of crime and social security. GVCLC also engages in a range of other work, including law reform work.

Gippsland Community Legal Service[147]

Gippsland Community Legal Service (GCLS) operates in **Bairnsdale** and is managed by Anglicare. It provides a range of services, including:

- legal information and referral on all areas of law;
- legal advice on all areas of law except for adoption, child protection, immigration, conveyancing and personal injury;
- CLE, law reform and policy work;
- and legal casework in very limited circumstances.

Fitzroy Legal Service Inc.[148]

Fitzroy Legal Service (FLS) is one of the oldest CLCs in Australia, opening in 1972. It is located in Fitzroy, Melbourne and provides legal advice and information, including through its drug outreach lawyer, a family lawyer and financial counselling service. Areas of law covered by FLS include criminal law, family law, motor vehicle accidents, consumer problems, debt, housing, employment, social security payments and complaints against police, solicitors and government. FLS has a history of running public interest cases. It also engages in law reform work and community legal education as a form of 'preventative law', to demystify the law and to lead to increased levels of self-help and empowerment. Law reform projects have included work in relation to public housing, including DHS' anti-social behavior initiatives.[149] Community development and social action projects have concerned issues such as criminal record discrimination and police accountability.[150] FLS has some relationship with Aboriginal Legal Services, including as it works with criminal law to a greater extent than other CLCs and may liaise with VALS (very close to FLS geographically) in relation to such matters and also has at some times had staff exchanges with VALS.

[145] Information taken from the GVCLC website (http://gvclc.org.au/) and from an ILNP stakeholder interview.
[146] See also Loddon Campaspe Community Legal Centre and Uniting Care (2010), *Working for Justice in the Goulburn Valley: Report of the Goulburn Valley Community Legal Centre Pilot (October 2010)*, Victoria.
[147] Information taken from GCLS' website (http://www.communitylaw.org.au/clc_gippsland/cb_pages/about_us.php)
[148] Information taken from the FLS website (http://www.fitzroy-legal.org.au/) and from an ILNP stakeholder interview.
[149] Go to: http://www.fitzroy-legal.org.au/cb_pages/submissions.php
[150] Go to: http://www.fitzroy-legal.org.au/cb_pages/community_dev_projects.php

Murray Mallee Community Legal Service[151]

Murray Mallee Community Legal Service is located in Mildura and offers free confidential legal advice (face-to-face or by telephone), information, referral and casework. It also provides legal education and engages in policy and law reform activities. It conducts outreach advice/casework appointments in Robinvale and Swan Hill once per month, as well as offering telephone appointments to clients from these areas at other times. An Intervention Order Support Service is provided at both Robinvale and Swan Hill Magistrates' Courts, also every month. This service offers advice, advocacy and support to people seeking Family Violence Intervention Orders. The CLC also offers a generalist service, as well as assistance with family law in collaboration with the local FRC.[152]

West Heidelberg Community Legal Service Inc.[153]

West Heidelberg Community Legal Service is a not-for-profit organisation providing a range of free legal services to the Banyule community. It was established in 1975 in the Olympic Village precinct, West Heidelberg Melbourne. It has always been and continues to be co-located with Banyule Community Health. Services provided include legal advice, casework, court representation, CLE, information, referral, law reform, research and community activities. [154] Areas of law covered include criminal law, victims of crimes assistance tribunal matters (VOCAT), fines, youth law social security, motor vehicle accidents and insurance and debt-related assistance.

3.2 Specialist CLCs

Consumer Action Law Centre Ltd. [155]

Consumer Action Law Centre (Consumer Action) is a Melbourne-based CLC formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service. The centre is an independent, not-for-profit, campaign-focused casework and policy organisation. It offers free legal advice, pursues consumer litigation and provides financial counselling to vulnerable and disadvantaged consumers across Victoria. It is also a nationally recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. It is dedicated to advancing the interests of low-income and vulnerable consumers and of consumers as a whole.

As a CLC, Consumer Action provides free legal advice and pursues litigation on behalf of vulnerable and disadvantaged consumers across Victoria and is the largest specialist consumer legal practice in Australia. As well as working with consumers directly, Consumer Action provides legal assistance and professional training to community workers who advocate on behalf of consumers.

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[151] Information taken from the Murray Mallee CLS website (http://www.communitylaw.org.au/clc_murraymallee/cb_pages/about_us.php) and from an ILNP stakeholder interview.
[152] See the work that the Murray Mallee CLS has done in relation to consumer issues at: http://www.communitylaw.org.au/murraymallee/cb_pages/news_2013.php
[153] Information taken from the West Heidelberg CLS' website (http://www.communitylaw.org.au/clc_westheidelberg/cb_pages/about_west_heidelberg.php)
[154] See examples of West Heidelberg CLS's law reform submissions or policy-related work at http://www.communitylaw.org.au/clc_westheidelberg/cb_pages/about_west_heid_reports.php
[155] Description drawn from Consumer Action's website (http://consumeraction.org.au/) and correspondence with the service, including by email dated 19 September 2013.

As a financial counselling centre, Consumer Action operates MoneyHelp, a not-for-profit email and telephone financial counselling service providing free, confidential and independent financial advice to Victorians experiencing financial difficulty. MoneyHelp is nationally recognised as the first point of telephone contact in Victoria for anyone with financial counselling issues.

Emma House Domestic Violence Services[156]

Emma House Domestic Violence Services Inc. Legal Program (EHDCS-Legal) is a pilot program funded initially for a period of two years following the collapse of a generalist CLC servicing the south west region of Victoria, including Warrnambool. It is located in Warrnambool.

The service is dedicated to providing legal advice, advocacy and casework for those who have been or currently are victims of domestic violence. It is also funded for a specific Family Violence Court Based Applicant Program. This funding allows for the service's solicitor to attend the Portland, Hamilton and Warrnambool Courts to assist applicants seeking Intervention Orders. The solicitor assists with advice, negotiations and legal representation. Any ongoing casework that falls within the service's case work guidelines is then managed by the service.

At present there is one solicitor who is a Children's Law Accredited Specialist and experienced in family violence, family law, child protection, victims compensation, crime and housing issues. The solicitor appears in the local Children's and Magistrates Courts as well as the Federal Circuit Court of Australia and the County Court of Victoria.

Any matters involving property are referred to private solicitors.

Jobwatch Inc[157]

JobWatch is an employment rights legal centre providing assistance to Victorian workers in relation to their rights at work. It is an independent, not-for-profit organisation located in Melbourne, but providing assistance state-wide. It provides both a telephone information service and an outreach service to assist communities outside inner Melbourne. Some of Jobwatch's functions include:

- a free and confidential telephone information and referral service for Victorian workers;
- CLE, including training and seminars;
- publications on employment law and workers' rights;
- representation and assistance for disadvantaged workers through the legal casework practice and via its Unfair Dismissal Self-Representation Program; and
- campaign and law reform activity with a view to promoting workplace justice and equity for all Victorian workers.

The JobWatch Telephone Information Service provides information and referrals to Victorian workers in relation to workplace difficulties, with both a Melbourne metro number and an 1800 number for

[156] Information drawn from correspondence, including by email dated 9 September 2013.
[157] Description drawn from website (http://www.jobwatch.org.au /) and from correspondence with the service, including by email dated 3 May 2013.

callers outside the Melbourne metropolitan area. Callers on the 1800 number are prioritised.[158] JobWatch's legal practice conducts casework in the various employment courts and tribunals. As part of its community education role, the JobWatch legal practice is responsible for producing a number of employment law related publications. JobWatch's legal team also makes submissions to various bodies in a range of relevant policy areas.[159] Further, through the media Jobwatch also promotes community awareness of important workplace issues such as bullying & harassment, unpaid trial work, underpayment of wages and unfair dismissal.

Public Interest Law Clearing House (VIC) Inc. (PILCH)[160]

PILCH provides pro bono and direct legal services, predominantly through its Melbourne-based members' offices and Melbourne-based outreach clinics, to disadvantaged people who cannot afford to pay for legal services.

PILCH's focus is on the delivery and expansion of quality pro bono services which respond effectively to the unmet legal need of both people experiencing disadvantage and the not-for-profit organisations which support these people. The Referral Service at PILCH facilitates access to pro bono lawyers for people experiencing disadvantage that cannot otherwise access legal services.

The Referral Service takes and assesses requests from individuals in all areas of law, applies pro bono guidelines and makes pro bono referrals. The telephone intake process is state-wide. People from across the state make a telephone call to one of PILCH's intake staff, who will conduct an interview over the phone. A lawyer at PILCH will assess the appropriateness of the legal matter for referral to a pro bono lawyer. Referrals are mainly in migration, property, credit/debt, some criminal law, matters in the public interest and limited family law matters, although all areas of law are assessed.

PILCH also runs a number of specialist legal services, as follows.

The *Seniors Rights Legal Clinic* (SRLC) was established by PILCH as one of the services provided by Seniors Rights Victoria. The SRLC is a specialist legal service designed to respond to and prevent elder abuse and to assist clients with other issues associated with ageing, including credit and debt and Centrelink matters. Legal assistance is provided by pro bono lawyers at four health and allied health services throughout metropolitan Melbourne to ensure easy access by clients and to facilitate referrals from service providers with whom clients already have a relationship of trust. [161] People who call the service may receive initial advice and information about their situation, be given a referral and/or be booked into one of SRLC's clinics, depending on the nature of their inquiry. The SRLC also undertakes law reform and advocacy work and community and legal education activities to promote and protect the human rights of older people and help to improve their ability to age with respect and dignity.

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[158] According to JobWatch, whilst funding cuts have reduced access to this service, Job Watch telephone advisors responded to 6,988 enquiries during 2011/2012. The majority of callers to JobWatch live in the Metropolitan Melbourne area (82.4%). Regional/Rural callers comprised of 17.6% of all callers.

[159] For instances of this work, go to http://www.jobwatch.org.au/index.php?option=com_content&view=article&id=72&Itemid=85

[160] Description drawn from website (http://www.pilch.org.au/) and correspondence with the service, including by email dated 19 March 2013.

[161] Locations are Bundoora, Niddrie, Footscray and Caulfield (which would cover the ILNP focus communities of Fitzroy and Heidelberg).

PILCH's *Homeless Person's Legal Clinic* (HPLC) is a specialist legal service that provides free legal assistance and advocacy to people who are homeless or at risk of homelessness, within a human rights framework. Legal assistance is provided by pro bono lawyers at eight homelessness assistance services around metropolitan Melbourne and in Geelong to facilitate direct access by clients and to provide a service that works closely and collaboratively with other homeless service providers. [162] HPLC has a state-wide hotline. People who call may receive initial advice and information about their situation and/or be booked into one of HPLC's clinics, depending on the nature of their enquiry (as occurs with the SRLC. Civil law issues covered include housing and tenancy matters, fines and infringements connected to homelessness, credit and debt problems, Centrelink matters, guardianship and administration orders and human rights advocacy. The HPLC also undertakes significant law reform, public policy, advocacy, legal education and community development activities designed to promote and protect the fundamental human rights of people experiencing homelessness.

PilchConnect is a further specialist legal service set up by PILCH to provide free and low-cost legal assistance to not-for-profit community organisations and to advocate on their behalf. PilchConnect aims to 'help the helpers' through free or low-cost legal information, advice and training. Its advocacy is focussed on improving the legal framework and reducing red tape for the not-for-profit sector.

PILCH has run a number of pilot projects relating to civil law issues to address unmet legal need outside metro Melbourne. The two most recent examples include an HPLC clinic at Moe VCAT and a Seniors Rights Legal Clinic in Shepparton. Additionally, PILCH has run an Aboriginal Credit and Debt Clinic, in collaboration with VALS, in 2010.[163] These were short-term pilot projects and are no longer operating.

PILCH also conducts advocacy and law reform work to transform underlying societal structures that cause oppression, injustice and inequality, including within the justice system. Key areas are access to justice, homelessness, human rights and the not-for-profit sector. In this area, PILCH is working on an Indigenous Issues Project, which aims to increase the provision and efficacy of pro bono legal assistance to Indigenous individuals and communities and to engage in targeted law reform and strategic litigation.

Social Security Rights Victoria Inc.[164]

Social Security Rights Victoria (SSRV) is CLC located in Melbourne, but is a state-wide service offering legal information and assistance to all Victorians (other than in Geelong, where the Barwon CLC operates). SSRV advocates for the right of people to have adequate income security and the rights of people in relation to the system providing this income security (Centrelink). It aims to promote the rights and raise the status of all people in receipt of social security benefits, to work towards an adequate standard of living for every member of the community, and to promote the redistribution of wealth through the welfare and taxation system.

[162] HPLC provides outreach to Collingwood, St Kilda, Footscray and Geelong, and has several clinics in the CBD (with, again, ATSI clients in Fitzroy and Heidelberg able to access these outreach clinics).
[163] See Povey, C and Tan, S (VIC) (2011) *Aboriginal Credit and Debt Clinic: Project Report and Evaluation*, Melbourne VIC, http://vals.org.au/static/files/assets/2677ed55/ACDC_Evaluation_Report_-_Final.pdf
[164] Information taken from the SSRV website (http://www.ssrv.org.au/) and an ILNP stakeholder interview with the service.

Initially, all contact with the public, including the provision of advice, is by telephone. Further assistance may then be provided, including representation and casework. SSRV also undertakes CLE and policy and law reform work.

Tenants Union of Victoria Ltd [165]

The Tenants Union of Victoria (TUV) is based in Fitzroy, Melbourne, and operates a CLC, Tenants Union Legal Service (TULS), as part of its service provision. All services are state-wide. The TULS provides free and confidential advice and advocacy for residential tenants in Victoria. Residential tenants include public and private rental housing and residents of caravan parks, rooming houses and, in some instances, hotels, motels and hostels.

Contact with the advice service may be made via telephone, email or face-to-face (within certain hours) at the Fitzroy office. However, the service is operating at peak capacity for all methods of contact and there can be substantial delays. The service is currently assisting about 18,000 clients per annum. TULS runs a small outreach program to rooming houses and caravan parks and conducts about 125 visits per annum. Clients can also be referred for advice by other organisations and TULS is available for secondary consultation by staff with clients with a residential tenancies problem.

Ongoing assistance may be provided to some clients who are involved in disputes with their landlord or real estate agent, which can include everything from basic help with completing documents and standard processes, to negotiation and advocacy or representation in the Residential Tenancies Tribunal or other courts as required. Due to finite resources for ongoing assistance there is an eligibility and approval process before assistance can be provided. Eligibility for assistance is essentially based on the client's capacity to advocate on his/her own behalf or to secure alternative legal assistance (such as a private lawyer or Legal Aid). Around 10% of TUL's clients are provided with ongoing assistance and the service is currently undertaking about 350 appearances per annum.

The TUV also provides a number of publications which address problems commonly experienced by tenants and residents.

Women's Legal Service Victoria[166]

The Women's Legal Service Victoria (WLSV) is located in Melbourne. WLSV provides free and confidential legal information, advice, referral and representation to women in Victoria. It offers state-wide services in relevant practice areas. This encompasses legal issues arising out of violence against women and relationship breakdown, including intervention orders, family law matters and VOCAT work. WLSV provides free legal advice by phone, advice at a drop in clinic at the WLSV office (weekly), and advice and representation to women at the Melbourne Magistrates Court as a duty lawyer service in relation to family violence (daily).

While WLSV is a state-wide service, the reality is that the majority (but certainly not all) of its clients at the drop in clinic and for whom it undertakes casework are metropolitan-based. However, in 2012 WLSV's outreach program was extended (and enhanced) to enable the provision of legal advice

[165] Description drawn from correspondence with service, including by email dated 10 April 2013. See also TUV's website: http://www.tuv.org.au/.
[166] Information taken from WLSV's website (http://www.womenslegal.org.au/our-services.html), an ILNP stakeholder interview with WLSV and correspondence with the service, including by email dated 10 October 2013.

services to family violence workers and their clients via Skype in the north and north-east of Victoria. The Skype program is a pilot developed by Women's Health in the North (WHIN) and Women's Health Goulburn North East (WHGNE) and involves seven partner agencies from both regions. WLSV is working to retain funding for and to expand this service and partnerships.

WLSV also operates a Family Law Legal Service to both men *and* women, which assists clients engaging with VLA's RDM service and Melbourne's FRC, as well as providing a duty lawyer service at the Family Law Courts in Melbourne each day.

It has also started a warm referral arrangement with VALS to assist when they have conflicts or where individuals are looking for a service outside of their community.

WLSV also undertakes law and policy reform work and CLE, and is part of collaborative networks such as Domestic Violence Victoria and Women's Legal Services Australia.