



The civil and family law needs of Indigenous people in WA

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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

Research Assistance: Paddy Gibson, Lorna O'Shane and Petra Franks

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 **Balgo, Fitzroy Crossing, Geraldton, Laverton, Narrogin, Perth, Roebourne** and **Wyndham** 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 valuable contributions to the project (see Appendix B for the stakeholder interview list).

In addition, the ILNP sincerely thanks Paddy Gibson, Lorna O'Shane and Petra Franks for research assistance provided for this report.

Published by the Cairns Institute, James Cook University, Cairns

Year of Publication: 2014

ISBN 978-0-9941500-1-1



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This report should be cited as:

Allison, F, Schwartz, M and Cunneen, C (2014) *The Civil and Family Law Needs of Indigenous People in Western Australia*, 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
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investment Commission
AFLS	Aboriginal Family Law Services
ALSWA	Aboriginal Legal Service WA
ARC	Australian Research Council
ARIA +	Accessibility/Remoteness Index of Australia Plus
ASIC	Australian Securities and Investment Commission
ATSI	Aboriginal and Torres Strait Islander
CALD	Culturally and Linguistically Diverse
CDEP	Community Development Employment Program
CLC	Community Legal Centre
CLE	Community Legal Education
CCC	Corruption and Crime Commission
CPFS	Department for Child Protection and Family Support
DBMS	Disruptive Behaviour Management System
DIA	Department of Indigenous Affairs
DoH	Department of Housing
EOC WA	Equal Opportunities Commission (WA)
GIHO	Goldfields Indigenous Housing Organisation
ILNP	Indigenous Legal Needs Project
JCU	James Cook University
KCLS	Kimberley Community Legal Service
LAWA	Legal Aid Western Australia
MOU	Memorandum of Understanding
RTA	Residential Tenancies Act WA (1987)
SNAICC	Secretariat of National Aboriginal and Islander Child Care
STEP	Support and Tenant Education Program

TELCO	Telecommunication Company
VRO	Violence Restraining Order

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EXECUTIVE SUMMARY

1. Background

This report presents key findings and recommendations of research conducted in 2012-2014 by the Indigenous Legal Needs Project (ILNP) in Western Australia (WA).¹ The ILNP is a national project, which aims 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 WA research is based on focus groups with Indigenous participants and interviews with legal and related stakeholders. The eight communities selected in WA for the ILNP research were **Balgo, Fitzroy Crossing, Geraldton, Laverton, Narrogin, Perth, Roebourne and Wyndham** – representing a cross section of urban, regional and rural communities.

Sixteen focus groups were held with a total of 156 Indigenous community members in these eight WA communities. Separate women and men's focus groups were conducted in each community. Female participants comprised 53.2% of total participants and male participants 46.8 %.

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 4.14 of the Report).

Over 70 stakeholder organisations servicing or working within the nominated WA communities were also interviewed to explore the experiences, perspectives and understandings of those providing legal or related services. A full list of stakeholders interviewed in WA 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 and unrecognised and unmet legal need, and stakeholder interviews.

Five areas of need immediately stand out, primarily based on focus group participants' responses to the ILNP questionnaires; that is, more than 25% of participants indicated that they had experienced a

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

legal problem or dispute in these areas. There was also a considerable amount of comment from stakeholders and focus group participants concerning these same areas of law, for the most part, including with respect to the significance of these issues within and for ILNP communities. These five areas are as follows.

- **Housing** (60.1%)
- **Disputes with neighbours** (36.8%)
- **Discrimination** (40.9%)
- **Credit/debt** (30.7%)
- **Stolen Wages** (26.2%)

For reasons explained below we add a **further six areas** of priority need: Stolen Generations, consumer law issues, child protection, education, social security/Centrelink and wills.

Stolen Generations is included as a priority because of the rate at which it is identified as a legal issue requiring attention (21.9%) and because of its link with Stolen Wages. It is not uncommon for a person to have potential civil law claims for both Stolen Wages *and* as a member of the Stolen Generations.

Whilst numbers of reported disputes or problems concerning superannuation and banks was relatively high (20.6%), **consumer law issues** are prioritised primarily in so far as they interconnect with credit/debt related problems. An example of this interconnection is when Indigenous communities' lack of financial and consumer literacy around scams and contractual obligations (such as mobile phone contracts) leads to debt. Credit and debt and consumer law issues are difficult to separate where linked in this way.

One in ten persons (10%) identified removal of children into government care as an issue. **Child protection** is not one of the more frequently experienced problems, but it is an area of substantial need because of the significant impact child removal has on the wellbeing of families and communities, and the level of concern it provoked amongst ILNP community and stakeholder participants.

Education is also identified as a priority legal issue because problems in this area affect a reasonably large proportion of persons. Nearly half of all participants were either studying themselves or were responsible or caring for a student. Of this group, close to two thirds (65.7%) experienced a dispute or problem related to education. We note too that disruption and difficulty in schooling also impacts on many of life's opportunities, including employment prospects. This provides another basis for its prioritisation.

Some 76.3% of focus group participants stated that they received **Centrelink** payments and over one in five of these individuals (22.6%) identified experiencing problems with these payments over the last couple of years. Similar to education related issues, taking into account the proportion of persons dependent on social security payments, the impact that issues with payments have (no or restricted access to financial support) and the minimal proportion of participants who had sought help in relation to such problems, **social security/Centrelink** is also identified as a priority area of need.

In addition to these ten areas of expressed need, we identify **wills** as a priority area of *unrecognised* or '*silent*' legal need. Only 10.3% of focus group participants had made a will and a further 56.5% expressed a desire for assistance to create one.

4. Findings in Relation to Priority Areas

There are a number of areas of law discussed in focus groups and stakeholder interviews which are not prioritised, but which are still considered important. These include employment, accident and injury and victim's compensation. These are all discussed in detail within the Report. Here, we focus on *priority* areas of need.

We note that there were important gender differences in some of the priority areas of legal need. A number of issues were much more of a priority for women than men, and vice versa.

In WA, women are significantly more likely than men to identify legal problems in the areas of *housing, neighbours, Stolen Wages and Stolen Generations* and *education* and more likely than men to identify a problem relating to *child removal*. Men were more likely than women to identify legal problems in the areas of *discrimination* and *consumer law*. Men were much less likely than women to access legal or other help in relation to housing, discrimination and neighbourhood disputes. Women experiencing problems in relation to credit and debt were substantially less likely than men to access help in response.

4.1 Housing

Housing, and in particular tenancy, emerged as a priority legal issue in focus groups and during stakeholder interviews. Overall, **60.1%** of all focus group participants identified disputes or problems with landlords. The majority of such disputes and problems concerned the Department of Housing (DoH or 'Homewest'). The percentage of Indigenous women identifying such disputes was considerably higher than that of Indigenous men (72.8% of women compared with 45.8% of men). In half of the ILNP communities, at least two thirds of participants had had an issue with their tenancy. In Balgo, 100% had done so.

Repairs and maintenance were identified as the primary area of dispute arising in relation to tenancies. Repairs and maintenance issues raised in the fieldwork had potential to cause serious harm (including asbestos, unsafe structural issues). This was followed by rent and a range of problems which might be seen as broadly associated with having and retaining a house to live in (evictions, overcrowding, relocations/transfers, and access to housing).

There was frequent interaction between housing and other civil and family law issues, including debt, social security and child protection. By way of specific example, the DoH's three strikes policy emerged as an issue of some prominence in the WA fieldwork, directly linking tenancy issues with neighbourhood disputes and discrimination. This policy appears to have a disproportionate or discriminatory impact on Aboriginal tenants, leading to eviction if there have been three instances of 'disruptive' behaviour reported to DoH. These reports appear to often be made by neighbours. DoH is also allegedly evicting multiple tenancies on the basis of debt.

Nearly half of all participants had sought assistance in relation to housing issues (**45.7%** of participants, overall). However, the majority of these individuals turned to Homewest itself for help and/or were largely unable to resolve their problems. Many Aboriginal people do not address these issues more effectively due to fear of losing their tenancy and/or a lack of knowledge of rights. There are also gaps in availability of legal and other advocacy in WA in relation to tenancy, inhibiting the degree to which Aboriginal tenants are accessing assistance.

4.2 Neighbours

A high **36.8%** of participants identified a problem or dispute with neighbours, with women more than twice as likely than men to do so (48.8% of women compared with 23.3% of men). Dogs and noise were the most common areas of dispute, followed by nuisance-type behaviour ('anti-social behaviour', drinking and fighting) and fences and boundaries. In Balgo, over 90% of participants had a problem with neighbours and in Laverton, 50%.

Complaints about neighbours were both raised *and* responded to by participants in the focus groups. In other words, sometimes *they* were the subject of complaint, but at other times they themselves had a complaint about the actions of their neighbours. The vulnerability of tenants to eviction under DoH's three strikes policy on the basis of neighbours' complaints was highlighted, as was the racial bias apparently motivating these complaints, at times. Widespread community feuding between Aboriginal family groups was also a significant issue in some communities, raising a call for increased opportunity to utilise mediation or other forms of dispute resolution in response to such conflict.

Neighbourhood disputes were also a fine example of unresolved civil law issues escalating to criminalisation. The proportion of focus group participants who sought help for such disputes was just over one in four (**28.3%**), with women almost three times as likely to do so than men. Some lawyers report that they would see violence restraining orders as the most common type of legal issue arising in the context of neighbourhood disputes.

4.3 Discrimination

Two out of five focus group participants (**40.9%**) identified at least one experience of discrimination over the last couple of years. Indigenous men identified discrimination at a marginally higher rate than Indigenous women (43.1% of men compared with 39.0% of women).

Discrimination was seen as being pervasive throughout WA, evident in many areas of life. In five of the eight ILNP communities, over 40% of participants had experienced problems in this area. The most frequently identified issues concerned shops, hotels, employment, government and non-government services (including police) and real estate agents. Note that the discrimination identified was primarily race-based and direct discrimination, meaning that many other instances of potential discrimination are not captured in the above statistics. Discrimination intersects with a range of other civil law issues, including education, consumer law, housing and neighbourhood disputes. It is also another example of a civil law issue that has potential, if unaddressed, to spill over to become a criminal law problem.

Only **16.3%** of those who identified experiencing discrimination sought legal or other help or advice, with women nearly four times as likely as men to have accessed assistance (8.7% of men compared with 23.1% of women). Barriers inhibiting responses include a lack of awareness of rights, difficulties identified with the legal complaints process itself and poor access to legal and other support.

4.4 Credit/Debt (with Consumer Issues)

Nearly a third (**30.7%**) of focus group participants said that they had been in a situation where a lender had threatened to, or had taken legal action against them due to their failure to repay a debt, with men and women identifying an issue of this type at similar rates. Some **11.3%** of all focus group participants also said that their debt issues had led to problems with their credit reference rating or to

bankruptcy. Focus group participants nominated the most common problems in this area as bill repayments (including phone and utility bills), tenancy debt and loan repayments. Only 8.7% of women and 20.7% of men dealing with debt had sought help in response. Overall, only **13.2%** of all participants had done so.

The main problem areas for consumers related to superannuation and banks (**20.6%**) and scams and contracts (**8.6%**). The more common issues identified were access to superannuation, motor vehicle sales/repairs, telephone contracts, insurance and scams. In the majority of cases, Indigenous people had not sought any help or advice in relation to these issues. Consumer matters frequently cross over with credit/debt problems and where this occurs, consumer law is also identified as a priority in terms of need. Some of the more obvious examples of this cross over include disputes relating to phone contracts and phone debt, high-pressure sales, as well as use of hire purchase as a potentially problematic form of credit in order to buy goods.

Under-responding to both credit and debt and consumer law issues may be due, in part, to a lack of awareness of rights and poor access to legal or other assistance, including because of limited availability of legal service assistance in these areas.

4.5 Stolen Wages (with Stolen Generations)

Just over one in four focus group participants (**26.2%**) identified an entitlement to compensation for Stolen Wages, with women more likely to identify such an entitlement than men (31.8% compared with 21.5%). The fact that during the ILNP fieldwork in WA the State Government's Stolen Wages compensation scheme was either open or recently closed is likely to have led to a heightened level of concern or interest around this issue. There was criticism raised during the fieldwork about the operation of the scheme, including its short time frame for applications and its exclusion of persons working on private cattle and other stations.

Over one in five participants (**21.9%**) identified belonging to the Stolen Generations, also giving rise to possible claims for compensation. The percentage of women identifying as such was close to double that of men (27.2% of women compared with 15.7% of men). It was not uncommon for those who felt they had had wages stolen to also identify as having been stolen as children. The relationship between Stolen Wages and Stolen Generations is the primary basis for the prioritisation of the latter issue in WA. Half of those who identified being entitled to compensation had sought advice or help in response.

4.6 Child Protection

Child protection was not the most frequently identified problem area (10% of participants). Qualitative data gathered in WA indicates, however, that **child removal** into the care and protection system generates serious levels of grief, distress and anxiety for Aboriginal people. It obviously has enormously negative repercussions for individuals, families and communities in an Indigenous context and is generally seen as a repeat of earlier Stolen Generations policy and practice. This is perhaps understandable given that according to the Australian Institute of Health and Welfare (AIHW), as at 30 June 2013 Indigenous children made up 5.5% of the child population (0-17 years), yet comprised just one in two (48.8%) of all children in out-of-home care in WA.

Concerns were raised about WA's Department for Child Protection and Family Support (CPFS) practice including, for example, the too frequent placement of children far from home and its failure

to properly adhere to relevant policy and legislative directions, including the Indigenous Child Placement Principle. There were significant levels of distrust towards CPFS and a strong sense of disempowerment amongst Aboriginal people around their interactions with this agency, leading for instance to acquiescence to orders for removal.

Around half (**47.6%**) of focus group participants who had identified a child protection or family law issue relating to children said they had sought legal advice or assistance in response. There was a strong perception among legal practitioners and other organisations that Indigenous people either never obtained legal advice when compelled to take part in child protection processes or did so only after substantial intervention by CPFS had already occurred. Despite some developments such as the Signs of Safety Pre-Hearing Conference program Pre-Birth Child Protection Mediation Program, better resourcing of advocacy and support services working in this area are urgently required.

Child protection legal needs crosses over with other areas of legal need including domestic violence, social security and housing.

4.7 Education

Nearly half of all participants were either studying themselves or had responsibility for a student (44.4%) and of these, over two thirds (**65.7%**) had experienced a problem in education. For women, difficulties in this area were especially pronounced (75% of women compared with 51.9% of men).

Issues overwhelmingly related to bullying or harassment, often with a racial element, followed by suspension and expulsion and 'racism' as a separate category. The education system was seen at times as incapable of effectively meeting the needs of many Aboriginal children, as well as failing to deal appropriately with bullying by students. There were also some reports of bullying or harassment perpetrated by teachers.

Only about one in four (**26.8%**) of those who had had such issues sought legal or other help in response, but based on available ILNP data this generally involved trying to resolve problems directly with schools.

4.8 Social Security and Centrelink

Overall, **76.3%** of all participants identified being in receipt of a Centrelink allowance and nearly a quarter (**22.6%**) reported having a problem or dispute with their payments in the last couple of years. Men and women experienced these issues at similar rates. Only three of the 27 individuals who had identified a problem with Centrelink also indicated that they had sought legal assistance or advice.

Mostly, complaints raised in this area concerned a Centrelink debt, being overpaid (also leading to debt) or being cut off benefits, often resulting in reduced or no means of financial support for at least a period of time. Whilst service delivery in general attracted a degree of complaint, the likelihood that such issues will occur and be difficult to resolve appear to be due to some degree to significant problems in the way in which Centrelink engages with its Aboriginal clients. The emphasis Centrelink places on communication through phones, the internet and computers, for example, presents as a significant barrier to Aboriginal people seeking to make contact with the agency, whether that be to attend a mandatory appointment or to seek clarification about entitlements to benefits.

Other issues related to access to and awareness of benefits, including for single parents having to simultaneously navigate the Child Support and social security systems as a condition of accessing benefits. Income Management was also raised as problematic, for instance with respect to the

limitations it placed on where you could shop. The Centrepay scheme was also said to be operating contrary to its stated objectives of assisting Centrelink customers 'to budget and plan for their household and living expenses', providing insufficient case management, resulting in deductions for items other than those seen as essential.

4.9 Wills

Only **10.3%** of all focus group participants had completed a will, but **56.5%** of those who hadn't done so indicated that they would like assistance to draw one up. Women and men were similarly likely to have completed a will (10.8% of women compared with 9.7% of men) and to want to put one in place (55.7% of women compared with 57.4% of men).

Reasons for not having made a will include a lack of understanding of their utility beyond bequeathing property and/or taboo surrounding discussion of death. Some participants, however, spoke of having a will in place as decreasing the likelihood of disputes, including in relation to distribution of assets. It was noted that there are a number of Aboriginal people in WA who have accumulated assets through employment in mines and for whom this may be an especially relevant issue. A relatively high proportion of participants (**25.5%**) reported being involved in a dispute over a deceased estate, often involving decisions relating to burial of the deceased person.

Despite the level of existing need in this area, there is said to be limited availability of legal service assistance to complete a will. Relatively recent changes to the law in WA means that now when Aboriginal persons die intestate their estate does not automatically vest in the Public Trustee, which means that they have the same right to administer the estate of their deceased relative as any other person living in WA. It was seen as important to inform Aboriginal people about these changes.

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

The research highlights the complex interplay between civil, family and criminal law problems.

The ILNP has uncovered instances of 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 failure to address initial legal concerns. For instance, eviction as a tenant or discrimination in accessing private tenancies can create overcrowding in Indigenous households, which might then result in child removal and neighbourhood disputes.

Further, when civil law issues are left unaddressed or unresolved, the situation can sometimes deteriorate to involve criminal law issues too. This is evident in areas such as social security and discrimination, for example. We note the opposite can also be the case. Criminal law issues, including family violence, can give rise to civil law needs. Examples arise in the connection between family conflict and violence, for instance, with removal of children more likely where such violence is present and/or where debt is incurred as the result of damage caused to a tenant's home by domestic violence.

6. Priority Issues Relating to Service Delivery

This report identifies that **civil and family law problems are experienced frequently by Aboriginal people in WA and, on the whole, are *not* satisfactorily resolved.** Under servicing of legal need in civil and family law areas by legal services is contributing to poor levels of resolution of legal issues and therefore of access to justice in these areas of law.

Services are presently vastly under-resourced in terms of capacity to address legal need in Aboriginal communities. Additional funding is urgently required for civil/family law work, with priority to be given to Indigenous legal services as primary providers of legal assistance to Indigenous people. Any increase in the funding of civil/family law work should not lead to a reduction in current resourcing of legal service delivery with respect to criminal law matters. It makes no sense, economically or otherwise, to take from one area to bolster another, given the clear interconnection between different types of legal issues.

Aboriginal people have a right to adequate access to justice, including through legal and other assistance. It is noted that so much of the work legal services provide to Aboriginal people with respect to the law responds to (negative) intervention on the part of government. Examples include public housing tenancy issues and child removal, as well as criminal law matters. It is seen as an injustice, therefore, for government to fail to properly fund legal services working to support individuals to respond effectively to such interventions.

There are particularly significant gaps in civil/family law service delivery to the regions of WA. Whilst it is noted that legal services are working to address these gaps (for instance, the Aboriginal Legal Service of WA (ALSWA) has introduced regular civil and human rights-focussed outreach to regional and remote communities and Legal Aid WA (LAWA) also provides some civil and family law assistance outside Perth), civil/family lawyers of these two major legal service providers and of a number of specialist Community Legal Centres (CLCs) service WA largely from Perth. This Perth-centric focus is seen by many as being a far from ideal way of working with regional and remote communities. Civil/family lawyers more permanently based in regional locations, often in CLCs or Aboriginal Family Law Services (AFLS) offices, are often still located a considerable distance from many clients, given the enormous areas services cover.

More regular outreach, extended in terms of time spent in each community, will go some way towards reducing existing gaps in the servicing of regional and remote areas, but is likely to require greater resources given the substantial cost associated with its delivery.

Lack of knowledge or understanding of civil and family law presents as a significant barrier to Indigenous access to justice. Aboriginal people may not know that the civil/family law issues they face are legal issues, as a first point, and then how to go about getting even initial advice or help in relation to such issues. **Increased access to information and CLE is needed**, again requiring further resources.

It should be noted that to some extent, maximising outputs from CLE and outreach work is not *all* about additional resourcing and includes ensuring that this work is undertaken by the most effective means possible (such as working more closely with local services and using all types of media (social media, radio)).

ILNP research confirms that **Aboriginal people often have complex legal needs**. Complexity arises where individuals are experiencing more than one legal issue at a time, with these issues likely to be bound up with non-legal issues such as substance abuse, poverty, homelessness or disability. Non-legal issues can both cause *and* be exacerbated by civil or family law problems, as well as making it much more difficult to address legal matters arising. Language, literacy and culture also ‘complicate’ legal need in Aboriginal communities. **This complexity requires a collaborative response on the part of legal and non-legal services. Services absolutely *must* have capacity to work responsively with culture**, including through effective cross-cultural communication.

Whilst a number of CLCs and LAWA offices may have a high proportion of Aboriginal clients because, for instance, of their location in areas of high Indigenous populations, **non-Indigenous legal services recognise that they could be engaging with Aboriginal communities around non-criminal legal need to a much greater extent.** Levels of engagement are, to some extent, another resourcing issue, but to some degree might be better progressed by ensuring that there is genuine consultation with Aboriginal people about what they think will improve legal service delivery within Indigenous communities.

A significant barrier to engagement is widespread mistrust of the law and of legal services, stemming from a long and continuing history of negative interactions between mainstream/government services or institutions and Aboriginal people. Aboriginal people may be reluctant to initiate or respond to a civil or family law dispute or problem through engagement with the legal system. They may not see it as likely to lead to benefit. Organisations need to acknowledge and work with or around these issues of trust, **including through employment of Aboriginal staff.**

Services need to work as collaboratively as possible, including (as noted) because of the complexity of legal need present in Aboriginal communities. This means having effective referral processes in place, achieved by services learning more about what each other can do in terms of client work. It also requires consistent effort to build or establish relationships at a more formal organisational level. **Effective relationships between non-legal and legal services, and between different legal services are fundamental to improving civil and family law outcomes for Aboriginal people in WA.**

Finally, other barriers identified in terms of access to justice include **shame, use of phones in contact with services, lack of transport and scheduling of appointments** (as opposed to more flexible service delivery).

PART 1 CONTEXT

1. THE ILNP

1.1 INTRODUCTION AND BACKGROUND

This report presents key findings based upon research conducted in 2012-2014 by the Indigenous Legal Needs Project (the ILNP) in Western Australia (WA).² The ILNP is national research into the civil and family law needs of Aboriginal and Torres Strait Islander 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.³

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.⁴ 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. 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.⁵

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. It 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 an Australian Research Council (ARC) 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 of

² Further information about the ILNP is available on the ILNP website: <http://www.jcu.edu.au/ilnp/>

³ 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.

⁴ 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

⁵ Ibid, 178, 236, 311

methodology and in organising fieldwork. In WA, Legal Aid WA (LAWA) and the Aboriginal Legal Service of WA (ALSWA) are ILNP project partners.⁶

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 it encompasses urban, regional, rural and remote communities and that more than 85% of Indigenous people in Australia live in the nominated 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 WA report is the fourth and final report to be published by the ILNP. The ILNP has released reports on findings in the NT, Victoria and Qld in (respectively) 2012,⁷ 2013⁸ and 2014.⁹ The ILNP is also disseminating research findings more widely to ensure optimum accessibility for the broader community to the research, including through social media.¹⁰

1.2 WA REPORT STRUCTURE

The WA Report seeks to provide:

- enhanced understanding of the civil and family law needs of Indigenous people in WA, 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 WA, 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 **Section 1**.

Section 1 provides contextual detail in relation to the ILNP, including the background to the project and the methodology used for the research.

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

⁶ A full list of project partners is available on the ILNP website at:

http://www.jcu.edu.au/ilnp/participants/JCU_083396.html

⁷ Allison, F, Behrendt, L, Cunneen, C and Schwartz, M (2012) *Indigenous Legal Needs Project NT Report*, Cairns Institute, JCU, available on the ILNP website.

⁸ Schwartz, M, Allison, F and Cunneen, C (2013) *Indigenous Legal Needs Project Vic Report*, Cairns Institute, JCU, available on the ILNP website.

⁹ Cunneen, C, Allison, F and Schwartz, M (2014) *Indigenous Legal Needs Project QLD Report*, Cairns Institute, JCU, available on the ILNP website.

¹⁰ The ILNP has a Facebook page: <https://www.facebook.com/IndigenousLegalNeedsProject> and a blog: <http://indigenouslegalneedsproject.wordpress.com/> and animated videos of our key research findings are available on these and our website.

Section 2 identifies the priority civil and family law areas of legal need.

Section 3 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 access to justice issues in WA. It consists of **Sections 4 and 5**.

Section 4 considers in detail the thirteen different areas of civil and family law which have been the focus of ILNP research in WA, as well as 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 WA.

Section 5 looks in detail at how effectively legal service delivery is currently meeting civil and family law need in Indigenous communities in WA. This material is drawn from qualitative data collected at each focus site, particularly focus group discussions and stakeholder interviews.

1.3 METHODOLOGY

The ILNP WA 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 WA.

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.¹¹ Further, as the ILNP is a study of policy and practice in a practical context, it also lends itself to a qualitative research framework. A qualitative approach to gathering data in this instance has provided material 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 2012-2014 the ILNP visited eight Indigenous communities in WA in order to gather the data upon which this report is based. The sites in WA were selected in close consultation with WA ILNP project partners.¹² Based on their knowledge of relevant communities in this jurisdiction, partners have

¹¹ The quantitative data is an important indication of the key concerns of focus group participants located in a variety of different WA locations. However, it should be noted that the quantitative data cannot be interpreted simply as a representative sample of *all* Indigenous people in WA.

¹² 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 2011-2014 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.¹³ The eight communities selected in Queensland are representative of five different ARIA+ classifications of remoteness.¹⁴ Four of these communities are classified as ‘very remote’, with the remaining four communities falling within each of the other four categories of remoteness: ‘remote’, ‘moderately accessible’, ‘accessible’, and ‘highly accessible’. All eight communities have been chosen on the basis of their geographical distribution across the State.

The eight focus communities in WA are **Balgo, Fitzroy Crossing, Geraldton, Laverton, Narrogin, Perth, Roebourne and Wyndham**. These sites are classified by ARIA + as follows:

Highly Accessible:	Perth
Accessible:	Geraldton
Moderately Accessible:	Narrogin
Remote:	Roebourne
Very Remote:	Balgo, Fitzroy Crossing, Wyndham, Laverton

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 focus groups with Indigenous community members. 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 WA are currently able to access justice.

In all WA ILNP communities, two separate focus groups were held - one group for men and one group for women. It was initially envisaged that the focus groups would comprise a minimum of six members, with an optimum attendance of ten people per group.¹⁵ Numbers of participants in the groups ultimately ranged from three to 15 (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 ‘Balgo Women’s Focus Group Participant’).

¹³ See the following website for ARIA+ classifications: <http://www.spatialonline.com.au/aria/default.aspx>

¹⁴ Ibid for definitions of the different categories. ‘Very remote’ is defined as ‘locationally disadvantaged with very little accessibility of goods, services and opportunities for social interaction’. ‘Remote’ is defined as ‘very restricted accessibility of goods, services and opportunities for social interaction.’ ‘Moderately accessible’, ‘accessible’ and ‘highly accessible’ are defined (respectively) as having significant restrictions to accessibility, some restrictions to accessibility or relatively unrestricted accessibility.

¹⁵ 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.

In general, a male researcher from the ILNP facilitated the men's focus groups and a female researcher facilitated the women's groups. On some occasions, groups were co-facilitated by ILNP researchers of different genders to the focus group participants, but only where communities indicated that this was appropriate. The ILNP facilitators were assisted in running the focus groups by local Indigenous focus group coordinators, in general.¹⁶ Coordinators were primarily either local Indigenous men and/or women residing within the relevant community or local Indigenous organisations, often initially identified as having capacity to undertake this work by project partners or local stakeholder organisations. 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' role was to invite community members to attend the groups, to explain to them the purpose of the groups and to arrange for an appropriate venue at which the groups 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 perspectives 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.¹⁷

Table 1.1 indicates that upon completion of the fieldwork in WA, sixteen (16) focus groups had been held, with a **total of 156** Indigenous community members participating (with a target number of participants at 160). The proportion of female participants in focus groups was 6.4 percentage points higher than that of male participants (53.2 % female participants and 46.8 % male participants). The greater number of women in the focus groups has only a slight impact on the results when discussing

Table 1.1 Location and Gender of Focus Group Participants

Location	Focus Group Participants					
	Female		Male		Total	
	No	%	No	%	No	%
Balgo	8	72.7	3	27.3	11	100
Fitzroy Crossing	12	50.0	12	50.0	24	100
Geraldton	10	66.7	5	33.3	15	100
Laverton	12	50.0	12	50.0	24	100
Narrogin	15	62.5	9	37.5	24	100
Perth	7	41.2	10	58.8	17	100

¹⁶ Only in Balgo did a non-Indigenous organisation assist with focus groups, which largely involved use of a space in which to meet. Further, in Geraldton only men and women sat together in a single group. This was the stated preference in this community.

¹⁷ 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 to share their knowledge and insights as professionals as they would be asked to contribute this information by way of stakeholder interviews.

Roebourne	8	40.0	12	60.0	20	100
Wyndham	11	52.4	10	47.6	21	100
Total	83	53.2	73	46.8	156	100

N = 156

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 Location and Gender of Focus Group Participants

Location	Focus Group Participants					
	Female		Male		Total	
	No	%	No	%	No	%
18-24	10	12.0	10	13.9	20	12.9
25-34	15	18.1	14	19.4	29	18.7
35-44	15	18.1	11	15.3	26	16.8
45-54	20	24.1	25	34.7	45	29.0
55+	23	27.7	12	16.7	35	22.6
Total	83	100	72	100	155	100

Excludes 1 missing case; N=155

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.¹⁸

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.¹⁹ The focus group questionnaire is

¹⁸ May, T (2001) *Social Research: Issues, Methods and Process*, Open University Press, Buckingham.

¹⁹ 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 Indigenous-specific concerns (eg. Stolen Generations, Stolen Wages, income management). Family and

attached as **Appendix A**, and responses to it form the basis of the data presented in Parts 2 and 3 of this report.²⁰ 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 civil and family law issues arose during both stakeholder interviews and focus group discussion. Discussion of these other legal issues is provided in Section 4.14 below.

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.²¹ 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 over 70 stakeholder organisations servicing or working with the nominated communities. A full list of stakeholders interviewed in WA is attached as **Appendix B**. Stakeholder interviews were used to explore the experiences, perspectives and understandings of those providing legal or related services.

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 stakeholder interviews, 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 4.14: Other Civil and Family Law Issues.

²⁰ 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.

²¹ 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, including at ALSWA, Aboriginal Family Law Services (AFLS), Community Legal Centres (CLCs) and LAWA (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 WA Equal Opportunity Commission (EOC WA) and the Department of Commerce (WA)).

Questions posed to stakeholders during interviews sought to elicit 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.

To maintain confidentiality, we have identified stakeholders in a general way throughout this report; that is, 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, Indigenous family support services) are referred to as ***Indigenous community organisation worker***;
- CLC lawyers and private solicitors are referred to as ***Legal practitioners***;
- Aboriginal legal service staff (solicitors and support staff), including AFLS and ALSWA staff, 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 EOC WA 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.

PART 2 PRIORITY NEEDS AND SERVICE DELIVERY

2. CIVIL AND FAMILY LAW NEEDS: THE PRIORITY AREAS

Identifying the priority areas of legal need in focus communities in WA 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 and other service providers to make a case for adequate resourcing of the work they undertake.

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 4**. However, for the reasons outlined below, we have prioritised a number of legal issues: housing, neighbours, discrimination, credit and debt (with associated consumer issues), Stolen Wages/Stolen Generations, as well as child protection, education, Centrelink problems and wills. We in no way suggest that matters relating to employment, accident and injury or other civil or family law issues discussed later in the Report are not important or do not give rise to significant problems for Indigenous people. However, they have not been prioritised in the discussion immediately following.

2.1 SELECTING PRIORITY AREAS OF NEED

Selection of priority areas was not based purely on participant responses to focus group questionnaires, although the questionnaires 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. This encompasses issues which might not have emerged as common problems during completion of focus group questionnaires, but which came out in focus group discussion and in interviews with stakeholders. This accounts for the fact 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 WA fieldwork that are worthy of 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.²² We note that the opposite can also be the case: that is, criminal law issues can give rise to civil law needs. Family violence, for example, can be connected to civil law problems in housing, victim's compensation and child protection. 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 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 throughout this report.

²² 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.

2.1.1 Priority areas of Indigenous legal need in WA

We identify **11 areas of priority need**.

More than 25% of focus group participants indicated that they had experienced a legal issue in the following **five areas** of law. We consider these five areas of law to represent priority areas of need. These particular areas also produced in some cases a substantial amount of comment in focus groups and/or stakeholder interviews. In a number of areas too, the extent to which participants actively responded to and/or resolved these issues was generally low, particularly for discrimination and credit and debt matters.

- **Housing** (60.1%)
- **Disputes with neighbours** (36.8%)
- **Discrimination** (40.9%)
- **Credit/debt** (30.7%)
- **Stolen Wages** (26.2%)

Stolen Generations (21.9%) is also included as a priority both because the rate at which it is identified as a legal issue requiring attention is comparatively high and due to its close connection with Stolen Wages. It is not uncommon for a person to have potential claims for both Stolen Wages *and* as a member of the Stolen Generations.

The proportion of participants identifying an issue in relation to **consumer law** was relatively high for some issues (20.6% for superannuation and banks), but it is its link with credit and debt that leads the ILNP to identify it as a priority area. It is at the point of crossover between the two areas of law that intensity of need is increased. This crossover occurs, for instance, where Indigenous people have little comprehension as consumers of contractual obligations (including in mobile phone contracts), which leads to accrual of debt.

One in ten persons (10%) identified removal of children into government care as an issue recently experienced. Whilst **child protection** was not one of the more commonly identified problems, the ILNP recognises it as an area of significant need because of the enormously negative impact child removal has on the wellbeing of Aboriginal people - as individuals, families and communities, and the level of concern it generally provoked amongst both community and stakeholder participants.

Education is also identified as a priority legal issue. Nearly half (44.4%) of all participants were either studying themselves or had responsibility for a student. Of these, over two thirds (65.7%) had experienced a problem in education, mostly relating to bullying or harassment and often with a racial element. Education is therefore prioritised because a substantial proportion of persons identify having experienced a problem in this area and as it is a civil law issue likely to have adverse effects on educational outcomes, which are so fundamental to many of life's opportunities.

In addition, 76.3% of focus group participants stated that they received Centrelink payments of some kind and over one in five of these people (22.6%) identified experiencing problems with payments over the last couple of years. Taking into account the percentage of persons dependent on social security payments, the impact that problems with payments have (no or limited means of financial support), and the low rate at which persons had sought help in relation to problems in this area, **social security/Centrelink** is also identified as a priority area of need.

In addition to these ten areas of expressed need, we identify **wills** as a priority area of *unrecognised* or 'silent' legal need. Only 10.3% of focus group participants had made a will and a further 56.5% expressed a desire for assistance to create one.

Gender differences

In relation to these 11 priority areas, there are important gender differences in terms of extent of legal need. In other words, some issues present as a higher priority for women than men, and (to a more limited extent) for men than women.

Women are significantly more likely than men to identify legal problems in the areas of *housing*, *neighbours*, *Stolen wages and Stolen generations* and *education* and more likely than men to identify a problem relating to *child removal*.

Men were more likely than women to identify legal problems in the areas of *discrimination* and in all areas of *consumer law*.

Men were much less likely than women to access legal or other help in relation to housing, discrimination and neighbourhood disputes. Women experiencing problems in relation to credit and debt were substantially less likely than men to access help in response.

We now address these priority areas in turn.

2.2 HOUSING

Housing, and in particular tenancy, emerged as *the* predominant legal issue in focus groups and stakeholder interviews. Some **60.1%** of all focus group participants identified disputes or problems with landlords. Women were *much* more likely to identify this issue than men (72.8% of women compared with 45.8% of men). As a further indication of the magnitude of this issue, in half of the ILNP communities visited over two thirds of participants had experienced a tenancy related problem. In Wyndham, female focus group participants stated, for instance, 'Nearly everybody has had a problem with housing.' 100% of participants in Balgo had had problems in this area.

As discussed further in Section 4.1, housing is prioritised in the research on the basis of these statistics, but also because of the way in which tenancy matters and problems of access to adequate shelter feed into so many other civil and family law issues, including discrimination, child protection and neighbourhood disputes. In WA, the interweaving of different legal issues around housing is most apparent in the implementation of and subsequent impact on public tenants of the Department of Housing's (DoH or 'Homeswest') three strikes policy. The policy leads to eviction of public housing tenants after three 'substantiated' reports of 'anti-social' behaviour within a 12-month period.

The principal issues raised in relation to tenancies are repairs and maintenance, rent, and those which might be categorised as having a home to live in and retaining that home, including relocations/transfers, access to housing and evictions.

Repairs and maintenance

Failure of landlords to undertake repairs and maintenance at all or in a timely manner, contrary to time frames DoH has itself established with respect to completion of such work, was the most frequent cause for complaint. It was suggested that Aboriginal people are not uncommonly expected to move into properties that are in a significant state of disrepair, including those damaged by

previous tenants and never repaired by the Department. At times, the deficiencies are significant enough to place tenants at risk of serious harm.

My daughter moved into a Homeswest house. The maintenance mob just went there, looked around - smack, smack, smack - then Homeswest handed the keys and said "Right you can move in now." The day my daughter moved into the house a lady from Homeswest visited her, walked inside there and showed all the problems. Fence was broken. It's been broken, it was one of those government houses that was handed down to Homeswest, you know.... Anyway, she moved into the house, the fence was broken,... there was a big crack in the ceiling, taps were running and the plumbing was no good. She's been in the house for nearly two years now and every time they come, we show them, show them. Nothing's been done. "We'll send them mob round, we'll get the water people and send them"... Now, couple of months back, the ceiling fell in. My precious granddaughter was in the bedroom, heard a big crack in the house. The whole ceiling fell in. So we had to run across the road and camp out there for nearly two weeks before this mob came to fix the house. Electric wires was hanging out everywhere in the house.... Why would they put a person in a house like that? And the plumbing and everything like that been the same since she moved into the house. It's been like that before my daughter lived in that house.... Somebody should have got hurt in that house. The police come round and they seen the house and said lucky nobody got hurt. **(Laverton Women's Focus Group Participant)**

There's asbestos in most of the old houses here. We've had a lot of - we've had some difficulties with assisting our clients with asbestos. We had one particular client, just to give you a picture, who had a hole in the wall so the asbestos is loose. Called electricity, power not working. Electricians go and won't fix it. Asbestos. This goes on how long? It would've been 12 months. I've had tenants with 20 or 30 holes with asbestos. No air conditioner, so the fans are all blowing it around and you've got maybe eight kids in the house. Might have been for three or four years like that. Cooking outside on the BBQ in all weather because you can't use the kitchen. So when we report these things to Housing, we get enormous delays. This is, it's illegal... There's still sort of an attitude, isn't there? "They did it themselves." "You said it doesn't matter who did it. It's asbestos." So this is the sort of thing we're dealing with all the time. **(Legal practitioner)**

Disputed liability is a major issue for tenants. This might relate to debt accrued through water usage, for example, or damage to a property which tenants claim existed prior to the commencement of their lease. Tenants may also question liability if damage is caused by domestic violence, a visitor or other family member. Failure to successfully dispute liability for damage to property or water usage can lead to substantial debt, which may end in eviction.

The Department's not interested in who caused the damage. They want the money. So they don't actually look into the situation or the circumstances surrounding situations. It's very militant. You owe us. We want it. You don't give it we'll take you to court. I've got one now where I firmly believe she shouldn't be paying any of that money. **(Legal practitioner)**

It's a big one with the water bills. Lots of people come in with excessive water. I guess they don't realise - like I went out this morning and one of the guys was just watering the tree. And the plant needed - it's very therapeutic, watering the garden. But we're talking like \$1,500 bills, \$2,000 bills without pools or anything. It's a lot. A leaking tap, or they might have family come over and they'll leave the tap on. [It's the landlord's responsibility to fix a

broken tap but] the tenants have to come in and report it. So if they choose to take a month to report it, some of that responsibility will get pushed back on the tenant. **(Legal practitioner)**

It is noted that if tenants need to establish that someone else caused the damage in question they are generally required to file a police report, which is often difficult.

Sometimes, of course, people aren't reporting because it was a family member. You're not going to report your family member to the police because of what happens in the criminal justice system. **(Legal practitioner)**

Other problems relate to the apparently poor quality of repairs to and maintenance of properties.

[The refurbishments] are always done as cheaply as possible. You know, a lot of the maintenance is done to – “Oh well, we'll fix it up as cheaply as we can.” Then it breaks again. So the houses are constantly being repaired and then falling into disrepair again, for a variety of issues. **(Legal practitioner)**

Changes to tenancy arrangements introduced on some remote communities under the Federal National Partnership Agreement on Remote Indigenous Housing (NPARIH) attracted both positive and negative comments. As part of the initiative, households are required to sign 'regular' tenancy agreements under the *Residential Tenancies Act WA* (1987) (RTA) in return for refurbishment of existing housing and building of new homes. One stakeholder said that this meant tenants would actually enjoy a better standard of housing than they had previously under Aboriginal community housing because (in theory) they had better access to maintenance and repairs. Others, however, thought that tenants might not understand rights *or* obligations under the new arrangements, including any right to maintenance/repairs.

Negotiating the (Housing Management Agreement) HMA with the community or the community body is the first step. Then once that's done, then the second step is that the Housing Department do the refurbs or, in some cases, put new housing in as well if there's a wait list for housing in particular communities, which there almost always is. Then the third step is that they allocate the housing then sign people up on to individual RTA leases. So then they become subject to all the same obligations as a private tenant in Perth. But without the – ordinarily, without the understanding of what it all entails. **(Legal practitioner)**

Rent

Rent was also raised in the context of repairs and maintenance. As one woman in the Wyndham focus group states, “They get us to pay rent but they aren't up for renovating”. The high cost of renting, connected both to the mining boom and to poor availability of housing, was also an issue. “Rents are sky high, housing is so limited”, suggests one Indigenous community-based organisation stakeholder. Other issues relate to the increase in rent on remote communities under tenancy agreements signed as part of HMAs. Rent is now aligned with that charged for all public housing tenancies. Further complaints in this area concerned the Department kicking those working in, for instance, the mining sector out of public housing because they were earning too much, even where the work in question was short term.

Because when you get a job then you run the risk of earning over the limit for Homeswest, and because we fall out of the isolated area we don't get an extra two years to stay in the house, whereas if you're in the Pilbara or up north you get an extra two years to try and find

another house or buy something. We fall out of that category. We're not isolated enough. Is that true for Laverton as well, because that's an extremely isolated area? I think it is. If that's not isolated I don't know what is. **(Indigenous Legal Service staff)**

Evictions

By far the subject attracting the greatest amount of comment and criticism was eviction; in particular, in relation to what is seen as DoH's recent hard line approach to tenant debt and 'anti-social behaviour' as part of its 'three strikes policy' or Disruptive Behaviour Management Scheme (DBMS). The current approach of the Department is seen as being highly punitive, utilising a law enforcement type model of managing tenancies of some of the most vulnerable persons in the community, including through the employment of ex-police officers to implement the relevant policy. DoH's obligations to respond more effectively to this vulnerability were highlighted.

But I find that Department of Housing are getting more and more tough and seem to be adopting like a zero tolerance approach. Yeah, we're all finding that. But it's what they call their three strikes policy. Yeah, we're getting those as well, three strikes. **(Legal practitioner)**

I think for all of this around these evictions, all the social issues around evictions what our tenant advocates, certainly in our office, have become are social workers as well as tenant advocates. So they are doing what the Department should be doing and aren't doing. The Department is employing ex-police officers, ex-prison guards, ex-court officers - whatever, whatever. They're going about this eviction process, you know, to the letter of the law. We're left to pick up all these little pieces around the place and try and put it all back together again. They would say "We're not welfare services. We're a landlord." Yeah. That's what they say. "We're not welfare services, we're a landlord." I don't initially agree with that position. But that's certainly the Department's position. "We're a landlord, so we're not really interested in this social work side". **(Legal practitioner)**

Evictions, according to stakeholder legal services and other advocacy organisations, definitely appear to be on the rise across rural, remote and urban WA.

Well, tenancy takes up pretty much my entire file load at the moment and in particular because the Housing Department's been sort of doing bulk evictions, if you like, from earlier this year. So pretty much every fortnight, for the last few months, we've had maybe 20 tenants listed at court... All the eviction applications are on the basis of non-payment of rent or repairs or water, whatever it is. I think it's just been mismanaged for a number of years and they've got an astronomical debt or so they say, comparative to other regions. So I think, you know, it's been a bit of an adjustment for the public housing tenants because, I think, previously they may have got away with not paying rent for some time. Whereas now, it's - management's changed and they're trying to change all that. **(Legal practitioner)**

In Carnarvon last week, five families were evicted in two days. Eviction is very high on the list. **(Indigenous Legal Service staff)**

DoH's actions are seen as being likely to *exacerbate* the vulnerability of Aboriginal tenants. Problems such as child sexual abuse and other forms of victimisation, offending and, of course, homelessness are on the rise, as a result.

I think that with DoH going through what they're doing now, it's only going to cause more problems. It's not going to go away. It's not going to solve the issue of – yes, I know they need their money because, you know, fair enough, that's... people have to do the right thing, as a tenant. But... it's not going to stop the problems you're already seeing. **(Indigenous community organisation worker)**

You can just see - from the eviction of one family, you know, it just rolls out more crime, more dispossession, more disadvantage, the vulnerability to assault and abuse and all those kinds of things. It's very difficult to keep your kids safe if you don't have a home to keep them safe in. So you're sharing a house with two or three other families and an extended family. It's not unusual, even in white communities, that one of those adults probably is a paedophile or a child abuser. They're going to be exposed to more domestic violence because it's a stressful, crisis, overcrowded situation. That is going to affect those young people. And then they're going to have effects on the wider community. So, you know, a policy that leads to more evictions is insane. It's like – I thought it had got to something like 2,000 Aboriginal kids who had been evicted through this policy over the course of the three years or so. Like it's large numbers of children that were being evicted. **(Legal practitioner)**

In this same context, the following is a good example of how unmet civil law need (eviction) might well escalate to offending.

I had a case with an Aboriginal woman that came to see me that was going to be evicted. I said to her 'Look, have you got somewhere to go?' She said "There's no way I can move back in, you know, with my mother or my father." She said "I was subjected to rape and everything else." She said "I'm not taking my children there." She says "I'll burn the house down. You know?" That's what I'm getting – clients saying that. "They're going to have to drag me out of there. I'll take me and my daughter with me. You know, I'll burn the place down. Rather than move back in with family", because of what she's gone through. **(Legal practitioner)**

Whilst tenants certainly need to take responsibility for looking after their homes as best they can and to pay their rent, some stakeholder organisations felt that DoH should be working more preventatively to avoid termination of tenancies (and notification to Department for Child Protection and Family Support (CPFS)) that a family is about to be evicted) by making a greater number of, and more timely referrals to their own Support and Tenant Education Program (STEP) when difficulties arise.²³

But yeah, we've been pushing to work collaboratively with the Housing Department and the tenants to try and get payment plans and stuff in place, to avoid court. But the Housing Department have sort of been resistant to that and – yeah, so [we have workers that can provide] tenancy support service. So, you know, our ideal scenario is the tenants get referred to [these workers] before – you know, when they've got a small debt. Then they work with them to resolve it. Then it never has to come to our legal service, because it hasn't turned into a court action. But it's been happening the other way around at the moment. Unfortunately. **(Legal practitioner)**

Well, CPFS are usually only aware when it's at that termination stage. That's when CPFS will become involved. Because Department of Housing go, "Hey look, we're going to be evicting

²³ For information about the STEP program see:

<http://www.housing.wa.gov.au/currenttenants/publichousing/SupportandTenantEducationProgram/Pages/default.aspx>

this family. They've got five kids. We're just letting you know in case..." Where as if it had have been like a little bit further back, maybe three or four months beforehand, they should be picking them up in the system and then referring them out to [a tenancy support program].

(Legal practitioner)

Others believed that sometimes households face eviction for rental arrears when they are not actually behind in payments. Stakeholders stressed that more accurate maintenance by DoH of tenant ledgers is required.

We have had a few clients where their rent was actually paid and [the Department had] lost... they couldn't find their money. We found the money after we proved they had paid them. They were actually in front, but they'd sent out notices saying they were behind. We had a couple where that has happened. You know, like they were actually two or three weeks in front, not behind at all because they had been paying. You'd have to say Department of Housing WA is a travesty. **(Legal practitioner)**

The Department's three strikes policy, introduced according to some only as populist politics, is said by one statutory authority stakeholder to be "not working for anybody". Some concerns about the policy were general in nature, relating to difficulties in challenging allegations raised, the too vague definitions about what constitutes a strike and a lack of procedural fairness in the way the policy is implemented. But many also feel that the policy has a disproportionate impact on Aboriginal people. Neighbours, for a start, may use it in a racially discriminatory way to exclude Aboriginal people from their community. This as an excellent example of the way in which multiple civil law problems may interact as the three strikes policy frequently brings together a triad of legal issues: neighbourhood disputes, discrimination and tenancy matters (see also Sections 4.2 and 4.3: Neighbours, Discrimination).

Housing and tenancy... [is the main issue], especially now with the three strikes. We find in WA the three strikes policy seems to be very easily put to Aboriginal people because neighbours can complain. We're getting loads in at the moment... because they don't know how to address [it]. **(Indigenous community organisation worker)**

I've got a case ... it's actually on the Department file that this woman complained as soon as an Aboriginal family was placed next door to her and then just lodged complaint after complaint after complaint until they brought proceedings against them. **(Indigenous community organisation worker)**

Standards being imposed around the policy allegedly do not take into account non-western standards of living, with Aboriginal people generally less likely to be able to 'measure up' or comply with such standards.

Some of us could modify our behaviour upon receiving a first strike or a second strike. But there are some people, because of their circumstances or their cultural background – they cannot modify their behaviour. That's what I'm concerned about. Those are the people that are in that lottery of either you're going to be evicted or you aren't when it goes to court. It's nothing to do with capacity or skills. I mean they just do not have the ability to stop the behaviour that led to the strikes. So there has to be some sort of alternative for managing those tenancies. **(Legal practitioner)**

Larger gatherings and noise at home, for example, may be sufficient to lead to a strike. And yet, Aboriginal households may be ‘busier’ because of lifestyle and culture, including as they often consist of larger family units and/or house more people due to obligations to take in other community members, for example.

We estimate that over 2000 Aboriginal children have been made homeless in the last three years under the three strikes policy. It’s for cultural reasons. Aboriginal families tend to visit each other a lot... [and] tend to have a lot of comings and goings, even without alcohol inducted fighting, which does happen as well... Just normal day-to-day life can be disruptive in a street where they are the only Aboriginal family. I am convinced it has a disproportionate impact on any big families but most Aboriginal families tend to live that way.... There are certainly more Aboriginal people homeless in the parks and the streets than there used to be. **(Indigenous Legal Service staff)**

Those sorts of things are being labelled as disruptive behaviour. But it’s not. It’s just everyday living that we encounter... In particular, our Aboriginal people in the community. We rely wholly and solely on our family, because that’s just the way we are. If we have like 10 people at our house, so what? I mean that’s our right. That’s our god given right. We’re paying rent. We’re paying thing to use the house. Okay, we’re not going to use it for illegal purposes or whatever. **(Legal practitioner)**

A tenant may face eviction based on the behaviour of others living in or visiting their home. The Department is said to be lacking in any understanding of the cultural and/or familial obligations of Aboriginal people and the potential these obligations have to lead to instances of (alleged) ‘disruptive behaviour’.

It’s massive. Huge. I think there doesn’t seem to be any sense of how the policy might impact on Aboriginal families or trying to look at a way to apply a policy in a better way that would work better with Aboriginal families. So no sense of understanding of their obligations. It just leaves tenants with no options for how to manage their tenancy - because the Department’s expectations just clash completely with their obligations to their family. So I’ve got a number of cases where the tenant is a single mother with four or five of her own children. The strikes arise from visitors’ behaviour, typically, you know, teenage sons or kids’ fathers or other uncles, men, typically coming to the household and then a strike arising from that behaviour. You talk to the people about, well, you know, “Could you say you’re not allowed to come here anymore?” And it’s like, well, “This is the safest way for the kids to have contact with their dad. You know, I can supervise it a bit. I can manage it that way.” Or they’re saying well, “It’s my brother who comes over and has caused – all of the strikes are when my brother comes to visit. He’s really unwell at the moment. He’s suicidal often when he’s turned up. You know they said what do they want me to do? Turn away my suicidal brother when he comes to our house? Like, no, I’m not going to be able to do that.” So, the expectations the Department places on people are just completely unrealistic. To comply with a policy, they’d have to put their family at risk. **(Legal practitioner)**

Access to housing and overcrowding

Public or community housing availability is severely limited in WA and private tenancies are difficult to access for Aboriginal people due to both the cost of rent and in some instances, discrimination by real estate agents (see also Section 4.3: Discrimination).

My son.... they put in for their house 10 years ago. Their kids gone to school now, they are still waiting. **(Wyndham Women's Focus Group Participant)**

Existing Aboriginal households are required take in family and community members who are without shelter because of lack of housing or after they have been evicted. They are providing shelter to persons who otherwise would be living on the streets. This constitutes a *secondary* form of homelessness for those seeking such shelter, which manifests as overcrowding.

Well, there's not enough housing. Big families, of course, and Aboriginal families are very obligated to keep family members. That's how we are. We're social people. And there's just not enough housing really. **(Indigenous community organisation worker)**

There's the [homelessness in the] street and then there's couch surfing (secondary homelessness), isn't there? It's the secondary homelessness [that affects Aboriginal people]. **(Indigenous community organisation worker)**

Overcrowding causes considerable stress on households and can create a range of legal problems, including (further) eviction and child protection.

That person, that family's been evicted. So then they move in with mum or dad, aunty or uncle and then they've got 20 people, putting that tenancy at risk and the kids at risk, as well. Then they'll be evicted. It just goes on and on. It is a vicious cycle. **(Indigenous community organisation worker)**

We do a lot of child protection work and at risk cases, at risk children type work and housing is a common theme – a lack of, or inappropriate housing and an inability to get housing. The accommodation is so precarious and difficult and it's becoming more difficult. All the practice areas interrelate. **(Indigenous Legal Service staff)**

Restricted liquor signage

Another concern raised relates to the placing of restricted liquor consumption signage on social housing properties. Changes in 2011 to WA's *Liquor Control Act 1988* mean that tenants can elect to have their properties declared 'dry', with signage to this effect placed on their homes. Problems arising around this signage include the extent to which tenants have provided informed or in some cases any consent to having the signs put up on their property, as well as the ramifications of breaches of the restrictions it imposes. These include criminalisation and/or eviction of tenants, even if somebody other than the tenant enters the property and drinks.

You see a lot of the signs – have you been up to the village? The people don't understand what the ramifications are by having that sign on there. It's never been explained to them. So GIHO (Goldfields Indigenous Housing Organisation), which is a housing office, is another arm of State Housing... they manage the village. They basically put pressure on householders/tenants with the police to fill in these forms and get these signs put on. That all happened in one day. What happens - they can't get the signs on there unless the tenants sign that bit of paper. It's illegal for GIHO and the police to put the signs on there, so somewhere along the line someone's signed something. I've never seen any paperwork or anything.

This same organisation continues.

Now what's happened is that by putting them signs on them fences, it's compounded legal issues a lot more for families because they didn't realise how it can impact on their lives. There was one lady, for instance, up in the village never, ever been in trouble with the police, never. She got these signs put on there and in the last two years she's had 20 charges of alcohol related offences against her because someone's been standing in her yard drinking alcohol. Then she's charged. Yes because it's her property. The families don't realise how much of an impact it would have on them. For some it has worked but for others who continuously drink, it can't work. **(Community organisation worker)**

Responses to housing issues

Nearly half (**45.7%**) of those who had identified a tenancy-related dispute or problem sought legal advice in response to their problems, with Indigenous women 21.9 percentage points more likely than Indigenous men to seek legal advice (52.7% of women compared with 30.8% of men). Whilst this is a relatively high percentage, a third had sought help from Homeswest itself, which is potentially problematic, as tenants do not have access to independent advice or information in this scenario. Overwhelmingly, issues were also not resolved satisfactorily.

Barriers to effective responses include feeling intimidated by landlords. Tenants are particularly worried about the possibility that tenancies might be lost if a complaint is initiated, especially concerning no doubt given difficulties in accessing housing in WA. Disputes or problems are also often not addressed until the last minute, including because literacy issues make it difficult to understand relevant correspondence from DoH. This leaves little time for those assisting tenants to 'unpack' the inevitable complexity of problems arising in this area.

We see matters that are kind of compounded with issue upon issue. So Department of Housing fails to maintain a property over years to the point where there are water leaks all through the house or to the point where the tenants are getting thousands of dollars in water bills. Then they're not paying them. Then the Department is seeking to terminate them on that basis. So it then becomes quite a complex legal issue to unpack all of that, and to try to shine some of the liability back on to the Department. **(Legal practitioner)**

It was noted that education for tenants about rights and responsibilities would assist Aboriginal people to both avoid and respond to housing problems *and* that DoH also needs to learn and understand more about its Aboriginal tenants.

Yes, housing is definitely an area where a lot of people, I think, need a lot more information than what they're getting. Just in regards to what's expected of them, what's legally expected of them, all that type of stuff. **(Indigenous community organisation worker)**

My understanding is most Indigenous people come from communities. So they've never lived in a house before. They're not really educated into the side of things of how to be responsible in keeping, you know, a clean house, I suppose. And just the responsibility that comes with it. I think there's really education needed there. I've been finding that, and I've been trying to educate DoH on that, as well. I think we'll see a balance once - we start doing that education, I think we might see some changes. But until that happens... **(Indigenous community organisation worker)**

Having access to legal and other advocacy when there is a problem can make all the difference to tenants in dispute or facing tenancy problems. However, the bulk of Aboriginal tenants are thought to be largely facing issues on their own, up against a massive, well-resourced government department (DoH). In terms of evictions, service providers and advocates stressed that many tenants are just walking away from homes without challenging Departmental decisions. As one CLC states, “I think many Aboriginal people are not obtaining any legal assistance... and are just being evicted.” It is noted that there are significant gaps in availability of legal and other help for tenants in WA. Within the CLC sector, for instance, one CLC notes, “there’s nowhere *near* enough funding ... to represent even a portion of the tenants who are being evicted by the Department.” It was thought that some kind of representative body for tenants, with Aboriginal representation, could play a vital advocacy role in WA.

2.3 NEIGHBOURHOOD DISPUTES

Neighbourhood disputes and problems emerged as a priority area of legal need, largely based on statistics gathered through the focus group questionnaires. This was a commonly reported area of complaint or of potential complaint, second only to housing related issues. Some **36.8%** of all focus group participants identified neighbourhood disputes as an issue. Need in this area was particularly pronounced for Indigenous women, who identified such disputes at 25.5 percentage points higher than that of Indigenous men (48.8% of women compared with 23.3% of men). Some communities fared worse than others, with 90.9% of participants in Balgo having a problem with neighbours.

As discussed in greater detail in Section 4.2: Neighbours, dogs and noise were the most common areas of dispute, followed by fences and boundaries and nuisance-type behaviour (‘anti-social behaviour’, drinking and fighting). Dogs caused concern where there were too many roaming around a community, as well as in relation to specific dogs. “Neighbour trapped his daughter’s dog, had to ring the police” (**Wyndham Women’s Focus Group Participant**).

Noise was an issue within participants’ own households because of the likelihood it will lead to a strike under the three strikes policy (and hence eviction). Noisy neighbours *also* disturbed focus group participants.

People coming in, people drunk, waking up the neighbours, people crying, family and friends. Neighbours shouting. No respect for people trying to sleep. I tried to sort my problems out with them today and forever but they can’t listen to me, the words go in and out. (**Laverton Women’s Focus Group Participant**)

Problems associated with lack of appropriate fencing or boundaries, often due to failure by the landlord to fix fences, meant that dogs and people weren’t always safe.

We still got no fencing out back. It’s ongoing. Place that we rent from Aboriginal Housing. Been like that for two and a half years now. They said they was going to come last Friday but they didn’t show up. We had dogs wandering in there. Our son’s dog, looks like he got into a fight when we wasn’t there, cause he had a cut under his eye. Our neighbours out the back who just rebuilt the place they got there now, they put in for the landlord to pay half of the fence. But they never come to the party. So the fence is still down. My husband just made a makeshift one. We’ve been trying and trying to get them to do it. When (named advocacy organisation) was up there they reckon they wrote letters and sent photos but nothing happened. It’s not fixed. (**Narrogin Women’s Focus Group Participant**)

Comments were made in relation to the racially biased impact of the three strikes policy, as noted in the context of discussion above relating concerning tenancy. As observed in Sections 4.1: Housing and 4.3: Discrimination, neighbours' reports may be racially motivated, or the issues they report as being disruptive might arise because of the way Aboriginal people in general live (larger households, for instance). Homeswest is also perceived to be keen to preference the account of a non-Indigenous person over that of an Aboriginal tenant.

Neighbourhood disputes are not always about race, however. One issue emerging with relative frequency in WA is that of community feuding. This occurs where conflict between multiple persons, often based on family groupings, affects an entire or large section of a community. This can arise in situations where DoH has failed to take proper account of existing conflict in allocation of public housing. It can lead to whole communities seeking to apply for restraining orders, according to legal service providers. They are generally unable to assist, however, due to the legal conflict this gives rise to.

Another thing I remember at the time was that the principal solicitor that I was working with, he was really pushing the fact that Homeswest, at the time, weren't taking family groups into consideration at all [in allocations]. So all these family groups were saying from the outset, "We do not want to be close to each other. We're feuding." They were being placed very closely in areas. Next door. So all these things were blowing up... So there was just the suggestion that even before, you know, the stuff that should be done before people are – you know, that people should be placed culturally appropriately in public housing, rather than just thrown in together. There were riots as a result of that. They were all in the street. Yeah. It was massive, at that time. **(Community organisation worker)**

It has quite an impact on the legal service [when there is widespread community conflict], because if everyone comes to get restraining order advice it creates all sorts of problems with conflicts. Because once we've given someone advice on a restraining order, if there are criminal matters or any other matters, we're kind of stuck to representing that person or group of people who have come in for that advice. But that's where [the legal services have] all got a good relationship so we can try and work through all those conflict issues. **(Legal Aid staff)**

Overall, **28.3%** of participants had responded to this issue by seeking some type of help. Women were considerably more likely than men to attempt to address neighbourhood disputes (35.1% of women and 12.5% of men). Many legal services indicated that they rarely assist with more 'traditional' types of neighbourhood disputes (noise, fencing). Households may just pack up and leave (by asking for a transfer, for instance) rather than directly tackling a problem with neighbours. Disputes between neighbours are much more likely to emerge as a criminal law rather than a civil law issue, it is suggested – a further example of the escalation of non-criminal legal issues to offending and criminal law matters. Mediation needs to be further explored in terms of its potential to contribute to resolution of conflict between neighbours, especially when on a larger scale as occurs in some communities.

Whole lot could be said about family feuding in Narrogin and about dispute resolution as a means of de-escalating the problem. There's a lot of family feuding happening here. **(Narrogin Women's Focus Group Participant)**

2.4 DISCRIMINATION

Discrimination emerged as a priority area of Indigenous civil law need in WA. Two out of every five participants (**40.9%**) identified experiences of discrimination in the last two years, with Indigenous men marginally more likely to report such experiences (43.1% of men compared with 39.0% of women). Some communities, such as Geraldton (60%) or Laverton (50%), also identified discrimination at higher rates than others.

Discrimination is an issue that intersects with many other civil and criminal law issues, instances of which are identified throughout this report. Aboriginal people are discriminated against - particularly on the basis of race - in education, as consumers of services, in housing, by neighbours in accessing credit... and the list goes on. As an organisation working in Geraldton says, racism is “alive and well - big, fat and ugly”. It is “every day in our life, you know.”

Racial discrimination and human rights in this State absolutely stinks! Whether it's housing, police, private rental, wherever you go. Racial discrimination is bad every day and every night. It doesn't matter where you. If you go over to the shops you don't see young Noongars serving because the managers are all racist. It is really hard out there for Noongars. When they go to kindergarten right through until they adults, there are always jokes about the colour of their skin, wherever you go. **(Perth Men's Focus Group Participant)**

In response to a specific question about the type of discrimination participants experienced, direct and race-based discrimination in access to places and in goods, services and facilities was most commonly identified. The main areas of discrimination were (in order of most to least frequently arising) shops, hotels/pubs, police and other government services, employment and real estate agents. Racial abuse was also mentioned, as was discrimination in education and sport. This does not mean that other types of discrimination do not occur, but there is perhaps a lack of understanding of the range of protection offered by anti-discrimination law in WA and federally. Further, qualitative and some quantitative data in other civil and family law areas also refer to racial discrimination. So, for example, there was much discussion about racial inequality in schools in the context of discussion about education, manifesting as bullying and/or more broadly in the way in which schools interact with Aboriginal students (see Section 4.8: Education).

Areas of discrimination

Focus group participants complained about shops and pubs/hotels mostly in terms of problems of access and quality of service, as well as over-surveillance (in shops).

When you go into the shop they [non-Aboriginal people] always get served before you. That's always. **(Wyndham Men's Focus Group)**

I talk to them. “Who are that mob? How are they allowed to go first? What are we - invisible?” It does happen but I don't take that much notice of it. **(Wyndham Men's Focus Group)**

I've even noticed at the Carousel shopping centre, there's hardly ever any Noongars there... The security guard there, they do... (Another interjects “They following you around!”)... When you go into the shops you just know you are going to be followed. **(Perth Women's Focus Group Participant)**

If you come here to stay in a hotel, you have to go stay in the creek even if you have money. We went there for a few drinks last year and they used to breathalyse people coming in. Not white people, only Aboriginal people. Some whites were running amuck but they weren't kicked out. If you walk home with a carton the police harass you if you're Aboriginal.

(Indigenous community organisation worker)

One Indigenous community worker spoke of blatant differential treatment in the local pub and of how "no one does anything about it".

You go down the pub, there's still a black bar there.... You know what they do? They light essence. I've taken a... white man, I've got a couple of white mates and I took them in and said, "Let's go have a game of pool". They said "Oh it smells lovely in here, how come they're lighting the essence?" I said, "You don't realise why they're lighting the essence mate?" and he said "No". I said "Well your girlfriend's a barmaid here and you ask here when you go home and you're sleeping with her." He came back and said, "You've got to be kidding mate." I said "Yeah, that's what they do it for, because of the black fellas." In winter time, next door in the white bar they've got the heater going and a nice little fire going. Next door [in the Aboriginal bar] they've got the aircon' on down to minus 16.... Aboriginal people have to go in there with blankets and jumpers and everything on. No one does anything about it. They haven't gelled together as a community to sort out these issues.

They're faced with all these sorts of stuff. **(Community organisation worker)**

Services, including police

Most grievances about government services concerned police – both under and over-policing of Aboriginal communities. Community members in particular had much to say about this.

I would say [under-policing] may be due to an expectation that a certain level of violence in these communities is normal or it's not a problem because it's happening in these communities. But that's not true, because violence is a problem everywhere and it should be treated seriously. Sometimes police don't always make the effort to get proper statements or to get statements from people. Someone might not be able to give a statement on the spot and they won't follow it up. We've had one lady quite recently who I'm assisting with something else, but it turns out she was assaulted quite badly towards the start of the year and was put in hospital, and she's now got some cognitive difficulties as a result of this alleged assault. Basically what had happened is the police would like for her to come in and give a statement but she can't. She needs help to do that now because of the assault, and the police are treating it as if she doesn't want to report it or she's just being belligerent, and that's not the case. She's been helped by a different agency in town, and I think she has since made a statement, but I don't think that's appropriate. **(Indigenous Legal Service staff)**

You've got the move-on policy in this state, where if there are a couple of Noongars talking, young blokes, two or three, they come along and tell them to move-on. They seem to be targeting the young Noongars. That's discrimination. **(Perth Men's Focus Group Participant)**

The cops are out there nearly every fifteen minutes. And I pulled them up one time and asked, "Well, how come you're out here like twenty, thirty trips a day." And they said, "Well, 90%

of the crime has come from the village,” which is a load of crap! **(Laverton Men’s Focus Group Participant)**

Trying to complain about police, to police, is seen as pointless. “It will go as far as the front desk and, ‘Yep, we’ll deal with it. See you later. Next time you’re in court.’” **(Laverton Men’s Focus Group Participant)**

Health services and taxis also attracted some comment.

We went up to the afterhours (doctor), and you have to press the button to get in. Before we even walked in – I have four little kids – the nurse said, “I’m watching youse, don’t make too much noise!” I growled at her, I said, “Hey, we only just walked in the door!” **(Perth Women’s Focus Group Participant)**

Employment

Discrimination in employment apparently arises in both applying for and keeping jobs.

They say that jobs are going, soon as Aboriginal people go to put in for it they don’t get it. They say, “Sorry job’s taken.” Even Target, you know they’re very racist. **(Indigenous Legal Service staff)**

My son, he was racially abused with the company he worked for.... I went back to ask for a copy of his contract. They opened his file and there’s no paperwork there. Now, the discrimination mob in Perth (EOC WA) can’t go forward because there’s no paperwork. So yeah, racism is alive and well.... It’s because the people over here haven’t got a copy of his contract. “Oh, we gave it to you, but he hasn’t bought it back to us.” “No you didn’t. You didn’t give to him because if he would’ve bought his contract home, the first person he would’ve showed would’ve been his father. He never bought it home”.... Because the boss said - because my son just said like “I’m not getting paid right.” You know, these two blokes here, they got double the pay that he was getting. He did more work than them, was more qualified with his traffic things – you know, stop and go signs and all that. Got all that, all his plant operating certificates. Got it all. Yet he was making half the money they was. So he bought it up with his boss. Some of the blokes had told him “Oh, just be careful when you go in there, because when we sit around and have beers, all he does is just run black fellas down.” So I deliberately went in there because he actually said to my son “I eat little black Cs like you for breakfast.” I went in there deliberately so I could actually see the boss and say “You going to come and have this big black fella for lunch?” True that. **(Legal practitioner)**

There is some suggestion that *local* Aboriginal people should be able to draw greater benefit from the mining boom in WA, especially through increased employment opportunities.

Most of [the mining companies have agreements about a proportion of Indigenous employees but] you only need like 3% of your work base to be Indigenous. That’s pretty low. It’s got to be like 20%. And the whole thing is they’ve got like 3% of Indigenous people employed but that doesn’t have to be 3% of local Indigenous people, it’s Australia wide. So if they’ve got their 3% covered by people that have come from the eastern states. **(Indigenous Legal Service staff)**

One Indigenous legal service discussed how hard it is to get a job if you've been in prison, and how being excluded from employment can also lead to offending – a telling example of the interconnection between civil and criminal law problems.

There's either no employment, they can't get employed. If they go to prison they're not going to get employed, and so they go to all these trainings, they do all their selling appointments, employment appointments and then they don't get employed [because of their past history of imprisonment]. And they're just stuck in the circle of not being employed, and it's stressful. If it increases stress on the family and the household then you're going to get the violence and the drinking and all the other issues. **(Indigenous Legal Service staff)**

This stakeholder was then asked if they would say there was discrimination in this. "I think there is, but I don't know if you want to point the finger. But yeah, there is."

Housing

Aboriginal people are less able to access private rentals than non-Aboriginal people (excluding those of CALD backgrounds). As one housing advocacy organisation said, "I've worked with Aboriginal people for a year and a half now, and I haven't seen anyone in private rentals." (See also ABS data in **Appendix D**).

Whilst many tenants are priced out of accessing private tenancies or may not be able to access them because on some communities there are so few private tenancies available (in some more remote communities, such as Balgo), sometimes the exclusion of Aboriginal people from the private rental market is due to racial and/or other forms of discrimination by real estate agents. Of note, media around the three strikes policy of Homeswest is thought to have demonised public housing tenants, including Aboriginal tenants, which certainly doesn't help.

When you are going for a rental, they see a blackfella coming, and it's like they give you a funny feeling. They look at you like what are you doing? And you think I'm not going to bother putting in for it. **(Perth Men's Focus Group Participant)**

Aboriginal people, when they're trying to – if they can't get a house from Homeswest or Department of Housing - they've got a like six, seven-year waiting list or something like that here. And priority housing, if they're fortunate enough to get priority housing... that's about two years or something. Probably you'll wait two to three years. So they're thinking "We need a new house straight away. We can't wait seven years" or whatever the case may be. So then they try and access the private rental market. You could be the most beautiful person on the phone and sound so wonderful to that person you're speaking to. You give them your name and say you'll be in the office within half an hour.... You walk in there and you go "My name's Greg Cross. I'm just enquiring about the house at 22 Zulu Place." "Oh sorry, the place has gone." "But I just spoke to you half an hour ago and you said it was available." "Oh no, sorry"... They don't even look on the computer, eh, to see if it's available. "Well, I gave you a mobile number to call me. Why didn't you call me to let me know, save me time coming down here?" "Oh sorry, it just happened.".... That's the attitude, tone they take. They don't see you as a person. They don't even try and hide it. You could be working but it doesn't matter... Because a lot of people, you know, you do sound different on the phone. Yeah, you don't sound black or white, eh? Well they can't see you through the phone.... You walk in

and that's it. It's happened to me a few times, about three years ago. All that self-opinion and confidence just goes. **(Legal practitioner)**

Whilst it is true that there are Aboriginal people who can't afford private rentals, even where they do have sufficient funds to rent privately because they are employed or otherwise, the perception may be that they won't be able to pay the rent.

I've got clients who've been evicted and are trying to get into private rentals. The discrimination's so tough that, you know, you've got three generations looking to get a house together. They could afford some rent - you know, five kids, so the Centrelink payments are there, they could pay some rent - but they can't get a house. **(Legal practitioner)**

Discrimination in public housing is also discussed in Section 4.1: Housing, particularly in relation to the three strikes policy. Discussed in further detail in Section 4.3 below, the real possibility that this policy constitutes indirect discrimination is based on an argument that it imposes conditions or requirements on tenants that are much more difficult for Aboriginal tenants to comply with, including because culture leads to a certain way of living for Aboriginal people (larger households, for instance). More generally, Aboriginal tenants are perceived as often being poorly serviced or under-serviced by DoH.

Discrimination is a problem with Homeswest. It takes them fucking months to do anything. But if you don't pay your power bill it takes them one second to switch the power off!
(Roebourne Men's Focus Group Participant)

We've probably got endemic discrimination in [housing]. But we haven't had the capacity to take it on as discrimination. Some of our clients actually feel that they're not being looked after or their property manager is not really listening to them. They think it's a waste of money, waste of time servicing that house. Some actually do get afraid of ringing their property manager and reporting a maintenance issue because they're victimised or because of the perception they won't be dealt with fairly or that, you know, to complain will undermine your housing. They will just come back with a notice to vacate.... So discrimination's something – we need to be further talking with the community about it because it's obviously not going to work as a take one client and do it. It's like a whole lot of clients together because of the potential [for victimisation]. **(Legal practitioner)**

Around one in six focus group participants **(16.3%)** experiencing discrimination had sought help in response, with Indigenous women more likely to do so than men (23.1% of women compared with 8.7% of men). Overwhelmingly, problems were left unaddressed or unresolved where attempts were made to address them. The legal system was rarely used to challenge discrimination, though there was some recognition that to do so may lead to positive social change.

People may be unaware of their rights in this area and even of the (legal) concept of discrimination. “A lot of people don't know where to go. Information's not there, right there in front of them”, claims one CLC. There is also a level of resignation towards discrimination, as well as far too much else to deal with at any given time.

Yeah, you just kind of put up with it. You're going to want a better house and a better job, and people are still going to put you down because you're a black fella. But it kind of gets put

under all these other issues and you deal with it last. **(Indigenous community organisation worker)**

Barriers also arise within the complaints process itself. It is seen as being a lengthy process, as well as raising difficulties relating to proof of allegations of discrimination. There is, moreover, a general feeling that the effort expended would not be worth much at the end of the day anyway. The importance of advocacy and support to discrimination complainants and the difficulty of finding this type of assistance were identified too.

I've had contact with ALS about discrimination... They told me that they couldn't give me any advice or represent me, that I had to go to the Equal Opportunity Commission, so the whole process, I done it all myself. But I didn't get what I want out of it... it was really hard. **(Perth Women's Focus Group Participant)**

2.5 CREDIT AND DEBT / CONSUMER LAW

Credit/debt is identified as a priority area of need. Nearly a third (**30.7%**) of focus group participants said that they had been in a situation where a lender had threatened legal action against them due to their failure to repay a debt, with men and women experiencing this problem at similar rates (32.1% of women and 29.2% of men). Debt also led to issues with participants' credit reference rating or bankruptcy (**11.3%** of focus group participants). Some communities (Narrogin, Perth) felt these issues more keenly than others.

The most common debt issues arise with respect to unpaid bills, loan (including bank loan) repayments, housing debt and fines.

I don't owe anything to Homewest now. I had to pay \$7000. They reckoned I owed \$7000 for arrears. I didn't mind cause I ended up paying it all anyway. **(Narrogin Women's Focus Group Participant)**

Credit/debt issues, they're huge. So what do we get? We get Telstra. Telstra having signed people up to mobile phone contracts without them being properly explained or properly understood. So people will run up debt on plans. You know how those things are sold as \$500 of free calls. Who understands how that works? ... This is an area of some of our greatest successes. So they waive \$10,000 sometimes. We had an old lady... She was looking after her grandchildren, \$10,000 Telstra bill. **(Legal practitioner)**

Debt is often quite substantial. It is not uncommon for an individual to have a fine to pay, a Centrelink debt and debt accrued as a consumer. Having to deal with multiple debts in this way complicates need, causing it to 'snowball' in terms of size and intensity.

You can see the complexity of the legal need in this area. Well, I mean, I just - a lot of my clients have a lot of debt related to the law. You know, they've got - because of fines, because of disputes. They've been fined for disruptive behaviour. There's a lot of that. Or driving without a licence or driving under the influence. All that sort of thing. So a lot of my clients have a lot of debt built up before they even start on anything else. So there's that kind of debt. Then there's, you know, the Mr Rental debt. Then there's the debt they've... accumulated with the electricity company and Homeswest. You know, the rentals and all that sort of stuff. **(Indigenous community organisation worker)**

The majority of those facing debt-related issues do very little about it or perhaps only act at the very last minute, when the money owing has probably increased ten times over. Only 8.7% of women and 20.7% of men faced with a debt had sought help in response. Overall, only **13.2%** of all participants had done so. Avoidance is due to fear and/or lack of awareness about how to tackle debt. Debt also arises, in the first, place due to insufficient knowledge of relevant obligations and rights.

They become afraid, you know. Not too sure what to do. Try and ignore it. So we educate about the fact that you can't ignore it when you've got debts and bills. Coming in to see us, just to talk about it and get it dealt with, is a lot better than trying to forget about it and not deal with it. Because it will still be there. It won't go away. It'll just cause more stress and then you're in bigger and bigger trouble down the track. **(Indigenous community organisation worker)**

It's more or less the fact that they've gone for a loan while they've been working at the mines with a high paying job. Then, all of a sudden, lost their job for whatever reasons. Then they're back to square one, on a low income, and not knowing that they have to go and report it – come and see us or come and see a financial counsellor to be able to do another repayment plan, because their income is not the same. **(Indigenous community organisation worker)**

Whilst non-legal services, specifically financial counsellors or similar, are able to assist Aboriginal people with managing debt, there is not enough legal assistance available in this area. There is some suggestion that there are major gaps in advocacy in relation to both this *and* consumer law areas. “The gaps are about consumer and debt issues” **(Legal practitioner)**.

Access to lawyers is crucial where there is a legal issue requiring legal attention sitting within a debt-related dispute or problem. As one service providing budget assistance states:

We work closely with KCLS (Kimberley Community Legal Service) due to the fact that they have a financial counsellor there, and they work in sync with us. Which is good, because they have more – they do the more in depth, the heavier stuff, you know, when it comes to credit card loans and repayment plans and debts. We can do the repayment plans and stuff, as well, especially with Department of Housing. That's easy enough. **(Indigenous community organisation worker)**

Consumer law has been identified as a priority where it crosses over with credit and debt matters, although it is also noted that certain consumer problems transpire with some regularity as well. Superannuation and banks were identified as a problem by **20.6%** of participants, for instance. Other issues were not quite so commonly experienced. Scams and contracts were identified by **8.6%** of participants, insurance by **5.2%** and good/services paid for but not received by **7.9%**. Indigenous men experienced all consumer issues more frequently than Indigenous women.

Some 24 individuals identified a total of 32 different consumer problems. The most common of these was access and entitlements to superannuation (11 participants). Motor vehicle sales/repairs was the second most common problem area (6 participants), followed by telephone contracts (4), insurance claims (4), scams (4) and banking disputes (fees, balance etc.) (3). The majority of persons identifying a consumer related problem had *not* sought any help or advice in response.

Debt can be attached to a number of these problem areas. In general, consumer law issues frequently run alongside credit/debt-related problems, and vice versa. Common ground between the two areas

also exists as credit/debt and consumer problems can occur because people do not understand their rights and obligations and/or experience financial or more 'traditional' literacy issues (they can't read bills, for instance). The latter issues also reduce capacity to respond effectively to problems and disputes in these two areas.

So they don't know their legal rights when it comes to door-to-door sales. They don't know their rights with purchasing a vehicle, even though you don't have any rights after you sign that but that they're not aware of that. So those are real areas that we want to emphasise onto communities - about the refund, about your rights as a consumer. But Aboriginal people are not aware that they have those legal rights as well. So it's about also outreaching to them.

(Statutory Authority staff)

Phone contracts and phone debt is one obvious example of the intersection of the two areas. Indigenous people can end up with huge bills to pay as customers of TELCOs.

[Credit and debt is] huge. We get Telstra [issues]. Telstra having signed people up to mobile phone contracts without them being properly explained or properly understood. So people will run up debt on plans. You know how those things are sold as \$500 free calls. Who understands how that works? [This is an] area of some of our greatest successes. So they waive \$10,000. We had an old lady... wasn't as old as me, probably. But that's the age gap. I mean, the life expectancy. She was looking after her grandchildren, \$10,000 Telstra bill.

(Legal practitioner)

Motor vehicle repairs and sales is another 'space' where the two areas come together. Purchasing a car through credit that probably should not have been provided (because repayments are beyond the borrower's means) is one issue. Another is that some Aboriginal people have apparently not been able to pick up their vehicles from mechanics until they settle a debt for services provided. Mechanics, though, are not always dealing as ethically as they should with their Aboriginal customers and how they charge for work undertaken.

The other one is getting cars repaired. Because it's so expensive and people are reliant on their vehicles, I have quite a lot of complaints that come through that relate to situations where the repairs are more than the car is worth. But because people need that vehicle, people will then want to go ahead with really complicated big repairs that take a lot of time. Often times, people won't have that money to outlay up front so that vehicle will sit with a repairer for months and months, months and months - perhaps getting further issues while consumers get the money together to pay it off. And then it's a bit more and a bit more because it has sat there, it might have sat there over a wet season and people never sort of, don't sort of catch up and get ahead. And that's not even just for major repairs. That's sometimes for smaller repairs. So if you talked to a lot of repairers they have yards full of vehicles. There are issues about whether the work needs to be done and whether people might have been given the impression that things were going to cost a certain amount and then when they go to pick up the vehicle it becomes way more and they're sort of over a barrel at that point because they can't pick up the vehicle. So, car repair is a difficult one. And also the quality of repairs - it can really depend on who you're going to as to how honest perhaps they're going to be, perhaps not putting in old parts when you can put in new parts and that's not specific to Indigenous consumers, but that's right across board. **(Statutory Authority staff)**

Door-to-door sales are also problematic, with persons on Centrelink benefits compelled through high - pressure sales tactics to sign up to contractual arrangements setting up a seemingly never-ending cycle of direct debts from their bank accounts.

But with the credit and debt issues, one of the other things that's come up a lot when we've been travelling around have been problems with different types of scams, with things like Aboriginal funeral funds or... door to door sales. Things like family portraits. **(Legal practitioner)**

The ILNP has heard about hard selling of water filters, mobile phone contracts, portraits and sponsorship through charities, for example – particularly on remote communities, where residents may have less access to information able to protect them from this type of trade.

People are vulnerable and they'll sign up. Remember, was it World Vision came around door knocking and signed up all these people out here? (Named person) managed to stop it all. When she rung [the charity] they said they had no authority to be out here in the first place. Because they are very pushy, and you just... Apparently it's on commission. I'm sure they do get commission because that's why they're so pushy. I even hate dealing with them. A few times, I've just signed up to shut them up and then you go off and terminate it, just to get rid of them. It's also that you're seeing this photo of this child that's going hungry. Now I had one lady... She said, "Oh God, I've just signed up for – I can't even afford to feed my own children. What am I doing?"... It was only, I think, the day before she'd done it. So there was a cooling off period and I just rang up and said, "Look, this woman doesn't want to do it." But you know yourself that if someone appeals to your emotion... **(Legal practitioner)**

You know what the biggest one is - those photos. It is outrageous! Well, I don't think people fully understand when they get those photos just how much it's going to cost them. They ask for a couple of photos and they've got to take this whole deal. It's over \$1,000. Then they come in and they want help with food and everything because they're paying for photos. They don't want all the photos. They don't understand what they sign up to... There was one here recently. The place opposite me... I went to one of my neighbours and I thought oh, here we go. There's a person that definitely can't afford that. It was first thing in the morning and I thought that's a bit unusual. But anyway, they must have gone there four times... A thousand dollars would be your minimum. I think, you know, it's one of those situations where, say if I'm saying, "Look, you can have one of them that size. But this size is only going to cost you this. So do you want one of them as well?" Now, I don't know how you go with, a lot of people aren't any good with figures. I would be adding it up as they said it (for the total price) I would know the exact amount... But how many people can do that? That's not being rude. There's a lot of people, other intelligent people, but they're no good with figures. I'm not good with names. **(Community organisation worker)**

Yeah, and the Kimberley, we've just got this huge thing with the photography packages where they turn up and charge you exorbitant prices and you're paying off a photography package forever. **(Statutory Authority staff)**

The connection is also evident where Aboriginal consumers purchase goods under some sort of credit arrangement, including book up or hire purchase. In both instances, the consumer owes a debt to a trader (in most cases). These arrangements represent, along with payday lending, in some respects a less beneficial, potentially more problematic type of lending. But, given the poor levels of access to

more traditional forms of credit Indigenous people generally experience, using them may be the only way they can make purchases.

Problems with book up include traders not placing sufficient limitation on how much debt is accrued, as well as the holding of customers' pin numbers and key cards.

I guess what actually happens is that people book up, book up, book up. Then by the time - actually, I should rephrase that - at one particular shop people used to book up, book up, book up. By the time they'd go down to get money and that there, they'd have spent all their money on book up. So then the whole process starts again. So what that shop owner had to turn around and say is "Look, what you fellas need to do is that I will say this is how much you're allowed to book up to and that's it. Because you need money to live, you need all that type of stuff." And put it into that sort of way. But then other shopkeepers haven't thought like that. There's still that - basically, they're just paying that bit off with that key card and they don't have no more money. **(Indigenous community organisation worker)**

I don't know where the legalities of book up - people having other people's credit cards or key cards and things like that. The thing is though, is that they got their PIN numbers. I mean I know it's not illegal to have a key card. But I don't know how legal it is to be able to have access to that person's PIN. **(Indigenous community organisation worker)**

Issues arising with respect to hire purchase include the fact that "you just never finish paying for the flamin' thing, you know," as one community-based stakeholder states. Hire purchase arrangements require a customer to "direct debit and who knows when the direct debits stop," causing the total cost of whatever is being purchased to blow out of *all* proportion to its true value.

This issue is also linked with that of Centrepay. Some would say that direct debts are managed through the Centrepay scheme without sufficient oversight by Centrelink (see also Section 4.9: Social Security).

It's just sort of - when you do reach the end of it, they just come around and say, "Oh well, that's worn out and that's worn out. Do you need some new ones? Look, I've got some nice new ones out here, you know." So there you go again. Whereas hire purchase, they won't get hire purchase in town, really, will they? I think neither of the shops will do [it]. Mr Rental just arrives with his big van full of goodies. He knows exactly which street to stop into. Up and down, up and down - yes, yes. Public housing. If we could ban him, we'd be doing a lot better, wouldn't we? Although, in some ways, there's a place... Well, some of those people, they move into a house, they've actually got nothing. I've got a client who's got their lounge suite, their washing machine, their fridge, TV, you know, most of their household goods - and they've got four little kids and they're both unemployed. So they wouldn't have had that. But now they've got a debt with the debt collectors for \$5,000. **(Community organisation worker)**

I mean I think most businesses do just take what is on the contract. Sometimes people have committed to \$250 a week and their income is managed, so somebody might be getting \$80 cash out of their payment a fortnight, but they've committed to \$250 a week on something else ... Most of the businesses don't do Centrepay.... It's all direct debit.... And if you miss one or two payments, that's it. Some of them have got very harsh terms and conditions. You just forfeit what you've paid. Or if they've already supplied goods to you then they will take

action against you. Some of them are more flexible and reasonable than others (**Statutory Authority staff**)

I think another thing is, too, they sometimes buy, say, a product from a store and they – like say you’ve got the rental guys here. They sign a contract and they’re not reading between the fine lines. So they’re thinking they’re maybe signing up for something for 12 months, but really it’s like three years. In that three-year period, they’ve paid over triple, quadruple of what they’ve bought the item for. When they start realising, when they come in – like we do, a budget. We’re seeing they’re paying \$4000 for an \$800 washing machine but that’s fortnightly over a three-year period. You know, they’re realising they’re paying that money, they want to get out of it, but they can’t. If they – you know, they come here, we do the budget and say this is how much they can afford. If they want to give the item back, then the white goods people wants to take them to court or something. Then, of course, the Aboriginal person gets scared and just goes back and drops it off. But they’ve still got that big bill. That’s when they come back to us. We do the budget. From then, we can do the referral to the financial counsellor. (**Legal practitioner**)

The same type of barriers hindering more effective responses to credit/debt problems also arise with respect to consumer law issues, including a lack of awareness of rights and of ways to address issues and also fear, as the following comment suggests. This comment also indicates how important advocacy and support is for Indigenous consumers.

They’re afraid to stand up and challenge. They don’t know. Unless you go out there and really nurture them.... Only because they have no idea what you’re doing. They haven’t even heard of Consumer Affairs. They don’t even know about that consumer law. So, you know, you have to – you’re not only trying to win their trust and build that, but also educate them at the same time, to let them know that you’ve been ripped off or that’s against the law and you’ve got legal rights. Just that whole sentence right there would’ve already thrown people. (**Statutory Authority staff**)

2.6 STOLEN WAGES/STOLEN GENERATIONS

Oh we used to go and work with our grandparents. Our mum and dad, we used to go working until at least 10 or 12 years old but we never got paid. Fruit picking or anything. We never ever got anything for that. 5 o’clock in the morning. (**Narrogin Women’s Focus Group**)

At the time the ILNP was conducting much of its fieldwork in WA, the Stolen Wages compensation scheme was open or just closed. The State’s compensation scheme for people abused in state care had also been open during 2008 and 2009. For this reason, these areas of civil law had particular currency when the WA ILNP data was being collected. This is likely to be reflected in the fact that just over one in four participants (**26.2%**) identified an entitlement to monies owed to them for Stolen Wages. Men were more likely to identify an entitlement than women (31.8% compared with 21.5%). Further, over one in five participants (**21.9%**) believed they belonged to the Stolen Generations, also giving rise to a potential claim for compensation. The percentage of women identifying being stolen was nearly double that of men (27.2% compared with 15.7% of men).

The extent to which Stolen Wages has been raised as an issue (by over 25% of participants) has led to its prioritisation as an area of legal need. Participants also identified being part of the Stolen Generations with relative frequency, but it is its connection with Stolen Wages that defines Stolen

Generations as a priority area. It was not uncommon for those who had had wages stolen to also identify as having been stolen as children.

Further, prioritisation of these two issues reflects not just the extent to which participants identified potential entitlements, but also the level of frustration and anger expressed about the operation of the two relevant compensation schemes. The Stolen Wages scheme, for instance, was criticised as being open for too short a period of time, providing only a very narrow window of opportunity for individuals to apply for compensation. It was also apparently not effectively advertised and the amount of money offered was seen as being far too small.

They only opened the scheme for Stolen Wages for 6 months. We only found out about it on the day they opened it and it's for amounts of up to \$2000. Generous bunch! **(Indigenous Legal Service staff)**

It was a big rush for us to get out there ... [A number of organisations] got together and asked them to extend the time limit. Because it just wouldn't have been able to have been done [in time]. Because we had to – we go to Meeka(thara), Mullewa, Three Springs. We had to go all around. There's still heaps out there that are missing out on it. **(Legal practitioner)**

It's only just been advertised in our papers about a close out date and people didn't talk about it before. They're only just talking about it, maybe because it's closing... We haven't got the time to be able to do them or even go through our books to find people who we can send letters to. We're not funded to do anything like that. [It was 6 months to apply] but people didn't know, no one connected with it and they are only just connecting now... I only picked it out of the paper the other day where the tender section was. There were [advertisements for] two tenders, then this bit about the close off date. Then it was about having massages, sexual relations... not a section that [our Aboriginal clients] would ever read in their life. They read the local paper... There aren't many that would buy the Western Australian. It's not something that they actually read. [Our organisation's] workers have to remember to think about it. If clients come in here because they're on their third strike and they're losing their house you actually don't think about whether they have a claim for stolen wages. It doesn't even come into the conversation. If the client is at risk of losing their children they're not going to talk about [Stolen Wages]. So it's just something that never came up in anyone's conversations until I happened to see its closing. **(Indigenous community organisation worker)**

Another major complaint was that those working on private stations were not eligible for money under the redress scheme.

They should be entitled to money for working on stations for rations. My mother in law was upset about it. She worked when she was 15 getting flour, tealeaf and beef. **(Indigenous community organisation)**

A lot of people who were station workers get very, very annoyed... because they did the work. I mean they built the bloody Kimberley cattle stations. So we got a groundswell of people really annoyed about that and getting a bit of movement. So while we explained to people properly – you know, properly advised them that they weren't going to be eligible, a lot of them chose to put in an application in order to be rejected... A lot of that's what we're

still going through. People have been rejected so we do an appeal... But the government appears to be willing to exercise no discretion. **(Legal practitioner)**

One legal service provider also noted the knock on effects between Stolen Wages and other areas of law – in this example, superannuation entitlements. Commenting that most Indigenous clients had little super to speak of, they added:

We're not dealing with the situation where most of the people would've worked for pay all their lives. They're worked all right - for rations. **(Legal practitioner)**

Taking this context into account, the frustrations voiced about the \$2000 offered as compensation have particular resonance.

Half of those who identified being entitled to compensation had sought advice or help in response, generally from a legal service or community organisation. Nine individuals were still pursuing compensation.

2.7 CHILD PROTECTION

Family law issues including (i) removal of children into the care and protection system; (ii) child support, contact and residency of children; and (iii) property disputes in the context of separation were examined in the ILNP research. Whilst **14.2%** of focus group participants identified an issue relating to contact, residence or child support (with men and women doing so at similar rates), it is the family law issue of **child removal** into the care and protection system that really stands out in terms of legal need for the reasons set out below. Only **4%** of focus group participants identified a dispute over money, property or superannuation following a separation or divorce.

Child protection is prioritised primarily on the basis of qualitative rather than quantitative data. Focus group participants were asked whether they had recently experienced problems in relation to children being taken into care, fostering, adoption or guardianship or issues with family members taking children and not returning them. One in ten participants (**10%**) identified a problem in this area, with women a little more likely to do so than men (12.7% of women compared with 7% of men). Qualitative data collected by the ILNP, however, identifies child removal as generating serious levels of distress and anxiety for Indigenous people, given the negative repercussions it has for Aboriginal people as individuals, as families and as communities.

The scale of the problem is also reflected in the following statistics. In Western Australia as at 30 June 2013, the Australian Institute of Health and Welfare (AIHW) reports that Indigenous children made up 5.5% of the child population (0-17 years), yet comprised just one in two (48.8%) of all children in out-of-home care.²⁴ AIHW also observes that Indigenous children were 16 times more likely to be in out-of-home care than non-Indigenous children in WA.²⁵ Further, SNAICC (Secretariat of National Aboriginal and Islander Child Care) has noted that in WA the number of Indigenous children removed has more than trebled in the 10 years from 2003 to 2013.²⁶

²⁴ Australian Institute of Health and Welfare (AIHW) (2014) *Child Protection Australia: 2012-2013*, Child Welfare Series No. 58, Canberra, AIHW, pp. 102, 113

²⁵ Ibid, p.52

²⁶ SNAICC [Secretariat of National Aboriginal and Islander Child Care] (2014) *Western Australia Issues Paper*, p. 6: <http://www.snaicc.org.au/uploads/rsfil/03301.pdf>

This is despite the fact that there are particular provisions in the *Children and Community Services Act (2004)* WA designed to ensure that the child protection system pays particular attention to the needs and circumstances of Indigenous children, including through the Indigenous child placement principle (ICPP) (s.12) and the principle of community participation (s.14).

As further illustration of the importance of this issue in terms of legal need, it is suggested that rates of Aboriginal child removal are placing strains on legal services trying to meet an ever-increasing demand for assistance.

The demand, it keeps going up all the time, the pressure on the courts. The care and protection lists used to be about half the number. The criminal lists in the Children's Court were about twice as long, now we're seeing that the care and protection lists are actually longer than the criminal lists and they seem to be getting longer all the time. There are hundreds and hundreds of matters every week. **(Indigenous Legal Service staff)**

Characteristics of family law and child protection legal needs for Aboriginal people in WA

It is worth noting, in the context of Indigenous family law need at a broader level, that the extent of CPFS intervention in Aboriginal families' lives may lead them to be fearful of engaging in the family law system *in general* unless they absolutely must do so, including because their child has been removed. Legal services report that child protection is certainly the main family law issue they assist Aboriginal clients with. Aboriginal people appear concerned that contact with the legal system in any sense might increase the risk of removal.

If you go into the Family Court today, you'll very rarely see Aboriginal people [there]... You go into the Magistrates' Court or the Children's Court, they're packed. But you go into the Family Court... they don't know it exists.... They don't utilise that. They don't utilise that service. **(Indigenous Legal Service staff)**

ALSWA also noted the increasing 'crossover' of cases involving at-risk children into the Family Court.

As cases in the Family Court are between private individuals (not parent versus DCPFS), the power imbalance automatically built into child protection cases where Department of Child Protection has intervened is absent, but these FC cases can be just as complex or more so. While DCPFS are not a party to any of these matters, they do sometimes appear and will supply information to the Family Court, and sometimes try to run cases by 'remote control' – that is, insist that care arrangements should be a certain way, but not actually intervene. The spectre of this possible intervention is feared by Aboriginal people because of their terrible history with welfare authorities. My point being, these clients need representation as much as the parents on the receiving end of a DCPFS statutory intervention. **(Indigenous Legal Service staff)**

Another point made by stakeholders and focus group participants is that Aboriginal people rarely have an understanding of family law and family law process, including around child protection. This also reduces capacity to engage with legal services in this area.

I don't know how the whole [legal system] works, it's too complicating. The white people are making it harder for these little kids to come home to their parents. **(Perth Women's Focus Group Participant)**

Given this, more legal education should be provided by legal services so that Aboriginal people will be more likely to use the legal system and the law to challenge CPFS at an early a stage as possible. "Part of it is education. Letting people know what their legal rights are before an apprehension even happens" **(Indigenous Legal Service staff)**.

A further point is the increase in complexity of legal need pertaining to child protection which family violence can cause. This is another example of the connections that exist between criminal and civil/family law issues. As the following quotes suggest, there is a need for more preventative work to address broader issues that might lead to contact with CPFS, including around family conflict. This type of support work is not sufficiently resourced at present, it is thought.

It's all connected to all this family breakdown, there needs to be some sort of addressing of what's fundamentally going on to cause family breakdown, because that's what's causing kids slipping through the net, being at risk, high conflict in families, all those things that drive cases into services like ours. **(Indigenous Legal Service staff)**

I'd just like to see people and families actually given support and assistance prior to removal and after. I mean I just find that once they've got their application to take a child into care then there's not really assistance given to the parents to address the issues. Sometimes they are legitimate issues, but people should be given help to change. **(Indigenous Legal Service staff)**

Child protection is also linked with a range of other civil law issues, including housing, social security and debt. An example follows.

Housing was her issue. The reason why she had no money was the fact that her house had burnt down. She was staying with relatives and every man and his dog was coming in and taking the food. I worked this out when she offered me a coffee. She went into her bedroom and got the coffee from under her jumpers in her wardrobe. So that was a good indication to me that there was a bigger issue there. So once we got her housing we were able to do a budget. Her children were still in her care but were at risk of being taken away. Eventually we got her into some training and she's working part time and her children were never taken away. But it wasn't that she couldn't really manage financially, it was all those other things that were creating that financial mess. **(Indigenous community organisation worker)**

Concerns about CPFS practice

Whilst there was individual grief concerning the act of removal, the general consensus about CPFS policy and practice was that the impacts on Aboriginal people are also harmful on a much larger scale. Participants called for establishment of a special taskforce to examine Indigenous child removal in WA.

There should be a special taskforce set up in Noongar country here. So that we can start working on getting our Noongar kids back into their homes with their families where they

belong. And if we can't get them back with their immediate mother and father, get them back with their families at least. **(Perth Women's Focus Group Participant)**

Particular issues around CPFS practice relate, for instance, to not placing enough emphasis on reunification and placement of kids with Indigenous families and/or nearer to home, making any sort of regular ongoing contact difficult or impossible.

[If those kids are removed from their family, are they also removed from Wyndham?]

Facilitator. Generally speaking, yes. They go to Kununurra. I know it's still in country, but yes. I know of quite a lot of kids that went all the way to Perth. **(Indigenous community organisation worker)**

They've got foster carers everywhere. They take them to Kalgoorlie or Geraldton or whatever, including Perth. Yes, they've put them on the plane mate and someone will be at the other end to meet them. It's frightening. **(Community organisation worker)**

There is also a sense of both despair and resignation in response to or in the face of the level of power CPFS is perceived as having over Indigenous lives.

CPFS interference at the moment, intervention... You've got people giving up, because they've tried – well, they've tried their best. Yes, CPFS has decided to take their children off them. They're working hard with Money Management, you know, with CPFS, with all these other service providers to get themselves back on track. Sometimes they just feel that they've failed and they give up. That leads to drinking, disruptive behaviour. What's the point? They're thinking to themselves, what's the point when, you know, my children have been taken? CPFS is controlling our lives here. Does that give CPFS the right to do that? No, it doesn't. **(Indigenous community organisation worker)**

A point raised in Section 5: Observations on Legal Service Delivery is that child removal in the present day is just a repeat of what has happened to Aboriginal people over many decades now. This history leads to distrust of the welfare system and of CPFS as a government agency, and by extension of government in its entirety. Where legal services are also seen as government, this lack of trust inhibits the extent to which parents will engage with advocates in response to child removal.

I know four women now – four. One was only just recent. Last Thursday. Called me up on Facebook saying that their kids were taken away from them, right in the front yard. There was no warning, no nothing. This is what I hate, that fricken mentality of the welfare days, where we're just taken away. Here, we had four years ago, whatever it was, with Kevin Rudd apologise to the country for all this stuff that had happened. And what, four years, six years later, we're still doing it. It's ridiculous. **(Legal practitioner)**

They see us as the enemy, which we are sometimes, but we should all have the same goal at the end of the day and that's for children to be with their families and to be safe and well looked after. So if they were to cooperate with us more that would be good, and to communicate with us better. **(Indigenous Legal Service staff)**

And yet legal assistance is vitally important, including or especially at the early stages of contact between carers and CPFS.

So representation mostly happens after court proceedings have been started. It depends if it's a new order or if they're varying or exceeding a previous order. So I'd have to check exactly

what the legislation says, but I think once a child has been removed they've got a certain number of working days to put that application into court, and then if they ask for an interim order that the child should be in protection they always get it if it's unopposed... I mean that first court appearance is a bit of formality. Most of the time we see a client after that. We don't start acting for them until after that first court date. There's exceptions sometimes, but that's mostly what happens. But if we can see someone really, really early on in the process or help them – before they're actually removed. We can help people through that safety program process and that's where we get really good outcomes. **(Indigenous Legal Service staff)**

In this context, it is suggested that there should be more assistance provided to parents by CPFS to access (or at least to know that they can access) advocacy when kids are removed.

With the CPFS issues, when they do take children from families, it should be something that they should do, to give family members [advice]. “Well, we're going to do this, so it's best for you to go and get this legal advice.” Because I've known from a lot of family members where children have been removed from home. Then they've taken the kid from the front of the office, take them down the back, took them out the back door, and the parent's sitting out the front crying because they don't know what to do. CPFS don't pass nothing on. **(Legal practitioner)**

If people don't have representation, so if they're not told about the fact they can get help – so CPFS might dump all these documents in their laps, so the affidavit and the application and legal documents, and people probably don't have the literacy skills to understand what they're saying or they're reading or they're signing, so I don't think that's fair at all. **(Indigenous Legal Service staff)**

Failures of law and policy: cultural plans, consent and the Indigenous Child Placement Principle

CPFS is said not to be adequately complying with relevant policy and law in this area, as one ex-CPFS worker suggests.

We've got a lawyer who used to work in CPFS ... and she's horrified at some of the orders and consent orders that are being made. She's trying to help people... Without that sort of legal assistance people are lost. **(Indigenous legal service provider)**

Other stakeholders raised concerns about little effort being expended in preparation of cultural reports within the context of case planning. There was also discussion about the extent to which parental or carer consent was given to CPFS orders and whether this consent was sufficiently informed or otherwise genuine. ILNP stakeholders expressed the view that it should be the duty of the court to ensure that consent orders have been signed with proper consent and that other legislative requirements, including the ICPP, have been correctly adhered to. Generally courts are thought to be doing so to a certain extent, although it is noted that parents appear to rarely attend court for child protection matters (and therefore are unable to provide input into decision-making at this level).

The Children's Court has been more on the side of parents over the last five years. By that, I mean, they're harder on CPFS in terms of making sure that CPFS follow their process. So in doing that, they've expressly given them a serve in court. That never used to happen so much. Now, it happens quite freely. **(Indigenous Legal Service staff)**

I've never known them (Aboriginal parents) to go to Court. I think CPFS just step in and take the kid and it's up to you to go and fight to keep your kid. They'd just probably be hurt with removing their kids from that family. **(Community organisation worker)**

As a further point concerning the ICCP, WA has a low (and ever decreasing) rate of placement of Indigenous children with Indigenous carers, currently at only 57% of placements (below the national average).²⁷ Developing the cultural competence of Departmental officers and increasing the role of Indigenous child care agencies in decision-making is said to be essential to improving adherence to the principle.²⁸

It's crap. Absolutely, it is. I think it's a bit of a joke these days. I was just reading the Gordon Report yesterday.²⁹ So in 2002, 79% of Aboriginal kids in care were placed with their direct family. Now, I think it's at about 48%. It's really decreasing. **(Indigenous Legal Service staff)**

Access to legal and other advice and advocacy

Twenty-one individuals who had identified a family law problem in relation to children, including child protection, responded to a question asking whether they sought legal advice or assistance. A little less than half (**47.6%**) indicated they sought legal advice or assistance, with men and women seeking advice at the same rate.

There were examples among focus group participants of successful outcomes from using Aboriginal Legal Services and Legal Aid. "They tried to take away my two girls, but I fought them. I went to court", states a man in the Roebourne focus group. Others were reluctant to contact the ALS. "It doesn't make a difference if I do go and see ALS because they won't represent me properly in court" **(Perth Women's Focus Group Participant)**.

In general, Aboriginal people need to have improved access to legal advice and advocacy in relation to child protection matters, at *all* stages of interaction with CPFS. Accessing legal advice and assistance at present usually comes after there's already been significant intervention by the Department. Of note, assisting clients is more difficult once children have been removed. Those living more remotely are particularly difficult for legal services to access.

So we have got a few people, care and protection clients in Laverton. One of the biggest problems that we face in providing services is getting to people early enough to make a difference. That's a really big issue, when people are involved with the Department often for very good reasons they're scared that the children will be taken away, and their first instinct is to slam the door or throw your papers in the bin. But the earlier people come to us, the more we can help them and the better results we can get. It's much easier to help someone when things are in their early stages rather than once – once a child has been removed it's very, very difficult to get that child back with the parents. So yeah, that's the biggest challenge we face, getting to people early enough and getting them comfortable enough to use our services. **(Indigenous Legal Service staff)**

²⁷ SNAICC (2014), p.12

²⁸ Ibid

²⁹ Gordon, S (2002), *Putting the Picture Together*, State Law Publisher, Perth

There is presently insufficient funding of family law and child protection services in WA. ALSWA, for instance, provides assistance for child protection matters both from Perth and with only 3.8 full time equivalent family lawyers working in this area. Better resourcing is required so as to ensure greater access to support and representation. Assistance in this context might also be provided by Indigenous organisations involved in child protection decision-making with capacity to inform individuals about their rights and advocate for those rights at an agency level.³⁰

2.8 EDUCATION

Education is prioritised as an area of legal need in WA both because of the extent to which it is identified as a problem area by participants, generally in relation to their children's experiences of schooling, but also as disruptions to and difficulties in education have such a significant impact on later life. The following quote provides an example of this impact.

[Older teenagers] should never have been able to fall through the gaps in education. But it's about... in the schools now you don't keep kids down (to repeat a year). You know, "they need to grow up with the kids of their own age". So they have fallen through the gaps ... they can't go for really good jobs. They don't want to go and work in KFC or Chicken Treat or anything like that... But they're not able to do any other type of work because there is nothing else out there. So it's – education, lack of education gives them the lack of employment opportunities. **(Legal practitioner)**

Nearly half of participants (44.4%) identified attending or being responsible for someone attending an educational institution. Indigenous women were 10.5 percentage points more likely than Indigenous men to be responsible for someone attending an educational institution (or to be themselves attending) (49.4 % of women compared with 38.9% of men). Overall, **65.7%** of those engaged with the education system had had a problem within it. Significantly, 75% of women had experienced this type of problem, compared with 51.9% of men. In some communities, almost all participants identified an issue in this area (87.5% in Balgo, for instance, and 90% in Roebourne).

The predominant bases for complaint were bullying and harassment, often with some racial element. Suspension and expulsion, followed by 'racism' as a separately identified issue were the second and third most common issues, respectively. The education system is seen by some as an institution incapable of responding to the particular circumstances of Aboriginal children. Stakeholder comments identified that schools could be unresponsive to the cultural needs of young Indigenous students. Further, those working within the educational system may be *directly* discriminating against or otherwise treating Aboriginal students unfairly by bullying them *or* by failing to deal equitably with conflict between Aboriginal and non-Aboriginal kids. The following quote illustrates this, and also provides a further example of the interplay between criminal and civil law issues.

One of the boys was assaulted by a Year 12 boy what was under DCP, a State ward. The school, I don't think they acted on it appropriately, and my aunty went to the police cause he had a broken nose or broken cheekbone out of that. There were charges on that one... I moved my daughter out of there because of the stuff that's been happening... The school only sees their side of it. They say they're going to interview independent witnesses but they

³⁰ SNAICC [Secretariat of National Aboriginal and Islander Child Care] (2013), *Whose Voice Counts? Aboriginal and Torres Strait Islander participation in child protection decision-making*, http://www.snaicc.org.au/_uploads/rsfil/03197.pdf

are not reliable. They don't believe the kids and then they don't deal with the issues appropriately. **(Narrogin Women's Focus Group Participant)**

Schools are also seen as not responding as best as they might to difficulties Indigenous children may be having and to behaviour at school associated with these difficulties. If schools are to be provided with greater capacity to improve responses in this area, relevant additional resourcing needs to be culturally appropriate.

I got a little uncle who throws tantrums, and he was refused to go on camp cos of that. And the rest of the class went. Had an argument with the principle who left without explanation. That's not fair at all... he's about 11 or 12. Six or seven classes that went and he was the only one left behind. **(Wyndham Women's Focus Group Participant)**

Also, when it comes to the Education Department – I said this two or three years ago to the Education Department that – don't just get a cultural training package just on one thing. If you've got a teacher who specifically wants to go to up north, then there's a cultural package for that area. Because every one of us – well not everyone, but we're all different in the way we do things. So those packages need to coincide with that area and that region. I haven't seen nothing of that yet. **(Legal practitioner)**

Around one in four **(26.8%)** of those who had identified an issue in this area sought legal advice or other help, generally by working directly with schools to try to resolve issues. Lawyers reported having little engagement with clients around education-related problems, other than when they arose as part of their criminal law work with clients (where, for example, clients within the juvenile justice system were also being expelled or suspended).

2.9 SOCIAL SECURITY

Problems experienced in Aboriginal people's interactions with Centrelink have also been identified as an area of priority need. This is based on the large proportion of participants in receipt of benefits (76.3%) who also report a problem with payments **(22.6%** of those receiving benefits) and the low proportion of persons who had sought help with issues arising. Another basis for prioritisation is the likely consequence of these issues: that is, zero or limited access to income (benefits), at least for a period of time.

With Centrelink if they don't attend certain things they lose their funds and what normally happens is it's Nan or Mum that has to pick up the pieces and provide the food for these ones that have lost their income. Centrelink is a major issue. Almost every one of our clients, there'd be some issue. **(Indigenous community organisation worker)**

In terms of gender differences, women were significantly more likely than men to be a client of Centrelink (84.3% of women compared with 67.1% of men) and were also a little more likely to be subject to Income Management. Men and women experienced Centrelink related problems at very similar rates (22.1% of women compared with 23.4% of men).

The most common types of complaints identified by focus group participants about Centrelink concerned Centrelink debts, being cut off benefits and overpayment of benefits. Underpinning these issues and/or increasing the likelihood that they will occur are significant problems in the way in which Centrelink engages with its Aboriginal clients, particularly (but not exclusively) for those living outside centres.

Service delivery in general left much to be desired, according to a number of participants and stakeholders. “You versus Centrelink. Yeah! It’s you versus Centrelink”, claimed a man in the Laverton focus group, for instance. Negative interactions with Centrelink can cause clients to become frustrated and angry. As one legal service provider states, “I really get frustrated with Centrelink because they – the people behind the counter carry on like it’s their money”. Situations can easily escalate to offending on the part of Centrelink clients.

People would be in there for like three hours on the phone. I had one client and I was going to the bread shop next door and getting food for her because she was on the phone for so long. Then people just get the phone and they would smash it. Then the police would get called. Just sheer frustration. It was hopeless. **(Indigenous community organisation)**

Centrelink is seen as a massive bureaucracy, controlled from somewhere far away (Canberra or some other major centre). However, navigating a path through it is made easier if you have direct contact with helpful individual staff members.

A behemoth. A huge bureaucratic nightmare and it gets down to very personal things such as who the person at Centrelink is that you’re talking to. They can be helpful. They can be totally unhelpful because they’re at the end of the food chain. Again, Centrelink Canberra says, “This is our policy.” How does that happen in bloody Roebourne or Hedland or Tom Price?
(Indigenous community organisation)

The processing all happens in Darwin. They don’t know these people here. **(Indigenous community organisation worker)**

More specifically, certain barriers make contact with Centrelink difficult, and these are seen as likely to disproportionately impact on Aboriginal people, especially those living in remote areas. These barriers can both cause legal disputes and problems *and* make it difficult to sort them out when they arise.

The emphasis on communication through phones, the internet and computers, for example, presents as one such barrier. Many Indigenous people may not have access to and/or capacity to use these modes of communication. And yet, especially for those living nowhere near an office or agent, these are the primary or even sole means of accessing Centrelink. Even if there *is* a Centrelink agent located nearby, considerable reliance is often still placed on phones and Internet, given limitations on services an agent generally provides.

Most of us people don’t have mobile phones. We need it for Centrelink and other things.
(Indigenous community organisation worker)

They want everyone to be computer literate. Be able to jump on, print out your income statements or apply for benefits without having any interaction with a staff member. Well, you want to make changes down there (about how clients interact with Centrelink), don’t push your changes onto [us]. So they go down to Centrelink and Centrelink are turning them away saying, no, they can’t print out a Centrelink income statement. **(Legal practitioner)**

It is easy to see how disconnection in this sense might lead to benefits being cut off. Clients may not attend appointments and so lose their benefits for a period of time. This might also occur where Aboriginal people do not have access to transport or can’t or don’t read Centrelink correspondence.

A client in Wagin, she had an interview with like Community First (job service provider) in Narrogin or one of those. So she couldn't get to that [because she had no car]. She rang and left a message. I don't think they got the message in time, so her benefit got cut off.

(Community organisation worker)

They haven't thought about letters. They don't have family at home that would open the mail box, read a letter because half of them can't read Centrelink letters and say "Oh, you're supposed to attend an appointment on such and such a day". **(Indigenous community organisation worker)**

Awareness of and access to benefits was a significant issue in this area, including for single parents. Problems arise in this context due to an obligation, for example, that a single parent seek child support from the other parent and that they interact with the Child Support agency as a condition of access to Centrelink benefits. There are exceptions in cases of family violence but individuals may not be aware of this.

We've identified loads of child support issues and maintenance issues. I work it out and say "Well, that means you're getting \$456 a fortnight maintenance. That's why your Centrelink rate is lower than the rate." They say, "No, no, no I'm not getting it." Well, I am saying, "Well, Centrelink is basing your rate on the fact that Child Support says you should be getting it. If you're not getting it we need to go back to Child Support". **(Indigenous community organisation worker)**

That's like me with child support, because I don't go through court and everything for my last two little ones, the father of the two little ones took me to court to prove that they're his children. I have had to go up and down up and down to Perth, did all the DNAs down here and I didn't want them to go through it all but I had to do it otherwise my payments would've been stopped... They're (Centrelink) terrible people. **(Narrogin Women's Focus Group Participant)**

Problems of access to benefits also arise for persons seeking the Disability Support Pension, including those individuals now being forced onto Newstart but unable, due to disability, to comply with Newstart requirements (such as attending training). Family situations where grandparents are caring for their grandchildren but not receiving appropriate benefits appear to be a problematic area as well.

The grandmas are really struggling on the pension. I had somebody in this morning that was – you know, she's got three kids going to high school. There's only two of them that she's getting family tax benefit for, and she's got a two year old as well that she's not getting family tax benefit for. She's 60. She's got diabetes and everything else that goes with it. She's worrying, even now, about next year's school uniforms because there'll be two of them coming up to school up here. **(Indigenous community organisation worker)**

A sizeable proportion of Centrelink customers are now on Income Management in WA (22.7% of Indigenous women and 19.6% of Indigenous men), leading to quarantining of payments and restrictions on where goods can be purchased through the Basics Card. In WA, Income Management is supposedly voluntary. One issue raised however is that consent is not always completely freely given. As a further indication of the way in which civil law issues interact, housing providers may require that tenants agree to Income Management to 'save' their tenancy. "There's some community

housing providers, that's a condition of having access to the housing. That you sign up for voluntary income management. It's kind of voluntary, but kind of not really" (**Legal practitioner**).

On that Basics Card business, isn't that same as you're getting a voucher for rations back in the early days? Dark Stone Age gone now, everything should be equal opportunity for people. Government just automatically handing out basics card... I wouldn't get on it because in this town here now you can walk into so many shops and they'll say, 'No Basics Card', especially that big shop over there. (**Laverton Women's Focus Group Participant**)

Problems were also raised in relation to Centrepay.

For most people – most of our clients are on some – even if it's for their utilities. Because they're paying their rent by what's called direct deduction. But if something goes wrong with their payments, often the Centrepay stops. That can cause a problem. They say that they don't always... They're not always aware of it. (**Legal practitioner**)

Some suggest that the scheme is not operating in accordance with its stated objectives. Section 3 of the *Centrepay Policy* document states that it seeks 'to enhance the wellbeing of its Customers by improving their social capacity and encouraging their movements towards financial self-management', including through 'providing Customers with a means to budget and plan for their household and living expenses'.³¹ This is not always occurring, however.

When you take them to Centrelink, there is a lot of our clients that have been having money deducted that we question. They are being deducted for different things at Centrelink... So they are deducting – their pay's being deducted before they get most of it. They (the payments) are going to places other than housing. A lot of our clients are having lots of things taken out, not just housing and stuff. (**Legal practitioner**)

Only **three of the 27** individuals who had identified a problem with Centrelink also indicated they sought legal assistance or advice. For the majority the problem was either unresolved (8) or ongoing (4). This suggests that generally people are not challenging Centrelink in the decisions it is making. They may, for instance, just pay the debt they are told they owe, without asking questions.

But, I didn't – I couldn't – I didn't know who to ask for advice so I just paid it back because it's Centrelink, you know. If you start questioning them they'll start cutting your money down or start being really, you know, nasty with you, with your payments and stuff you know. (**Geraldton Women's Focus Group Participant**)

2.10 UNMET OR UNRECOGNISED LEGAL NEED: WILLS

Only **10.3%** of all focus group participants had completed a will, but **56.5%** of those who hadn't done so indicated that they would like assistance to create one. These figures broadly correspond with other research about Indigenous people and their use of wills.³² Women and men were similarly likely

³¹ Department of Human Services (nd), *Centrepay Policy*, Australian Government, Canberra, Department of Human Services (nd), *Centrepay Policy*, Australian Government, Canberra., accessed 25 August 2014: <http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf>

³² 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.

to have completed a will (10.8% of women compared with 9.7% of men) and to want to put one in place (55.7% of women compared with 57.4% of men).

There are a number of issues impacting on legal need with respect to wills that are specific to WA. The first is recent changes to the *Aboriginal Affairs Planning Authority Amendment Act 2012* (WA), removing provisions directing that the estate of Aboriginal people dying intestate had to be managed by the Public Trustee. This means that they now have the same right to administer the estate of their deceased relative as any other person living in WA. Aboriginal people will need to be properly informed about these changes.

Everything used to go to the Public Trustee if someone didn't have a will. That's not the case anymore... Now the Public Trustee's not going to be there, so things will stand still, really, until people are aware of their legal rights and executors and all those kind of matters that most people just don't know about. **(Legal Aid staff)**

Further, whilst it is acknowledged that wills are not only about property and assets, Aboriginal employees of the WA mining industry are often earning good money and will have assets to distribute upon death through a will so as to avoid possible disputes. It is suggested that superannuation, including for such persons, should be expressly passed on to an intended beneficiary through binding nomination (as part of the worker's superannuation policy). This is said to be especially important because "superannuation companies are the worst you can deal with". "There are so many procedures and policies. So if you can make that process any easier, you should". **(Legal practitioner)**

The majority of Aboriginal participants in WA did not have a will. "Nobody got a will," says a woman in the Roebourne focus group. People think they've got nothing to give. "Most people are thinking I've got nothing to leave anyone anyway. Or the only will they know is Cousin Will!", states a man in the Perth focus group. Drawing up a will can also be seen as bad luck and a preference was also expressed for working things out without formal documentation of this type.

As noted, a significant proportion (over half) of all participants identified that they'd like to complete a will however, indicating that this is a priority area of Indigenous legal need. The fact that wills might be helpful to Aboriginal people, including as a means of avoiding disputes, was discussed as follows by an Indigenous worker.

In my belief, I reckon that would be the way to go. Do a will. Save arguments. Indigenous – they're set in their ways. You know, like there's already the way where, you know, we take every day as it comes. We don't tend to plan ahead, you know. Now, living in two worlds, it's very hard. So, you know, me, as an Indigenous person myself, I live in two worlds. I tend to – I would go for a will. I would, you know, go in – that's something I want to be prepared to do. **(Indigenous community organisation worker)**

A relatively high percentage of participants (**25.5%**) had been involved in or experienced a dispute over a deceased estate, with Indigenous women more likely than men to identify such a dispute (28.8% of women compared with 20.9% of men). "Lots of disputes about money, belongings, burial", states one Indigenous community organisation worker. Burial stood out as a common basis for dispute in this area. One stakeholder estimated that they encountered a dispute around burial each month.

A lot of Aboriginal people don't do wills. They have a verbal agreement that can be misinterpreted within their immediate families and there's still the cultural side to it where

they have connection to country and they don't want the deceased persons buried in a particular spot because they weren't from there. Or a de facto has come into it and they all have their vested position in it. It's a big frustration. **(Statutory Authority staff)**

We have probably once a month we have a dispute between the family of the deceased, the mother's side or the father's side or the son's side or the daughter's side will say, "No, look, we want him or her buried in Broome." They say, "No, no, we want him buried in Roebourne or Hedland or Tom Price." You get those disputes. There's no legal that I know of, no legalities to cover it. It's very much blackfellas... will sort it out themselves. **(Indigenous community organisation)**

According to one community based stakeholder, in the absence of a will or any legal intervention, disputes were usually resolved through "[a] lot of talking, a lot of raising of language ... and finally ... Yeah. It happens". They added that such disputes escalated to a court hearing – "two in the last six months probably".

Despite the level of existing need, there is said to be little legal service assistance available to draw up a will in WA, although a local project based at the CLC in Geraldton has been successfully working with communities around wills,³³ and agencies such as art centres and artists themselves are also producing wills. A Wills As the women in the Balgo focus group stated, "We all made a will at the Arts Centre" **(Balgo Women's Focus Group Participant)**. Of note, a Wills Working Group for Aboriginal Western Australians has also been established in WA to reduce high levels of intestacy present in Indigenous communities in the State, with the Department of Aboriginal Affairs providing Executive Officer support to the group and legal services forming part of its membership.

3. PRIORITY ISSUES RELATING TO SERVICE DELIVERY

3.1 Under servicing of Aboriginal civil and family law need

This report identifies that civil and family law problems are experienced frequently by Aboriginal people in WA and, on the whole, are *not* satisfactorily resolved, giving rise to substantial levels of civil and family law need in Aboriginal communities, especially in the priority areas discussed in this report.

The ILNP has some focus on improving Indigenous access to legal (and to some extent other) services because this is seen as likely to reduce the extent to which relevant problems arise and to improve capacity to effectively address them when they do occur. As stated by a community organisation worker, Aboriginal people have a right to quality legal assistance to help "fix up their lives". However, it is acknowledged that meeting Indigenous legal needs in civil and family law areas is not solely about access to services.

Resourcing and under-servicing

Presently, significant barriers inhibit the extent to which Aboriginal people are accessing justice through legal or other help. A notable barrier to Indigenous access to civil and family law justice is the current under servicing by legal services of existing need. Without a doubt, a primary reason for

³³ See information about the Aboriginal Wills Project at Geraldton Resource Centre: <http://grc.asn.au/aboriginal-wills-project/>

under servicing of civil and family law need in Aboriginal communities is under-resourcing of legal services. Services are generally doing the best they can with what they've got.

I don't think you can say that anyone's satisfied, there's just not enough [servicing]. There's just so much out there, there's so much that could and should be done but you just don't have the resources. **(Indigenous Legal Service staff)**

Legal services are forced to constantly make hard decisions about what they can and can't take on, with these decisions inevitably leading to gaps in service delivery. Funding guidelines also establish boundaries in this context.

What we do is always to capacity. We're defined by capacity in who we help and the types of matters we do. But because civil is so broad, as well, we're careful not to try to cover the field when we're not experts or have strong skills in certain areas. [For example] housing is not an area that we've traditionally provided assistance in. But we are now providing a little bit more assistance in housing. **(Legal Aid staff)**

It all comes down to what's in the funding guidelines, what we can and can't do. And I suppose it comes down to prioritising and... whether there are other services out there that can do things. Then we have to refer to them so we can do everything else. **(Indigenous Legal Service staff)**

Prioritising criminal law

There appears to still be a widespread perception in the communities visited by the ILNP that ALSWA and LAWA have a primary focus on criminal law matters. Partly to address this perception and to respond to need in other areas of law, in September 2013 ALSWA initiated a civil and human rights circuit in regional WA, with civil lawyers generally visiting relevant regions every two months. During these visits, advocates undertake casework and provide CLE in the areas of civil law and human rights. To what extent this initiative will alter community perceptions about ALSWA and the work they do over time is difficult to gauge, but ALSWA reports seeing a shift already in this regard.³⁴

It may be particularly problematic that ALSWA is seen as maintaining a fairly strong focus on criminal law, given they are the principal provider of legal services to Indigenous communities in WA. The feeling is that ALSWA "are only helping us when we're handcuffed" **(Indigenous community organisation worker)**. This perception then leads to another – that ALSWA only assists Aboriginal men.

If you can't go to the ALS as a Noongar mother with all her kids where are you going to go? We've been there to try and get help with driver's licenses. They say they can't help with driver's licenses. I've been there with this discrimination thing. With housing, I've got holes in my kids' roofs, been there since last winter, they're still there... They're all about criminal so if you want help with that they'll help you. **(Perth Women's Focus Group Participant)**

With the menfolk, it's more about court fines and things like that. It's the women that deal with the nitty gritty, the other issues... home and everything like that... **(Indigenous community organisation worker)**

³⁴ Email from ALSWA, 9 December 2014

Of note, LAWA generally tie their civil/family law outreach work to *criminal* law circuits in remote and regional areas. ALSWA civil circuits are run both independently of and to coincide with these criminal law circuits, as appropriate, though the perception remains that they will only visit a community when criminal court is sitting.

I don't want to be too critical of ALS... but I mean... Unfortunately [ALS staff representing] people here for criminal stuff haven't got a good reputation... I always go back to that service that's been provided. Obviously it's not enough and they only come out on court days and that's the only time you see them. If they come out and do like more of a community education type process, then they might get some pluses and work with the families, but it's too case driven. I think if they take a bit more time and go sit down and spend time with the families that would probably be an easier process. **(Community organisation worker)**

Unmet civil and family law need - links to criminal law/social exclusion

In suggesting that increased funding is required for legal services, the LNP does not suggest that resources directed towards criminal law work ought to be reduced so as to increase legal services' focus on civil and family law issues. Current resourcing of criminal law work is *also* insufficient to meet existing criminal law need. Present funding for criminal law work must be retained (or ideally, increased), with *additional* funds provided for civil and family law work. At this point in time, however, government promises a reduction rather than an increase in funding.³⁵

We believe that it makes little economic or other sense to take from one area of work to enhance another. As the ILNP research indicates, different legal issues inter-relate in various ways. Unmet civil/family law needs can escalate to become criminal law matters. Indigenous contact with the criminal justice system then costs governments money. Unaddressed civil and family law issues connect with broader social issues, too. Eviction from a tenancy, for instance, can feed into criminalisation, homelessness and other problems associated with social exclusion, which also then place financial demands on government. Resources expended on better meeting Aboriginal civil and family law need is thus money well spent as it reduces the incidence of criminal and social problems.

But then you need to be considering other ways as well [beyond focusing on criminal law] ... [There's a link between criminal law and civil/family law]. You know, like the full circle for an individual. Having a safe home. Because they're having tenancy problems and they lose their house, they're homeless. Leads to drinking, police surveillance. Then people get themselves into trouble, because they're angry. You know, it's that balance at home and then what's happened there, I think, what affects us.... I think there is [a connection between all these things]. **(Indigenous community organisation worker)**

So access to justice for Aboriginal people is dramatically underfunded and my concerns are that there are a lot of vulnerable people out there who don't have their legal needs addressed. Those legal needs not being addressed spiral into serious costs for the government.
(Indigenous Legal Service staff)

³⁵ See for instance (NATSILS) (2013) *Factsheet: Funding cuts to Aboriginal and Torres Strait Islander Legal Services*:
<http://www.natsils.org.au/portals/natsils/submission/Funding%20Cuts%20Factsheet%202%20April%202013.pdf>

Not all of this, however, is just about economics. As noted, Aboriginal people have a right to adequate access to justice, including through legal and other assistance. It is noted that so much of the help legal services provide to Aboriginal people with respect to the law responds to (negative) intervention on the part of government. Examples include public housing tenancy disputes and child removal, as well as criminal law matters. It is an injustice, therefore, for government to fail to properly fund legal services working to support individuals to respond effectively to such interventions.

Funding of legal services

Funding directed towards improved legal service delivery around non-criminal legal issues *must* resource *Aboriginal* legal services to undertake this work, as a first priority. However, non-Indigenous legal services also need to be adequately resourced so as to be able to offer Aboriginal communities a real choice in terms of where they access legal help. We note that some non-Indigenous legal services (certain CLCs and LAWA offices) already have a high proportion of Aboriginal clients, but with increased funding across the board *all* legal services should be able to do better in terms of the extent to which they are engaging with Aboriginal people. This is seen by one staff member working in an Indigenous legal service as preferable to focusing all funding on development of a 'super-ATSILS'.

It's not the view of the service necessarily, but I personally think that it's really important for there to be this network of different service providers that *do* do different things... If you took the view that you wanted to create one super-ALS or one super-ATSILS at the expense of the others, I don't think that's a very good model. I think that's the key to it, is having a choice. Because for some communities, I wouldn't want to go to a particular place if they knew me and knew my family and I was sitting across from somebody who lives on my street. It's just not really conducive to having a trusting relationship around confidentiality and I think confidentiality is a really important issue for legal matters.... Having a model where all of the players are very healthy and strong and can take on matters and have competency that's part of effectiveness. **(Indigenous Legal Service staff)**

Legal service policy and under-servicing

Comments were provided about legal service policies with potential to impede Indigenous access to legal assistance. The most common issue raised was legal conflict, leading to refusal of service. Non-legal services may also feel that they have no one to whom they can refer clients for legal advice because of conflict - particularly female clients.

ALS does civil law matters but quite often when we send the client there they're conflicted out because they have such a large criminal practice. I suppose our clients tend to be women and their clients tend to be men. **(Indigenous Legal Service staff)**

LAWA staff felt that they were, to some extent, more restricted than others in the work they are able to take on, including because of their means and merits testing. Some LAWA staff, though, discussed the flexibility of the organisation's social inclusion program, directed towards assisting more vulnerable persons (including Aboriginal people), outside of stricter eligibility criteria.

What we've created in civil is what we call a social inclusion program - to focus not on the matter, but more on the client... What we're looking at is shifting the focus, looking at the person more and trying to be more inclusive around our funding. [Helping] those people who need it most based on their personal characteristics... rather than the nature of the legal problem.... Aboriginality is a factor that will get you in rather than the other way around.

Positive discrimination.... So that's why, for Aboriginal folk, it's a much better option.
(Legal Aid staff)

3.2 Working regionally in WA

The vast geographical distance between WA communities was a prominent issue raised in the context of current levels of Indigenous access to justice.

I think it's out in the regions. That's huge. It's massive. People just don't understand or know what services are out there and it's really hard for us to give any services there as well.
(Indigenous Legal Service staff)

Whilst ALSWA has two family lawyers situated in the regions³⁶ and now provides civil and human rights outreach outside the capital (from September 2013) and LAWA offers some civil and family law assistance from its regional offices, civil/family law work by specialist CLCs, LAWA and ALSWA state-wide is still *predominantly* undertaken from Perth. Thus, civil/family law casework is likely to involve liaison between Perth offices and staff (including the latter civil/family lawyers) located nearer to remote/regional clients. For some stakeholders, this arrangement works well. Most, however, felt it was far from ideal.

Ideally a civil law service shouldn't be run from Perth. There should be lawyers within ALS who operate in Broome and operate in Kununurra and in the Goldfields. But there's obviously not enough funding for that. (Indigenous Legal Service staff)

Civil and family lawyers more permanently based in regional locations, often in CLCs or AFLS offices, are still located far away from many clients, given the enormous areas services cover.

Well, the level of access is clearly insufficient. In terms of service providers usually, particularly in a remote area, there's some kind of CLC within, say, a 500km radius of where people are. That's not necessarily avoidable – the distance - because, I mean, some of these communities are so remote. But it's also the amount of funding the CLCs are provided with.
(Indigenous Legal Service staff)

Courts and *non*-legal services (health and other support services, for instance) are similarly difficult to access. Apparently in some communities CPFS and police might be the only 'services' around – “and of course Aboriginal people don't want to touch them with a barge pole” (Legal Aid staff). And yet, non-legal services and courts have important functions or roles too in ensuring effective access to justice. Legal needs are often so bound up with non-legal needs (support around substance abuse, for example), for instance, that both must often be addressed simultaneously.

Outreach

Whilst radical alteration to the way legal services work in the regions is unlikely, by for example setting up multiple offices covering many areas of law, and whilst acknowledging the outreach work presently being provided, more extensive quality outreach would assist in reducing widespread gaps presently existing in service delivery to more remote areas. Issues likely to be impacting on capacity to provide outreach include costs associated with this work.

³⁶ These family lawyers commenced in the Goldfields and Kimberley regions in late 2012, early 2013. The funding of these positions is uncertain after June 2015, however.

I don't think you can ignore how big this State is too, so in terms of distributing services, those additional costs that are inherent. So it's not a case of saying you are going to deliver this service and it's a great idea, you've got to think about how you're going to deliver it and if it means flying somebody up from Perth and back or whatever, it all comes out a much bigger cost, because the State is that much bigger. **(Legal Aid staff)**

Maybe, I know outreach is the only thing you can do for remote communities because offices can't be everywhere.... but there are people falling through the gaps.... I think they're doing their best... But I would say that more is needed. **(Indigenous community organisation worker)**

Legal and other services spoke of frustration when extensive resources were used to travel to communities, only to have no clients show up.

We get to a point where it was looking at sort of \$8-10,000 for one trip, and you weren't actually going to... know if you're going to get anything. **(Community organisation worker)**

There was some suggestion that whilst this may be unavoidable to an extent (if there is a funeral for instance in the community), outreach might be more likely to engage local Aboriginal people if done the 'right' way. This means stepping outside of an office into a more public space and/or linking in with services working on the ground and already well connected with community, for example.

That's half the problem with a lot of these agencies, is how they do business. It's not culturally appropriate. Simple. I used to do a lot of training and I did it with (named welfare organisation). I got all of their staff to come out, like 50 degrees heat... [and] they thought we were going to an office. I went and set a tent up at the village and sat underneath that tent there on a rug and let the people come to me – 50 degrees heat. Admittedly at 3 o'clock they were nearly falling over from the heat and I took them to the pool, but that's how you do business. **(Community organisation worker)**

Outreach services could also be improved by increasing regularity of visits. Services are often in and out of a community so quickly, as well - especially if travelling with circuit courts - that often communities do not even know they've been there until it's too late.

3.3 Improving access to justice through education

Not having enough knowledge or understanding of civil and family law presents as a significant barrier to accessing justice. Aboriginal people may not know that the issues they face are legal issues, as a first point, and then how to go about getting even initial advice or help in relation to such issues. Increased access to information and CLE is needed. Services are presently trying to provide this information with limited resources. Additional resources are required.

They're not getting the help they need or they're not knowing where to go. Maybe more education out there on where to go, you know, what issues these solicitors can deal with, these lawyers. People don't know where to go, where to get help. Some of them didn't even know that it's as simple as coming in to here, talking to me and I can get this help for them. You know, the relief that they had when it's done. "Oh my God, it's just – it was just so easy to come and see you and you just helped me". So getting that information out there more, I reckon. **(Indigenous community organisation worker)**

As suggested in the context of outreach services, CLE should also be provided so as to ensure maximum beneficial outcomes. This means scoping with communities directly and in advance of any visit to ascertain what it is they want to learn more about.

[One Legal Aid staff member delivering CLE on a remote community] hadn't anticipated that when the group went out to talk about Stolen Wages, it would just take over everything. So I said, "What is it that you're trying to achieve in terms of community legal education?" And we haven't really got a sense of what those needs are because we haven't surveyed those needs. We tend to go out to a community and deliver stuff that we think they might need, but it's not necessarily what they do need. **(Legal Aid staff)**

Other ways to ensure positive outcomes through CLE include working with local organisations with an established 'audience' and educating key persons within Indigenous communities, who can then share relevant information with other community members. Organisations should by now also be moving away from sole reliance on written educational material, such as pamphlets. Social and other media can be helpful in disseminating information.

I think there is a place when communities are very disempowered where you could provide a paralegal course for people who hold the power in those communities.... Hopefully they can then refer people quicker. **(Legal practitioner)**

3.4 Complexity of Indigenous legal need

Compounding of legal and non-legal need issues

Aboriginal people are likely to have multiple legal issues to deal with simultaneously. As discussed in detail in various parts of this report, civil, family and criminal law issues frequently travel together, leading to increased complexity and intensity of legal need.

Need also becomes more complex as a result of *non*-legal issues frequently experienced in Aboriginal communities, such as mental health issues. The latter type of issues can both cause *and* be exacerbated by civil or family law problems, as well as making it much more difficult to address legal matters arising. As a woman in the Geraldton focus group states, Aboriginal people may not "have the energy" to deal with civil and family law problems, not "with everything else going on".

And then other barriers would be mental health, substance abuse, which are really a symptom of a deeper issue... If they're addicted to substances or they're abusing substances, or have mental health issues... that would prevent them from engaging with a legal service or properly engaging. They may not be capable of giving instructions or you can't find them half the time so you can't represent them properly. You want to, you can't because you're not getting that feedback from the client. **(Indigenous Legal Service staff)**

This complexity can be addressed through collaboration between different services. As noted previously, however, there are significant gaps in both legal *and non*-legal (support) services in more remote locations, meaning that there may be reduced capacity outside centres (in particular) to do so effectively.

But they stop paying their rent and then, of course, they stop their payment on their Synergy account, then the Synergy bill goes up. Then they arrive in here with a bill for \$2,000, \$3,000 because they haven't been paying their Centrepay. It just goes around and around. Then the power gets cut off, then that's a breach of their tenancy because their smoke

alarm doesn't work. So it just goes on. It just goes around and around. It's very difficult.... I mean, we work together in the line of whatever we can do for them. We're always sort of - I work with parent support. That's a part of CPFS. I think, pretty much, in this town, we all work together... We all work together to do the best we can for everybody. **(Indigenous community organisation worker)**

Language, literacy, culture

Language and literacy issues also feed into complexity of need. Like other barriers to accessing justice, these issues can both cause legal problems to occur (for instance in reading and understanding contracts as a consumer) and can also present as significant barriers to effectively accessing justice (not being able to understand 'legal speak', for instance).

Aboriginal people need help getting legal advice, but they need help to talk... When they start throwing hard words at us, we need help to break it down and understand it. **(Wyndham Women's Focus Group Participant)**

A lot of them aren't confident with their reading or writing, as well. So, you know, if they go somewhere and they go "Well here, read this. Read and sign." They look at it and they go "I'm not going to read that." Then they won't go any further because they don't – you know, too many long words or... instead of it just being plain English. Whereas, a picture's more effective for them, you know. So a lot less writing, I think, is a big key. And all that form filling. That's something... Oh, some of them get overwhelmed because they don't know if they've filled out the question right. That's another thing, that they feel white society's probably controlling them again. **(Community organisation worker)**

Culture also increases complexity. As an Indigenous legal service provider notes, "So in terms of access to justice, I'd say remoteness, language and culture are three primary issues that I think Indigenous people face." Services absolutely *must* have capacity to work responsively with culture, including through effective cross-cultural communication.

Well, the big key issue with any Aboriginal people is - yarning is just a universal word. You have to sit down and talk. You can't go in and say, "Right, let's talk about housing." You might start talking about something totally different, and then it comes up "I'm having trouble with Homeswest. Do you reckon you could help me?" You say, "Well, I can't help you but we can find someone who can." That's what we've been trying to do. That's what happens here, too. **(Community organisation worker)**

3.5 Engaging with Aboriginal communities

Community engagement with non-Indigenous services

Non-Indigenous legal services recognise that their level of engagement with Aboriginal communities needs to be improved, in general. This is, to some extent, another resourcing issue, but at another level might be better progressed by genuine consultation with Aboriginal people about what they think will enhance service delivery within Indigenous communities. Non-Indigenous services need make a firm commitment to walk the requisite 'hard yards' to enhance engagement.

I think CLCs suffer from what all organisations suffer from, that's getting stuck in their ways, getting restricted by their funding capacity, as well. **(Indigenous Legal Service staff)**

It's something that we're always working at and we don't know where we stand. We can always see a better way of doing and we think we've come a long way. **(Legal Aid staff)**

Some non-Indigenous legal services, both within LAWA and the CLC sector, already work with a significant proportion of Aboriginal clients around civil/family law issues. This is often due to their location in areas with larger Indigenous populations or their focus on a priority area of need such as housing.

One way of almost certainly improving engagement with Aboriginal people is to employ quality Indigenous staff, as the following CLC observes.

We have an equal amount of people accessing our services. It's nearly 50/50 now, Indigenous/non-Indigenous, which is fantastic. A third of our staff members are Aboriginal, which we're really, really proud of. It's the highest it's ever been, which is great. So the people that are coming through our door, nine times out of ten, they're going to hit an Aboriginal person. They're actually going to get an Aboriginal service provider. Which is great. **(Legal practitioner)**

In 2009, LAWA introduced its first Reconciliation Action Plan (RAP) as part of its commitment to increasing the service's engagement with Aboriginal communities in WA. The 2013-2014 RAP continues to recognise the importance of employment of Indigenous staff in achieving this goal.³⁷ LAWA has employed an Aboriginal Liaison Officer (ALO) in its Kununurra office, for instance. The ALO works to create collaborative partnerships with relevant local services and provides outreach and community legal education to Aboriginal people in the Kimberley region. In 2014, the ALO made 30 visits to a total of 10 communities, identifying legal need and responding accordingly.³⁸

Mistrust

Some of the problems relating to engagement are likely to arise because of the fear and mistrust within Aboriginal communities of non-Indigenous services or agencies, engendered by generations of negative interactions with mainstream society, especially government departments (including police or CPFS in present times). This leads in turn to disengagement with anything that looks vaguely like a government service or is associated with government, including legal services. Aboriginal people may be reluctant to initiate or respond to a civil or family law dispute or problem through engagement with the legal system. They may not see it as likely to lead to benefit.

I think maybe it's the process you have to go through. I don't know, maybe just not following things through or even initiating that first thing. I've never really tried it to know whether it is going to help me or not, myself. **(Geraldton Women's Focus Group Participant)**

Organisations need to acknowledge and work with or around issues of trust.

Like, for instance, today I had – I went out to talk to this Aboriginal lady who wants to file a complaint. You know, who seems very competent in her role and everything. But to come to fill out the form, which I thought she would've been okay to fill it out. She just didn't know – oh, there's no way she'll come in. But I went out to her. But then, I went out with her with

³⁷ For LAWA's current Reconciliation Action Plan, see LAWA (2013) *Reconciliation Action Plan*, Perth WA: [http://www.legalaid.wa.gov.au/LegalAidServices/About/Documents/Reconciliation Action Plan 2013 - 14.PDF](http://www.legalaid.wa.gov.au/LegalAidServices/About/Documents/Reconciliation%20Action%20Plan%202013%20-%2014.PDF)

³⁸ Information on the ALO's work in 2013-2014 provided by email from LAWA, 12 December 2014

another Aboriginal lady, but she didn't know her. So she's liked "No, I don't want her."
Because, again, there's that trust. I think that's so important. **(Statutory Authority staff)**

3.6 Services working in collaboration

Referral processes

Services need to be working well together to meet Indigenous civil and family law need, in all its complexity. Given also that generally services will be necessarily restricted in the work they can take on due to resourcing and other issues, effective *warm* referral processes must be in place. Some felt that referrals between legal services were already working well. Others were not so sure.

Our funding restrictions restrict us to looking at [certain matters] - and look, we're pretty flexible here. In terms of advice at the first instance, there's only very limited matters that, if there's nowhere else they can go, I can't really think of any matters that we wouldn't see someone about. Even just to sit down with them and explain to them that we can't give them much assistance and these are some places that might be able to assist you, and to follow up. So we do a lot of - the lingo in Legal Aid is 'warm referrals'. So we start the referral process, rather than giving a list of names and going there you go. Off you go and do it. **(Legal Aid staff)**

Crucial to effective referrals is having sufficient knowledge about what another service can assist with so that clients can be sent to the right place. It is also useful to be able to follow up on referrals once made, but many services report having little time to do this.

Where there are really strong connections, we pick up and take referrals [effectively]. It's that model that if everybody is healthy, you've got healthy referral relationships. It's as good as helping the client. But that can only happen if each of the services are really strong and are clear about what matters they can take on and what they can't.... **(Indigenous Legal Service staff)**

There's a gap in the knowledge there because if I spend the morning referring out 6 or 7 or 10 people to different places then after lunch someone comes in and then I've gotta go to court. There's no way, there's no time, there's no capacity to find out [how the referral's gone].... You kind of don't hear from them. **(Indigenous Legal Service staff)**

Relationships between legal services

Ensuring that legal services, in particular, are working well in collaboration involves more than just measuring the extent to which referrals are being made. Referral systems may operate with some efficiency on the basis of personal relationships established between individual lawyers in different legal services. More than this is required, however, to ensure effective relationships exist at an *organisational* level. Opinions about how well these more formal connections were working varied.

And it's about is having those relationships you can rely on... To be honest I think there's a long way to go. I think ALS' relationship with Legal Aid, it's there but it could be improved vastly. There's a history there, and there's a political history as well, and it could be improved. Yeah, it's functional but it could be improved. **(Indigenous Legal Service staff)**

[Our relationship with other legal services is] pretty good.... If you're looking at capital cities around Australia, it's a smaller capital city... so we're much closer in terms of our client base

and the work that we're doing.... We have really good communication with other service providers in the community. I think too, because we have, if you're looking at the Community Legal Centres here they're in a number of very specific subject areas, so from the civil law perspective it pays for us to always be communicating with specific centres... because they're engaged directly in very specific areas of work in the civil area. **(Legal Aid staff)**

'Non-legal' need and non-legal services

The ILNP has seen some great examples of positive working relationships between services, legal and non-legal, in the different communities visited.

As noted, access to justice is not just about adequate legal service provision. Non-legal services are working hard to meet Indigenous need around civil and family law issues, though not in a legal capacity. Not every problem escalates to become a full-blown legal issue and/or requires legal representation. An example of this is a financial counselling service and what it can do with clients' budgets and in negotiation with creditors where there is a debt.

Non-legal services often have high levels of engagement with communities, and as such are well placed to refer clients to legal services if they *do* require legal advice. Through working in cooperation in this way, engagement between legal services and communities is enhanced and legal services can also help build knowledge of non-legal services, including so to ensure that they know when to refer a client to a lawyer. Given the likely benefits, more collaboration should be occurring between legal and non-legal services.

We provide a statewide telephone advice line. We find that it's not a particularly high percentage of Aboriginal people calling that. But we also have a Community Worker Hotline. That's probably where we pick up a lot of our referrals for Aboriginal people seeking assistance. **(Legal practitioner)**

There is a significant gap in the extent of assistance available in relation to 'quasi-legal' issues. This might include, for instance, applying for a birth certificate or negotiating a payment plan for a housing debt. Who should be taking this on? Some non-legal services report having to do a fair bit of this type of work as no one else is assisting with it. Legal services too feel that they have to help clients in this area, though it is not strictly speaking legal work. One stakeholder felt that it was appropriate that legal services commit to doing so, because of the fine line often existing between what is 'legal' and what is not. A CLC such as the Geraldton Resource Centre is held up as exemplary in this regard, as the holistic nature of its service means it can provide help with emergency accommodation, police statements and advocacy around social security problems, *inter alia*.

3.7 Other barriers to accessing justice

Other barriers to accessing justice include shame, not having access to phones or transport, not wanting to use phone contact, and preferring more flexible engagement with legal services, without having to appear at scheduled appointment times.

They might not have bus fare. They might not have any clean clothes. There can be many problems – there are real life skills you need. But shame – shame to go in there. And it's like flash in there too, you know? **(Perth Women's Focus Group Participant)**

They don't like talking on the phone. They'd rather see you face to face. A lot of my contact has been on the phone. So until you get that face-to-face connection, they just think it's just another person trying to tell them what to do. **(Community organisation worker)**

PART 3 DETAILED ANALYSIS OF LEGAL NEEDS AND SERVICE DELIVERY

Section 4 of the Report provides detailed analysis of Indigenous legal need in WA ILNP communities based on focus group and stakeholder data.

Section 5 of the Report goes on to provide analysis of issues relating to service delivery.

4. INDIGENOUS LEGAL NEEDS

The order of the discussion below follows ILNP findings about the priority areas of legal need.³⁹ Priority areas of need are dealt with first (Sections 4.1 - 4.10). These are ordered principally according to the extent to which focus group participants identified them as a priority in focus group questionnaires, commencing with the priority areas *most* frequently identified as problematic and finishing with priority areas less frequently identified as such. The level of comment provided in relation to the different areas has also had some influence on the ordering of discussion in this section.

Sections 4.11 - 4.14 provide detail about Indigenous legal need in the remaining areas of civil law. Although these areas are not prioritised by the ILNP, this is not intended to imply that they are unimportant to Indigenous people. Legal needs arise in *all* of these additional areas, 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 set out in **Appendix C**.

4.1 HOUSING AND TENANCY

Housing, and in particular tenancy, emerged as *the* predominant legal issue in focus groups in both discussion *and* statistically. It was almost always recognised as the area of highest legal need in stakeholder interviews too. On this basis, we identify it as a priority legal issue in WA.

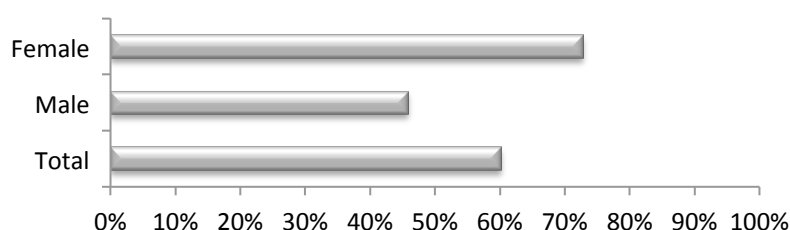
Focus group participants were asked whether in the last couple of years they had experienced a problem or dispute with their landlord over issues such as rent, repairs, evictions, relocations, bond or overcrowding. They were also asked about any conflicts arising in supported accommodation (such as hostels or nursing homes) in relation to fees, services or standards. Participants were then asked whether they'd had any problem in relation to 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 finally asked if they had sought any legal advice concerning a housing or tenancy-related dispute.

4.1.1 Disputes with Landlords – Tenancy

Figure 4.1 shows that overall, **60.1%** of all focus group participants identified disputes or problems with landlords. The percentage of Indigenous women identifying such disputes was a significant 27 percentage points higher than that of Indigenous men (72.8% of women compared with 45.8% of men) (see **Table 4.1: Appendix C**).

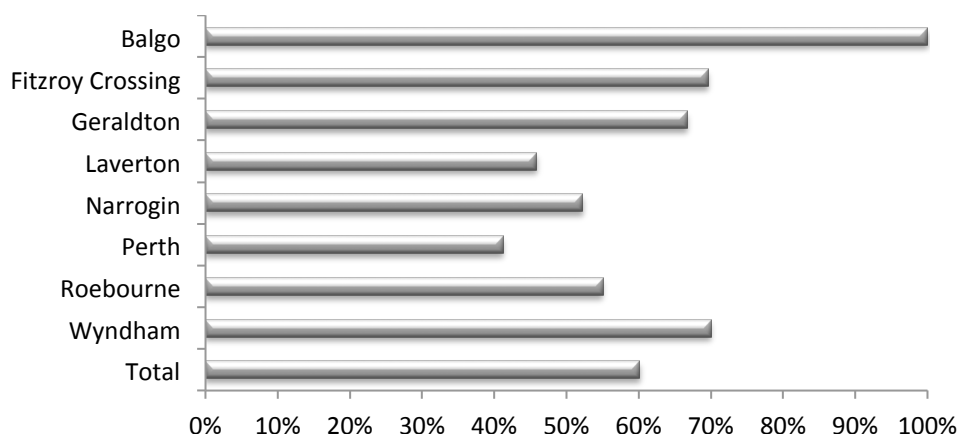
³⁹ We explain the criteria applied in selecting priority areas of need in **Part 2: Section 2** of this Report.

Figure 4.1 Participants Identifying Housing Issue or Problem



Whilst it is worth observing that level of need in this area is consistently over 40% in *all* ILNP communities, there was some variation in the relevant statistics. As **Figure 4.2** indicates, participants in Balgo, Wyndham and Fitzroy Crossing were more likely to identify a tenancy-related issue and those in Perth were least likely to do so. In Balgo, for instance, 100% of participants had experienced problems in this area, compared with 41.2% of participants in Perth (See **Table: 4.2 Appendix C**).

Figure 4.2 Participants Identifying Housing and/or Tenancy Problem with Landlord by Geographical Location



In discussion too, focus group participants highlighted the importance of this issue in their respective communities. In Narrogin, for instance, the women were asked to name the single most important priority issue they faced as a community. Participants said, ‘Housing. Homeswest is the biggest issue here in town’. The same response was provided by participants in the Fitzroy Crossing women’s focus group, and in Wyndham problems with housing was seen as the most significant problem area. Stakeholders also generally placed housing at the top of the list of priority areas of need.

So tenancy is right across the board.... A lot of tenants are coming in asking, “What do I do now? This is what’s happening.” It might be breaches that they’ve received for non-payment of rent, just maybe getting a bit of a fright and not knowing what it all means, getting worried that they might be evicted, seeking advice. It could be a whole range of things. **(Statutory Authority staff)**

Reflecting the significance of this issue to Aboriginal people, some legal services in WA reported that whilst they may not see a lot of Aboriginal clients, they do see a fair few for tenancy matters. “So, we actually have a percentage [of Aboriginal clients], but not a high percentage. But we do have [a big percentage] in tenancy” **(Legal practitioner)**.

Housing is prioritised not solely because of the rate at which tenancy-related matters arise, but also as these matters are so intimately connected with many other civil and family law problems, as discussed at various points throughout this report. There is, for example, repeated interaction between neighbourhood disputes, discrimination and housing, including for public housing tenants through the DoH's three strikes policy (see below and Sections 4.2: Neighbours, 4.3: Discrimination). Tenancy also often connects with issues such as child protection, debt, social security, criminal law (including family violence) and consumer law. As a good example of this, getting behind in rental payments can lead to eviction, but also ties in with child protection, debt and social security related issues.

CPFS don't like that [we've got no home]. The government told us, "You'll get priority housing in Wyndham." We still waiting... This is about 3 years. **(Wyndham Women's Focus Group Participant)**

Like if you're on Newstart and you've got to report each fortnight, if you don't you get cut off. Then, of course your rent stops and, before you know it... because people have their automatic deductions coming from Centrelink, especially. So if their Centrelink ever gets cut off, it starts this downward spiral. They don't realise that they still need to pay their rent.... **(Legal practitioner)**

Our emergency relief goes on housing quite often to keep people in homes, people who are in rent arrears that have had their 8-week period of exclusion for not filling in a form because they were down at a funeral or just too many things were happening in their lives. **(Indigenous community organisation worker)**

As may be clear from the discussion so far, tenancy disputes or problems identified in ILNP stakeholder interviews and focus groups predominantly concern public or community-based housing ('social housing') rather than private tenancies. The ABS data set out in **Appendix D** indicates that although some Indigenous people do own or are buying homes, the majority are renting. Some are doing so privately, but generally they are public housing (Homeswest) tenants. The type of housing available to Aboriginal people may depend on the community in which a person resides. In Balgo, for instance, tenants are more reliant on social housing as that is the housing that is available to them. In comparison, Perth has a much higher rate of private rentals and home ownership/purchase by Aboriginal people.

Traditionally, housing for Aboriginal people in WA is provided by Homeswest or the Department of Housing. I think it's pretty much similar across other states. It's a huge problem, housing for Aboriginal people. **(Indigenous community organisation worker)**

Private rentals are pretty non-existent round here. It's just inaccessible for most Aboriginal people.... I get the occasional private rental enquiry here. But yeah, it's the exception. **(Legal practitioner)**

I don't think we see any Aboriginal clients or very few that would be in private rentals. They're all Department of Housing tenants. **(Legal practitioner)**

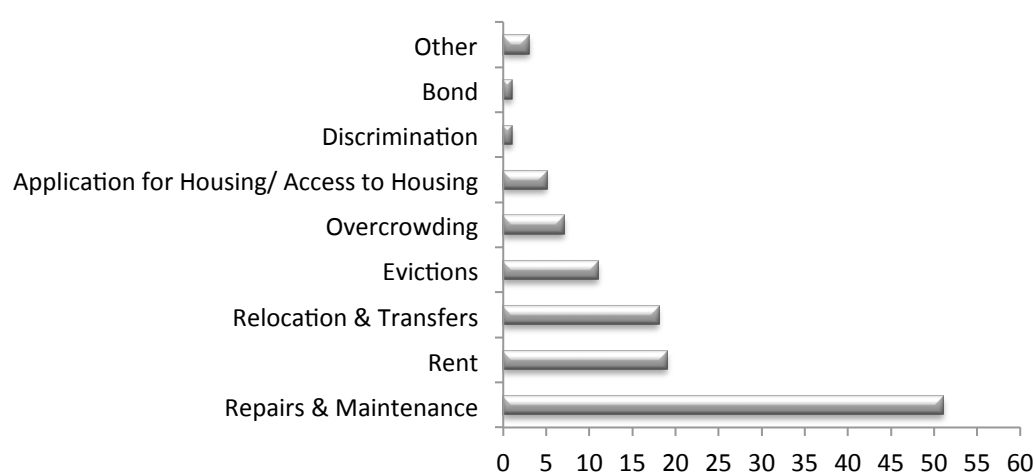
4.1.2 Nature of Tenancy Issues

We're having lots of – well, I do more walk-ins. I deal with their emergency applications and off they go again. So, lots of minor tenant liability charges, maintenance issues, not paying

rent, excessive water and then they're not paying it. They're getting breached in their tenancy for all of those things. **(Legal practitioner)**

Of the 92 individuals who had identified a problem with their landlord, some 82 responded to a question relating to the reason for the dispute. These 82 individuals identified 116 issues, of which repairs and maintenance was the most frequent issue (51 respondents). Rent was the second most prevalent area of complaint (19), followed by problems associated with getting and keeping a house; that is, relocations/transfers (18), evictions (11) and applications for/access to housing (5). Overcrowding (7 participants) was also relatively common, and at some point is also related to problems of access to housing and eviction. Note that participants may have identified in their responses more than one problem or area of dispute (see **Table 4.3: Appendix C** and **Figure 4.3**).

Figure 4.3 Reason Identified for Housing Dispute or Problem



Repairs/Maintenance

The stand out issue in this area is clearly repairs and maintenance. There were reports of seriously long delays in the carrying out of repairs and poor maintenance of properties, all of which means rental homes may be substandard in terms of quality. Relevant issues are often critical and include the presence of asbestos, problems with gas leaks and electrical power, as well as broken doors, windows, stoves, flooring and fences.

The women in the Fitzroy Crossing focus group commented as follows, for instance. “We’ve been waiting for months to get houses fixed up”. “A lot of promises [for repairs and maintenance], but nothing.” “A lot of health things (hazards) too like water leaks and electrical things.” Other participants spoke of similar issues, as well as problems with fences (see also Section 4.2: Neighbours) and having no cupboard space.

I keep on saying my switch keeps falling back... Power cuts out... You know, to cook something, it’s hard... I called the office, rung up, “My powers still not working, still falling back.” Nothing. It’s nearly Christmas time.... They get that lady come from Halls Creek a long time ago, they drive in, they come and see our home and we show them... Homeswest. Power’s still not on. Not got power... Power is the main one. We’re wasting power. They need to come and fix it. **(Balgo Women’s Focus Group Participant)**

Another thing, we need to have new fence, chained around. My thing is really worse, I got broken yard. They stopped doing this job. They're not doing the yards anymore.... This is my first time now [to talk about this]. **(Laverton Women's Focus Group Participant)**

They should put some nice little cupboards in... Been like that for years and years... Moved in when my sister got released. **(Laverton Women's Focus Group Participant)**

The following exchange about repairs and maintenance took place in the Laverton women's focus group. Participants complained of having to take on houses in a significant state of disrepair, making them feel like 'an animal'. The properties in question were allegedly damaged by previous tenants and not repaired by the housing provider, leading to issues with potential to cause serious injury.

I was stopping in one of them units. I went in there 2010. Window was broken, door was broken, everything was broken and I was sitting down there like an animal with the windows broken. Never been help me to fix that tap and those toilet things. And when I moved I got another house in the same street.... Nothing, they just give it anyway [broken], give the key. When I opened the door, I seen the house wasn't renovated, nothing. They should be renovating first [before we move in]. When you go to move into a house, it's hard for me [to fix it up]. When I been shift in it wasn't renovated properly. It wasn't in good shape. Doors and windows are broken... Before I came to move into Laverton, I have been staying so long in Warburton. And since I shifted here they been renovating that house, central desert house. Landlord is GIHO.

What she's saying is only thing they did was clean the house [before she moved in].

Those houses in the village, when they was first built – cause I was one of the first mob to move into those houses when they built them - it's from rammed earth... Now you have a look at those houses, they're all falling apart. The inside, where they put those switches for the electricity, they're all falling out.

Stakeholders also criticised housing provider's actions or inaction in relation to repairs and maintenance. Their accounts of relevant issues concur with those of participants, and whilst they note that as a rule tenants need to be responsible for damage they have caused to houses, forcing them to take on damage caused by previous tenants is not fair.

[Some of these houses] are disgusting.... There's no doors or anything. You and I would not move into that property. No way. Nobody would, except people who aren't going to be able to complain about it. But with the Department of Housing, you've got people that just want to get people in the houses. Now this woman, it was her first tenancy. (Shows photo of house)... No handles. I've been writing to the Department for months about this. She moved in and she's not getting back to me anymore. So I think she's [given up]... It makes them feel like a second-class citizen. Because we do have some photographs of houses that people have moved into that are just – they just aren't liveable, like kitchens with no cupboard doors. There's holes in walls. No bedroom doors. No handles. They're just told to wait. Just move in and wait. Well, you'll lodge your maintenance claim – it is a two-way street. I agree with that. But with the people straight moving in, I think they should be moving into a house that's up to standard in the first place. They're telling them that they have to move into these houses that aren't... **(Legal practitioner)**

Services and organisations had the sense that tenants didn't know what to do to get things moving, and/or were not responded to effectively by housing providers when they reported repairs/maintenance problems.

I just wanted to also say that I think the Department of Housing maintenance is a complete shambles. People have said how they've phoned up to get things done and there's no record of it. Nothing happens. I just think it's a complete shambles. **(Legal practitioner)**

But the issues are different in Perth and outside of Perth. Outside of Perth, there are plenty of difficulties of maintenance issues [whilst three strikes is more of a problem in the city]. If there are any complaints against Homeswest, there's no way for people to make those complaints. **(Indigenous Legal Service staff)**

Not getting maintenance done is a big issue and not knowing what to do about that. So, tenants just become more and more frustrated thinking that they just have to accept that the owner will get to it when they get to it. But the tenancy laws in WA really are very black and white and the maintenance has to be done. **(Statutory Authority staff)**

In terms of process, there are specific timeframes within which repairs on public housing properties are to be carried out, which seem to be not always adhered to.⁴⁰ Another problem is that apparently contractors responsible for the work might expect tenants to wait at home over a period of time (until the contractor can get to them), and if they miss the tenant, the contractor charges them money. In this context, there was also some comment about "not using Aboriginal people to do repairs" **(Indigenous community organisation worker)**.

I'll get told, because I'll do maintenance calls, and they'll say if it's an emergency - four hours. Usually, they'll be there that day. It's not within four hours, I've typically found they're here that day.... I think it depends if there's someone in the area already. That's the other thing I do find hard, is that they'll say, "We'll be out in two days. Your client needs to be home." [Sometimes they say]... 10 to 14 days. And they need to be home. How do you know when they're coming? I just think they just assume that people out here don't work and are sitting at home. They supposedly do call the client [when they're coming]. But then we also have our numbers listed as well and they never call us... Like if the client has no phone sometimes. **(Legal practitioner)**

I think that the labour has often come from – well, do they say they service from Perth or something? They do have that Transfield company (contractor). But I'm pretty sure – when we were around at a client's house their contractor said that he was in the area. He got a phone call. Because it was exposed wires, he came straight away, which was good. But he said, "We don't get paid for the first call – for coming out." But I think they might charge travel. So if you go out and you're not home... they'll charge you for that. The second time, when they come out, they'll charge you for that travel then. I don't think it's cheap. **(Legal practitioner)**

Other types of costs to tenants in relation to repairs and maintenance were discussed, with some suggestion that these might be somewhat inflated.

⁴⁰ See policy on time frames for repairs on DoH website:
<http://www.dhw.wa.gov.au/currenttenants/governmentemployeehousing/housingmaintenance/Pages/default.aspx>

It's like the ones that come in and they've lost their keys. We had one lady within three weeks of moving in. "Well, do you know that's going to cost you..." it could cost, I don't know, \$500, \$600 to rekey? Another one was \$900 to change the locks. I got it appealed because it was domestic violence. (This was done twice). That's \$1,800 in tenant liability. I do think that that's inflated. I don't think it costs that much to change the locks. It only cost me, I think, 200 and something dollars to have all [the locks on] my house back home [changed].... **(Legal practitioner)**

Comments also covered the poor quality of house refurbishment or repairs - seen, at times, as 'shonky' and as only leading to further problems not too far down the track.

I think part of it is the shonky contractors. Dodgy brothers. The WA Auditor General actually issued a report about this sometime last year, about Department of Housing particularly - I think it was focussed on the Kimberley.⁴¹ You know, about not properly checking the contractors. Plenty of stories you hear about people... Yeah, there were two we've heard about in the community. One was for a driveway. When you pull up at an Aboriginal person's house, their concrete driveway is darker than a non-Indigenous person's driveway. Yeah, it was more cracks and, you know, everything. So you can easily see it when you go down Lakeside, for instance.... And then there's pest control. I know for a fact, because I work with Home and Community Care, and they actually said to me that they dilute the pest control because my mob don't leave the house..... So, you know, so they've gone ahead and done the job but... you're really not going to kill them pests diluting it. **(Legal practitioner)**

I don't know if it still exists, but when this government took over, they actually let the contract out for maintenance to an organisation called Transfield. I think it still is that case. There was a big enquiry, but I think it got buried... Transfield weren't paying their subcontractors or something. The subcontracts were billing them for work they actually didn't do. So there was lots of - you know, the work wasn't getting done, but they were telling Homeswest it was getting done. So I don't actually know what the end result of that was. But I'm sure they still have the contract. They did a big audit and they reckon... Haven't they got new contractors now? It was just released... Yeah. They've got a new contractor. And on a reliable source, there's about to be a huge announcement about the maintenance side of things with the Department. I've got that from someone who works within that section. Well, he says it's going to improve. **(Legal practitioner)**

I've got a client at the moment that was charged for a stove that's never been delivered. Yet someone signed off to say that it's been delivered and installed and she's still waiting for it. The neighbours got it. The Department's probably already paid for it. **(Legal practitioner)**

From 2013, changes to the *Residential Tenancies Act 1987* (WA) (RTA) imposed stricter obligations on landlords, including the Department of Housing, to carry out repairs. Tenants need to know about these changes, it is observed.

So the big thing that's obviously happening at the moment is - with the *Residential Tenancy Act* changing, if the Department of Housing are not carrying out, for example, urgent repairs

⁴¹ See WA Today media report (March 2012): <http://www.watoday.com.au/wa-news/cac-asked-to-investigate-alleged-rorting-in-homeswest-20120330-1w2lx.html> and ABC report (26 September 2012) <http://www.abc.net.au/news/2012-09-26/ag-criticises-public-housing-maintenance/4281960>

on a property that an Aboriginal family is living in, then action can be taken against the Department.⁴² Previously, they were exempt from the law, the way that the law was written. This is Western Australia specific. The Department of Housing were not classed as landlords. Period. ... You've probably heard about the case here in WA where a child climbed into the hole of a wall and was electrocuted. As a result, we have had the residual currency device campaign and they all had to be installed in homes. In that case, it was questionable about whether the Department of Housing should have fixed the house up. I mean, that's a contentious one, obviously, because there are tenants' responsibilities as well as Department of Housing responsibilities. In that you can't really kick holes in walls. But they do need to keep properties and maintain them. When they are not doing so, particularly in very regional, remote communities, because they can't get there very easily, for example, the tenants do not know their rights, that they can challenge the Department of Housing. Now, the law is changing so that they really can challenge them on things like urgent repairs. So it's about also educating those tenants that they can actually lodge a breach complaint with Department of Commerce against the Department of Housing.... And there's a lot of education that needs to happen around that, because these laws are not going to be changed for another 800 years, probably. ... It's quite a new thing, isn't it, government departments taking on other government departments? Thankfully, we've seen it already whereby the Department of Commerce has lead the way. There is separate Consumer Protection [which can take on Department of Housing]. [There's] WorkSafe [in the Department of Commerce], and WorkSafe took on a case where the Department of Corrective Services transported an Aboriginal elder in a van and he passed away. That was the Ward case. So that's good, because that's – Commerce took on the Department of Corrective Services. Whereas, I think, previously in WA there's been a real exemption for government departments, one government department will not legally challenge another. That's changing. So I can't wait for Consumer Protection to take the Department of Housing to court. It's going to be great. **(Statutory Authority staff)**

Another big change involves remote housing in WA as part of the Federal National Partnership Agreement on Remote Indigenous Housing. Aboriginal people on some communities now sign up to tenancy agreements under the RTA through Housing Management Agreements. In exchange, properties are being refurbished and new homes built. Changes associated with these HMAs are seen as positive by some. It is claimed that those tenants that are signing up would not previously have bothered reporting maintenance issues, as there was apparently little chance of necessary repairs being undertaken. Education for new tenants is required around new rights and obligations associated with these changes, including in relation to reporting of repairs/maintenance problems.⁴³

[On some] remote communities – so like Warmun or Kalumburu, places like that... they're coming under the new Housing Management Agreements. So that's a new system, basically, where [government]... will fund the refurbishment and rebuilding of housing in those communities, but on the basis that the tenants then come under the RTA.... So it's a bit analogous to the way, in the Territory, they took the 40-year leases out to the community. So

⁴² The Department of Commerce (WA) has published a fact sheet on changes to the RTA: <http://www.commerce.wa.gov.au/sites/default/files/atoms/files/issue43changestoresidentialtenanciesact1987.pdf>.

⁴³ See ABC media report (11 April 2014): <http://www.abc.net.au/news/2014-04-11/indigenous-communities-sign-up-to-housing/5384086/?site=indigenous&topic=latest>

these were all Aboriginal community housing. They're now progressively being put under these HMAS, where you have to sign up individually for tenancies. **(Legal practitioner)**

Well definitely housing and tenancy's a big issue. A lot of communities are now moving across to be under the *Residential Tenancies Act* in WA. So that's hopefully good news for tenants. That's a large group of people who have never been tenants before, not in any formal sense of the word, so we've had a property provided by the community... We've got all sorts of ways that this has worked. But now it's become quite formal and there's rent, there's power and utility bills, there's processes, when you need to report maintenance issues. I think historically, from what I understand that's not something that really happened so people didn't really bother reporting [problems], because, you know, it's never gonna happen. So now, trying to get those processes in place, they're also working to get those properties up to the standard that's required... and that sort of thing, so I think that's a really big change for tenants. **(Statutory Authority staff)**

There was also, however, some criticism about HMAs. People have to agree, for example, to sign leases in order to get maintenance done or new houses built in their communities, but don't really have a broad understanding of what they are signing up for. Others said that those that don't sign up on a particular community might feel like they're in 'limbo' in terms of who to contact about repairs.

So, you know, you're talking to Councils along the way... Yeah. It's been framed as a negotiation process, to sign up the communities under the HMAs. But essentially, it's put to them if you want us to assist in maintaining your housing and managing your housing, then you have to sign up. If you don't sign up, then you don't get any maintenance, you don't get – you have to arrange it yourselves, the community body will have to. **(Legal practitioner)**

[One] thing is who does maintenance? ... There's more education needed. They have to be educated for our mob to keep up. Otherwise, the system is just... So what we found out, particularly in this community, for example, is that some people sign up and some people don't. That's a community decision and an individual decision. When you don't sign up, you're completely in limbo. Nobody's responsible for your maintenance and there's no one to ring and get your maintenance done. **(Legal practitioner)**

One further major issue concerning repairs and maintenance is disputed liability about damage to a property. It must be noted that some tenants *are* causing unreasonable damage and should be responsible for its repair. "You've got all these new houses and two of them, the damage in two within a month is just unbelievable. But that comes back to the social issues here" **(Indigenous community organisation worker)**. However, sometimes it is not that simple. Tenants may seek to dispute liability, for example, when someone else allegedly trashed their house or where they feel that the issue in question was caused by the landlord's failure to carry out necessary maintenance. An example of disputed liability in this context includes the exchange immediately below from the Laverton women's focus group.

They been charged me for \$3000. You know what I did? I went to Centrelink and asked them to help me so I went and told them "You just stop them sending the things for me to pay. Stop that bill." So I'm waiting so they can pay me back.

You didn't do that damage? **Facilitator**

No it was those drunken people.

She been living in that house, right. When she say window's broken or tap's leaking nobody come round to fix that thing. They just left it like that right through until the end she just left it like that. She had to get out cause it was crumbling down. And she got hit with that big bill saying it was wear and tear from her. But it's the landlord supposed to be sending someone round to fix it.

I got that \$3000 but I went down to see the Centrelink.

Did you do the entry inspection? **Facilitator**

Even when we do do that inspection, Housing doesn't believe us.

Stakeholder observations follow.

Tenancy issues cover everything. Sometimes it's about vacate debts. That's quite a common one, about comparing the condition of a property - when somebody's gone in and when they've come out whether they are liable for, you know, what's been claimed as damage or whether it is wear and tear or whether its things they're not responsible for. So that's a dispute that's across the board, that's not particular to Indigenous consumers. Perhaps, more in public housing that's an issue when people have got vacate debts or they have got large tenant liabilities, that's more of an issue there. **(Statutory Authority staff)**

One difficulty is that in order to avoid liability for damage caused to the property by someone else whilst you are a tenant, you must file a report with police. A number of barriers may inhibit reporting, however, including not wanting to push those who have caused the damage into the criminal justice system.

Also, the tenant liability, which is charged for maintenance, is an ongoing issue. Because the tenant gets charged for it unless they can provide a police report – if someone else has caused damage and the police don't provide the reports. So we're stuck in this perpetual loop of, you know, not being able to have maintenance waived if it's been due to criminal behaviour. **(Legal practitioner)**

One of the significant problems is this problem with the police. Here and Halls Creek, it's particularly bad. Probably bad across the whole of the Kimberley, for all we know. Gibb River communities, for example. The police won't go out there unless someone's been killed, really. Even then, they might take two or three days to come and collect the body, I've been told by tenants there. So if you rung them up and said, you know, someone's gone through the house while I was away for a week, I need a report, they just laugh. They visit those communities once a month or something. They're not going to attend to an enquiry like that. Effectively, what is really just required is that they give the client a report number. They don't do it. At Halls Creek, they'll say that they're not going... to do that. "They're just trying to get away with it", you know. Well, we met with the Senior Sergeant, who's the Officer in Charge, the other day.... He said that the police view is that if it's someone that's at the house – often, you'll have people that are maybe, sort of, unwelcome visitors or guests but they're there all the time anyway. So in that instance, the police would say that's your responsibility as a tenant. So, you know, that's a civil matter between you and the person that's at your property. You can seek reimbursement from them rather than providing a police report for damage. Yeah. So that sort of interface with the police... **(Legal practitioner)**

Sometimes, liability for damage is also called into question when it occurs in the context of domestic violence.⁴⁴

Domestic violence and tenancy matters – I see a lot of those intertwined. Mostly more maintenance-wise when damage's been caused by domestic violence and having the Department appeal liability charges. **(Legal practitioner)**

The impact holes, like [the Department] won't fix those anymore in the houses. That's probably fair enough because the client, visitor, whatever smashes a hole in the wall. They think the Department will fix it.... Look, the tenant is supposed to fix them. Some do make an effort to do it themselves but then I've got a lady that's in a wheelchair who's been a victim of domestic violence. There's big holes where her wheelchair has [hit the wall]... and her young son has been removed, as well. Yes, but her neighbour has actually tried to patch them up and done a really good job. [We too].... can probably assist if the hole's fixed up before she transfers. Otherwise, they're left with a huge tenant liability. **(Legal practitioner)**

Liability for payment of water bills is also commonly disputed. A CLC states, "When they come to see us, it's usually to do with rent arrears, water. Water bills are a very big issue, tenant liability." Tenants of Homeswest properties must pay for water, but might not know this. And whilst the landlord should fix a broken tap, tenants may not know that they have to report the problem and/or may report it too late and are therefore asked to cover some or all of the water costs incurred.

Yes, it's mainly water. Quite often, maintenance goes unreported or they report it and they're not – the contractors come, [tenant is] not contactable. You know, their phone number has changed. So in the meantime, the water bill is increasing. Not being aware of their responsibilities with respect to maintenance. And the fact they are in – some of the houses out here are *terrible*. There's *always* something wrong. I think it's just kind of a vicious cycle. Tenants just give up on it. But then they get hit with these excessive water bills and that sort of thing. It just goes around and around. **(Legal practitioner)**

Rental payments

The issue of renting is linked with that of repairs and maintenance where people question why they have to keep paying rent when the landlord is not maintaining or repairing their home. As a woman in Laverton comments, "Homeswest want people to pay rent but they're not doing anything about the house."

I think, in my opinion, it's a two-way street.... As to repairs and maintenance, they want the rent paid on time, but how about you come to the table? ... I've had a client where she actually hasn't had any repairs done to house. The standard of her house is poor, as in the maintenance side of things. Yet, I got onto them about it and we've been nagging them. Now, they've actually – yeah, yeah, yeah - because other people have been involved as well.... I mean, we know they've got a very big job because there's all these renovations going on at the moment. I mean, that's fine. But you still have a responsibility to these tenants. If they want the money, well then, you know, do your side of the job as well. **(Indigenous community organisation)**

⁴⁴ See Tenancy WA's (2014) *Submission to the Law Reform Commission of WA Project 104: Enhancing Family and Domestic Violence Laws*: <http://www.tenancywa.org.au/wp-content/uploads/2014/04/Tenancy-WA-Submission-to-LRCWA-Enhancing-DV-Laws-final-pdf.pdf>

The high cost of renting was also discussed. This clearly relates to the low supply of and high demand for affordable accommodation in WA, as well as inflation of rental prices as part of the mining boom.

Rents in Karratha, Roebourne have dropped.... So you can pick up a three-bedroom house for anything from seven to nine hundred dollars. It's a lot less than it was. [Mining] apparently, it's all slowing up.... But it will go up. I mean, having said that, we still pay \$1,500. My husband's company has to pay \$1,500 a week rent for our house. So it's just ridiculous... But then I know of some people who are paying \$2,000 a week for a much bigger house. **(Legal practitioner)**

If you look at... especially the Pilbara. The cost of rent is astronomical because of all the mining activity, easily in excess of \$2,000 a week to rent. What we've noticed here too, in the metro area, is a significant and acute lack of housing – of public housing or alternative housing. That's just generally speaking, not for Aboriginal people. Yeah, that's the big one, I think. **(Legal Aid staff)**

There is some suggestion that rent paid to housing providers is sometimes more than it should be, given the quality of the homes rented. Sometimes Homeswest receives over the market rent for properties, some of which “should be bulldozed”, where there are a number of people living in houses each paying subsidised rent. Homeswest is also said to sometimes charge market rent on houses where rent should be subsidised due to low income because they haven't been able to process paperwork in a timely manner.

But the market rent, sometimes if you get three or four people that are paying rent out here and you look at the statement of accounts you think “Oh well, \$20 more and they're paying market rent.” But the houses are just... For the kind of houses... I don't think that's an adequate or fair market rent. Honestly, I wouldn't pay it... I don't know how they assess [market rent]. It must just be based on the general value of, it couldn't be on the individual properties because they're just – some of them really do just need to be bulldozed. Market rent on them is \$400. **(Legal practitioner)**

Department of Housing is so understaffed. We have been putting in subsidies and they're not even getting to them in time. So it still goes up to market rent. I know it will get backdated, but it is very scary for clients to get hit with this \$2,000 arrears and not understand that it just means the Department's understaffed. I think that that's really unfair, as well, because it really does stress them out. **(Legal practitioner)**

This same organisation also pointed out that Homeswest tenants are obligated to report people moving into their house. Their total rent then increases because the new household members supposedly contribute rent, which doesn't always happen. The original tenancy is then jeopardised and debt begins to accumulate.

This gentleman here, his house is an absolute dump. It also should be bulldozed. So the market rent on that property is \$315 a week. The rent that he's paying at the moment is \$62.60 a week. However, he's got some people that are staying there, freeloaders that are going to get on the rental subsidy. But that will probably take the rent over the market price by the time I sign up the other three... I daresay they'll all be – there'll be four of them in there all paying \$66.60. That's the issue with the homelessness thing, with people moving in. So our tenants declare it, because they're doing the right thing. Their rent goes up, but these

people don't put in. ... They only have to miss out on reporting their income to Centrelink. Then that's it. It quite easily falls into arrears. **(Legal practitioner)**

Homeswest can make serious efforts to chase housing-related debts. The Department of Housing is 'getting tough' on tenants who owe money and there was much discussion amongst stakeholders of the multiple evictions this is leading to (see below: *Evictions*).

We held a morning breakfast barbeque. They said you won't get many people but we had 70 people there, but you know what happened? Housing got wind of us having this barbeque and when we had people lining up to get the food, they were dragging people out of the line "Hey you owe us \$100 back rent" and things like that. I said to the bloke with us "You've got 10 seconds to get over there or I'm going to ring the police and get her charged." That sort of mentality... And they were two Irish chicks. A culturally appropriate service where you've got two Irish chicks from Department of Housing? They couldn't even understand them, you know their strong language (accent). They came up to town here. They heard there was a barbeque on and they travelled. Yes, trying to get people [to pay]. It's 370kms. **(Community organisation worker)**

A further point suggests that the increase in rents associated with the shift from community housing to formal public housing tenancies on some communities has been 'a big shock' for some tenants.

In Kununurra and Wyndham... those tenants are already under the RTA. They pay rent based on their Centrelink income or their earnings. I think it's about 25% of household income. That's what the rent will be set at. [Under the new HMAs, tenants]... will eventually be paying the same rent as a public housing tenant would in Kununurra or Wyndham. At the moment, the house might be \$50 a week in Warmun, whereas in Kununurra, you might be paying \$100 or \$200 a week, depending on how many adults are in the house - up to \$300-400 a week, if there's a few adults.... We've had one particular case around here... it's a community where - we found - that's with the community housing, that was a big shock factor to our mob out there too... because the rent that we paid - we've got freehold title lease out there. But yet they're asking for rent - it's more than what some of them would pay in town. **(Legal practitioner)**

An additional issue concerns situations where tenants are forced out of a Homeswest tenancy when they start to earn too much, particularly as miners and even if only on a short-term basis. They can end up losing both their job and their home within the same time space, as the following conversation in the Narrogin women's focus group suggests.

Another big issue is when people earn a lot of money fly in fly out they chuck them out of their Homeswest house where they should be accommodating them as well - not say you've got to get out cause they're over the threshold.... One of them is my sister.

They told her they had a week to get out.

Instead of saying "Can you come in so we can talk to you and see if we can resolve the issues and see how we can accommodate you?" They don't do that.

In my house (Foundation Housing home), they don't kick you out for this reason. You can go and do your work and as long as you pay the rent you're okay.

[These wages don't last forever but if you get kicked out you have no home down the track]. That's where family comes in [which causes overcrowding].

Stakeholders also commented on this point.

If you get a job and you earn more than whatever, than Centrelink, after a year or so they kick you out of Homes West. You lose your house. One of the underlying problems is a lot of these jobs are based on projects which are in the resource sector. Project finishes, you're out of a job, you're out of a house. Then you go back to the waiting list to get back into Homes West. It just goes round and round. I've seen papers published all over the joint by governments over the years. Federal and state have spent billions of dollars on Aboriginal programs and what's the result? Bottom line - zilch. No change. **(Indigenous community organisation)**

Evictions

Evictions appear at present to be a *key* housing issue in WA, given what is perceived as the hard line direction taken by Homeswest in more recent times, designed to 'weed' out 'problem' tenants: that is, those with housing-related debts and/or deemed to be engaging in 'anti-social' behaviour in breach of the Department's 'three strikes policy' or Disruptive Behaviour Management Scheme.

It's not really just about rental arrears. I think it's a bit more than that.... I think, because we know that there's a few areas in town that are – what do you say - bad areas, I suppose you'd say, for a lot of drinking, anti-social behaviour, fighting, rubbish. I think that Homeswest is just coming down a lot harder in that area. **(Indigenous community organisation worker)**

Stakeholders report seeing increases in numbers of evictions in the client work they are doing. Most of the comments following immediately below concern eviction due to Homeswest debts, but comment about eviction had a particular focus on the three strikes policy (see: *Three strikes policy* below).

A lot of our work with housing is trying to save tenancies. **(Indigenous community organisation worker)**

But we are also encountering a lot more evictions for debt, rental arrears, water bills and tenant liability. Whereas in the past the Department of Housing didn't tend to evict for water and tenant liability, they now are.... These debts can hang over their head for their whole life. Some people have got \$25 or \$30000. They never get paid off. You're paying off \$5, \$10, \$20... Then all of the sudden the Department can just decide, oh well the debt levels are too high, we're going to evict. **(Indigenous Legal Service staff)**

We found that – yeah, there's been an increase [in eviction] since Department of Housing has changed their management policies. So there's been a lot of breach notices to evictions to court hearings. A lot of assistance is needed in that area.... Roughly, 30, 50 people so far over the last three months. Yeah, it's quite a lot. It's been quite busy.... It started in March, I'd say, around March [2013]. Impacting on services such as money management organisations, the community we service, of course. A lot of impact in the areas of – especially the legal side, then coming to us for support as well. So we've had quite a few numbers come through the door. People are very stressed, afraid to lose their homes.... Trying to get everything sorted. It's just – yeah, a big impact. **(Indigenous community organisation worker)**

One organisation felt the Department was trying to be ‘flexible’ in its response to debt, whilst another said that they were too inconsistent in their responses to it.

I’ve had clients come in and they’ve got a termination letter for the first time. Other people have been in and out of having applications brought against them, numerous times. I really think it depends on the size of the debt, really, whether they’ll evict, and also how long you, what kind of good faith you show. If you’re trying to make an effort, they seem to be really flexible. Whereas if it’s the first time and you racked up a \$10,000 debt and you’re not showing any care, then they’ll definitely proceed with termination straight up. **(Legal practitioner)**

I’ve got clients that – the debt will be as small as \$300 and the Department will proceed for termination. I’ve got another client that’s got a debt of \$30,000, living quite happily there. How does that work? **(Legal practitioner)**

Whilst stakeholders are seeing more clients who are facing eviction, it is suggested that there are many more tenants impacted by the new policies that *aren’t* seeking help who are likely to be just walking away from their homes. This should be cause for serious concern.

If these people didn’t have us helping them they’d just hand in their keys and walk. **(Indigenous Legal Service staff)**

With those 20 evictions that we can help with, we know they’ve sent out 100 letters.... Because they suddenly decided that they were going to start collecting debt, this sudden decision to collect old debts. **(Legal practitioner)**

There was broad criticism by stakeholders that current housing policy is, overall, highly punitive in the way that it is interacting with those reliant on social welfare, including in the form of social housing. The Department is said to be engaging a heavy-handed, law-enforcement type model of managing tenancies. It appears to at least one stakeholder to be overly concerned with tenants’ responsibilities and largely indifferent to tenants’ rights, paying little attention to its own stated obligation to ‘build better communities’.⁴⁵ Note that s. 75A is a provision introduced into the RTA in 2012, used to enforce Homeswest’s three strikes policy.

But, you know, I think whilst we adopt this attitude of you have responsibilities and you have no rights, then we’ve got an issue. As a country, we’ve got an issue. That’s my view, anyhow. **(Legal practitioner)**

But from an Aboriginal perspective... you’ve got this brave new world, you’ve got this new change of the way things are run. Nobody ever thought to go to the public housing tenants, irrespective of who they are, and say this is what’s going to happen. You had a lot of housing tenants who had it in the back of their minds they’ll never kick me out. **(Legal practitioner)**

It’s a zero tolerance approach by government. I mean, the number of times we’ve tried to negotiate alternatives to court action and been told by the Regional Manager or the Area Manager that they no longer have discretion. That’s the direction they’re getting from Department of Housing Executive. So you get yourself into debt. You get yourself into strife with visitors or neighbours. It becomes a legal matter. At least with the officers that I had

⁴⁵ See Department of Housing website page ‘About Us’ at: <http://www.housing.wa.gov.au/aboutus/aboutthedeptment/Pages/default.aspx>

most dealings with, there doesn't seem to be the discretion for alternative action which there probably was before the disruptive behaviour management policy came into effect and s. 75A a couple of years ago. **(Legal practitioner)**

Now, I know, and we both know, where we work, the background of some of those people [working to implement the three strikes policy] is just totally incompatible with working with any culture or any – you know, we know them.... Some of them are ex-police officers... There's quite a few ex-police. One of the worst ones in our area... was a security guard at the courts. I mean, her training in working with Aboriginal people... We've seen a number of those ex-prison officers. We've actually had an experience of them bullying [tenants and our workers]... She's pulled the clients out of a meeting. Then they've tried to bully [our worker] at the same time. **(Legal practitioner)**

I think what's most telling is there used to be this notion with tenancy that if it went to court, it was up to the applicant to show the merits of their case. I see that as being thrown out of kilter. You now, especially under s. 75A, what the court can take into consideration.... So, what I see is the Department building this dam wall and then the tenant can't push through it. Now previously, in years gone by, it wasn't up to the tenant to argue against that. They simply had to give a reason as to why things might have happened. Now they have to literally argue – and it's almost like there's an imposition of criminal process to all this - you have to prove that you're not guilty. That's my view of things. **(Legal practitioner)**

Getting tough, including by asking people to pay their dues as tenants, may seem fair enough. But this approach, if there are no 'soft edges', is thought likely to have a disproportionate impact on Aboriginal people.

And that's kind of hit hardest for Aboriginal people because of their levels of poverty and lack of education and ability to budget. They tend to get into very bad debt situations, which are very hard for them to dig their way out of. **(Legal practitioner)**

It is also likely to increase or intensify social disadvantage. One stakeholder generalised about a range of issues it sees many of its public housing clients facing. "There's always family issues, overcrowding. There can be domestic violence, drug and alcohol issues." These and other issues (poverty, family breakdown, child removal, family violence and other forms of victimisation and offending, overcrowded and stressed households and homelessness) are all reportedly exacerbated through the recent DoH policy changes. Other agencies and organisations, including Department of Child Safety, then have to respond to these negative social impacts.

I think the Department relies a lot on agencies that give emergency relief funding... I think they're quite happy to send people to us and [to others to] get money. **(Legal practitioner)**

Once a family becomes homeless then CPFS are likely to swoop in and take the children and until the family or the mother gets a house back again she hasn't got a hope in getting the children back. The waiting time for a house is five years. They're all grown up by the time they get them back again. So that is a direct consequence of this three strikes policy. **(Indigenous Legal Service staff)**

Because from what I'm seeing, clients are coming in with, you know, \$500 rental arrears. I mean, yes, they do have tenant liability debts and water debts. But I don't think they have the grounds to then say, you know, "If you don't pay this up front, then we're going to take you

to court.” I mean, that’s fine. They have to do their job. But then again, on my side of it, my role is to then show them that these – my clients can’t, haven’t got the financial capacity to even come up with this money. Not up front like that. Yeah, they’re saying it’s their rental arrears. You know, “If you don’t pay your rental arrears, you are in breach of your tenancy agreement.” Okay, so then we - then I get in contact with, you know, the accommodation managers and I try to sort out well, what can we do? “What can my client do to make it better for herself?” They’ll say, you know, “She’s got to get into a repayment plan”. That’s fine. We do that. But in some cases we’ve had where they’ve had court hearings, where they’ve been to the solicitor but haven’t been to see me, so there’s that gap there as well. Somehow, we’re missing these clients. And they’re not putting their repayment plans in place. Then they’re falling through the – they actually may end up losing their houses, which I don’t find it is a good – it’s not a good thing. Well, they’re going to be homeless. Or if not, they’re going to be staying with family members that are already overcrowding in the houses and that’s going to cause a ripple effect. Because there’s going to be other social issues out there. They’re no better off. They’re going to be still struggling. There’s suffering and hardship.

(Indigenous community organisation)

A lot of these people who’ve been evicted - as the evicted generation - I really believe that, I think we’re going to see... There are obviously very painful and traumatic consequences for the people involved right now. But you’re going to see terrible consequences for society in five, 10 or 15 years. These are children that will not be able to attend school. These are children that are going to drift into juvenile delinquency and then other crimes. **(Legal practitioner)**

[It does lead to increased homelessness] but they’re hidden. They stay with other... There are actually mobs in the bush, on the edge of the city, only see them during the day. There are families which are, you know, 10 or more camping out. Like around Rockingham, Kwinana area, the beachside area and car parks. They are filled with people living in their cars. Even around inner city. Around where I live, North Perth... We’ve got clients living in garages, all that kind of stuff. We have people come in from the communities, down to Perth for health treatment. Nowhere to live and they’re being told to move on from the park. They’ve got nowhere to go. They lock the toilets, get them away.... I’ve had a couple of cases where I’ve dealt with one member of the family and then another member of the family because that family’s moved in with the other one. So I’ve seen like about four people from the same family. Which is just terrible. **(Legal practitioner)**

[The] Housing Advisory Round Table ... clearly says the Department for Child Protection and Family Support has responsibility for homelessness. That’s not our responsibility. ... You’ve been evicted? Well go and see the Department for Child Protection and Family Support because we don’t care about homelessness. And if you go to the Department for Child Protection and Family Support – and I was speaking to one of their officers the other day - she said, “I just want to stand there and say we’re not a Housing Officer.” You know, so you’ve got that – and they’re in the same building. Their offices adjoin one another. They’re in the same building. You know, one gets evicted out of this one, goes to that one and gets sent back to that one. It’s just ridiculous. **(Legal practitioner)**

But within Caucus, like the government’s priority is on implementing three strikes, rather than trying to put arrangements in place to care for children. I attended a conference organised by SNAICC, the Aboriginal and Islander childcare conference. The child protection Minister

attended, people asked questions about the problems of three strikes and what it was doing for child protection. She said, “I hope you’re not suggesting these families shouldn’t be evicted.” You know, that was her position. **(Legal practitioner)**

One service provider felt that this tougher attitude was evident in the policy and practice of a number of government departments (in addition to DoH), including Centrelink and Department of Child Safety. “It seems with housing, family and children there’s this strike system that’s really affecting families at the moment” **(Community organisation worker)** (see also Section 4.7: Family Law/Child Protection).

Some also thought spates of evictions in certain communities were probably economically motivated.

I worked previously in a [family violence legal service]. We just found, even more than VROs and family law matters, there were just all these eviction matters coming in. It was at the time of a pretty big boom here in Geraldton. Where the real estate prices had jumped up 200% in 12 months and all this stuff. It just seemed like a mass of people were being evicted. So we had all these matters that we ended up kind of – you know, anyway, we ended up justifying doing it as part of that program to represent them in court and challenge all these eviction matters. So we got lots of detail about why they were evicted. Lots of them were very, very small things. So lots of – but all of them were kind of this antisocial behaviour clause in people’s agreements with Homes West. So one example that sticks out was a lady who was in her sixties who had been in the same house since the 1980s. She was being evicted on the basis of her grandson swearing in the front yard. There was some discussion at the time, in the media, of public housing stock and that perhaps what was really going on, in the bigger picture, was people were being evicted so that public housing stock was sold. And it was about getting the bigger money and then buying lots of stock elsewhere, that’s cheaper. Of course, there is a social justice argument, I suppose, that if you’ve got a family of five, why should one family stay in a really expensive house, where you could sell that house and get four houses for much cheaper and house poor families. So, you know, no big deal was ever made of it. But they didn’t really acknowledge the fact that people had that connection, not only to their houses, but also to the area. **(Community organisation worker)**

The other issue about tenants’ debt is that whilst people do need to pay their way, sometimes housing debts could be challenged but they are not, particularly where tenants aren’t in contact with housing or other advocates. In other cases, debts might well have been avoided or reduced if the Department had kept better track of them over time.

The Department can’t keep up with their own policies. So what they’re doing is if you FOI the documents, you could find errors everywhere. **(Legal practitioner)**

Some of these debts are huge. They will never pay them. I think, as we’ve alluded to, it’s also because Housing is not keeping up with people. They let these debts accumulate until they’re unpayable. Ten or twenty thousand is not unusual. They’re never going to repay that. Then the tenants go in to follow it up and they say if you can pay 50% up front, we’ll withdraw the [notice to vacate]... Well, the rent generally looks okay. There’s often just these obscenely high water bills and they haven’t provided waivers where there’s been a leak that’s gone unrepaired for months, which isn’t unusual. So a lot of it will be charged on that basis. **(Legal practitioner)**

Other comments suggest that the Department should be working more preventatively in the way they are managing tenancy problems, including by referring more tenants to its own STEP program or to other tenant support services. In this way, a small debt can be taken in hand before it becomes unmanageable, for instance. Opinions about whether the Department was making these referrals as often or as early as they should were mixed.

I'm with the STEP program. So I work contracted to Department of Housing.... I work full time. I do outreach up to about 100 kilometres or more. I see Aboriginal clients whenever I'm out and about. It's all home visits that I do... My caseload, when I'm full, is 16. Aboriginal clients are probably over-represented because I probably have at least half Aboriginal.
(Community organisation worker)

My referrals all come from the Department of Housing. So they identify people at risk and send them to me. It's people at risk and also people who have never had a tenancy with them before, which is kind of a new thing that's just happened. So it's about teaching them what it's all about to have their own tenancy, what's expected. My job is often trying to put supports in place for them. It's not supposed to really be long-term, although I do have some clients I've had for about two years because their issues are generally really complex.
(Community organisation worker)

I understand that STEP can't help once they've commenced eviction proceedings. There's a window, which is often taken up by the wait period before they even start to see a worker.
(Legal practitioner)

You know, the Housing Department here, in my experience - I mean, I've worked with them. I have to get on with them. But they are, the people that they refer to me, I find they've referred them to me because they wanted to help them. Yes. But I don't know about the others that don't get referred to me.... Well, I think they're the ones where the Department has thrown their hands in the air and decided, right, "transfer them to somebody down there or somebody up there, anywhere we can. But just get rid of them." **(Community organisation worker)**

Directly related to that, the Department funds – or government funds the disruptive behaviour management unit, which is targeted at striking people and evicting them, vastly more than they fund the STEP program, which supports people to sustain their tenancies. There's many months wait to get into that program. So if the Department even bothers to refer people to STEP... We've got a number of open files where they've never been referred to a support program by the Department. If they bother to refer them to STEP, then they might have a three to six month wait before they even start to see a STEP worker, during which time they've got more strikes and the Department's already commenced the eviction proceedings.
(Legal practitioner)

Three Strikes Policy

Problems with eviction probably attracted most comment around Homeswest's controversial three strikes policy, or the DBMS. Three 'substantiated' instances of 'anti-social' behaviour within a 12-month period and your tenancy can be terminated.⁴⁶ Note, under the DBMS there are more immediate

⁴⁶ For discussion on policy, including its impact on Indigenous tenants, see the following ABC media report (26 December 2013) <http://www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316>. The WA Equal

consequences for more serious breaches of a tenancy (involving ‘dangerous’ or ‘serious’ behavioural issues).⁴⁷ Section 75A of the RTA is also used to terminate social housing tenancies without notice for disruptive behaviour. The latter might include family disputes, ‘substantial and unreasonable disturbance from children associated with loud noise’, and ‘loud parties’.⁴⁸ To provide some context, government policy in relation to ‘disruptive’ tenancies was seen as previously being largely ineffectual, having been subject to public scrutiny through the media after the explosion of a drug lab in a public housing property in 2011. Government then ‘toughened it up’ by focussing on much stronger implementation of policy relating to tenancy management.⁴⁹ Stakeholders felt that this was ‘populist politics’ at its best.

I think it goes back a bit. I had this conversation with the Minister only a couple of weeks ago at another forum about this. But it was after the actual forum. But I made a comment during the forum and he said this is what happens. He was talking about housing. This is what happens when you make policy on the run and it’s populist. This is how it came about. Because this three strikes policy came in following a couple of drug labs and some other things that happened. They brought in this three strikes policy on the run, the government – so it’s populist politics. **(Legal practitioner)**

It’s an interesting thing. But I think part of the problem is, I think they set this up. As I said to you earlier, I think it was sort of like a reactionary policy that they put in place. You know, we’ve had the s. 75 once before, years ago. But they put this policy in place to – you know, populist politics. Because that’s what it was. A bit like shark nets. **(Legal practitioner)**

That it has had significant impact, particularly for Aboriginal people, is indicated by the following comments, which also illustrate how closely connected to neighbourhood disputes this issue is (see also section 4.2: Neighbours).

This is where we do have Aboriginal clients, especially in the housing area. WA has a policy - ‘three strikes’ and you’re out.... So it could be – and what happens, you can get a strike if your ex comes around and he’s pissed and he’s yelling and screaming. A neighbour just has to ring up Department of Housing and there’s a strike. It’s not even the tenant who’s committing the behaviour [or can control it]. So that’s a big issue in WA. **(Legal Aid staff)**

If there’s too much overcrowding or too many people in the house or just total partying all the time you can get a strike. Department of Housing decides. Once it gets reported they build that case up and up and then they’ll send them a letter. **(Community organisation worker)**

Even the police will say that.... [The] Acting Assistant Commissioner, will speak publicly about how this policy of three strikes is increasing homelessness and increasing Aboriginal families interaction with police, with increasing pressure on prisons and increasing pressure on Department for Child Protection and Family Support. It’s not just the community sector saying this. Even the police are saying it. **(Legal practitioner)**

Opportunity Commission (EOC) has also released a report on the policy: EOC (WA) (2013), *A Better Way: A report into the Department of Housing’s disruptive behavior strategy and more effective methods for dealing with tenants*, Perth WA, http://www.eoc.wa.gov.au/Libraries/Publications/A_better_way_report_web.sflb.ashx

⁴⁷ See Department of Housing’s brochure on the three strikes policy: http://www.dhw.wa.gov.au/HousingDocuments/DBM_brochure.pdf

⁴⁸ Ibid

⁴⁹ Western Australia, Parliamentary Debates, Legislative Assembly, 29 March 2012, 1634–1635 (Mr T. R. Buswell, Minister for Housing).

One stakeholder felt that the policy had a particularly significant impact in Perth, rather than in more remote locations. Those outside Perth may be more concerned about service provision, including in relation to repairs and maintenance.

In Perth, the issues are - there's a kind of three strikes rule that the Department of Housing here is implementing. So if there are three housing complaints and - well, for Homeswest, they're substantiated - then those people lose their Homeswest house. These people eventually just end up becoming homeless or it's otherwise really difficult for them... So I suppose that three strikes issue, I haven't come across it as much in remote areas. In remote areas, it's service provision and kind of insufficient service provision. **(Indigenous Legal Service staff)**

There are particular reasons why the policy is likely to have a disproportionately negative effect on Indigenous households and why there may therefore be grounds for complaints of discrimination, in response (see also Section 4.3: Discrimination). Firstly, Aboriginal people are more likely to be renting Homeswest properties and therefore to be subject to the three strikes policy.

How many Aboriginal people get private rentals? Very few. They're going to be the ones to get the strikes. They're going to be Aboriginal and they're going to be living in Homeswest housing. We know it's going to happen more for them. Even though the percentage of Aboriginal people is low it'd be interesting to find out the percentage of strikes against Aboriginal people. It's elderly people they're evicting. This lady is in her 60s. **(Indigenous community organisation worker)**

Secondly, neighbours might use the policy in a racially discriminatory way to exclude Aboriginal people from living nearby (see also Section 4.2: Neighbours).

We're all painted with one paintbrush. All the clients I've had, I've had three now, they're all Aboriginal. I've had a couple - one in particular, had a strike against her because she's friendly with an Aboriginal woman. No sooner than the Aboriginal woman visited her house, and with her kids, who goes to school with her kids, my client's kids. Seen as a gathering. Disruptive behaviour. A strike was issued. This is non-Indigenous people having Indigenous people at her house.... It's - you know, we're friends with a lot of non-Indigenous people. I've got heaps of them, you know. **(Legal practitioner)**

Some of the issues people have been having have been - like I was saying, it's not very evidentiary in the sense that people don't - a neighbour might want to just complain against someone and then that's taken into consideration. Quite often, it's quite unreasonable, the types of complaints. So people make assumptions that it's the Indigenous people next to them that are causing all these issues and, quite often, it's not them. So I do think there's a disproportionate impact on Indigenous people. We've taken a couple of matters to the Equal Opportunity Commission, because we believe that there's been a racial element to it. But it's so often so difficult to get past that...the hurdles of proof. **(Indigenous Legal Service staff)**

Thirdly, the way many Aboriginal households live may cause them to face greater scrutiny, a larger number of complaints and a higher likelihood that they will be breached under the policy. Some of the conditions imposed by Homeswest might appear reasonable, but they lead to inequitable outcomes for Aboriginal tenants. Aboriginal people may, for instance, socialise out of doors with extended family and/or in bigger gatherings more than others. They also have strong obligations to take family into

their home, including as carers for other family members' children. All of this may lead to what is labelled as disruptive or 'anti-social' behaviour.

I think a lot of government departments [operate] on a western standard of living. Nothing in it's considered for Aboriginal people. We are strong on our family unit... I can have 50 people at home who are directly related to me from my mother and father, their brothers and sisters. But yet we all can be called like an illegal gathering because there's too much people there. Then you get complaints. We can't hire a venue to hold a 18th birthday or a 21st or a wake. So you hold it at home. Then all the family comes around. Then Monday morning – this happened to me – Department of Housing come around home and said "Here's your first warning", verbal warning, about the number of people that I have there. I said, "Well, I'm holding my boy's 18th birthday at my house. There was a lot of young people there, but we kept the noise to a minimum." But it's all a textbook, westernised way of living. Because we don't have two adults and two kids, you know. The government hasn't totally brainwashed us to live like in western society yet. But, you know, we're still going to live our life – then the mentality is. **(Legal practitioner)**

But it's when we're getting crowds of people in a house – that's where the problem lies. Everyone thinks oh, here we go. You know, they're going to be drinking, they're going to fighting. But it's not. It's just – you know, everyone raises their voices, everyone has loud music... [like] good old times when we used to do this sitting around a campfire and play guitars and have our kids running around. You know, that's the whole family environment. When it comes time for kids go to bed and the adults keep going. Well so what? As long as they're not causing, you know, any problems. It's just that a lot of complaints because of loud music. It might be just a one off.... Then there might be another time where the people are walking down the street and then stop in front of the house, nothing to do with the tenant. Then strike two. Then strike three, there might be another with, I don't know, just with going off and whatever. But they can act on the first one, if it's deemed very, very serious. Because there's three levels of minor, serious and – what's the other one? I forgot. There's three different levels. **(Legal practitioner)**

I have had a few elderly Aboriginal women that actually take care of their grandchildren, because their daughters are in prison. There's a lot of other compounding issues. So a lot of the elderly Aboriginal women are having to kind of step up. They're feeling quite overwhelmed in those situations, where, you know, they have six, seven, at times eight grandchildren in their care. We had that case recently where that lady in Rockingham, was it, took care of her grandchildren and is now facing eviction because the children are too noisy. That was the one in the paper. It was at Fremantle. But they're moving. That's a repeat of the Joan Martin case.⁵⁰ Joan Martin's case was so many years ago, you know. It was an incredible case. That was when s. 75 came in before.... That Joan Martin case, she was a grandmother... It was at the Equal Opportunities Commission... They chose to believe the Department of Housing. Then it went to Supreme Court and it was overturned. They did say they believed what we were saying. But it was about the rights and responsibilities of older people, grandparents in raising their children, you know. It was an incredible case. It's just this whole

⁵⁰ For discussion of this case see McGlade, H and Purdy, J (1998), 'From Theory to Practice: or what is a homeless Yamatji Grandmother anyway?' 11 *Australian Feminist Law Journal* 137

same thing come back again. It's certainly reducing the housing list, I suppose. But we are creating lots of homeless people. **(Legal practitioner)**

I agree that it disproportionately affects Aboriginal people. That's to do with cultural differences. I mean the Department, a few years ago, was all about substantive equality and recognising indirect discrimination. Here you have a major policy plank that clearly indirectly discriminates against Aboriginal people. I mean, I don't know the exact numbers but, as I said, almost every person that comes to my service facing termination from public housing is Aboriginal. There may be a couple who have psychiatric illness. But everyone else is Aboriginal. **(Legal practitioner)**

I think it comes down to overcrowding. Say there's a loss in a family, like sorry business. Families are going to come from all over to stay. There might be only two or three family members that live in that town at that time. So of course they're going to have to – you know, you're going to house two or three, four families at a time. You can't say - oh, when the funeral's finished, pack your stuff and go. It's not the way Aboriginal people live in this day and age. But the government and – like Australia-wide - they don't see that. So if they're going to stay, you know, a couple of days later, or even until the next, following pay day to get that money to go back home, of course there's going to be extra noise, or noise levels going to go up, or more cars going to be at that house, etcetera. Whatever it may be. They're not understanding how we live. **(Legal practitioner)**

Aboriginal tenants are required to modify the behaviour of violent partners or rowdy visitors to their homes, who they might find difficult to challenge for cultural reasons.

This policy particularly impacts on Indigenous people. When you've got Aboriginal people with extended families coming over and they're concerned about cultural ramifications if they say you can't come to our home anymore or you've got to behave a certain way.... For Aboriginal people to challenge the behavior of immediate family, you're going to have repercussions. People are very loyal to their families. A lot of Aboriginal families are feeling discriminated against. Whether that's based on fact I'm not sure. There have been media reports around it. Some individuals have gone to the EOC about their complaints. They don't feel that they have a good working relationship with property managers in housing and feel that they're not being heard as to the mitigating factors around why their behavior has been flagged. **(Statutory Authority staff)**

Can I just go back to this issue about the expectation that people will modify their behaviour? It's worse when the Department's expectation is that they will modify somebody else's behaviour. You know, we've got a case at the moment without giving any particulars away, of a woman who was stabbed by her partner. And because she wouldn't take action against him - no VRO, no charges - she's now facing eviction. Repeatedly holding women responsible for the violence that's perpetrated against them. **(Legal practitioner)**

As the following example indicates too, sometimes it may be difficult to modify behaviour due to disability. Conflict across Aboriginal family groups, aggravated by housing providers placing feuding families too close together, holds potential to feed into strikes (see also Section 4.2: Neighbours).

Oh, they follow their policies [to the letter].... They just don't have the skills to recognise some issues, cultural issues... So, [we helped] a young girl that was in a relationship. They had a two-year old child... [who] got murdered by her partner, which wasn't the father of the

child. They then relocated her... into a block of three units. When they placed her in there, it was just a matter of - get her out of there into somewhere else. But the father of the child actually lived in the next street and moved in with another female. Also, the neighbour behind her, in the block of three, was related to the person that had murdered her child. So there was no consideration given to where were they putting her. As a result of that, obviously, there was conflict, arguing, you know, fights, antisocial behaviour. So I probably had the file over 12 months, just on and off, on and off. Trying to get the strikes withdrawn or what have you. When it was coming up for trial, we tried to negotiate with the Department because she had the trial for her little boy coming up this year. So we contacted all the MLAs to see if they would get involved or at least put her tenancy stuff aside until she dealt with these other issues. The response was just no, no, no. We tried to deal with the Regional Manager. Please, put it aside. Nah, no way. Then probably...two days before the trial, we sent off a letter to the Regional Manager outlining certain things that we – we sort of did a bit of investigation work. We found, you know, where she was living, the people that had been lodging the complaint, nobody lived there anymore. Found out how far away the other person lived.... Then we put that all forward to the Department.... Gave them a whole list of names that I was going to call – because she had a lot of support, people that were going to come in for her.... Then, at the last minute, they wrote to us and said, “Yep, we’re not going ahead. We withdraw... Where does she want to move to? We’ll get her into all of these support systems, and you need to deal with one person only in the Department.” Whatever she wanted, she could have. There were a lot of issues in that, including that there was no understanding of the cultural implications of moving her closer to where the families were. No understanding of her own limitations [due to] foetal alcohol syndrome. One of the biggest issues the Department were trying to deal with was her very loud voice and her shouting all the time. I mean, we spent most of our time saying in the office, “You’ll need to be quiet. You need to be quieter.” She’s just very loud. Of course, she’s deaf, obviously deaf. So she’s very loud. She’s only 21. It’s just the way that they had no idea how to interact with their clients. **(Legal practitioner)**

By way of contrast, a minority of stakeholders felt that the policy was *not* disproportionate in its impact on Indigenous people. In circumstances, for instance, where there is fighting within or between families, it was said that neighbours, including Aboriginal neighbours, might well have valid cause for complaint.

No, it’s not racial. I don’t believe it is. I think they have a standard, a standard that they expect. Some of our mob just haven’t got, they’ve got that lack of education so, you know, we’re trying to put that in place. That’s where the standards have changed. Maybe working with DoH, we won’t see so many future problems. You know, with tenancies. But until that happens – I mean, I’m trying. **(Indigenous community organisation)**

Look, I can’t say that for sure.... But I do know that there’s a lot of feuding between groups. It’s just how it is. There are different factions here... You know, it causes problems. It causes damage to the houses and it causes strikes. If there’s a bad disruption, the police are usually notified. So if the police are notified, they let Department of Housing know. But usually, strikes are from neighbours (Aboriginal or non-Aboriginal) that have just had enough. ... But I do notice a lot with Aboriginal families. It’s not just - you know, it’s often feuding, even in their own family, domestic violence and that sort of thing. You know, yelling and screaming and partners not getting on. Yes, there’s quite a lot of that. Yes. Yes, it’s difficult, really difficult to deal with. **(Community organisation worker)**

Stakeholders provided comments relating to implementation of the policy that weren't specifically about race. Relevant criticisms included how easy it was to be breached because the bar or threshold is set so low, particularly where allegations involve kids.

So when – the three strikes – if it's not against – say, it's not adults. It's children. So you're getting a strike because that child is out there playing or being loud... Playing with mates at 6 o'clock, 6:30 pm... Or they're getting up at 6 o'clock in the morning, having a bit of fun play before they have a shower... So people have been getting strikes because of kids being too loud. Just kids... No parties, no fights, nothing. So this neighbour here don't like the kids... Yep. Early hours of the morning, or late at night, which is like 7 o'clock or something. So the Department will take – because that person there is a homeowner, could be a homeowner or tenant, private rental. They don't want to offend the private rental mob. So the kids are getting their parents in trouble when they don't realise it. It's just stupid. Why should they get the kids to be quiet at a certain time? We used to play all hours of the night. Yeah, it is. It's ridiculous. Then the new laws that they've got in place now – that change is really even worse. **(Legal practitioner)**

Like the Department, what they do, they get the initial allegations from a complainant, then follow the process by getting all the details, then go to the tenant who's seen to be causing those issues. Sometimes it's just kids just having fun, you know, being loud, but neighbours are saying they're disruptive. There might be just a little argument. I mean, what couples, parents and whatever don't argue with their kids or partners? It's not to the extreme where they're actually causing physical harm or property damage. It's just raised voices. **(Legal practitioner)**

Points were also raised about how difficult it is to challenge allegations once raised and/or the decision-making of DoH around imposition of a strike.

Very blurred around what's considered a strike. There's no real definition about what a strike is. Housing has so much power to do what they want. **(Legal practitioner)**

Because the policy is quite indiscriminate. It doesn't really take into account laws of procedural fairness... So it's almost like kind of – you know, all the hearsay's kind of taken – neighbours complain and then they're kind of substantiated without taking into consideration proper matters. So we've had families here in Perth who would come down and have complaints made against them because there are Aboriginal people on their front lawn making noise. It turned out they were just other Aboriginal people that had nothing to do with them. They didn't actually even know them. So that was one of the strikes counted against them. **(Indigenous Legal Service staff)**

As we said, you can't challenge the strikes because that's what we tried.... You know, because if you get a destructive behaviour complaint it's then a breach.... So a lot of times, when there's like rent arrears... we can dispute those breaches. Then when we dispute them, we lodge an appeal.... But when it comes to these sorts of things, you can't dispute it. You can't challenge it. **(Legal practitioner)**

[I asked] what can I do to appeal it? Oh no, it's already written in the books. We just... okay, well then that's our first strike. So we can't appeal it or anything like that. It's a load of crap. **(Legal practitioner)**

Tenants may not understand much about the allegations against them or even that they've been given a strike, including where notified in writing. They may also have little chance to explain their situation to the Department or to talk with neighbours directly to try to resolve any conflict. Tenants may sometimes be asked to share with the Department their version of events, but this communication is not 'without prejudice' – so is then used to their disadvantage.

Sometimes they don't even get notice about the strikes being ticked off. They don't understand the letters, what that letter that came from Housing is about... **(Statutory Authority staff)**

It's this stupid disruptive behaviour stuff, petty little things that we can handle if given a chance to communicate. Then, when it's failure of communication, failure to deliver a proper and fair – you know, procedural fairness, we call it, natural justice for our people or for anyone, really, for that matter. **(Legal practitioner)**

A lot of it, too, is lack of communication. Because it's just not, they just don't go into great details to support the allegations levelled against the tenant.... The Department – I find, in a lot of my cases, once you get into it, it's just they haven't listened. Because in reality, Aboriginal people do speak loud. In some of the cases, they shout at the kids. That's where the communication breakdown is happening. **(Legal practitioner)**

The Department's own processes – I mean, we have concerns that they're misleading. All of their materials that they send to people and the conversations they have with people is "Please come in for this interview. It's in your interest to come and talk to us about this." But it's actually not. They're not 'without prejudice' meetings. Those people's statements will then be used directly against them. So we've had people who've read the stuff that says it's in your interest to come and see. Come and talk to us. Then they say "Oh yeah, that did happen." That's not very good. Oh, right, that's written down. That's used against them straight away. So the Department's not genuine in those processes. **(Legal practitioner)**

The Aboriginal liaison officers in the Department are seen as conflicted, unable to genuinely advocate for their Aboriginal clients.

There is an Aboriginal customer service officer. That's seen as someone they're referring to as a support, but I mean, from my experience, the person is great at Fremantle, but she works for the Department. People sometimes get confused with that role. They want to engage with someone who's Aboriginal and who understands but, in reality, that person can't fix it, can't really do a lot. Can't advocate. Isn't on their side. I find that very frustrating. It's a no-win role, that one. Like I feel sorry for the poor person. **(Legal practitioner)**

It is questioned why there not more use of mediation to resolve relevant issues, particularly between neighbours.

I think something I'd like to see is mediation. Because I don't think that's really an option at all for Department of Housing issues. Sometimes, I just sense that the neighbours, they're annoyed but they don't want the person to be evicted. But then the Department put pressure on them, so then they think they want them evicted, when why can't everyone just sit down and talk about it? But there's no way that's ever going to happen. So frustrating. **(Legal practitioner)**

There's something really wrong with the legislation. If people are able to make complaints about neighbours and get a strike against them, why isn't there another step in the middle that says to these people that they need to demonstrate that they have attempted to mediate about the issue? We're bringing in that [legislative requirement] in other jurisdictions but there's nothing in there around three strikes. **(Statutory Authority staff)**

We have a family, a neighbourhood mediation service. I think, a few times over the years, we've approached Department of Housing about it. But I think it just falls on deaf ears. It doesn't seem to be anything they're interested in. **(Legal practitioner)**

Access to Housing, Relocations and Transfers

There are huge shortages in subsidised (social) housing, leading to a range of problems, including overcrowding and Child Safety's removal of children from or failure to reunite children with families. Wait lists for accommodation are enormous. Sometimes tensions can arise within communities as people compete for limited housing.

I've been staying at my Auntie's house, she's been paying rent and she wants to sign the house over to me. That became a problem with the community, because there are some people on the list waiting. **(Wyndham Women's Focus Group Participant)**

Well, part of the issue there's just a general lack of – there's not sufficient housing being provided in remote areas. **(Indigenous Legal Service staff)**

They really just need to build more houses. Like they've torn houses down here... There's a couple of houses here that had holes in the floor. Both, in the bathroom, the floor had rotted, so they had big holes. So they'll probably just pull those down. Things are pulled down and not replaced. You would've seen a few of the new homes that they've built. But they pulled down a whole village, because it was asbestos. So I'm sure they would not have – if they pulled down 20 homes, I'm sure they did not build 20. **(Legal practitioner)**

Pressure is placed on public and community-based housing providers to accommodate, partly because accessing private tenancies is often difficult for Aboriginal and Torres Strait Islander people. This is at some level due to racial and/or other discrimination, as well as the cost of renting privately (see Section 4.3: Discrimination). Participants in the Narrogin women's focus group were asked if they could get private rental. "It all depends on who you are", one replied. "There's discrimination there." A stakeholder observed too:

Part of the reason for that is, too, the mining boom's created a big problem in this country, in this state, particularly in terms of - a lot of those are owned by fly in fly out workers, a lot of those houses are now owned by them. They're losing them so fast, because they're losing jobs. So as they're also losing them, the tenants are losing – you know. It's just a nightmare. **(Legal practitioner)**

In the context of access to housing, there were very few comments about relocations and transfers, although this was identified in focus groups as a problem area.

I had a Homeswest house, a four bedroom. That's when I had my four children with me. Since they grew up, I said I'd like to go back into a three bedroom but I don't want to go into asbestos. They said, "No, we can't do that". I kept asking and asking. I've got a house that

someone would like, anyone can have. I didn't need that much room. I've only got two little boys. The others are all adults. Three of my sons got their own children. They wouldn't give me a house. I went to live with my son and daughter in law. We had a dispute and she kicked me out of her house, so I was just going from home to home. Then I ended up in an old shack they got up the back here, a private house. But now I'm in a Foundation house, far better than the Homeswest house they would have offered me, which I'm pleased with. **(Narrogin Women's Focus Group Participant)**

Overcrowding

There are generally substantial levels of overcrowding in Indigenous households in WA (see ABS statistics: **Appendix D**). "I want my own house. I just want a house to myself," said a woman in the Balgo group, for instance. In Wyndham, too, the women spoke of "a lot of overcrowding" and of needing "more houses, [it's] so overcrowded... There's not enough houses".

Overcrowding is a significant issue in large part because access to housing is so limited. "There were a lot of houses out there that were just knocked down and they were meant to be replaced but they just weren't", states an Indigenous legal service provider. It is also fed by cultural and familial obligations to take family members in, including when they've been evicted or when they come to stay as visitors, discussed above in the context of the three strikes policy.

Overcrowding is a manifestation of homelessness, though in 'secondary form'. There is some suggestion that while homelessness in Indigenous communities certainly exists, it is to some extent 'invisible' as the community shelters those who, arguably, should be better provided for by government.⁵¹ As the Equal Opportunity Commission noted in its 2004 report *Finding a Place* 'Aboriginal families have become de facto emergency housing providers for family and friends as a result of the lack of adequate housing stock.'⁵²

[There is homelessness here]. Yes, definitely. Definitely. You see the amount of overcrowding in the houses.... So people aren't necessarily homeless, but you've got 10 people living in two bedroom houses and that sort of thing. **(Legal practitioner)**

Overcrowding is connected with a range of civil and family law issues, including debt arising due to damage to properties, rental arrears and increased utility bills, as well as child protection. It definitely increases the risk of termination of a tenancy, including where it leads to strikes by the Department for anti-social behaviour or where the Department feels that there's too many people staying in the one house. More broadly, it places significant stress on households, including for the elderly.

And that's a ground for eviction, as well, technically - when you have people moving into to your Department of Housing property - overcrowding. **(Legal practitioner)**

⁵¹ 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>. See also discussion of mainstream definitions of homelessness, and how effectively these apply to Aboriginal and Torres Strait Islanders in Australian Bureau of Statistics (ABS) (2014) *Information Paper: Aboriginal and Torres Strait Islander Peoples Perspectives on Homelessness*, Canberra: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4736.0Main%20Features22014?opendocument&tabname=Summary&prodno=4736.0&issue=2014&num=&view=>

⁵² EOC WA (2004) "Finding a Place": *An Inquiry into the existence of discriminatory practices in relation to the provision of public housing and related services to Aboriginal people in Western Australia*, Perth WA, 24

We have got an elderly lady that came for financial counselling and her housing issue is that she's scared of not letting them into her house. They eat her food. They sleep in her bed. It's virtually verging on elder abuse. We'd say it would be elder abuse, which is happening quite a lot in this community at the moment. So housing, absolutely [massive]. **(Indigenous community organisation worker)**

And then if you've got a lot of people in your house and then they damage your house, then you've got to wear that bill if you don't report them to the police. [It also gives rise to child protection matters] including with people not being able to find stable accommodation and that being a reason why they can't [keep kids].... Even like the houses not being fixed too, damage to properties or wear and tear of properties [can happen with overcrowding]. **(Indigenous Legal Service staff)**

But the other issue that I think has a big impact - and I think it goes back to the Departments not working together like CPFS, Department for Child Protection and Family Support, and the Department of Housing - is the removal of children and then the placement of those children into already overcrowded situations, which [often leads to] an eviction and then troubled children going into a household that's already full. Then they're sort of out in the backyard, running amok and then they're getting - you know, that family's getting evicted.... I think there's an interaction between [child protection] and the Department of Housing. Because they just move them from one place, put them into another, overcrowd that place and, you know, it just goes on and on. **(Legal practitioner)**

One stakeholder believes the Department actually has a relatively lenient policy around short stays of guests and doesn't *have* to evict where households are accommodating additional family members, but that it doesn't always tell people this.

With overcrowding, [they tell them they got to declare them staying]... They don't explain all the other policies, where they can have visitors for an eight-week period. You know, they don't say that. They just say, "You're overcrowding, you've got to do this." They just jump. You know, they implement stuff to get them - to get our people to sign and go on with it. They don't explain other things. "Oh no, actually, sorry, you've got a funeral? Oh, sorry for your loss. But you do realise that we have a policy that you can have your family stay for a period of eight weeks. After that, we're going to have to get you to sign a rental form because that's the way we operate." **(Legal practitioner)**

There was some complaint, as well, that the Department itself contributes to rates of overcrowding, including where it allows properties, some of which are awaiting repair, to sit vacant for too long.

There are a lot of vacant houses that people don't live in, houses that aren't rented at all, houses that are just sitting there and getting rotten and they don't do anything. **(Wyndham Women's Focus Group Participant)**

But, you know, the overcrowding wouldn't be such an issue for - this is away from sorry business [and family coming to stay] or, you know, for all those other reasons. If Department of Housing actually got off their butts and fixed up all the houses and housed people, there wouldn't be as much of this being an issue and being included in the three strikes. Because you can drive around in any given suburb and find up to 50 homes empty in Geraldton. You can't question the Department for that, you know. Sometimes, it is - they just haven't got

around to doing a final inspection yet. You know, there is nothing wrong at the property. Or maybe the property just needs to get the lawns mowed. You know, there's no damage done inside. So if they actually started getting out there and having a look at all the empties – but they're so keen on just throwing people out. It's the turnover. We don't have to have a seven-year waiting list for every person that goes on one of their lists. **(Legal practitioner)**

This is the problem we've got here. There's a couple of houses that are sitting empty. The tenants are gone, whether they've gone whoop, whoop somewhere on holiday... Some of them go away for 12 months. We got such problems with overcrowding. Can't we get into the empty house? GIHO say "Sorry, they're paying rent". Isn't that a breach of their tenancy agreement? **(Laverton Women's Focus Group Participant)**

Other Policy Issues: Restricted Liquor Signage

Another problem area was the placing of restricted liquor consumption signage on social housing properties. Changes in 2011 to WA's *Liquor Control Act 1988* means that tenants can elect to have their properties declared 'dry'. This is seen by some as a good way for tenants to control others drinking at their homes.⁵³ But issues raised in relation to this signage include the extent to which consent obtained from householders is present and informed. It was questioned whether people understand the obligations the signs impose on them and the consequences of not meeting those obligations, which include hefty fines, criminalisation and eviction. There was also comment about how difficult it is to have the signs taken away once they're in place.

Yes. I've had some clients, some tenants - it's been suggested by support workers that they put signs on the door. I mean it might just be something as simple as a bit of card that says no visitors and no alcohol, for example. It might be on the front door and there might be one on the fridge. Doesn't really work well. [It's] not part of the tenancy agreement, but it's suggested... to save your tenancy, if there's alcohol issues, by the Department and/or the support workers... There are hefty fines... They are doing that in the Top End. They do have official liquor restriction. You can declare an area, which can be your house, as a dry area – and if anyone does come onto the property with alcohol, the police will come and – yeah. It's happening throughout the state. I've got a client in Katanning. But it applies to the block, not to the house, so the common areas. You can't wander down your stairs with a stubby. You're breaching it. **(Legal practitioner)**

I actually had an Aboriginal client suggest it to the Department that she – because she felt uncomfortable telling her visitors that they can't drink on the property. So it's a way of her protecting her tenancy that way.... I guess the issues that (come up is) whether people who were – people who may have seen it as offering them some support or protection were aware of the consequences, you know, of the breaches.... Couple of thousand dollars fine? Technically though, if they breach this, the Department can terminate because they've done an illegal activity at the property. It jacks up the consequences. Long term effect of all of this is if the Department's successful in court, under their policy, they can say I'm not offering you any further services from here to the foreseeable future. Forever. You've got nothing. **(Legal practitioner)**

⁵³ See media report (The Australian, 8 February 2012): <http://www.theaustralian.com.au/news/nation/first-western-australia-arrest-under-laws-on-alcohol-free-homes/story-e6frg6nf-1226266213339>

If they breach the liquor restriction ban too, they get fined. They can't pay the fine. So many people are living in one house, how can you stop others drinking? A 65-year old tenant can't stop them. And they can't drink in the pub either. These liquor restrictions are put on with a blanket approach, no merit in the decisions being made as to who has the sign or who doesn't. **(Legal practitioner)**

One of the other solutions that Homeswest is using is alcohol - restricted houses. Some of our clients or some of the people that have got them - they don't understand what it all means. In particular, there's a case in the Kimberley where the tenant themselves is subject to a \$2,000 fine. Nobody explains it. I mean, we're talking about people - that they're just not explaining what this all means. That's the houses signposted on the front door, there's a large sign that states that it's a restricted area, grog free. If that's ripped down and the tenant doesn't do anything about it, they're actually subject to a \$2,000 fine. It comes under the *Liquor Control Act*. It's something that can be accessed by the tenant, but Homeswest encourages tenants to apply for it and will actually help them fill out forms. There's a whole process attached to it, which is all fine. That part's easy. But what's not so easy are the legal obligations attached to it, and whether or not that's explained fully to people. It's actually life long. It lasts the – it outlasts the tenancy. It applies to a house forever. If [a new tenant moved in and] wanted it, [it applies to them too]. If you don't want it anymore, you have to go and apply to have it removed. There's all these things that – and that's what happened to that family. They somehow breached it or they didn't remove it...I think the sign was – also, the sign wasn't up or something of that nature. So they get lobbed with a \$2,000 fine. So there's all these complications attached to it that weren't explained – that aren't really explained very well to... [They probably weren't the original applicants for the signage]. **(Indigenous Legal Service staff)**

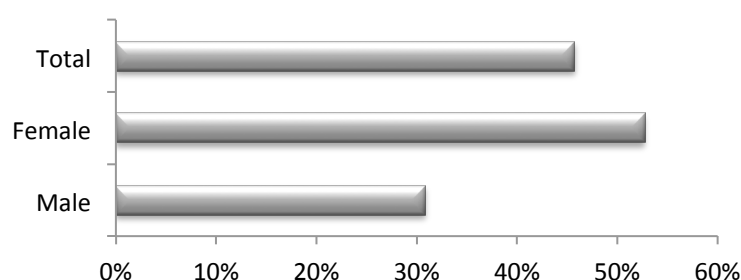
I found out that it is a very hard process to get rid of them signs. Very hard. You actually have to write a letter to the, I think it's the Director General or something, of the Liquor and Licensing Gaming mob to apply to have these signs removed.⁵⁴ **(Community organisation worker)**

4.1.3 Legal Advice for Tenancy Issues

Figure 4.4 shows participant responses to the question asking whether legal advice or assistance was sought in response to a dispute or problem with a landlord. Nearly half (or **45.7%**) of those who had identified a tenancy-related dispute or problem sought legal or other help. Indigenous women were much more likely than men to seek advice (52.7% of women compared with 30.8% of men) (see **Table 4.4: Appendix C**).

⁵⁴ For perspectives on the utility of imposition of alcohol restrictions, with some comment that they do little to address the causes of drinking, see Hudson, S (2011) *Alcohol Restrictions in Indigenous Communities and Frontier Towns*, Centre for Independent Studies (CIS) Policy Monograph 116: <http://www.cis.org.au/images/stories/policy-monographs/pm-116.pdf>

Figure 4.4 Participants Who Sought Legal Advice for Tenancy Dispute or Problem



Whilst the percentage of persons identifying an issue in this area who had sought help is relatively high (comparing it, for instance, to the same statistics in priority areas like discrimination or credit/debt), ILNP data suggests that a sizeable proportion of these individuals turned to Homewest for help and/or were largely unable to resolve the issue at hand. They were also more likely to have achieved satisfactory resolution if they had contacted a legal service for assistance.

Of the 81 individuals who sought legal assistance or advice, some 33 identified whom they contacted for help. Around a third (13) sought assistance directly from Homewest. Two looked to ALSWA for assistance and another three had contacted CLCs. All other respondents had approached a range of local community organisations (both Indigenous and non-Indigenous), councils or other government departments.

Thirty-one of the 81 individuals who had sought assistance also commented on whether the matter was resolved. Only 7 (or less than one in four) indicated a satisfactory outcome. Three of the seven were individuals who had contacted either the ALS or a community legal centre, likely to indicate the importance of advocacy to disputes in this area. As noted, for most people the housing issue was unresolved or still ongoing.

Barriers to accessing justice

There are a number of barriers likely to impact on a tenant's capacity to deal as well as they might with tenancy disputes. Tenants may feel too intimidated to challenge their landlord, particularly if a dispute needs to go to a court or tribunal. They may not want to 'rock the boat', challenge or enforce their rights for fear of losing their home. Given problems of accessing housing and with security of tenure, this is understandable.

The number of clients that come to me with a problem, I identify the issue, the point of law or whatever.... They'll want to go to court and you can just forget about it. You know, for private tenants, they have genuine grievances and problems, but they always have to weigh up - if I go to court, my lease will not be renewed. So, is it worth getting the guttering fixed or having a little bit of certainty that I could renew for another six months? Or you might get up on the... [tenant] database. So a lot of people are very reluctant to go to court. People really only go to court at the end of the tenancy for the bond dispute or, I find, a lot of public housing tenants will come to us because they're facing eviction. But when it comes down to maintenance, it is the landlord's responsibility that they should be doing it as a matter of course, but don't. A tenant is often reluctant to escalate it to court action. Now, I understand that.... I think there's a lot of substandard housing and the tenants are just too scared. It's taken them that long to get that house they're too scared to raise any maintenance issues.

(Legal practitioner)

Tenancy WA probably campaign around this. But we've got a different, you know, culture around renting in Australia, as opposed to Europe, where renting as long-term tenure is quite common. It's really usual to have to keep moving every six or 12 months or at the whim of your landlord. You find a house or a flat. Provided you pay your rent, you've pretty much got security of tenure until the kids have grown up. Totally different here though. This fixation on owning a home, which a lot of people can no longer do, so renting's always been quite insecure. Because of that, people don't enforce their rights. More than half the people who call the advice line only have a six-month lease then another quarter of those are 12 months. So that's, you know, a lot of people who have almost no security of tenure. So, you know, the impact on, particularly, single parent households and kids having to change schools and things all the time.... **(Legal practitioner)**

Sometimes the Department imposes a short-term tenancy as a kind of good behaviour bond – further disempowering tenants.

Sometimes, to settle a matter, like you can pay some money and Department of Housing will offer a six month fixed term tenancy agreement. So that, to me, it's like a 'good behaviour' period. If something happens during that six months, then they don't have to – I mean, they can evict them, I guess. But they don't have to offer another tenancy agreement after that, once the six months is up. So I think that creates a lot of pressure. But often, the family are in a powerless situation. That's their only option. **(Legal practitioner)**

Further, commonly tenants will also only seek out advice at the last minute, when the situation has escalated to a certain level of seriousness. This causes difficulties, as housing matters often carry with them a certain degree of complexity and some time is needed to untangle what is what.

We find we're having a similar situation where Aboriginal clients don't engage until the last minute. Most of them are Department of Housing clients. Yeah, they don't act until the very last minute. Then, once the crisis is over, they don't further engage. So they think that's it. **(Legal practitioner)**

But often, for myself, I find they come at the last minute. With tenancy issues like the three strikes and that, they try to work something out at the last minute. **(Legal practitioner)**

Housing issues are really difficult. Usually, particularly with Homeswest matters, for casework there are so many issues bound up in the housing issue. There's often not just one or two issues. They are chronic issues that span out and it all gets complicated. They are difficult matters to run.... and they've come to see a legal service when it's often too late. They've already been issued with an eviction order. You get involved at the last moment and if you'd had notice, you could have intervened earlier and done some good advocacy. **(Indigenous Legal Service staff)**

Part of the problem is that people are not reading correspondence from their landlord, for whatever reason (literacy, avoidance, no fixed address), meaning that issues aren't being addressed early enough or at all.

In addition, I think, even just speaking to Daydawn (advocacy service for Indigenous people in Perth), one of their main things is that they don't engage in the sense they don't read their letters. So that's one of the reasons why things get to us at such a crisis point. So you get

your warnings and court dates and those sorts of things. They just don't read it. **(Legal practitioner)**

Education – works two ways

Increased information for tenants about tenancy rights *and* responsibilities is needed to prevent disputes arising, as well as to let tenants know where they stand when problems do occur.

I'm looking at the fact that, you know, how many years ago, we lived in the wilderness. We lived on the land. We had no responsibilities except each other and our children. You know, we lived off the land, for God's sake. Now, you know, we're living in infrastructures. There's been education there. My mum taught me how to be clean. My mum taught me how to look after things. But in some areas, that didn't happen. You know what I mean? It's that lack of education. I'm not making excuses. Some are very – they're educated and they're lazy... But then there's that lack of education, as well, about, you know, what cleaning products do you use to keep the walls clean? I mean, basics. [There's been] massive change for us.

(Indigenous community organisation worker)

On both sides of it, knowing not only what their obligations are, but also knowing what their rights are, and it's a bit of a balance between the two. So quite often they'll be happy to focus on your obligations and not so much on information about what you can do if you're not happy or if something's not happening as it should. **(Statutory Authority staff)**

We got advice from Consumer Protection.... They were good. None of us didn't know our rights properly so they gave us enlightenment on our rights. Mum got her house refurbished. We didn't know they could pay for storage and help us move furniture. That was in the policy and we didn't know. That was an eye opener to us. **(Narrogin Women's Focus Group Participant)**

If someone is going into a house for the first time, we need to educate them about what's expected. So first it's to pay their rent and their water. Then it's standards. So they've got to keep the outside tidy, the inside clean and don't damage the property. And they've got to get on with their neighbours. You know, the three strikes you're out. So they need to understand that, and how to go about that. So if I'm going in, I might get them to sign a rent subsidy form so their rent automatically goes out... Then we might put Synergy on Centrepay. So we try and get their finances organised for them, and just to let them know what's expected. You know, you need to keep the floor clean. You need to wipe the marks off the wall. You need to get the lawn mowed every... So that sort of thing. So that's for a new tenant. **(Community organisation worker)**

Providing education in this way is considered to be much more effective than evicting tenants after things have gone awry.

I think it's about education, really. There's lack of education out there around tenancy, you know. Being a good tenant, bad tenant. I think there's more of that needed before – you know, that would be the answer more than anything. **(Indigenous community organisation)**

Recent changes, particularly in relation to remote housing tenancies, have left a lot of Aboriginal tenants in the dark in this regard. "They've got no understanding, our people, about leasing," observes an Indigenous community organisation worker. *But*, is also important to educate the Department about

the needs and perspectives of their Aboriginal tenants, including so that they might (reasonably) adjust their expectations. This was discussed above in the context of standards imposed on Aboriginal tenants through DoH's behaviour management system.

Or just helping them to understand that these are the changes [to leasing arrangements]. Again, the system let my people live like that for so long and now, all of a sudden, you have to do this, this, this, this, this. So, then again, we got to educate the DoH group, Department of Housing, on certain aspects in town. Like Kununurra's still very – culture's strong. So we have our ceremonies, we have our funerals. So just to let them know, even though they got a letter of overcrowding a month ago, they're not deliberately doing it again a month later. It is a funeral. You know, family comes – they stay. That's culture. It's not that – they don't really understand. To them, it's just there's a heap of people in the house. Well, they're not allowed to turn family away. You know, it's their culture. Certainly educate both sides. We do that as well. We can help them clean up their yard. Like we try and help them clean up their yards and the inside of their house to the standard the Department of Housing want. Good standard. You know, what is a good standard if they haven't done it before? They haven't got running water and haven't got electricity. **(Legal practitioner)**

A lot of it is also interpretation. The interpretation of what is to be done within that household. You know, you can only have four people live here. Our interpretation is different to an Aboriginal man's interpretation, even in regards to VROs. Where a VRO states, you know, you can't go to that house his interpretation is I can go to the porch or I can go and sit under the tree out the front of the house. A big thing is interpretation. You've got the white man law stated in legislation. In common language, there's a large interpretation issue there. So, you know, it's got to be explained in simple terms so people can understand exactly – whether it even means diagrams or – you know, and a lot of the issues in regards to the evictions was just failure to look after the properties. Just those issues of interpretation. You know, what is keeping the property clean? What is looking at how many people you can have in the house? Lots of it comes back to education, as well. The same way that these processes around what a breach is, a termination process, a three strikes policy. Like all the processes that the *WA Residential Tenancies Act...* applies, that still apply, whether – no matter who you are, if you're in a Homeswest tenancy, that's what you have to live by. How you educate people to make that work for them is another story.... It's also about working with Homeswest.... You go back to Homeswest, to the housing support workers and say, "Actually, ease off. This family's had five funerals and this one's been evicted. They've got to go live there." And so there's an education process that has to happen with the Homeswest staff too.... Like it's a very complex process. **(Indigenous Legal Service staff)**

Tenants need increased capacity to enforce their rights and, as part of this, more information about where to go for advice and assistance as having a support person or advocate can make a huge difference to how well a matter is resolved. Quite a number of stakeholders indicated that advocates have successfully assisted tenants, particularly when disputes have reached court.

Sometimes people don't know that they can go and see a lawyer. **(Roebourne Women's Focus Group Participant)**

There's that lack of education, a lack of awareness of their rights and where you seek help. Because I know there's been a few that have actually fallen through, that haven't been seen by

[us] or the legal service. They've actually just given up their homes. Which is sad, because they wouldn't have had to. **(Indigenous community organisation)**

I think tenants think they only have one avenue, particularly public housing tenants... That they can only deal with the public housing provider and that they have to go through formal processes and that's the end of the road. What they maybe don't realise is that that's not the end of the road. There are other avenues, there are other organisations like us that can, basically, conciliate, look at the facts, see where things lie, negotiate focus of outcomes and that sort of thing. So, I think people haven't necessarily realised that they do have those rights, that it's not just what's dictated to you, what you're told. You do have that right of appeal and however it goes internally, that's one thing but once you've exhausted that there's other processes. There's Magistrates Court. So there's things like that. So things are not binding just because you've been told to do it, it's only binding when it's been ordered by a court. I think that's going to be a big, big area for really vulnerable tenants who've never really had that exposure to being tenants before. So tenancy is a really big area. **(Statutory Authority staff)**

Repairs aren't being done in the appropriate timeframe and, quite often, they're not being taken seriously. So people would call me and they'd say, "I've been waiting six months to have this screen fixed and no one's come to do it". Then I'd do the calling for them - essentially, not legal work, in a sense. I'd call Homeswest up and try and resolve it. Then they'd be working on it straight away, within a couple of days. **(Indigenous Legal Service staff)**

Going back to your question about why are we having so much success. I think part of that is we go to court and we focus on the family's specific situation. As you're probably getting out of all of this, we've got a Department who has the ultimate faith in what they do, backed by a strong public support. But when the court hears about specific situations, and when we, as advocates, can provide potential solutions, the court will go "Okay, I want to hear about this". **(Legal practitioner)**

One of the reasons we win the odd case is because the Department is hell bent on terminating so many tenancies that their legal officers are so under the pump that they can't prepare their cases properly. You know, until things got out of control for the Regional Recovery Officers, about 12 months ago, it was very hard to win these because they had less cases. They rocked up with witnesses who had been prepped. They were generally able to prove that there had been disruptive behaviour. Unless we were able to get in mitigating circumstances and the bigger picture, there'd be termination. So it's good that we win. But...there's a context to it.... I would say the terminations are escalating, which is bad for everyone. Society. But in a way, it's good, because they're so swamped that I think they're more open now to a bit of negotiation. They're certainly more open to adjournments, which even if the final outcome's an eviction, is good because you've delayed it for three or four months. **(Legal practitioner)**

Whilst it is great that tenants are connecting with effective advocates, what about the majority, who don't access lawyers? They are most likely to vacate or otherwise accept their situation, whether it concerns debt or a serious maintenance issue.

You know what happens with evictions, we were talking earlier – and as I said, the people that don't come to us, a lot of people get their eviction notice and just go. They'll go into the other house - the sister's house, the mother's house. **(Legal practitioner)**

There are provisions in the RTA for termination saying, you know, the Court can consider whether termination's justified in the circumstances. So that's often what our arguments are based on. I think the preference would be that the Department has accountability to apply those considerations up front. It just doesn't appear to be happening at all. So it's just wasting time, resources and the other concern is this. Obviously, we've got a lot of unmet demand. So it is that falling through the gaps stuff. We shouldn't have to make those arguments at court or on the steps of court. Obviously, it's probably in their interests not to take those considerations into account unless there is advocacy on the other side. It's administratively easier, I suppose, to not do that. **(Legal practitioner)**

Greater levels of access to effective advocacy at *all* stages of the dispute resolution process are necessary, given the level of need and the significant impact that eviction, homelessness and other housing stressors have on Indigenous families and communities. There are currently serious gaps in the extent of assistance available in this area. CLCs and other advocacy agencies or services rather than Legal Aid or Aboriginal legal services are picking up the bulk of relevant work, but they have their limitations, generally due to funding issues. This is not just the amount of funding they have, but whether they are funded to help out with public housing disputes. Private practitioners are not so active in the tenancy space. Meanwhile, the Department has access to a well-resourced legal team.

And housing, I suppose, because there's so many tenant advocates and there's an established service [we usually won't take on]. It's about not providing a service that already exists. But we've found that there are more clients than there are services. This is one where we do have Aboriginal clients, especially in housing. **(Legal Aid staff)**

I think there's a serious need for some kind of housing advocacy service... I think it would be ideal if they had the equivalent of - what they have in Perth for housing is they've got tenant advocates. Within all the CLCs, they'll have one tenant advocate who can represent people in tenancy disputes with Homeswest. They generally have that in the CLCs up north, as well. But the matters there are much, much more compounded, for various reasons. I think it would be useful to have a larger housing advocacy presence in regional areas. **(Indigenous Legal Service staff)**

A lot of the CLCs do tenancy advice but not all of them provide representation in court. These days tenancy is supposed to be informal and all that, but if you do have representation you are a lot better off and likely to have better outcomes. **(Indigenous Legal Service staff)**

Tenancy WA is actually like a hub... and then there's spokes [other CLCs] out there.... They're all funded under the same program.... So Tenancy WA has the overall responsibility for the advice line and law reform and, you know, some education. Then the CLCs, as spokes, are responsible for the advocacy. But they're snowed under and they're not funded for public housing. They do it and the Department turns a blind eye. But they're not actually funded for public housing. They're funded for private tenancies.... Funding comes from the interest on the bonds. The Department of Housing doesn't put its bonds in, so the interest is only contributed to by private tenants... Our contracts just say 'provide advice to tenants within Western Australia'. It doesn't specify, but the Department of Commerce that funds this work is increasingly saying, "Well, you're doing a lot of public housing work. Public housing tenants and Department of Housing don't actually contribute to it. You should be focussing on your private tenants." **(Legal practitioner)**

I'm sure you're aware of this, but there are gaps in service provision. You know, the ALS doesn't do tenancy. Legal Aid does very little, if they do any. They don't represent in any cases for tenancy. So it does all fall on the individual advocate at each CLC.... or a private solicitor, if you've got money. There are some community agencies like Daydawn.... So, I mean, lawyers can only represent against a body corporate. So that's typically Department of Housing or a community housing provider and those tenants can't employ private lawyers. It's not a particularly lucrative area for private lawyers to operate in. So it's not like we have a big network of private lawyers that practice in tenancy matters. They might represent the landlords. This sort of highlights the inequity of things, too. Because technically, if you've got a Regional Recoveries Officer who's not a legal practitioner arguing the case, then an advocate can step up. But God forbid that a legal practitioner would want to step up, because then the Department's whole legal team will be standing there going... But the reality is that the Regional Recoveries Officer has access to the legal team. **(Legal practitioner)**

Having these matters heard in the Magistrates Court, with all its formality, is also an issue for some advocates, and certainly for vulnerable tenants. The reality is that they are likely to be unrepresented, including as there are not enough advocates to represent those in need. There is some question about whether Registrars or Magistrates Courts are just rubber-stamping the Department's take on a certain situation, especially where matters are heard ex-parte. The importance of advocacy in such matters is clear.

A gap in services, I mean, how do I put this? This is changing, thanks to Tenancy WA, but there used to be very few lawyers who would get involved in tenancy matters. If there's a problem in tenancy, it has to be resolved not in a Tribunal, but in the Magistrates' Court. So that's a bit of an issue. I'm getting a bit more experience now, just because of the number of terminations. I've had to learn as I go along. But there's a bit of a problem there, whether you're public housing or private tenant, in that disputes have to be resolved in a very formal Magistrates' Court setting, which is intimidating for less experienced advocates and for a lot of tenants. Certainly disadvantaged tenants. Even if we all were legally qualified, which we're not, or even if we were all legally experienced and gung ho, there's still not enough of us. You can actually, realistically, only do one trial a day, on the day that's set aside for tenancy matters. They're complex. It takes many, many, many, many hours to prepare for these trials. So it's a finite resource. It's often, you know, first through the door is the case that you'll be run with. Then you might have to knock back a couple more, or say 'Look, I'll take you through the adjournments, but I can't run this at trial.' Because we just don't have the capacity. **(Legal practitioner)**

One thing that I'd like to see addressed is during the [court] process when application is made for eviction, particularly social housing or public housing, whether the tenant's present or not, I want to see a change where the Registrar cannot make an order for eviction. I want to see that shoved upstairs to the Magistrate. Because there's too many – we don't even hear about them. They get rubber-stamped and they move on. **(Legal practitioner)**

In Perth, my experience is all s. 75As go straight to a Magistrate. Not all terminations, but all s. 75As. A lot of those are ex-parte hearings. Tenants won't turn up or they haven't engaged with the service. So DoH walk in and they talk to the Magistrate for half an hour, then they'll walk out with the order for termination. But it's not – it's changed right? A couple of years ago, they would all be in just with the Registrar, who's not supposed to make orders if the matter is in dispute. But often, they would. Even when the tenant turned up, they would

pressure the tenant to consent to something. So, I mean, it could still be happening in other courts... Out of metropolitan areas, that's happening. **(Legal practitioner)**

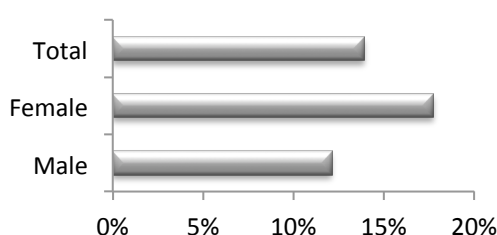
As a final point, one stakeholder thought that a tenants' stakeholder body could do some very effective advocacy around housing, with membership consisting of representatives from Indigenous communities.

One of the things that could be created is a stakeholder body by the tenants. That can be a go to place for tenants when they have issues, whether they be about maintenance or water consumption or just not being able to deal with the Department. If you've got a stakeholder body, that, for me, is pivotal. You need that there. It can be made up of Elders.... But it's lacking. These people don't have a voice other than us. **(Legal practitioner)**

4.1.4 Disputes Related to Supported Accommodation

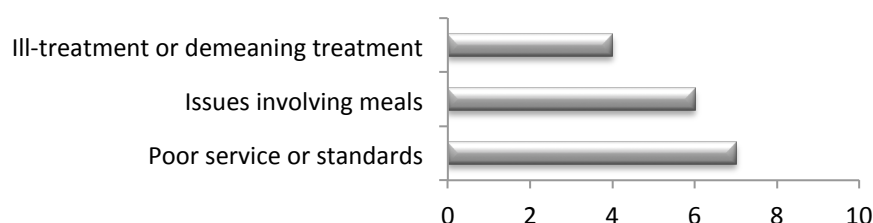
Figure 4.5 provides baseline data for participant responses to the question asking whether they had experienced a dispute or problem in relation to supported accommodation. Overall, **13.2%** of all participants identified a dispute or problem of this nature, with Indigenous women 9.4 percentage points more likely than Indigenous men to have had an issue arise in this area (17.7% of Indigenous women compared with 8.3% of Indigenous men) (See also **Table 4.5: Appendix C**).

Figure 4.5 Participants Identifying Supported Accommodation Issue or Problem



Many of the observations raised in the focus groups about supported accommodation related to hostels, and these observations were always made by women rather than men. Comments were generally about the rudeness of hostel staff and availability of food (See **Figure 4.6, Table 4.6: Appendix C**).

Figure 4.6 Reason for Supported Accommodation Dispute or Problem



In Balgo, the women were critical of a certain hostel used by persons travelling into Perth for medical appointments from regional areas.

At the hostel you have to buy your own food. When you go to hospital for appointment... There's the one place called Jewell House (?). That's the only time you go. And only get

breakfast, that's all, no lunch, no dinner. The Hospital don't pay for the food. And the people go there for appointment. Hostel, the Aboriginal Hostels. They only book there for the clinic. That's the only time you go, to get breakfast, that's all and you have to find your dinner... in the street.

.....

It's very hard because the people are running away... It's very hard for people from Balgo. It's very hard if there's an appointment, they go there, but there's no food there... And if there's family they take food off them. And then they have to go to the street and ask someone, find someone for food. Even the ones who are going for the hospital, for baby... or x-ray, they have no food... It's very hard.

.....

No one's got any money. That's why people run away from hospital. And you don't take your groceries when you're sick. You don't take your groceries when you go, so how are you gonna eat? Even when you're going to Broome, they put you in a caravan park all day or hostel. But there's no food in there, no blankets. One day I flew to Broome for my kidney scan. We went from Balgo. We got there. They took us to the caravan park to stay there. No blankets, only sheets for sleeping. And in the morning we had to go look for money for food and then to the hospital. It was very hard.... No food provided at hospitals and hostels.

Complaints in Laverton by the female focus group participants concerned similar (or sometimes the same) hostels.

A lot of people go to Perth, family member's in hospital and some of the family members go to (Jewel?) House... I heard that it's a horrible place. You have to have your own money in your pocket to feed yourself but then you have to share everything else with everybody.

Same in Desert (Rest) in Kalgoorlie... We have to buy our own food, walk all the way to Coles and buy it.

And very rude, aren't they? If you're not there at a certain time they'll chuck your stuff out.

They did it to us.

We were picking it all off the ground and putting it in the vehicle.

And they're supposed to be a Christian people. I've been to their church.

(Person named) came back round about 5 o'clock and everything was chucked outside... clothes, money.

We was all upset.

Same like me too, same hostel. They chucked my things out when I came from Perth.

We told them, 'We are Christian people. You shouldn't be doing that.' We had to rush around and ask them where our things have been left. They're rude people.

Same like me, they chucked my tablets out.

This time when I went for X-Ray, I packed my things up myself and put them outside where the rock is to keep them safe.

When you go there for appointment, it's same like what she said. They get my bag and they threw it out.

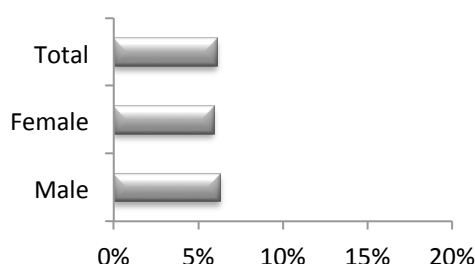
I came in after a meeting, when the meeting was over. They never said anything [about being late]. Even they changed our locker. We had a key with us and they been changed our locker. Some blanket was in the other cupboard. We was looking round for things in our locker but they was in the cupboard.

There was also one comment about a women's shelter. "We had a problem with the manager, she's got strict rules" (**Wyndham Women's Focus Group Participant**).

4.1.5 Other Legal Needs Relating to Housing

Figure 4.7 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, priority housing or seeking council approval for building applications). Overall, **6.1%** of all participants identified having sought advice or assistance for other housing issues (6.3% of women compared with 5.9% of men) (see **Table 4.7: Appendix C**).

Figure 4.7 Participants Who Sought Legal Advice for Other Housing Issue



The following comment relates to Department of Housing Keystart loans, and how sometimes they involve lending of large amounts of money to people who won't be able to make the relevant repayments – thereby setting them up to fail.

I've had a few clients come in with a Keystart home loan. That is done through Department of Housing. They obviously get some benefit. The interest rates must be lower... They only lend up to four hundred and something thousand. You won't buy anything here for that much. I do think there's issues with that, too. Like I have a client who's over income so he's going to lose his tenancy. They've been offering him a Keystart loan and really at him to do that. But he's 55 and they want him to take out a \$400,000 loan. That's just setting him up for failure. I was really surprised when he came in, telling me about that. No bank would be prepared to lend someone of that age that kind of money. Yes, so we've got a few of those. There are stricter – like I had a man come in and you have to live in the property and that sort of thing, when you have a Keystart loan. So there'd be a few of those out here. (**Legal practitioner**)

4.2 NEIGHBOURHOOD DISPUTES

Focus group participants were asked whether they had experienced a dispute or problem with neighbours over such things as fences or boundaries, noise, privacy or 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. Neighbourhood problems and disputes emerged as a priority issue for Indigenous ILNP participants: the second most commonly reported area of complaint or potential complaint. Need in this area was particularly pronounced for Indigenous women.

4.2.1 Nature and Extent of Neighbourhood Problems and Disputes

Figure 4.8 shows participant responses to the question asking whether they had experienced a problem or dispute with neighbours. This graph shows that overall, a significant **36.8%** 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 women identifying such disputes was twice that of men (48.8% of women compared with 23.3% of men) (see **Table 4.8: Appendix C**).

Figure 4.8 Participants Who Identified Neighbourhood Dispute

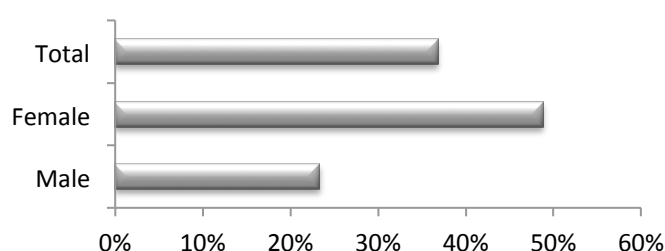


Figure 4.9 shows that participants in Balgo were most likely to identify an issue involving neighbours (90.9%) and those in Roebourne were least likely to do so (10.0%) (see **Table 4.9: Appendix C**).

Figure 4.9 Participants Who Identified Neighbourhood Dispute by Community

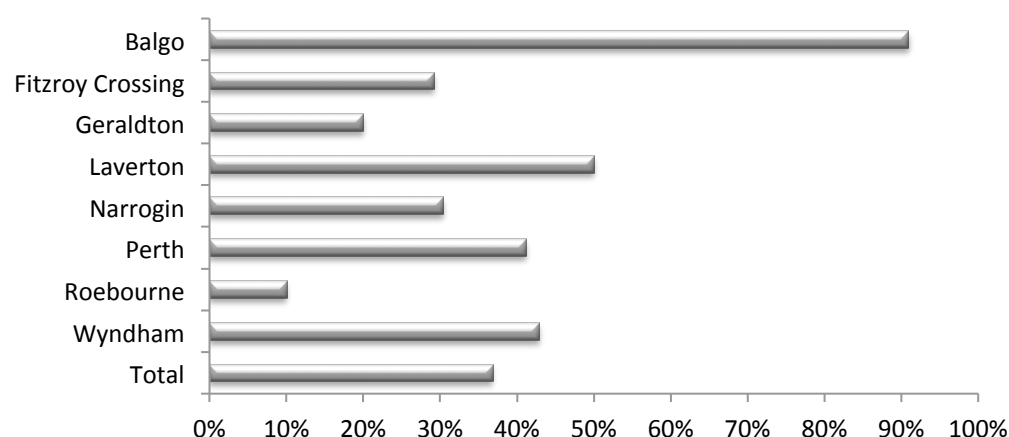
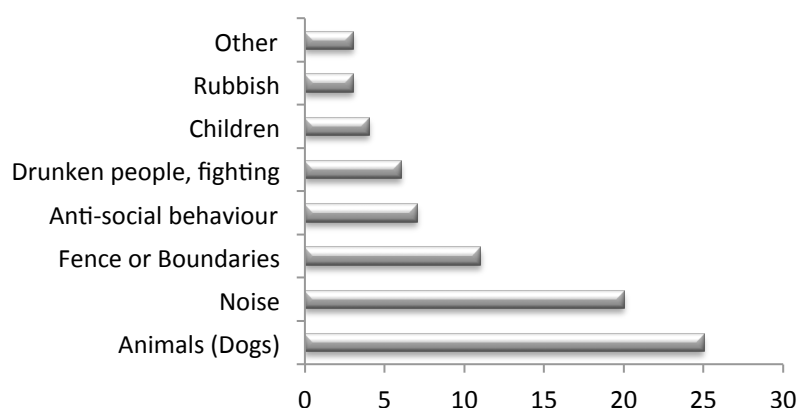


Figure 4.10 provides baseline data for participant responses to the question asking about the nature of neighbourhood disputes experienced. A total of 55 people identified 79 issues related to

neighbourhood problems. Of these 79 issues, dogs (25 participants) and noise (20) were most commonly identified as the basis for disputes or problems. ‘The biggest problem is noise and dogs’, states a Roebourne women’s focus group participant. These two issues were followed by problems with fences/boundaries (11), ‘anti-social behaviour’ (7), drunken people or fighting (6), children (4) and rubbish (see also **Table 4.10: Appendix C**).

Figure 4.10 Reasons Identified for Neighbourhood Disputes



Noise

Noise was a common problem area; noise that both emanates from participants’ own homes and from those of their neighbours. It includes fighting, kids and loud music, with incidents in question quite likely to lead to breaches under Homeswest’s three strikes policy (see section 4.1: Housing). It can be difficult to resolve these issues directly, claimed some focus group participants.

There’s always, yes, a family conflict. Disputes probably more are over loud music. Like I’m thinking one client that plays his loud music. So now he goes and plays that at the rotunda in the old village because, yes, they would play it every weekend. But no, disputes – there is a bit of conflict. **(Legal practitioner)**

People coming in, people drunk, waking up the neighbours, people crying, family and friends. Neighbours shouting. No respect for people trying to sleep. I tried to sort my problems out with them today and forever but they can’t listen to me, the words go in and out. **(Laverton Women’s Focus Group Participant)**

Singing... singing’s annoying me. From young people, you know that rap music? Loud music, its noise till one o’clock, two o’clock. Noisy kids, running kids. **(Balgo Women’s Focus Group Participant)**

In the Wyndham women’s focus group, one particular non-Aboriginal neighbour attracted criticism.

We’ve got kids coming round, music, a little drink.... We can’t even have music on while he’s around without him (non-Aboriginal neighbour) complaining. It’s not even midday and police are coming around to my house.

What is a white man doing among all these Aboriginal people? He’s causing real problems.

Always get the police over if you make one noise.

We've got human rights too.

Fencing

Disputes or problems concerning fencing and boundaries arose, for instance, where lack of appropriate barriers meant that people couldn't keep dogs, adults and children safe and/or stop others from entering their homes. People reported cars driving into their yards while they were sitting down playing cards.

We still got no fencing out back. It's ongoing. Place that we rent from Aboriginal Housing. Been like that for two and a half years now. They said they was going to come last Friday but they didn't show up. We had dogs wandering in there. Our son's dog, looks like he got into a fight when we wasn't there, cause he had a cut under his eye. Our neighbours out the back who just rebuilt the place they got there now, they put in for the landlord to pay half of the fence. But they never come to the party. So the fence is still down. My husband just made a makeshift one. We've been trying and trying to get them to do it. When (named advocacy organisation) was up there they reckon they wrote letters and sent photos but nothing happened. It's not fixed. **(Narrogin Women's Focus Group Participant)**

Other people come into our yard. **(Narrogin Women's Focus Group Participant)**

The following quotes came from the Balgo women's focus group.

Some of us haven't got a yard in our houses. No fence around the house. No fence to keep the dogs in. The kids can run on the road. We keep on asking them for fence. Nothing. We need a fence.

When we get first new homes, we asked they get fences fixed. We asked for fences, we asked and we're still waiting. They don't do something. Nothing happening... Yeah, we got this big problem. It's dangerous, eh. Nothing, we been asking them to put fence around, nothing. Nothing has been done... And we need more fences in the homes. We need fences. They drive in. Too many grandkids and too many dogs. Everyone going nuts in that place!

Yeah, and the cars drive in while you're playing cards.

House is...casino. When I see them, I ask them, 'When are we gonna get own fences, like the new ones?' We're still waiting for our fences to be safe, you know, for our kids. It's dangerous.

How we gonna get any fences? We need speed bump near our homes, speed bump... It's because we got old homes.

Yeah, we want Homeswest to put up our fences. All we want is to put up fences. Too many grandkids [in danger].

Dogs

Participants had problems with numbers of dogs, particularly on more remote communities. They also recounted stories of incidents involving particular dogs.

Neighbour trapped his daughter's dog, had to ring the police. **(Wyndham Women's Focus Group Participant)**

There's too much dogs here. (**Laverton Women's Focus Group Participant**)

(Named person) was away and she had puppies at the house. The puppies were well cared for. They're fed. They got water and everything. The neighbour from the other side of the house was complaining "Oh there's dogs there, they're starving." They got the Shire to go round there. They said were undernourished. (**Laverton Women's Focus Group Participant**)

Racial discrimination and neighbourhood disputes

Complaints raised by one neighbour against another are sometimes racially based, as noted in the discussion above relating to DoH's three strikes policy (see also Section 4.1: Housing, Section 4.3: Discrimination).

The non-understanding of things like... A lot of my Aboriginal clients, when I go around to visit them you sit in the carport on a really old couch. You don't sit in the house. Often the back garden's not really got much grass or trees. There's normally a good big council tree out the front. So, you sit out the front. The neighbours don't understand these concepts at all. And that's the difficulty with the Department [too]... They've got no idea that that is the way of life. They don't sit in their houses behind closed doors. You might sit behind a closed door and get drunk and the neighbours won't know. They would sit outside so any view of alcohol is public. ... They don't have air-conditioning. They don't have good insulation. The curtains are only what they put up. They're a lot more noticeable and this is what creates a lot of these neighbourhood issues. (**Indigenous community organisation worker**)

And there's racists, like against the children. Children can't even play in the backyard. I had a client last week, two of the strikes where child related. Because the neighbour's dead set on getting them out. (**Legal practitioner**)

But racism in neighbourhood disputes is broader than the impacts and/or process of implementation of this policy alone. It might also occur where a housing provider 'takes the word' of a non-Aboriginal person over that of an Aboriginal tenant when there is a complaint made. "Complaints about an Aboriginal neighbour who then gets kicked out, and [DoH] not really being fair about it," is an issue, according to a participant in the Wyndham women's focus group.

Community feuding

One issue that came up to a certain degree was community-wide feuding, in contrast to problems arising between just one or two neighbours. This is often rooted in long-standing conflict between particular Aboriginal families and as such it has no racial or racist element. Housing authorities allegedly do not always pay sufficient attention to existing conflict in the allocation of properties, thereby 'fuelling the fire' between feuding groups, so to speak (see also Section 4.1: Housing).

Another thing I remember at the time was that the principal solicitor that I was working with, he was really pushing the fact that Homeswest, at the time, weren't taking family groups into consideration at all [in allocations]. So all these family groups were saying from the outset, "We do not want to be close to each other. We're feuding." They were being placed very closely in areas. Next door. So all these things were blowing up... So there was just the suggestion that even before, you know, the stuff that should be done before people are – you know, that people should be placed culturally appropriately in public housing, rather than just

thrown in together. There were riots as a result of that. They were all in the street. Yeah. It was massive, at that time. **(Community organisation worker)**

We had some people that were going into... houses. They were ex-police houses, because you would have seen they've built the new police compound up there. So, of course, those... houses became available. It was kind of classed as emergency housing. It was actually the people – the families that had the holes in their bathroom floors were moved into these vacant properties. I know that when they were being moved in, they were saying “Oh, we're not quite sure. We've had conflict with that family across the road” and that sort of thing. **(Legal practitioner)**

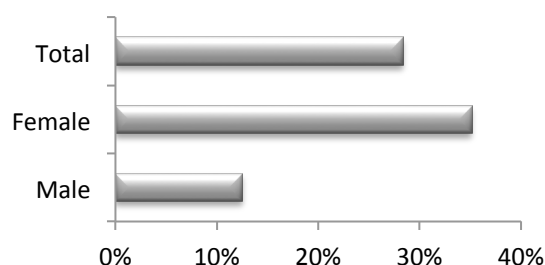
Dispute resolution [is needed], because there's a lot of family feuding... It's not adults that's causing it, it's the younger ones. That is a huge issue because lots of people are in conflict here. I usually have a problem with a neighbour. Their family side is fighting with my family side. I've got my family on this side, their family on this side. This town is stressful but it's been like that for years. I just didn't want to say anything before but I do get neighbour problems. It's happening a lot. **(Narrogin Women's Focus Group Participant)**

Neighbourhood disputes. That's an interesting one up here. Does that include family feuding in communities between families? Feuding between families does become a significant issue up here, from time to time - probably in some communities more than others. I suppose the point where we normally get involved in that kind of matter will be when people start asking for restraining orders left, right and centre, trying to take out violence restraining orders against each other. We played a fairly significant role in, I think - I suppose, an advocacy role in one sense, but also in another sense, we've certainly been encouraging people to engage in alternate dispute resolution. **(Legal Aid staff)**

4.2.2 Neighbourhood Disputes and Obtaining Legal Advice

Just over a quarter of those experiencing problems in this area (**28.3%**) had sought assistance to resolve relevant issues (see **Figure 4.11**). The proportion of Indigenous women seeking legal advice for problems of this type was 22.6 percentage points higher than that of Indigenous men (35.1% of women compared with 12.5% of men) (see also **Table 4.11: Appendix C**).

Figure 4.11 Participants who Sought Legal Advice for Neighbourhood Problem



For some legal services, becoming involved in neighbourhood disputes by providing advice or assistance for one person or another was pretty much off limits as it is far too problematic to be seen

to be taking sides, especially in smaller communities. Legal conflict is also a live issue. The following comments also illustrate how such civil law disputes can intertwine with criminal law matters.

Because the majority of our clients are public housing tenants, we wouldn't generally get involved with neighbourhood disputes because of conflict. Because that may then result in a public housing tenant getting evicted or, you know... You wouldn't be able to offer services here. The communities are small. Everybody's related to everybody. If you started interfering – getting involved... **(Legal practitioner)**

Certainly, I suppose, that's in the background of lots of things because that impacts on our criminal work as well as our civil work and our family work, in particular communities at particular times, when there is feuding. ... Feuding can escalate to criminal law. Yes, so with some of the - I don't really like the term feuding, but when there's an altercation between two groups, which are often along family lines, there will be criminal charges that go along with that, as well. As well as the inevitable restraining orders that people come to get advice on. It has quite an impact on the legal service, because if everyone comes to get restraining order advice, it creates all sorts of problems with conflicts. Because once we've given someone advice on a restraining order, if there are criminal matters or any other matters, we're kind of stuck to representing that person or group of people who have come in for that advice. But that's where [the legal services have] all got a good relationship so we can try and work through all those conflict issues. **(Legal Aid staff)**

Some people might say there's too many legal services for a small town, but [we] absolutely need all the legal services that are here. Because it still becomes difficult, sometimes, with [legal] conflict. I just don't know how ALS used to operate by itself in the East Kimberley because until five years ago, they were pretty much it. No idea how they did that. **(Legal Aid staff)**

Another example of the interconnection between criminal law and neighbourhood disputes follows.

But there has been violence. Yes, one guy helped his partner – his partner, she was bashed up [by a neighbour]. It was just alcohol-fuelled violence. Yes, she was beaten up pretty badly. **(Legal practitioner)**

In general, most organisations don't seem to hear much about the more traditional type of neighbourhood dispute (fencing, noise), other than perhaps where things escalate to the point where people need restraining orders.

But they don't actually dispute – they just suck it up and ask for a transfer. **(Legal practitioner)**

It's interesting. We don't really get that many queries about [regular neighbourhood type issues (dogs, noise, litter etc.)]. We would probably have more queries from people who have dogs who have been threatened by the Shire that their dog's going to get put down. We do deal, I suppose, with misconduct restraining orders. People come in to get advice on those things to do with a neighbourhood dispute, as well. But not too many on fencing and litter and noise. **(Legal Aid staff)**

Problems between neighbours may not evolve into a full-blown legal dispute if they can be effectively mediated. The Aboriginal Mediation Service⁵⁵ has been used in some communities to address conflict. However, it is suggested that non-Indigenous neighbours are more likely to lodge a complaint against their Indigenous neighbours and not mediate to resolve it, so it then becomes a strike or breach.

Whole lot could be said about family feuding in Narrogin and about dispute resolution as a means of de-escalating the problem. There's a lot of family feuding happening here.

(Narrogin Women's Focus Group Participant)

If it's two families, one wants to move because of another family, we try to get the mediation team happening.... At one stage, we couldn't get a lot because of the conflict between the two families. If it's non-Indigenous and Indigenous the neighbourhood disputes are a bit better. But then it's very rarely you'll find a non-Indigenous person will come to the party for mediation. So that creates problems as well, which then converts to your housing and tenancy because it's a 'strike'. **(Indigenous community organisation worker)**

We've made several referrals to the, I think it's called the Aboriginal Mediation Service now. We've had some not so good experiences with the agency, but we also had some good results, more recently, with mediation. It has come up to Kimberley. So if we advise our clients that it may be a way forward, we assist them to make an application to the service. Then they will send somebody up. They've got some quite prominent mediators on their panel.... I'm not sure what their guidelines are. But I had one in Halls Creek last year that they sent someone up. Actually, well there was more than, there was one applicant, but several respondents. But yes, they sent someone up to do that. **(Legal Aid staff)**

4.3 DISCRIMINATION

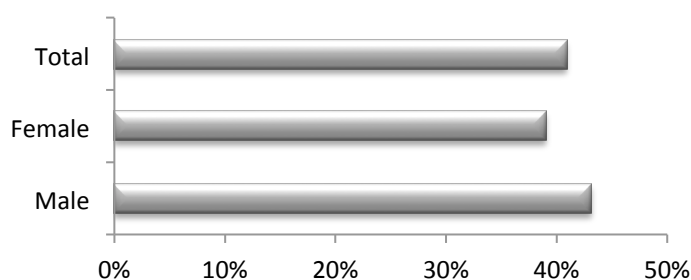
Discrimination emerged as a significant area of priority need during both focus groups and stakeholder interviews. Focus group participants were asked whether they had experienced racial or other types of discrimination over the last couple of years (including on the basis of age, marital status, gender, 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.

4.3.1 The Extent of Discrimination

Figure 4.12 shows that overall, **40.9%** of focus group respondents identified experiences of discrimination, with Indigenous men identifying such experiences at 4.1 percentage points higher than Indigenous women (39.0% of women and 43.1% of men) (see **Table 4.12: Appendix C**).

⁵⁵ See Aboriginal Mediation Service website:
http://www.department.dotag.wa.gov.au/A/aboriginal_alternative_dispute_resolution_services.aspx

Figure 4.12 Percentage of Focus Group Participants Identifying Discrimination Issue



Discrimination, and in particular racial discrimination, was identified in focus groups as a pervasive problem. It is seen as residing in many different areas of life, which is partly how it intersects with other civil law issues as discussed throughout this Report, including consumer law, education and housing.

In describing the extent of discrimination in Indigenous communities, women in the Narrogin focus group believed that “it comes out in employment, private rentals, aged care stuff. It hasn’t happened to me myself, but to other people it has.” For these women, their community “is the biggest racist town”. In Laverton, the men were asked what the most serious problem was they faced. “What sticks out the most, I reckon discrimination.” “The whole town!” Women in Roebourne thought that discrimination “happens anywhere”, “mainly at the shop, right here”, “even in the hospital too”, and “police station another one”.

Stakeholders agreed that it touches everyone, in both metropolitan and more remote locations. “Racial discrimination’s a big issue in WA, in particular”. “It’s both regional and within Perth” (**Indigenous Legal Service staff**).

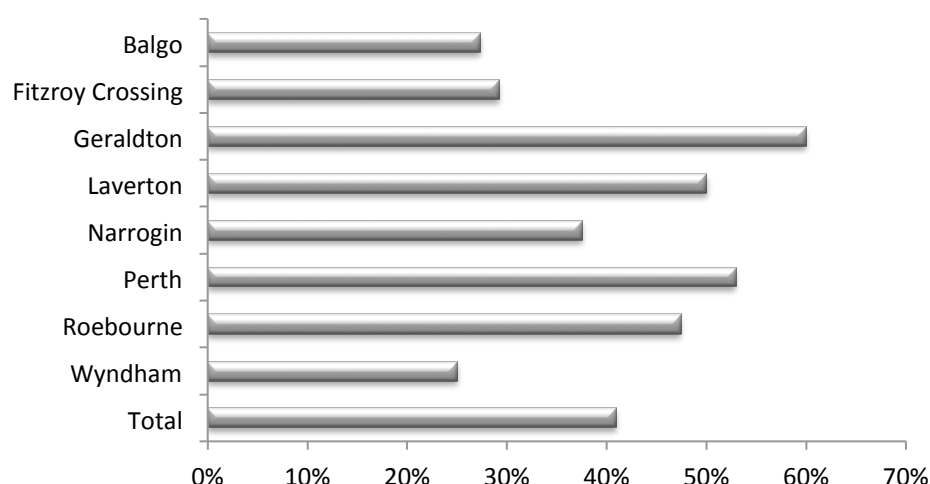
Indigenous staff members of one stakeholder organisation perceive racism as operating institutionally, within the highest levels of government. They spoke about the apology to the Stolen Generations offered by Rudd “four, five years ago”. “Well he got pulled down the line, didn’t he?” “He got hung out to dry.... Nothing’s going to change. None of it will ever, ever change until the parliamentary bloody mob get people like us in their cabinet, you know?” “Let us take over and be the Minister of this and the Minister of whatever. You know, they need people like us, from the ground up, to be in those places. Or they need to employ people to work with those [high up]...” There was also some comment by these same workers that things have changed in recent decades, but that it is a “slow process”.

Racial discrimination, in particular, is one civil law issue disproportionately and negatively impacting on Indigenous people, as ‘mainstream’ society (excluding of course persons of diverse cultural and linguistic backgrounds) is not subject to race-based inequalities to the same extent.

I think the kinds of [civil law] issues that might be a priority for Aboriginal people are different to non-Aboriginal people. So discrimination isn’t so much of an issue if you’re not Aboriginal, or at least not on the basis of race. It might be other things that you might be discriminated against for, but that’s probably not one of them. (**Indigenous Legal Service staff**)

As **Figure 4.13** shows, participants in Geraldton were more likely to identify an issue of discrimination and those in Wyndham least likely. (See **Table 4.13: Appendix C**)

Figure 4.13 Participants Identifying Discrimination as an Issue by Community

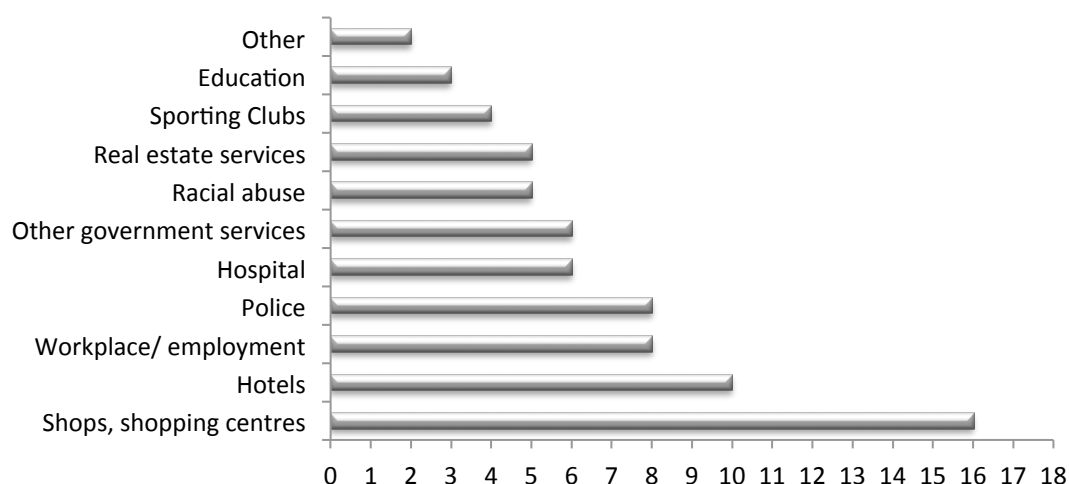


4.3.2 The Nature of Discrimination

Participants were asked to identify the nature of discrimination experienced. **Figure 4.14** indicates that 53 individuals identified multiple areas of racial discrimination. Access to places and goods, services and facilities are the main areas in which such discrimination is said to have occurred. Of the 73 incidents identified, problems most commonly arose in relation to shops and shopping centres (16 participants); hotels (10); employment and police (8 in each category); hospitals and other government services (6 in each); as racial abuse and through real estate agents (5 in each); in sporting clubs (4); and in education (3) (see also **Table 4.14: Appendix C**).

The fact that the issues or events specifically identified as discrimination were restricted to particular types or grounds (race) is more likely to be a reflection of a narrow understanding of what might constitute discrimination at law, than of the extent to which unfair or unequal treatment is occurring across ILNP communities. It is important to note that types of discrimination other than that which is direct and race-based, as well as further examples of racial discrimination were sometimes raised in discussion concerning *other* areas of law. An example of this includes focus group participants' comments about their experiences of employment or education. Stakeholders too talked about discrimination on the basis of criminal record in employment, disability discrimination in housing (tenancy), and indirect discrimination and inequitable outcomes in the implementation of government policy (including the disruptive behaviour management policy of DoH), for example.

Figure 4.14 Nature of Discrimination Nominated by Those Who Identified it as an Issue



Shops and Shopping Centres

Focus group participants talked about racially discriminatory service in shops. In Roebourne, the women complained that “The shop don’t serve you, they stare at you”. “I was the first one there, but the lady at that desk called the one behind me first!” Other comments follow.

That [named shop - unclear] is a bad place. I never go there anymore. He just looks... .. And, I only go there once in a blue moon. He just watches you, and you’ll move into each aisle, and he’ll watch, and I can’t handle this. **(Geraldton Women’s Focus Group Participant)**

Someone stole my lamingtons and my cakes. I was going to have a couple with my mum and aunty [named] and Nan I think. And um, it was a few dollars, but I thought, nah we haven’t had morning tea for a while so I went right back, and I went back to the shop, and I said, “Look, my lamingtons and cakes aren’t in here”. Anyway, when he checked the video camera, it was a white woman who took my bag, my shopping bag... (Everybody laughs). She nicked my stuff! I know her face. But I haven’t seen her around town. But, it was sort of no big deal to him, you know, and he showed me the cameras and I thought, well, no-one would get away with stealing in there because the cameras just see everything. **(Geraldton Women’s Focus Group Participant)**

I just want to mention about racism in this town. It’s been alive and well in Geraldton forever and a day, and it’s still happening. I had something that happened on Saturday going into one of the shops ... and I said to them “I know that the security guard has a job to do, but I come in here. I’m a genuine customer. The security guards need to work out who’s genuine and who’s not and by now, they should have a list”... I laid up nearly fifty odd dollars for clothing for family up north, and all the time I was there, he’s standing in front of the shop. He never moved and it made it so noticeable. I suppose I notice these things, and I... was just getting so angry about it... So I ended up going upstairs, to the place, the appropriate place to go where the security guards are. And, I said, “It’s not the first time that I’ve [had problems] with the same security guard there.” The things that affect me - if I see my people being treated badly I’ll go and have my say about it. And, I said “This little child was wandering in that shop there.... There’s other families and their children there, but because this young boy was a little Aboriginal boy...” I wished I’d of had time, I wished I’d of

dropped what I was doing to go and find the mother... So, I gave all that complaint to the person concerned... I said, "Isn't there an approach, a community approach that you can give your security guards? Ok, you catch people shop lifting and doing all those things. We know those things are alive and well.... But your people do it as much as our people that are doing it. They're the one's that get caught and the white [person] is pocketing things in their bag. You don't search their bags." This is where I'm coming from - fairness, you know. And, that poor little child, I said, "That security guard [said] 'What are you doing here?'" Well, of course he should have the intelligence to work out that a little child was there with a mother. I said, "He could of said in a loving way 'Oh, take me to your mummy' you know, but there's none of that. Just 'What are you doing?'" He intimidated the little fella. Yes, and that's what that man [does], and I've had run-ins with him before, with this same thing, looking for the Aboriginal woman from that ... All the sections of the supermarket, he's following them. I said, "There was two mothers I watched one day. They had their trollies chocker block of money they'd spent in that store and yet this security woman, she was, followed them through every aisle. Meanwhile, that white person might be pocketing whatever, whatever they can, you know." So, I said "That's where I'm coming from. I'll speak up every time if I see unfairness, you know." I can't turn a blind eye. But it's alive and well in Geraldton. And, it hasn't changed from when I was a single woman you know... But that it's, that racism. We're fighting that all the time, in the housing, you name it, every public place, the supermarkets, the shops... Yeah, just so you know. **(Geraldton Women's Focus Group Participant)**

Or they ask you if you've paid for it – the kids, if they've got something. **(Perth Women's Focus Group Participant)**

Stakeholders confirmed the general accuracy of these accounts.

Being stopped by security, being challenged by checkout staff or the manager, having your bags searched, kids allegedly grabbing stuff off shelves.... It would be the same around Australia. **(Statutory Authority staff)**

Spraying stores just after Aboriginal people leave the store is coming up quite frequently, you know taking a spray can and spraying the store... We've just come back from the Pilbara, and one Aboriginal woman [spoke of] where they had taken the seats... out of the shopping centre in the hope that Aboriginal people wouldn't sit there... **(Statutory Authority staff)**

We saw a lot of discrimination in regard to businesses and Indigenous consumers, which certainly could come under civil law. ... [We] saw, in one shop there – I don't know if you've still got that photo of – they'd put a sign up in the shop. Was that in Mount Magnet (or Meekatharra)? But they basically, they were outright racist in the shop, whereby Aboriginal consumers were treated differently or perhaps not even allowed into the store. And it's the only store, really. Well, the main store. Your next store is 100 km away. **(Statutory Authority staff)**

Stakeholders were asked whether the issue of racial discrimination had been raised with them in relation to deliberate targeting of Aboriginal consumers with scams or rip-offs. One stakeholder indicated that Aboriginal consumers mostly complained of more direct or blatant discrimination in shops, as above.

There are a couple of celebrated cases early on in the legislation, one involving a car mechanic.... So we do occasionally, it's not just the public places, but occasionally

there'll be an allegation that someone's been ripped off, not getting things back despite repeated requests, or the price of something suddenly going up. But it tends to be more the complaints of supermarkets and shopping centres, being followed, put under suspicion. **(Statutory Authority staff)**

Hotels/Pubs

Another fairly commonplace area of complaint involves hotels/pubs – of not being served, not being allowed access.

You know, “You’re too drunk” or they don’t want to serve you. We have our moments with these people. **(Indigenous community organisation staff)**

We’ve had matters recently in the Goldfields where people weren’t permitted inside pubs based on their race. We also had a matter recently in Perth at the last election where someone wasn’t allowed, wasn’t served because they were Aboriginal and the liquor store said “We had an incident yesterday with an Aboriginal man and the police told us not to serve Aboriginals.” So it’s something that we frequently come across. **(Indigenous Legal Service staff)**

In Laverton, the men had the following to say about a local pub.

I think that pub’s a bit of a problem too as well.

Especially one barmaid there...

There’s a barmaid there that is very bad towards Aboriginal people.

Steeped with racism.

Yeah.

And, I think she’s the manager.

When I took [named person] the other day, he asked if we could get, oh god, a couple of cartons of Carlton Dry. She reckons no, it’s only one item per person. And he said, “Well, I came here the other day” and she did serve him and gave him two. And because he said, “I want to see the manager”, she busted out oh “Yes, I’m the manager”.

It is clear that Aboriginal people may find it hard to take on publicans around discrimination.

We were all drinking at a pub. They knew what they called ‘the white people’ at the next table.... They were both ordering jugs. They allowed the whites to have an extra jug. They told my [Aboriginal] group that they could go to the bottle shop and buy bottles and take them home. And they’d had the same amount. We took that one to Equal Opportunity and they had to apologise. But the clients actually didn’t want to go ahead with it after we’d started at Equal Opportunity. They just felt that it was all too much and they would go and find somewhere else [to drink]. **(Indigenous community organisation worker)**

Police

Complaints of discrimination in relation to police came frequently in focus groups. In Wyndham, women in the focus group spoke of differential treatment all round - both over-policing *and* under-

policing. Police are “not doing their proper job... They don’t do correct statements... Sometimes there’s an argument going on, the police do their own statement” rather than take down the complainants’ version of events. Other comments from participants and stakeholders follow (see also 4.14: Other Civil and Family Law Issues).

With discrimination, my partner got pulled up with an RBT on Friday night at about 10:30, 10:45. They not only did an RBT on him, they did a drug search on him, on the car, went through his phone and then put a yellow sticker on him, for a crack on the windscreen that was no bigger than a 10cent piece. **(Wyndham Women’s Focus Group Participant)**

I owned a car and within three months, we had five yellow stickers.... The police, they are the law, they are not the mechanics... Who are they to say that this is wrong? You can’t have a clean engine without a water stain. It’s meant to be there. **(Wyndham Women’s Focus Group Participant)**

I was unlucky with my brother’s rifles. One was bought in ’64, another bought in ’73, my father’s rifles. When he passed on it automatically went to my older brother. Then he passed away too. It was sudden... For safekeeping we put them in the police station until my son got a gun licence. So I signed the papers and everything to keep them in safekeeping. Somehow... the (new) sergeant came in and he confiscated the whole 3 of them rifles. I went in and asked “What happened to them guns?” “Oh we had to confiscate them”. I said “But I signed papers for them to be in safekeeping until one of us get a licence”.... They done nothing about it, they never contacted us to say “We’re gonna do something with these guns. What can we do?” They just went ahead and destroyed those 3 rifles, all in working order. I’d like to get compensated for that cause that’s like a family heirloom. If it was a white man they would have contacted us and said “Hey Lydia, we got these guns here. What do you want to do?” “Give us back to us”. But because I was a black person they just destroyed them guns... Three rifles, shotgun, 22 and a magnum.... They don’t do nothing for Aboriginal people in this town. **(Laverton Women’s Focus Group Participant)**

[Police] have really scaled back since we’ve been here. But when we first got here, we had quite a significant number of police complaints. A lot of which, I think, could be fairly described as discriminatory practices by the police. We’ve assisted them to make complaints, both locally to district office and to the CCC (Corruption and Crime Commission), as well. **(Legal Aid staff)**

The following conversation took place in the Laverton men’s focus group.

Before we started cleaning up the village, we had um, well they used to drive around people’s backyards – this is half past eleven at night – and they’re shining their spotlights into people’s backyards. Now, people... - because it’s just finished the warm season now and people like to camp outside - and the cops are going around at half past eleven at night shining spotlights on them. But now they’ve blocked it all off.... Well, there’s a few places like up around my joint, I haven’t blocked it off yet, and they’re still doing it, after we’ve cleaned it up. Before it was clean, they wouldn’t go driving down there.

When they do drive in, a couple of times I’ve been drinking on my lawn, on the veranda and they’ve shut their lights off, shut their motor off, coming in through the main gate, and they’re just like rolling into the community.

[Is it an offence to drink on your veranda or...?] **Facilitator**

Well it must be because I've got done for disorderly conduct in public on my driveway, right up on my driveway, inside my yard! Disorderly conduct in public.

They came to my house.... They turn their headlights off and roll straight through ... and turn the engine off, got out of the car and walked straight to my back veranda and grabbed [my son] and walked straight back to the [van?]... I had to get out of bed, and put on clothes and get in my shoes, and by the time they had him on the veranda, when I got to the veranda, I said "What are you doing? Aren't you supposed to knock on my door before you do anything? We've got our rights. We've got our rights." He's 21... But he didn't get a chance or anything.

But the thing is, what [participant's name] is trying to say is they've barged straight into his house without even... [a warrant]. Yeah, and then turn around and say, "We've got every right to just walk in."

Even when we are drinking in the pub, we walk out, cops watch us. Yet, you go sit outside the pub and see how many white people come out of that pub drunk.

Driving!

I was in the car with [unclear], you know. We went to a party, pulled up at a party. Me and my mate jumped out, stood against the fence. The girl that was driving the car, blue drunk, she was pissed out of her head, and they walked to us and asked where our alcohol was instead of going to the driver....

She's way over the limit and she's allowed to drive off. And these fellows have nothing in their hand...

And they come and ask where our alcohol is. What the fuck?

And there's another one. There's a guy that bought beer from the pub. Walks up to the reserve, the cops pull him up. Ask him what he's doing with the beer, the piss. Where's your receipt? And he didn't have a receipt. Well he bought the carton of beer. So the coppers asked him, "Where's your receipt for that beer?" and because he didn't produce it they actually took the beer off him!

Two ladies walked out of the bottle shop, the drive through. They walked out of it. They've walked out of the pub, the drive-through, and the cops breathalysed them. Put them up on the street and breathalysed them and they were carrying a carton. Two old ladies!

I seen that. I was parked at the shop watching them.

The group then discussed the prohibited liquor signs they believe have been placed on social housing properties without consent of the tenants and the policing of the associated liquor restrictions (see also section 4.1: Housing).

There's quite a few out at the village there [that have signed up for Alcohol Management Plans] a lot of them have not signed there. So they can put their bloody stickers on there while the owners have not signed for it...A lot of them haven't signed it, and

they've still got all these signs up on their door. And, they're going in there, having a beer in there then all of a sudden the cops come in.

[Why do they have the signs on the doors?] **Facilitator**

The cops just put them up!

They done it to all the units.

I think they only use it to give them more power to get into your house...By rights, that should go through court, and the person who's in the house, they should ask for that permission. Dry house.

[So you just wake up in the morning, and there's a sign on your fence?] **Facilitator**

Yep. Yes.

Well, they had little (named person) doing it at night. I was driving down the street and I seem them putting it up at night while everyone is sleeping in the front yard!

They rip the wire meshing off the windows! To get in!

[Did anyone take the signs down?] **Facilitator**

A lot of them have taken it down.

Because they all drink.

But they just come back and put it back up again.

[Do people feel too pressured to complain against the police?] **Facilitator**

I reckon they do.

Yeah, course.

Because if you have a look at some of the issues that go on with the cops up here, a lot of the charges get dropped so they don't follow through with it. Some of the charges they get people for, they're that ridiculous, they drop the charges after they deal with them. That's harassment.

One of those guys was sitting under the tree out there minding his own business. They gave him a move on notice, and charged him for being on a public oval. He's out in the village under a tree.

They stuffed him over here and charged him for sitting on an oval over here. Load of crap!

We were discussing how the young fellows use the swear words and all that and we left the party where all the noise was and as we were walking across the oval, the coppers have got a complaint. I don't know where from. And because they can't see anyone else, they've spotted me and the Mrs walking across the oval. "Oh well, we'll have a go at them. We'll charge them"... And we got done for 'disorderly walking home'... So, I reckon you'd be better doing crime in town because they're always at the village!

Trying to complain about what is perceived to be police harassment feels like a pointless exercise to the men in this group.

It's like they ignore you if you go in there and complain, which I haven't done, but...

It won't go nowhere.

Like if you want to go and make a complaint, harassment and that, if you go to the police station, and, like that's as far as it's going to go - the front desk.

In Geraldton too, men and women had something to say about what they felt was unfair treatment by police. The women's comments are as follows.

What about the police, the police here?

Um, they're really discriminated (discriminatory) against Aboriginal people.

Well, we've got some Aboriginal people that are alcoholics, ok, and they walk around here in town. I've seen one officer or two officers tackling a drunk man down, nearly- half nearly breaking his arm. Now he, you know, he couldn't even defend himself how they grabbed him. Telling him to, you know, 'F up' and everything, swearing and carrying on, you know. I got really hurt by that, seeing one of my elders getting dragged in like that there, you know, into a paddy wagon. And he got a busted up foot and everything. At least, you know, could of gave him a bit more... not comfort, but being a bit more understanding more or less. You know, he might have had problems that day and that's why he was blue drunk walking around. But, yeah, it's just the police and the attitude with the police around here. They're all painting every Aboriginal with the same brush.

The men in Geraldton stated the following.

Like, a few years back, me and my mates were at a fair down town here, and we didn't know cops were coming from behind us. We were just walking along the path. And they drove past and they were like 'F off you Black Cs'. And, we didn't even know they were coming. Just out of nowhere drove past swearing at us.

And for police too in their response to incidents happening.... It involves my, because I live in a block of units, five units, they call there on different occasions and they take their time to come there, which in that response time, troubles happen. So, they could have been a lot more quicker to come stop the incident going ahead. And, you're not going to sit inside your house with people screaming and yelling at your front. You're going to go out there and say something. You know, "Go along, I don't want you here. I never invited you here". But, the police because, you know, they get called to my place quite regularly, I think they've got a bit complacent in their attitude. So, they think, oh, it's (named person) and that again. But their early response could avoid a lot of troubles.

Yeah, they don't come quick enough. It's always two, three hours later, four hours later. It's always after it's all finished.

Yeah, there's certain places in town...

And, I don't know if you can tell if you own a house or whatever you buy a house, but if I call the police over there've been there straight away. But um, I know that at other places, you

call them on Bogle Way when something's happened. "We'll wait and then we'll go in afterwards".

Yeah, they're quicker on Bogle Way, ah. They're pretty quick.

Let them kill each other first, and then they'll go in and then they'll have their turn.

Services

Discrimination was reported to have occurred in the context of government and non-government service delivery, including by health services and in taxis.

About five years ago, or six years ago... I actually believed that a lot of these fellas here, a lot of the Aboriginal families around here weren't being done right by, particularly through the hospital and the health service that was available.... At that particular time, they were planning on closing the hospital. So we fought with the hospital to stay open, because they were going to, of course, make it a little whatever, clinic type setting.... But to be honest, people were actually dying at that particular time because of the lack of service and of respect for human life. **(Indigenous community organisation staff)**

In Geraldton, the men talked together about taxi services.

Even like taxi services as well. They're like very racist.

Yeah, [they want] your money up front.

Um, it takes forever to get to certain spots, certain areas.

Because a few blackfellas jump the taxis but they think every black person is going to do it.

Yeah, they think every black person is going to do it.

In terms of health services, Laverton women spoke of the hospital in Kalgoorlie.

These three ladies here were in the hospital in Kalgoorlie. Some nurses are rude. The thing with the hospital, if you're flown down by Flying Doctor once you're well and better the hospital discharges people... When people say, "I'm just going to go for a walk to the shop or back".... [for smoko or something]... And when you come back, they say to you "Oh you left the grounds, you're no longer our responsibility. So we can't fly you back to Warburton or Laverton, you have to find your own way back." If you get flown to Kalgoorlie or Perth, it's their job to fly you back.... The nurses and the sisters of the matron, they are very rude and very arrogant towards the patient.

The participants were asked if they thought this was because they are Aboriginal. "Yeah, got to be", with a number of participants also perceiving that Aboriginal patients are treated worse than non-Aboriginal patients. To return home, "We gotta come back on the bus." "Camp with anybody and starve until the next bus trip." "Wait for our next payment". Other statements about health services include the following.

[At the doctor's office] a woman was shouting at me and my son, and he was very sick, he was vomiting. And the woman said, "If you don't want to wait, you can leave", she was shouting at the top of her voice. And I said, "What, are you talking to me?" She said, "Yeah,

there's the door, get out or I am ringing the police – get the F out or I'm ringing the police". This was the receptionist... I said to her, "Ring the police, I ain't done nothing wrong. Ring the police". (**Perth Women's Focus Group Participant**)

In Narrogin, female participants complained about racial discrimination in a local retirement home.

Even with the retirement home here, if some people are 50 or over, they got refused because of their Aboriginality. That's up here at Karinya. So, that was an issue for an Aboriginal family round here. They don't say whether it's because they're Aboriginal but they just make something up to say they're not eligible. The wife was very disheartened.

The women were asked if there were any Aboriginal patients in the home in question. They thought there were none living there. "They gotta go nowhere if family don't look after them or the nursing home."

Employment

Employment-related discrimination allegedly arose in seeking a job *and* then keeping it.

They're saying in Target there's money there for Aboriginal employment but then there's no jobs. (**Narrogin Women's Focus Group Participant**)

The men in the Laverton focus group had the following conversation in this context.

I filled in for the council job. They had a grader operator job going, and out of three applications I think there was two locals and a fellow from Queensland, and the fellow from Queensland got the job. So, if that's not discrimination, then I don't know what is. You know, he lives on the other side of Australia and we're locals. And, I was the first one to put my application in, and I've just come off a mine after working three years operating a grader there.

I put my resume in probably about eight times since last year. I've seen that many people getting jobs there, and I keep going in, and they say 'oh, we only hold resumes for three months', but yeah, so, I've been there a few times. Still going there.

There's only one Aboriginal person on the Shire here, two now...

People just give up and they don't even try to look for work now.

Yeah, it's a waste of time looking for work here.

What's the point when you get kicked in the face like that?

When asked if anyone had sought help in relation to this issue, a man in this same group said "Well, they have meetings here all the time, but no one goes to them. It's a waste of time going to them really." Stakeholders felt that this was an issue too.

They say that jobs are going, soon as Aboriginal people go to put in for it they don't get it. They say "Sorry job's taken". Even Target, you know they're very racist. (**Indigenous Legal Service staff**)

I mean, it's a bit like - my husband's (non-Aboriginal) a builder. He's been happy enough to employ anybody when he's needed somebody. He always works on his own, basically. But

it doesn't matter who it is. If there's somebody there that wants a day's work, well okay, he's happy enough to do that. But some people have said to him "Oh, those fellas, they don't want to do whatever and everything else." [My husband's] just looked at them and says "Would you give them a job?" Ah well, that's a different story. So yes, that's the sort of discrimination you get. **(Community organisation worker)**

That Aboriginal people are not able to draw benefit from the profitable mining boom in WA through employment in mines and training for employment drew some strong criticism. Mining companies are supposedly committing to a certain percentage of Aboriginal employment on mine sites, but one organisation suggests that that percentage is way too low.

Education and employment, I think they would go together. Being Laverton, where it's situated with all the mine sites, I think some of the responsibility remains with the mine site, because a lot of them, in regards to native title – and I think this is where the Land Council comes in - with their agreements in the lands, they should be negotiating, "Hey this is what you need to offer them. You want to improve your community, get the employment, get the training, on the ground running." **(Indigenous Legal Service staff)**

And it's very hard negotiations because the mining companies are very stubborn and they're lucky to get 10 to 15%, whereas up north you have to have at least 20% local, and that was stipulated in the agreements. Not outsourcing. You do not outsource unless you get the 20% in there first, then if you can't find that *then* they go out and look, whereas the agreements here are just so totally different. And yet the government is there, "Hey, give us our cut and we'll push all that through." But they're not being hard on them and pushing that percentage through for employment and training.... I think it's standard of local government in these places, in Laverton and (it leaves something to be desired)... **(Indigenous Legal Service staff)**

That Aboriginal people might be unable to get a job in mines because of previous discrimination (causing them to be under-educated or have little employment experience) was also raised. "There's a lot of mine sites around the place. But it's really hard to get a job. A lot of the people are just unemployable because they're discriminated against," claims one Indigenous legal service provider.

For those who are employed on mining sites and elsewhere, racial tensions and discrimination also leads to problems, including unfair dismissal.

Once on site, again I referred to this earlier and I repeat - there's a lot of rednecks on those sites who are mainly fly-in fly-out. They make the problem worse because they just don't want to care, don't want to learn even though every company does do cultural awareness training. They go and sit there and don't bloody hear and don't want to hear and still walk out with a racist attitude. And it works both ways because a lot of our people working on site are saying, "These buggers are ripping out my country, they're digging out, putting it on ships, sending it away. They're fucking up my country and I don't like that." So they become quite racist in defence, so it works both ways. It's a problem. It's recognised in Perth, Cairns, Canberra and in all head offices, "Yes, we address it. We provide cultural awareness training." But in practice on a site racism is alive and well. Snide comments. They come into a room for lunch and there's, they sit there (Aboriginal) and they sit there (non-Aboriginal). Not every site, not every site but it is prevalent. **(Indigenous community organisation worker)**

I've had one of my staff that is training with me, he's culturally obligated. He's a young man doing his law to culture, so he tends to go away a lot. His employers pretty much let him go (dismissed him) because of that. They gave him so many warnings because that understanding of the, you know, Indigenous – well, Aboriginal actually, not Indigenous... Aboriginal people have their law and culture as a part of their everyday life. **(Indigenous community organisation worker)**

That's like my cousin. She got a white man, right. He just got employed. Sitting down, having his lunch and they're over there slagging black fellas. He let it go for a while, right. Then he stood up and he said "Can you please not talk about Aboriginal people." He said, "My wife is black, my kids are black." They sacked him, sacked him on the spot. Don't come back. **(Legal practitioner)**

Housing/Real Estate

Whilst there were concerns raised during ILNP fieldwork in relation to discrimination in public housing, this was generally done in the context of discussion relating to tenancy (see section 4.1: Housing). Focus group participants focussed on unfair treatment by *real estate agents*, as follows.

Access to private tenancies

Discrimination by real estate agents mostly pertained to difficulties in accessing private tenancies. When asked why there were not many local Aboriginal people in private tenancies, one legal service provider said 'I would say discrimination is an issue. Discrimination has become an issue.'⁵⁶

As noted in Section 4.1: Housing, Aboriginal people may be excluded from private tenancies because of the cost of renting private properties, but also on the basis of their race.

If you are going to try and rent a house off a whitefella... If they see two Noongars walking up there, you've got no chance of living in their house... So people won't even bother going for private housing, because you're not going to get it anyway. **(Perth Women's Focus Group Participant)**

The following quotes illustrate the different ways discrimination may arise with respect to tenancies. It may be direct and based on Aboriginality, marital status and/or carer responsibilities, as the first comment suggests. It may also occur in a more indirect fashion, where Aboriginal people are perceived as not being sufficiently reliable (including financially) to rent privately - even in cases where they can actually afford to do so. It is noted that it's not just the cost of renting, but also requirements around bonds and option fees (a refundable fee paid to look at a house) that might cause a problem in this regard, as well as the highly competitive private rental market in WA. As one CLC stated, "The housing market in WA – I mean, it's not flush with houses. So they're up against the wall before they even walk to the real estate." It is also identified that evictions from public housing leave Aboriginal people effectively homeless, as they are unlikely to be able to then access a private

⁵⁶ See discussion in EOC WA (2009) *Accommodating Everyone: An inquiry into whether people from culturally and linguistically diverse backgrounds and Aboriginal people are being discriminated against on the basis of their race either directly or indirectly in the private housing rental market*, Perth WA

tenancy. Publicity around the DoH three strikes policy, for one, has demonised public tenants, making them look pretty undesirable to prospective landlords.

You know you can do it because you go and do the Money Business stuff or your budget on your own. You know you can afford a two-bedroom house. But a lot of time, they won't do it because you're a single parent with four kids. And that leads straight away to alarm bells. Also, the other alarm bell that is if you haven't got the bond money up straight away, or the option fee, which is an equivalent to one week's rent - they still ask for that - if you haven't got that there, then you can't have them process the application. Then also, if you haven't got the bond, part of the application is "Will you be seeing Department of Housing for bond assistance?" You tick yes. That's raising a flag as well. A lot of applications then get like "Oh here we go." **(Legal practitioner)**

But going back to that point about being refused assistance [through Centrelink]. Part of that refusal is you will not get a bond loan from the Department [of Housing]. So they'll never get into private rental if they haven't got the bond. **(Legal practitioner)**

One of the big issues that was coming up in the (WA EOC's) *Accommodating Everyone* report⁵⁷ for both Aboriginal and newly arrived migrants is the fee that is required from real estate agents before they actually hand over the keys to go and have a look at the tenancy. They quoted to us between \$50 and \$100. Just to go and have a look at the house. And so often it would take up to a week to get this money back. And so that stopped you from going to have a look at other houses as well. And then couple that with the market at present, and other people bidding higher than you to get the house. **(Statutory Authority staff)**

There are landlords not renting to Aboriginal families. In fact, there was an article the day before yesterday on our WA Today news website here in Perth about it. It's not just Aboriginal people. It's anybody with children or pets. You know, the rental market is so tight here that there is a lot of discrimination.... I'm actually a renter right now. I'm actually in the process of moving from one place to the other. So I haven't filled out a rental application for quite a long time. I had to fill one out, and I was really like quite surprised. In my application, on my front page, it has nationality. Well, I don't know [if they can ask that], but it's one for the Equal Opportunities Commission. So I'm actually putting the complaint into Equal Opportunities Commission to see what they would do. **(Statutory Authority staff)**

The other thing is - if we're talking just about Aboriginal people, they will most likely have been public housing tenants all their lives. They might have had multiple tenancies, but they have never rented privately. When there have been problems in the past, you know, maybe they were terminated or they walked away. But it didn't take too long to get offered housing again. That's not the case now. So my feeling is that any Aboriginal person who is evicted under the current (three strikes) policy and section 75A (of the RTA) is evicted into homelessness. There's no doubt about that. I've had clients who - you know, "It's the racist neighbours. I've got no chance of winning anyway. Just get me more time." So I take those instructions and then, after a couple of months, they come back to me and say "We're going to have to fight this. I can't find any private rental." It's not always a financial issue. Because this is when they've got those one-off payments for the children, you know, in June or July.

⁵⁷ Ibid.

So they've had the money for the six weeks in going. But it's just been no, no, no, no, no.
(Legal practitioner)

It's the reluctance, or the perceived reluctance to take on Aboriginal people as private tenants. This would also be related to that shock public support for preventing disruptive behaviour tenancies. So I'd say that, unfairly, a lot of our Aboriginal people are viewed as being the cause of disruptive behaviour. So you could see a homeowner, as an investor, not wanting someone to come and destroy their property. I would suggest that's one of the main kinds of tension points. **(Legal practitioner)**

It's actually – there's a lot of discrimination and it's not just around – because we work with a lot of cultural and linguistically diverse people, particularly refugees and humanitarian. They have the same problem. They have exactly the same problem trying to access private housing. It's very, very difficult. **(Legal practitioner)**

Not everyone thought that Aboriginal people experienced racial discrimination in accessing private tenancies. Unemployment was seen as more of an issue than race - but of course discrimination serves to exclude Indigenous people from work opportunities, too. A non-Indigenous, community-based stakeholder organisation working closely with many Indigenous clients was also unsure about whether discrimination arose in this context. They saw any segregation in housing as being about the price of renting in certain areas, excluding those without money.

Aboriginal people can't afford [private rentals] unless they have a job. As far as racial discrimination in the open market, not a lot. You'll always get the rednecks. In any community in Australia, particularly in the city I suppose more so than the bush, you'll always get the rednecks who are just racist. No easy answer. **(Community organisation worker)**

I don't think there's discrimination as far as the access goes. There would be discrimination as to where they're housed, as in, you know, where you apply for [tenancies]. You can apply for any house that's in town, but you're not going to get the ones that are in the more salubrious districts. [Pricing has] got a lot to do with it... [Whether or not racial discrimination also occurs] I don't honestly know.... It appears that way, yes. (In terms of whether overt discrimination arises in the private rental market) but I don't think so, no. There's quite a few Aboriginal people in private tenancies, yes, even the same for girls coming out of the refuge and that. They can sometimes get a private place quicker than they can get a Homeswest place. For sure, yes. **(Community organisation worker)**

Others believed that housing in certain communities was intentionally segregated. An Indigenous legal service provider thought this occurred in Laverton: Aboriginal people on 'one side of the tracks' and non-Aboriginal (and better) housing on the other.

Public housing: service delivery and policy implementation

It is worth noting again discrimination in public housing, although there has been some discussion about this in section 4.1: Housing. Issues were raised about public housing with potential to found a complaint of discrimination. These include access to priority housing.

A very common feature is Aboriginal tenants that wish to go onto the priority listing, and for whatever reason are declined. They may have a number of problems in the household to do with people with disabilities, and so that would be more or less a claim of indirect

discrimination; that is, that a decision not to accelerate or advance the process, to remain where we are, or remain without a house because they're not even on the standard list, is something that the applicant will be claiming that they can't comply with because they're dealing with a household with people with chronic illnesses, and to remain homeless is something that would be untenable. So that will be ... indirect race or disability discrimination it seems. So yeah, that features quite commonly. **(Statutory Authority staff)**

The way DoH responds to or is perceived to be likely to respond to you as an Aboriginal tenant when, for example, you need repairs done may also be seen as discriminatory.

It's hard to say [if it's discrimination]. Sometimes, I feel like the Department do treat Indigenous people – they wouldn't house non-Indigenous people in some of the houses that they house Indigenous people in. That's how I feel. But I guess that's not real blatant. That's just my feeling. I think they've become hardened in their roles as HSOs (Housing Service Officers), some of them, and as Recovery Officers- and less sympathetic. Some have absolutely no empathy at all. So yes, you do see they've become hardened. That's probably about the most polite word I could use. They've become hardened to it. It's a two way street. Indigenous clients have led them to – you know, they're definitely not the best tenants, a lot of them. **(Legal practitioner)**

DoH's three strikes policy was perceived in all focus communities as disproportionately impacting upon Aboriginal tenants. This is discussed in some detail in a housing context, as previously noted (see section 4.1: Housing), as this was how it was generally raised in focus groups and stakeholder interviews.

Against Homeswest, the Department of Housing, there's usually a cluster of the same kind of issues.... More recently it's been about eviction, and giving notice of eviction for disruptive behaviour. That's always been a common theme, but that has escalated because of the three strikes policy. **(Statutory Authority staff)**

The real possibility that the three strikes policy may constitute indirect discrimination was raised in stakeholder interviews.

There's been a lot of media about this, around Aboriginal people. So that's a big issue. I think there have been cases in the Equal Opportunity Commission, the EOC. So coming at it from a discrimination perspective. The argument – I haven't seen – I haven't been involved in those cases, but I imagine they'd be saying that this legislation or regulation has a disproportionate effect on Aboriginal people. **(Legal Aid staff)**

Early this year we were about to go to a hearing on the three strikes policy in relation to an elderly woman who lived in [named suburb], which has quite a lot of public housing, and were in the process of obtaining data specifically designed to reveal the proportionality of tenancies that were subject to the three strikes process, and the proportion of Aboriginal and non-Aboriginal tenants. [Leading up to the litigation]... uncharacteristically the Department (of Housing) threw up the white flag and negotiated a settlement... They had arranged to transfer the woman out of this neighbourhood, which was, according to the Department, associated with unacceptable and disruptive behaviour. So had it gone to a hearing, whether or not we would have won we don't know because it was testing whether it [was]... indirect discrimination [on the basis that] she was unable to comply with the requirement that her household be managed in such a way as to avoid the three strikes policy, the bar of which

was set sufficiently low that it would be hard in a lot of circumstances to [so comply]. So she was actually in the Magistrates Court having proceedings brought against her and when the Department decided that it would settle, those proceedings were dropped, the discrimination case the lady decided to discontinue, and they transferred her to a new tenancy and imposed ... a periodic tenancy agreement, which she was happy to agree with because she foreshadowed that some of the people that might have been associated with some of the disruptive behaviour wouldn't be a problem anymore. She did concede that there was some incidence of behaviour, whether it was disruptive to the neighbourhood or not. So that was the first time that it had got that far. It was settled thankfully for her. And she was quite a sort of forceful woman who came to tell the Department what she thought of them in terms of their policy.

.....

One of the arguments was that she was an Elder, and they called her, the local kids that would come from the shopping centre and the train station, would call her Gran/Aunty. And they would drop in and she said she couldn't just let the kids wander the streets, so she'd have soup for them and things like that. Some of them took advantage of that and would hang around and then their mates would come over and there'd be drinking and things like that. There was a dispute about the level at which that was done... And the grandson would have friends around as well. But she said even beyond her own immediate family she was Aunty, and so the teenagers would drop in. And sometimes she would have enough, and sometimes she was fine with it. It would depend on whose version you were listening to. And also, the idea of what disruptive behaviour was... so the policy was that disruptive behaviour means this, and it could mean loud talking or something like that. Now because Aboriginal people are more likely to congregate in someone's house in larger numbers, behaviourally, and that wasn't disputed by the Department by the way, it's more likely to generate some noise and other things... but whether or not it's disruptive, is what the department calls disruptive and what others might. And it also came down to one or two neighbours that were concerned more than others, and that's always a consistent feature. A lot of the neighbours don't care, but there will be one or two that will be constantly contacting the Department just when they see people turning up. It just depends. So each case would turn on its own facts, but the Department had aggressively defended this, and in fact, whilst it wasn't admitted by them, it's common knowledge that the government has imposed this on the Department, in some respects against their will. That is, that it's basically coming from the top... and so there was some reluctance, misgivings, this would have come out in a hearing if it had gone ahead, about their commitment to this policy that was inherently distasteful. So then having to then go out and apply it, to some tenants that had been looked after by Area Managers for ten years and then suddenly to apply a policy, where it hadn't been a problem before. But, the upside is that there were some tenancies that were disruptive and needed to be moved on, I mean it wasn't so clear-cut. But in this woman's case, it was certainly arguable that it was being used as a blunt instrument. (Statutory Authority staff)

There was also some suggestion that liquor restrictions were placed on public housing properties occupied by Aboriginal tenants more frequently than on houses where non-Aboriginal tenants live (see also s. 4.1: Housing and *Police* in this section (above)).

Then, in remote areas, housing's often tied in with a lot of the other issues. So there's complaints against police officers targeting Aboriginal people, where (in Laverton and other

places) there's liquor restrictions. In those communities, people can elect to make their houses liquor free houses. But what we've found was the police were kind of imposing that on people, rather than people opting into it. I don't believe it's a stretch to make the conclusion that the police are imposing that on Aboriginal families and *not* non-Aboriginal families. So there's a racial element to that, as well. **(Indigenous Legal Service staff)**

Education

Education is dealt with as a separate issue in the ILNP research (see Section 4.8: Education). However in some instances, problems in education obviously cross over with the civil law issue of discrimination, particularly racial discrimination and sometimes also discrimination on the basis of impairment or disability. The following discussion arose amongst the women in the Geraldton focus group, for example.

My daughter, she's getting bullied at school. She's only in Kindy. Um, and certain kids won't let her play with them because she's a black kid. And, she'll come home "Why don't they like me? Why won't they let me play with them?" Last week, she was invited to a birthday party, and then they came back and said no she can't go because she's a black kid. Yeah, and she get's really upset over it.

The kids said that to her?

Yeah

She's only four, she's down at a Catholic school, and it's the way that the kids are brought up.

Kids don't see colour.

They went back to school, and they said something else to her, and she just went to them "Black is beautiful anyways".

It's shocking at that age.

General Community Attitudes, Vilification and other forms of Discrimination

Outside of these more specific areas, discussion was concerned with a diverse range of potentially discriminatory issues. The justice or legal system and correctional system was seen as biased to some, for example.

Every time there's new legislation, there's always a line up of Aboriginal people going through the courts. **(Indigenous Legal Service staff)**

Discrimination [is a big issue]. It's not really out there (obvious), but it's there. Education here is a big issue here and juvenile justice... A lot of people are going through the courts but they (the courts) don't really understand the Aboriginal side of things when it comes to family feuding and drug and alcohol issues. **(Narrogin Women's Focus Group Participant)**

Prisoners, the majority of complaints we get from prisoners are understandably from Aboriginal people, and it will be about perhaps, some of it will not be within our jurisdiction, because it's complaining about privileges or something like that, but not really a discrimination issue. But many of them will be about services they've received, or don't

receive in prison, or the ability to go to a funeral, or to visit sick relatives and so on and so forth. So, they will usually be indirect discrimination matters about prison policies that Aboriginal prisoners find hard to comply with... They're fairly consistent, we're not overwhelmed with them, but if we, in the space of a month, we'll always get about a certain amount of prison complaints. Some of them are health, but I'd say maybe a third to a half, this is anecdotally, are health, the other half are things like visiting rights, funerals, other kinds of things like that. **(Statutory Authority staff)**

Cyber-racism also came up for stakeholders.

On top of that, there's quite a lot of cyber-racism. Huge. It's something that we're just touching the surface on at the moment. We've had a couple of matters last year, and we've got a couple of new matters this year, as well, where there's quite a lot of offensive material on Facebook and the like. People come in and with the stuff with social media. It's just often so negative and vitriolic. There's not enough being done to kind of call people to account for it. **(Indigenous Legal Service staff)**

There was some discussion, too, of community-wide racism and racial discrimination. Although one of the following comments concerns a storekeeper, it illustrates more broadly the way in which Aboriginal people are not seen by some in society as equal, as worthy, or even as fellow human beings.

There's a lot of discrimination, an awful lot of discrimination. People just see like the pimple on top. ... They don't see the whole thing at all... the disadvantage underneath... You just hear people... "Oh, bloody no-hopers. Why don't they get a job?" Or "They drink it all." They don't see, okay, they've been a victim of the Stolen Generation. They're depressed and they drink. **(Community organisation worker)**

This was a while back. Now, I think I tend to close off to it. But one time, I was in one of the shops here. These fellas, this particular shop, basically, all the money that they made and everything else had been off the black fellas around here. What actually happened is someone wasn't feeling well and they were sitting on the outside. Because they were drunk, this person walked back in and said "Look, can you ring us an ambulance?" The response was - and they didn't realise I was back up with the DVDs - the response was "Well, you know, we're not here to make phone calls for you over and over and over and over again. Go and ring your own ambulance." Something like this. I turned around - it sort of blew me away. I thought to myself would they have spoken to that person like that if they'd have known that I was actually in the shop? I walked to the front and you should've seen that woman's face. She didn't know which way to look. I turned around and I said to her, "Okay, why didn't you just ring the ambulance? You know, if that person dies out there, do you think they're going to come through these doors here," I said, 'if that person died in front of your doorstep there?' I said "There you go, that will be a lot of money washed down the drain there." She turned around and she said "Oh, I do so much for these Aboriginal people around here" and everything else. I turned around and I said "Yes, and they're the ones that put money in your pocket, feed your kids, put blankets on your kids' bed and everything", I said. "So just ring the ambulance." So she did it. I turned around and I said to her "You ought to have a bit of shame about you." I said "You'd let someone die out the front of your shop for what, 25 cents? After all the money that they've given to your family?" "Oh yes, but I provided things for them." "Yes", I said, "at cost. They could've went and got them stuff there if they'd had

access to other stuff”, I said, “but no.” I’m walking out and she turned around and she said “You’re a real...” I turned around and I said “Don’t start with me because I’ll give it right back to you.”... Anyway, like I said, she rung that ambulance. I made sure that them fellas was all right out the front. Then I looked at them and I said “Next time, don’t take no for an answer”. “No, they’ll ring the police on us.” So it was like – yes, you mob got to fight for an ambulance. Goodness gracious me. **(Indigenous community organisation worker)**

Another stakeholder, too, commented on the way in which racism ‘works two ways’; suggesting that Aboriginal people discriminate against *non*-Aboriginal people.

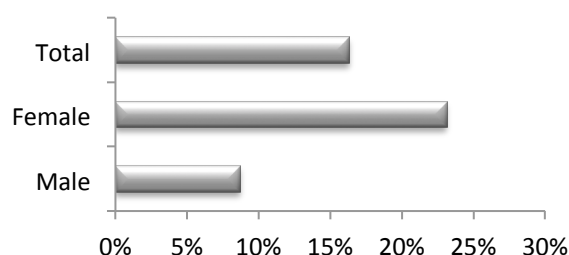
As a general comment it works both ways. When you get communities that are largely Aboriginal they can be quite racist towards smaller white sections of the community. Not all. It's like any community. There's the good, the bad and the ugly. But racism doesn't work one way. It works both ways. You've got the outspoken proponents in Canberra and major cities and you also get them in local communities like here. Speaking out about “That bloody whitefella” and “Yadda, yadda, yadda”. So it's a two-way street. **(Indigenous community organisation worker)**

4.3.3 Discrimination and Legal Advice

Figure 4.15 shows that **16.3%** of focus group participants who had identified discrimination as an issue had also sought help for or had otherwise responded formally to it. Although the numbers are small, Indigenous women were 14.4 percentage points more likely to have sought assistance than men for this issue (8.7% of men compared with 23.1% of women) (see **Table 4.15: Appendix C**).

Four of the eight individuals who had sought legal assistance or advice also indicated where they had gone to access help. Two had contacted ALSWA (one of whom also contacted the Equal Opportunity Commission), another had used a private lawyer and the fourth person had contacted the local courthouse. Five of the eight individuals indicated the matter was either unresolved, ongoing or they had stopped pursuing the matter. Only one person stated that the matter was resolved.

Figure 4.15 Participants Identifying Discrimination as an Issue Who Sought Legal Advice



Low level of formal response

Some people may be dealing with discrimination without recourse to the law and legal or other help, including through direct confrontation with the alleged perpetrators.

People like us (outspoken, more empowered) – we won’t encounter it. And if I do, I just stand straight up and I just say “Look now”. I just put them straight. You know, what they’re saying and how they’re talking is really wrong. But for people who are the opposite of me,

they just sit there. Or just walk away because they don't trust the government. That's the biggest problem. Why should they, after what's happened in the past? That's all. That's what it boils down to. **(Legal practitioner)**

But overall, these figures indicate that overall discrimination is not often challenged, despite its relatively high incidence. Both stakeholders and focus group participants confirmed that Aboriginal people rarely engage with the legal system as a means of responding to racism.

Well pretty much, discrimination, racism. It happens. But... we just tend to ignore it or just don't tend to take it to – you know, any further, really. **(Indigenous community organisation worker)**

I think we've only had one in the last few years, only had one specific racial discrimination matter. It was against Coles. Probably that sort of bigger picture stuff gets neglected because you're dealing with the day-to-day cases. We did have a disability discrimination matter for an Indigenous client. But that wasn't a significant matter. I think it's just not known that – actually, we were talking about this the other day. That this is an area that we're going to try and get the word out about. It's not that it's not occurring. It's definitely occurring. **(Legal practitioner)**

And discrimination – we did see a little bit. But we tend not to see much discrimination [in terms of complaints] at all.... That's across the board, not just Aboriginal people, but across the board, we don't see many clients – and I think that's because the level of service provided by the EOC is substantial. **(Legal Aid staff)**

Some thought that a community-wide response to discrimination was required, although difficult where communities are 'fragmented'.

[There's no action taken in response to racial discrimination] because of how this town's made up, especially Laverton, it's a pretty fragmented community and there's probably a lot of towns you have two or three factions, but this town here's got about 15 factions. It's really fragmented in terms of they don't really gel together as a community. **(Community organisation worker)**

The real possibility that complaints will lead to social change (and conversely, that nothing will change without people standing up for their rights) was discussed as follows.

Until they actually go and see someone about it, if they're being unfairly treated and things like that, then it's never going to go away. Well, we tell our mob all the time. We tell them all the time that you have your rights to go and complain about, you know, about being served alcohol. You've got the same rights as anyone else. I mean, fair enough if they're intoxicated, I can understand them saying no to that. But saying no for whatever other reasons... Until they complain themselves, and actually go and report it, nothing can be done. We're just doing ongoing education with our Indigenous community and keep telling them that you've got your rights. These are your rights. **(Indigenous community organisation worker)**

Discrimination is also a very good example of a civil law issue that has potential, if unaddressed, to spill over to become a criminal law problem. Sometimes it can happen one too many times and emotions boil over.

The problem is, a lot of us... We've put up with it that long that it's every day now. But there'll be a time that our fuse will be so thing – we'll hit them and ask questions later. That's where the problem lies because we've got an assault charge then. Then we've got to go to court. It's just too hard. It's too hard to do. And I guess, when we're around – you know, we will tell people to shut up. We will do something about it ourselves. I think the people that are with us do the same thing. You know, but when you're outside of that...you're sort of on your own or being restricted... You just accept it. Because you think you have to. **(Legal practitioner)**

Education and lack of awareness

There are a number of likely reasons why there are relatively low levels of formal complaint in this area. Sometimes people may not have enough information to be able to initiate legal action, including about where to go for help. There are low levels of awareness of rights.

And then of course you've got the other issue that discrimination is a new word, it's not a word that evolves from Aboriginal languages at all, so there's been a history of trying to work with Aboriginal people so they can understand what discrimination means in the first place. It's not a recognised word in Aboriginal languages at all. **(Statutory Authority staff)**

The thing, though, that gets me up here is the discrimination. But I don't think a lot of people are aware of what type of discrimination actually happens. Because I come from down south, I know exactly what it is to be discriminated against, what type of discrimination is out there. Whether it be visible or covert, it's here. A lot of these fellas, like I say, they don't fully get it. I don't think they've had to outrightly face it. Or acknowledge that it actually does happen. I don't know. **(Indigenous community organisation worker)**

Indigenous people have also had to deal with discrimination frequently, for many years and in so many different ways that there are significant levels of exhaustion or resignation associated with its occurrence.⁵⁸ Given this and the range of other issues Aboriginal communities are often dealing with, taking on racial or other discrimination is not likely to be a high priority.

I think often times, people would be too embarrassed to say anything about that if they feel discriminated against, particularly in small towns because you don't want to upset the one shop. Also, sometimes it can be a little bit subtle and people have just accepted it as the kind of status quo. So, if I've seen something suspicious I think, wow, that's really discrimination, people maybe just accept it, because that's the way those frontier towns have sort of done things, although it's not in line with where it should be. People do talk about discrimination for a range of things, so yeah, definitely by businesses, tenancies, accessing properties, that sort of thing. So, yeah, I do get a few inquiries about discrimination definitely. Sometimes, in those very remote towns, not so much the communities because if you go to a remote community, you know you're going to an Indigenous community, but perhaps when you go those remote towns you can attract people who may not sort of be that, I don't know how to out it, might be a bit close-minded or racist or what have you and in those most frontier towns

⁵⁸ For further discussion by the ILNP 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.

it can be. And I think there's a lot of prejudice there that can come out against people so, yeah definitely, I'd say there is an issue. I'd say they're not getting a fair deal right across. Yeah, it is really difficult though because I think there's so much more that's out there that we don't necessarily hear about so, I think that's a big area. **(Statutory Authority staff)**

Another barrier is the actual process of formal complaint, which can be relatively drawn out or problematic in other ways. This may deter people taking action or cause them to drop out once a complaint has been lodged.

There is a fairly high rate of withdrawal on Aboriginal complaints, compared to non-Aboriginal... Sometimes the complainants will just withdraw, or can't be contacted. The process wears them down. Yeah, so it just lapses, and that's the highest amongst Aboriginal people. Because even though EOC have brought forward or shortened the period of time it takes to get to a conciliation conference and go through the investigation process, it's still something that can take three, four months before it's finalised and that will kill off quite a few.... EOC tries to get a conciliation conference within 60 days of referral. And then an outcome, hopefully ... at three or four months... I'm not sure exactly how long it takes but, the stronger the process, the more likely you're going to keep anyone engaged, let alone an Aboriginal person, but it does have a particular effect on Aboriginal people, because they're often just, their own lives are such that to kind of maintain this level of formality... They find it hard to last the distance... About three years ago the lapsed (Aboriginal) complaints was actually quite high, it was over 60 per cent. **(Statutory Authority staff)**

It's too long (a process), you want it to be resolved as soon as you make that phone-call to the Commission, [the Commission doesn't] have a regional base, it's only focussed on the metropolitan area. These are problems for Aboriginal people. **(Statutory Authority staff)**

There are also significant problems in identifying and proving discrimination, unless overt.

I mean, one of the frustrations we have is so often we can take a matter to conciliation, but for it to then go to either Federal Court or, here in WA, to SAT (State Administrative Tribunal), the burden of proof is on the complainant to prove that X person was, that their bags were checked and no one else's was checked purely based on race. It's so hard to get across that. **(Indigenous Legal Service staff)**

It's really hard to prove though. That's the problem. You can't prove it. It's very difficult to prove... There are provisions in the *Residential Tenancies Act* around preventing discrimination against children, for instance. But there's nothing in there around racial discrimination. But it's really hard to [prove] the reasons why people are rejected when they're applying for houses. There's so many people applying for each of the houses, that they just say... It's pretty easy to cover up. **(Legal practitioner)**

There may also be a perception that a complaint will get you nowhere, even if successful or because it won't be dealt with properly or effectively.

I guess it's whether or not you really think that what he said to you – it's really important to actually take it further, you know. Because there were times that I was painted with the same brush. I'm educated and I know that I should've made a complaint, but what's going to be the outcome? That's more our, I guess, why we don't take it further. Is there really going to be

action taking place? Or is it going to be from the other person “No, you took them... dah-dah-dah-dah”. So yeah, will it really make a difference if our people start up and actually say, “Wait a minute. We’re being treated unfairly here. We have a right too.” **(Legal practitioner)**

Advocacy and support in discrimination matters

The need for Aboriginal people to be able to access more support (legal or otherwise) in bringing on and sustaining a complaint was noted. Legal services, including but not limited to the ALS, could be doing more in this area it is suggested.

In WA it seems that the advocacy culture for Aboriginal people in terms of complaints is definitely around housing and tenancy. I wouldn’t say that there’s a unified approach, from an advocacy point of view, to those other areas (that is, outside housing). And so complaints may come from the people that are directly aggrieved, or maybe a family member helping them. But there isn’t a body of formal complaints about goods and services in the metropolitan area, to do with shopping centres or whatever, coming through a particular advocacy service... in the same way that you get in relation to housing, which is more systematic. **(Statutory Authority staff)**

So, with the ALS, EOC WA sometimes receives complaints from an Aboriginal person through the ALS. So it’ll be a solicitor of the ALS who lodges the complaint, the complaint’s signed by the complainant. And they set out the nature of the complaint, what it’s about, but it’s far more common to get a complaint through an advocacy service [like]... Centacare, and sometimes from the complainant in the first place. ALS is probably [involved in] the minority of cases.... They have a presence, ALS, but ...EOC WA doesn’t have with ALS a continuing relationship. EOCWA doesn’t liaise with them, doesn’t have a partnership with them. They do get together with ALS on an ad hoc basis, for education and other things, but they don’t have a continuing partnership with them. **(Statutory Authority staff)**

4.4 CREDIT/DEBT

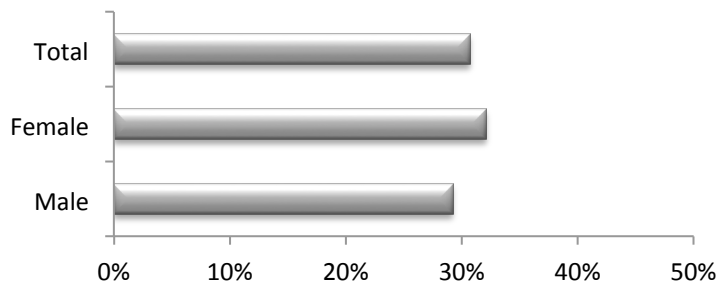
Unpaid debts, bills and loans emerged as significant issues for focus group participants. Participants were asked whether they had been threatened with or been subject to legal action due to failure to repay a debt; and/or whether debt issues had led to problems with their credit reference rating or to bankruptcy.

4.5.1 Nature of credit/debt related issues

Nearly a third (**30.7%**) of all focus group participants said that they had been in a situation where a lender had threatened, or taken legal action due to their failure to repay a debt. The rate at which men and women identified this type of problem in the last couple of years was similar (32.1% of women and 29.2% of men) (see **Figure 4.16** and **Table 4.16: Appendix C**).⁵⁹

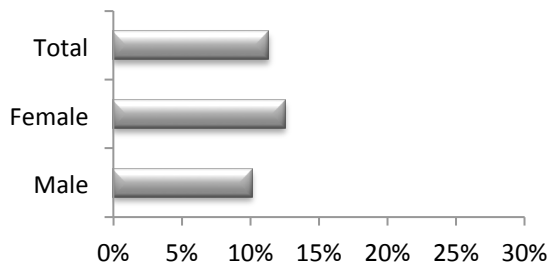
⁵⁹ For further research into unmet need in the area of credit and debt, see Povey, C and Tan, S (VIC) (2011), *Aboriginal Credit and Debt Clinic: Project Report and Evaluation*, Melbourne VIC, http://vals.org.au/static/files/assets/2677ed55/ACDC_Evaluation_Report_-_Final.pdf

Figure 4.16 Participants Identifying a Problem with Paying a Bill or Loan Where Lender Has Threatened Legal Action



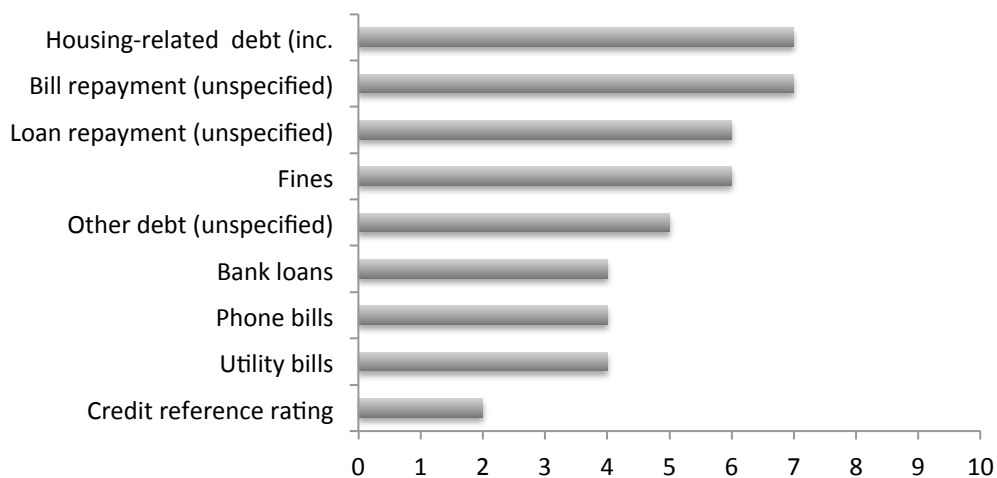
As **Figure 4.17** reveals, **11.3%** of all focus group participants also said that their debt issues had led to problems with their credit reference rating or to bankruptcy (see **Table 4.17: Appendix C**).

Figure 4.17 Participants Identifying a Problem Relating to Credit Reference Rating &/or Bankruptcy Problem



As **Figure 4.18** shows, some 41 individuals identified 45 issues relating to credit and debt, the most common of which were **housing** related debts (7 participants); **bill repayments** (unspecified) (7); utility bills (4); phone bills (4)); and **loan repayments** (unspecified) (4); bank loans (4). Other problems involved **fin**es (6), **other unspecified debt** (5) and **credit reference ratings** (2) (see **Table 4.19: Appendix C**).

Figure 4.18 Reason Identified for Credit/Debt Related Issue



Nature of credit/debt problems

The wide range of debt-related matters Aboriginal people have to deal with is described below. A number of the legal areas or issues raised in these quotes are discussed in other sections of the Report (see for instance Sections 4.1, 4.6, 4.11: Housing, Consumer Issues, Other Civil and Family Law Issues (*Fines*)).

Credit and debt is mostly like power, just not paying like what they owe around the shops. But usually I can sort that out with the shops. Because if they let them go over – if they know they're on Newstart, how can you let somebody run up a bill? That's not fair. **(Indigenous community organisation worker)**

Credit and debt, definitely, cars, furniture, all those interest free things and that type of stuff. Yes. Get a bit of that. **(Indigenous community organisation worker)**

The significant level of debt accrued by individuals and across generations and whole communities, and the difficulty that people often have in paying this debt off attracted some comment.

Some of them are sort of in the thousands, yes. I mean, you can put payment plans in place and everything else. But, you know, with everything else to be paid, as well as when you're on a pension, well there's not the money left for paying for things like that. If it's something that you're never going to get at the end of the day, you're not going to carry on paying for it, are you? It's just sort of... The debt collectors aren't allowed to do Centrepay. This client that's got the \$5,000 debt, there's been about five phone calls now. She's defaulted. Because she's signed the debit agreement, but when they go to get the money, she's already spent it. So then I'm on the phone again. When I see her, we make the call together and she signs up again. But to get her to leave that money there over the weekend, until it's been taken... They're about to start legal action because they are sick of it. They've been really accommodating. They've paid the dishonour fees for her. They've reduced the amount to \$30 a fortnight. But, you know, there comes a point. I don't know. What do you do? **(Community organisation worker)**

Again, with our stats and that, we would do maybe 75% Aboriginal as financial counsellors. That's probably why they're asking for you to look at this community, because of the level of issues. I find it disappointing that I'm sort of into my third generation of Aboriginal clients that are coming for help. You know, which makes me feel that maybe the education system and everything is not really working. ... Yes, it's not changing anything. **(Community organisation worker)**

Credit/debt and consumer law

Credit and debt often has a close relationship with consumer problems (see also Section 4.6: Consumer). This relationship is evident, for instance, when, as customers of TELCOs and utility companies, Indigenous people have massive bills to pay; as well as when they purchase vehicles or household goods, including under some sort of credit arrangement (for example, hire purchase). 'People purchasing vehicles and then getting repossessions' is a problem, states one Indigenous community organisation worker. It is also evident where Indigenous people are consumers of more 'traditional' forms of credit (credit cards or bank loans).

Some examples of debt accrued with TELCOs and utility companies follow.

Right now, and I know it's horrendous up here, but it would be as bad across Australia, the cost of water is going berserk, the cost of power is going berserk. So how the hell do you pay power, water and rent off Centrelink? You virtually can't. **(Indigenous community organisation worker)**

Yeah, well, the cost of utilities, you know, some people are paying \$100 a fortnight to Synergy. **(Legal practitioner)**

They have you over a barrel with those [phone bills]. You sign an agreement and because you get this you beaut phone that will do everything but cook your breakfast – then, of course, you get – what, \$50 will cover it. You just pay \$50 a month and you'll have the phone after two years and you can make all the calls you want and all the rest. Then, of course, it comes to the end of the month and you get a bill for \$300, \$400 or something. It's to do with people not understanding. Yes, yes. That's where I sort of – if we could get a lot more advocacy for prepaid on phones, we'd be a lot better off. Because, you know, the prepaid is much better value. If you haven't got the money, well then you can't make the call. That's it. [There is a trend towards using pre-paid.] All my clients do prepaid. I think yes, because I think we've been pushing pre-pays for years. You know, sort of when they come to see you... So it's working in a small way, anyway. We do get some Telstra vouchers to help with bills and that, but they're only a drop in the ocean compared with the amount that's owed. **(Community organisation worker)**

Buying household goods such as fridges or beds through hire purchase can also lead to debt, including as the total cost of the items in question is often so exorbitantly high. This type of arrangement offers goods to consumers on credit, effectively. Many Indigenous people may not have a lot of choice in terms of access to credit in order to purchase such goods and they are also more likely to find it difficult to purchase them outright. Because they generally do not enjoy high levels of financial inclusion, they might end up engaging with less favourable lending arrangements, including hire purchase. This may then cause further financial hardship, including debt.

They'll want a new fridge, so they decide to go to Mr Rental and, of course, they can't afford Mr Rental and a house repayment. It just doesn't work. Mr Rental, you're paying forever anyway. It just doesn't seem to ever end, does it? ... I can organise a NILS (No Interest Loan Scheme) loan for them for the fridge or whatever. That's much easier. They have a certain amount to pay and when they've paid it, the item's theirs. Then I can encourage them if they're in need of something else, like a washing machine or something else, to get another loan and we can get the house sorted out for them without it really straining them too much. It's just a case of, you know.... getting them to understand that if they can pay this off, well then they're getting somewhere. Now and again, when you get it, you have a nice win when somebody comes in with a bit of paper from NILS saying "I've paid for it, I've paid for it!" Which is lovely, yes. **(Community organisation worker)**

Problems were also discussed relating to forms of credit such as bank loans or credit cards, though the issues highlighted above about poor levels of access to these types of credit was noted.

I did assist with a few matters. It was actually more, I suppose, almost unconscionable conduct type matters, where elderly Indigenous people were getting – it doesn't happen anymore, because the law's changed - but getting unsolicited credit card increase offers or just

unsolicited, pre-filled in applications for a credit card and drawing out the entire lot in a day or two and not understanding that it's actually not their money. Nationally, the new credit codes don't allow those unsolicited letters anymore. I think you actually have to physically sign up to get your credit card increase requests. I don't think they can just send out something to you saying do you want a credit card anymore. But that was a real problem, particularly in 2008 or 2009. **(Legal Aid staff)**

A lot of people think you get a credit card and you don't have to pay it back sort of thing. They've got to realise that, yes. **(Indigenous community organisation worker)**

Occasionally, you'll get car loans and bank loans but not so much. It doesn't seem – I think it's probably more difficult for people up here to access credit.... I'd probably say credit and debt's still our fourth or fifth most common enquiry. But I was surprised with – compared to – I can only compare it with down in Victoria, where I was working before here. The volume of credit and debt we get down there would be huge whereas up here, it's not. But I think it was as much to do with people not having access to credit to them incur the debt, as much as people not seeking assistance. **(Legal practitioner)**

Housing debts

Quite a number of focus group participants and many stakeholders talked about debt accrued in public housing. This is discussed further in Section 4.1: Housing, particularly in the context of what seems at the moment to be large-scale eviction by the Department of tenants owing them money.

We do refer to some of the CLCs that deal with [housing-related debt]. So it's about money management. There are some money management programs in some of the areas. Like in the Kimberley, we know there are definitely money managing programs. That could also be part of the eviction process, as well. Once again, it's the eleventh hour that we're picking the people up. So people are evicted. So what we're also trying to do is look at how we can get them into temporary accommodation until we can go back and try to get a reverse on the decision that was made, but also bringing in the money management stuff, as well. So it's there, you know. Obviously, the degree will vary. **(Indigenous Legal Service staff)**

In Laverton, the women discussed this issue as follows.

I got problem with my house. I'm paying them \$800 and they take out \$100 every time from my pay. And how can I afford to get things for my house? That's for Horizon, the power, you know. My other sister's, she's in the lock up and she's paying, her debts are around \$250.

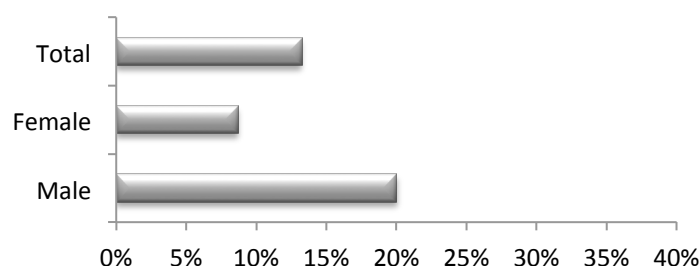
Paying for renting money, got debts of \$800 or \$700 or something.

That's nothing. Mine was \$3000 (with housing, for damage to the property) and water bill.

4.5.2 Accessing help and advice for credit/debt

Figure 4.19 shows that only **13.2%** 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. Women were much less likely to get help with such matters, although they reported experiencing problems with debt, unpaid bills and loans at similar rates as men. Men were over twice as likely to have sought help than women (20% of men compared with 8.7% of women) (see **Table 4.20: Appendix C**).

Figure 4.19 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



Legal services can certainly assist with credit/debt related issues. One legal service provider discussed the type of matters they had worked with clients in relation to, and how they had resolved the disputes in questions. An elderly client of the legal service in question, for instance, had a debt in relation to services provided to her for her dog. The legal service negotiated consent orders and the client paid all the money owing under that settlement. Another elderly client had a car loan and had defaulted on payment. She then voluntarily returned the vehicle and the other party waived the shortfall debt. She had a second debt with another finance company, a short-term loan high interest rate. The legal service negotiated reduced repayments and interest was also frozen for a period. It also liaised with Centrelink to ensure money was available to make the necessary repayments.⁶⁰

However, lawyers report not seeing a lot of clients in relation to credit and debt matters or generally not until fairly late in the picture. If debt is not presenting an immediate crisis it often does not take priority. Fear may also lead to avoidance. Once they are engaged with a lawyer, they may also not sustain contact for the time it takes to settle a debt matter.

We've had a few people being chased by the loan shark companies, debt collectors. Plenty of those. Trouble with, generally speaking, the debt collection agencies, once it gets to that stage, people tend to – they don't come for help. But also the people just disappear a lot. Probably about five or six of people – say that would be in a statistical period, people being chased by debt collectors and credit companies for loans for cars that they stopped paying, or cars that have been written off because the people, the loan sharks don't sell you insurance. You don't get car loan insurance. **(Legal practitioner)**

See, because they go more into debt negotiation. They leave it there, all these bills, little bills are piling up and they're just sort of getting the paperwork and sweeping it under here. It's just another matter getting swept away so they can't see it until it's in front of them again. You know, they might get abusive phone calls or horrible letters. It's when they come to us. Then we do what we can do on our part. But if it's like a big, more bulkier debt, we have to then refer them straight onto a financial counsellor. A lot of them get scared. They turn their phones off or whatever it may be. That's just another way of blocking them out. Because they do get quite nasty. Some of them are elderly people and they just don't understand what they're saying or reading when a letter comes. We've had a few cases. A lot of it's been waived because we've done our referral straight onto the financial counsellors. But again, it's a lack of, I guess, communication and education too. They're not

⁶⁰ Email, Justin Stevenson, Legal Aid Perth, 29 November 2012

understanding that or giving the client a chance to address the matter properly, or look into it further. **(Legal practitioner)**

Unfortunately – and this is one of the problems I often find with some of my Indigenous clients and these kind of matters – is the attrition over time. Because these matters, just by their nature, they're not going to be resolved in a week or two weeks or even two months or three months. I don't know whether it's due to – I don't know what it's due to. But I do find that I have had quite a lot of clients who will drop off somewhere along the line. They've just had enough. They've had enough of coming to see me with an interpreter to talk about it for hours on end. They've had enough of me telling them I have to write another letter to the bank. They just stop coming back. You try and contact them and they'll tell me not to worry about it. That's what happened in a couple of those cases. Which is unfortunate, because I'm pretty sure the bank was in the wrong. **(Legal Aid staff)**

Education and lack of awareness

Not knowing enough about managing debt and/or finances *or* how to respond to debt exacerbates the complexity and level of need in this area.

Credit debt is a huge problem. Huge problem.... The concept of credit and debt again is a very difficult one because they think basically for today, not tomorrow. So that's a problem. **(Indigenous community organisation worker)**

It's a bit difficult to get some of the older people to understand that if I can get them a grant for their electricity, they've still got to pay the rest that's owing. It's just getting them to get the idea that they've got to keep paying the thing, you know, or else they'll have a fairly large debt with electricity. **(Community organisation worker)**

A lot of people in remote communities such as Wyndham, people signing –you know, going for loans that they cannot afford. They're no longer in their employment with a high income and they're back on low income, Centrelink again, so they're not knowing that they have to then go – come and see, you know, a financial counsellor, Money Management, so that we can then let them know so that their repayment plan can be a lot less. So, you know, they're struggling with that. Then they're going into debt, quite big debt, with some. Or they're just pushing it aside trying to forget about it. It's not that it's going to go away. Yeah, it just keeps piling up and keeps piling on and ends up with debt collectors on their doorstep. **(Indigenous community organisation worker)**

A lot of debt collectors will ring Aboriginal people and they'll say you owe \$13,000, how are you going to pay it? Then you say – then the Aboriginal client will say "Oh, I thought I paid it off." "No, you've never paid it off. We need to start making arrangements." "Okay." "When's your next payday?" And straight away, the Aboriginal person's thinking oh, I must owe all this money. So they go into an arrangement to start paying all this money – which is what I did, until I spoke to this financial counsellor here and he goes, okay, well I want to see all the evidence that the person owes all this money. They wouldn't produce it. He goes "Okay, well tell them scratch the bill." So the bill's been scratched, just like that. Aboriginal people don't know that. You know, there's just not enough info out there for our mob. I've just – when that happened to me, and because I had contact with the financial counsellors here – them young people out there, just in Geraldton alone, he's paying all this big mob money to these fellas here. You're getting threatened with, "We'll just take you to court."

You know, we'll come take your car off you." You know, anything, "We'll send the bailiff around. We'll come get your TV" and things like that. It's really undermining stuff. So they automatically think straight away, well I must be – owe this money. So they enter into arrangements. Then they breach that arrangement, then they call them up again. They can be pretty abusive. Yeah, I swear back at them, now.... When our mob are threatened with court, automatically they think the worst - because nothing really good comes for us out of court. Always getting, you know – our mob, one of our – ten of our mob will go to court, nine of them will go to jail. That's the mentality that's out there now. So when we hear we're going to take you to court, you know, panic button straight away. All right then, we'll make arrangements to start paying this. When, you know, they don't have to. So yeah, that's still out there. That's still pretty common. **(Legal practitioner)**

This is one area where *non*-legal services – financial counsellors or similar – have a huge part to play in assisting Indigenous people to avoid or effectively respond to problems arising. They provide advice about budgeting and negotiate payment plans. They can also refer clients on to legal services, as appropriate (see also Section 5: Observations on Legal Service Delivery).

Well, the money management program is pretty much about individuals and families getting assistance with managing their money. That's from budgeting to educational workshops. Empowering them, pretty much, in skills and knowledge in financial education, ongoing education, of course. Just for their everyday expenses, to banking information, superannuation to, you know, tenancy. **(Indigenous community organisation worker)**

A couple of cases we've had, they've sent a letter to them stating, you know, about the client's issue. What their income is. We do send a copy of their budget. We pass it on to them. Then they either – it could be a verbal or written agreement. Then either waive the debt or come to some agreement, something manageable for the client and the retailer to go on. **(Legal practitioner)**

4.6 CONSUMER ISSUES

Focus group participants were asked about the types of consumer-related problems they had experienced in the last couple of years. These included problems accessing or finding superannuation, a dispute with a bank or other financial institution, a dispute over insurance, problems with contracts and/or scams, or situations where a person paid for goods or services that they did not receive. The number of issues broken down by community is set out in **Table 4.21**.

Table 4.21 Consumer Issues by Community

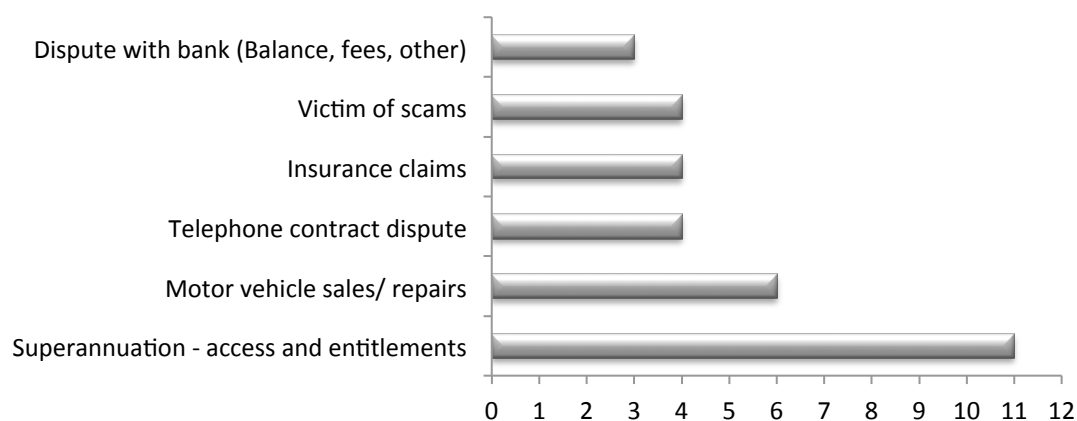
Location	Financial Institution	Insurance	Commercial Scams	Other Consumer Issues	Total
	No	No	No	No	No
Balgo	5	1	2	-	8
Fitzroy Crossing	2	2	1	-	5
Geraldton	2	1	3	2	8

Laverton	5	-	1	2	8
Narrogin	5	1	3	3	12
Perth	3	1	1	2	7
Roebourne	6	2	2	3	13
Wyndham	4	-	-	-	4
Total	32	8	13	12	65

NB This is the total number of consumer issues identified by community. It is not the total number of individuals identifying consumer issues, as some individuals may have identified more than one type of issue.

Some 24 individuals identified a total of 32 different consumer problems. The most common of these was access and entitlements to superannuation (11 participants). Motor vehicle sales/repairs was the second most common problem area (6) followed by telephone contracts (4), insurance claims (4), scams (4) and banking disputes (fees, balance, etc.) (3). (See **Figure 4.20**, **Table 4.22: Appendix C**).

Figure 4.20 Reason Identified for Consumer Problem



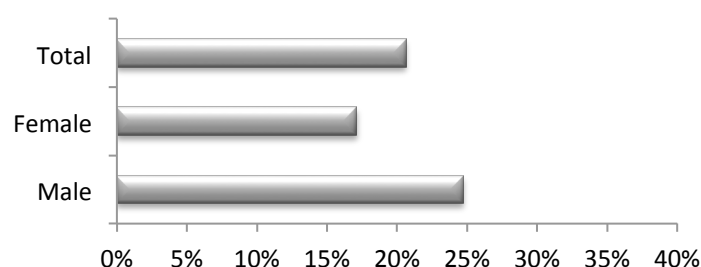
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4.6.1 Nature of Consumer Issues

Superannuation and banks

As shown in **Figure 4.21**, some **20.6%** of all focus group participants said that over the last couple of years they had experienced a problem accessing or finding superannuation or that they had had a dispute with a bank or other financial institution. Men were 6.9 percentage points more likely to identify this issue than women (24.7% of men compared with 17.1% of women) (see also **Table 4.23: Appendix C**).

Figure 4.21 Participants Identifying a Problem with Superannuation &/or Financial Institution



Participants spoke of problems relating to location of or access to superannuation.⁶¹

I've been looking everywhere for my superannuation. (**Roebourne Women's Focus Group Participant**)

My lawyer's helping me with my super. I applied for TPD, total permanent disability. (**Narrogin Women's Focus Group Participant**)

Claiming on their super. I guarantee most of us have had a job with money put aside in our super but we never ever claimed for it after we lost our job. That's a big problem. We don't get told whether we still got it or what. (**Narrogin Men's Focus Group Participant**)

We don't know anyone here in this little rural town where we can get help. No one has come to give us help [with superannuation]. (**Narrogin Men's Focus Group Participant**)

I've had trouble trying to find my super. I've had money going all over the place. (**Wyndham Men's Focus Group Participant**)

Stakeholders also saw clients about superannuation.

We see some accessing super, rolling it over – those that did work, trying to find their super. Maybe because there's a bit more education out there now, and people are starting to realise, you know, what they're entitled to. And they didn't bother to before. But now they know that they can. So it's the education, yeah. (**Indigenous community organisation worker**)

Superannuation also arose in connection with deceased estates [see Section 4.10: Wills].

Issues that were raised in relation to banks include poor access to banking services and ATM fees.⁶² The two issues are related. For example, for Indigenous people in more remote communities, where access to face-to-face banking services is restricted, fees charged to check bank balances or withdraw money can cause considerable financial disadvantage. The Commonwealth's 2011 *ATM Taskforce*

⁶¹ 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

⁶² For 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

Report looked at the financial impact of ATM fees, including on Indigenous people living remotely.⁶³ Their report has led to introduction of fee-free ATM transactions on a number of remote communities, alluded to in one of the following quotes.⁶⁴

Banking is a real issue in this way. People, they lose their EFTPOS card. Now, not such a big deal in Kununurra. It is here in Derby because the only bank branch is in Broome. So you need to get to Broome to get your card. You've got money in the bank. You can't get your money. You absolutely cannot get the money. So, you know, the banking system is a very big barrier. **(Legal practitioner)**

The other thing, as well, that people don't realise is that, as part of that credit and debt thing people don't understand that a lot of these ATMs that they've got around here, every time they use it it costs them \$5.00. They don't actually understand that. Then they go back and by the time they get their money in there \$10, \$15 has been taken out or something ... They don't sort of get it. Not that I know what you could do about that, but yes. **(Indigenous community organisation worker)**

[One issue is] ATMs and ATM fees on communities. You know, we get clients come in who have \$40 in ATM fees. I know that's something the Consumer Law Centre has taken up with them. There's been some changes. But it's still, you know... **(Legal practitioner)**

We have just had ... no fee ATMs put in around some of these remote communities. Yes, there's one in Wyndham. I'm so glad, because we were just educating our mob there the other day, last week, that they could use that instead of using the shop, the other bank's ATM, because it's just costing them \$2.50 each and every time.... There was a case, back in the day, when it was \$6... So can you imagine, this poor person checks it twice, that's \$12.... So yeah, trying to encourage them to use those ATMs. **(Indigenous community organisation worker)**

One thing that we've noticed - and we know that ASIC is now addressing is - the only way you can get your money in these communities is from the cash point. The banks are all charging every time you withdraw. Some people are checking their balances a few times a day, and they're being charged every time. So people are racking up big amounts of money doing that. I think, you know, that's an issue. Although, as I say, you know, we know that ASIC is now taking some action on that. **(Statutory Authority staff)**

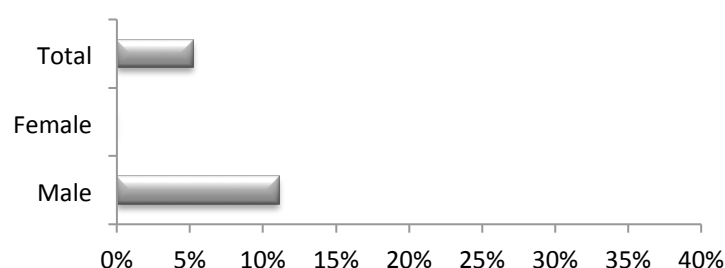
Insurance

As shown in **Figure 4.22**, a small percentage of participants (**5.2%**) said that they had had a problem with insurance, with significant differences in terms of rate of identification between men and women (0% of women and 11.1% of men) (See also **Table 4.24: Appendix C**).

⁶³ Reserve Bank of Australia (RBA) and Government Treasury (2011) *ATM Taskforce: Report on Transparency and Competition*, Commonwealth, Canberra, http://banking.treasury.gov.au/content/reports/atm_transparency/downloads/atm_transparency.pdf.

⁶⁴ See ACCC media release, 8 November 2012, on initiative relating to fee-free ATMs: <http://www.accc.gov.au/media-release/accc-authorises-fee-free-atms-in-remote-indigenous-communities>

Figure 4.22 Participants Identifying a Problem with Insurance



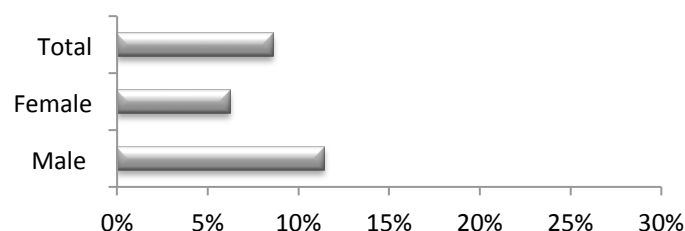
There was not a lot of comment about insurance (though see related comments below about funeral funds: *Scams and Contractual Issues*). One stakeholder thought that insured parties often might not know that they need to keep their contributions up to date to avoid missing out on a pay out.

From time to time, yeah, we get stuff on insurance. I get the odd one through once in a while. I think the big issue is understanding that its insurance and you can pay that premium for ten years, and if you don't pay that premium right when you need it because you're in hospital, that's it, your insurance lapses. I think a lot of people think it's a fund, whereas quite often it's not, it's an insurance product. And perhaps not realising if you're young, you probably don't need it, it's not worth your while to pay that for the next sort of twenty years, you're gonna pay much more than a funeral is. Yeah, that's a difficult one, that's difference between insurance and what's actually your money being put away for you for when you need it. There's lots of different insurance products about. **(Statutory Authority staff)**

Scams and Contractual Issues

As shown below in **Figure 4.23**, some **8.6%** of focus group respondents reported a problem with scams or contracts in the last couple of years. Potential 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 (11.4%) were more likely to report a problem in this area than women (6.2%). (See also **Table 4.25: Appendix C**).

Figure 4.23 Participants Identifying Problem with 'Scams' or Contracts



There was a considerable amount of comment about these issues, which take on a variety of forms. Some involve obvious scamming, as the following material suggests. But on other occasions problems arise where Aboriginal people do not understand relevant contractual obligations and rights, rather than due to any unconscionable or illegal activity on the part of traders or service providers. Either way, as is evident from the material that follows, consumer-related problems can cause significant problems, including accrual of substantial debt.

(i) Door-to-door and telephone sales

Door-to-door (and telephone) traders sell items such as first aid kits, portraits, water coolers and mobile phones. Traders enter a community and sign customers up for ongoing direct debits for these types of products. This appears to be a particularly problematic area, especially on more remote communities, according to stakeholders.

They're signing people up for first aid kits. Two guys signed my niece up. **(Indigenous community organisation worker)**

They (traders) go out to the communities. Because I've dealt with a few people that come in and see me... I see Kalumburu people and I did see Oombulgurri people, as well... Somebody would go over there with what you're saying (first aid kits etc.). That's on the communities. They come in and, you know, [the people I see are] not getting very much money at all. So I check on why and they're paying all this money out. **(Indigenous community organisation worker)**

So, it just relies again on those high-pressure tactics and we've seen some really, really, terrible tactics as well, particularly if people are on commission, going into remote communities and using very underhanded approaches. "I'm just looking for some water", just not disclosing who they are and what they're doing, that sort of thing and sort of once you're in somebody's house people feel very rude to say, "Please leave" and "No" and things like that. We have people getting signed up when they're intoxicated, even when they've told people to leave them alone multiple times and just being harassed so... **(Statutory Authority staff)**

The evidence seems to be that you'll get people out to these communities selling first aid kits and photographs. And so people then get hooked into this and you've got debt issues. **(Legal practitioner)**

There was somebody else come in – now, what were they selling? I can't remember what that was. Because I had a grandmother came in here to tell me. I said "Well, I hope you didn't give them your bank details and that?" She said no, I didn't. I told them to whatever. But it was good her telling me, because there's no way she was going to divulge her bank details, but I thought how many others are going to, you see? They get caught straight away. So then everybody that came in – if you get a bloke knocking on your door and wants bank details - just ignore him. Tell him to go away. **(Indigenous community organisation worker)**

One type of hard sell involves asking for financial support for a charity.

Probably just the other consumer issue that I'd say is pretty major is scams. There are a lot of people, right down to really remote communities, sending money away overseas [for charities]. **(Statutory Authority staff)**

This wasn't World Vision's fault. But we had a situation where doorknockers from World Vision were going around door knocking communities. People were signing up, people who were on benefits, not having it explained to them or understanding... So that was a problem. We had to get in touch with World Vision and say 'Hey'... We're gullible people, Kununurra people... We joined the Do Not Knock Campaign... That was quite successful for a while. We went around with our public tenancy support schemes. **(Legal practitioner)**

We had a very interesting one a few years ago with charities.... Basically it's outsourced now. So they'll have collectors go out on their behalf and they had gone out to remote towns and communities. The charities absolutely didn't want any part of that so they acted very, very quickly. That was a very strange one, but you do have a lot of people who may be supporting kids in third world countries who're struggling to support their own. But usually the charities are very, very quick to cancel any direct debits that are coming out, anything that people might've signed up to. **(Statutory Authority staff)**

Another involves portrait packages, where people are effectively scammed into purchasing *very* expensive family photos. There is little appreciation of what the final cost will actually be by the time the last payment is made, a detail which at times seems to be deliberately withheld from customers until they are well and truly engaged and ready to purchase.

Probably one of the biggest areas is family portraits. So, people love photos of their family, they love the photos of their kids. It's like a thing across the Kimberley. Everybody has these photos in their house but people are committing to \$9000 contracts for photos. So I think that those types of contracts really take advantage of that vulnerability, not necessarily overtly - in that people might want the goods, but it's about convenience as well. All those things come to play, and they seem to fit really well with that type of sales approach where it might not be overtly misleading or deceptive conduct, or unconscionable.... \$9000 is the biggest one I've seen, and she had two of \$9000. They are very expensive. With some of them, it's about \$200 a photo. Their staff are on commission. **(Statutory Authority staff)**

I suppose there's no price control. So they can charge what they like... Usually one of the difficulties is the disclosure about the price. So it's perhaps sometimes promoted as something free and people think they're getting the photos free, but it will just be a free session sitting. So they don't charge you for the sitting. You won't be able to find out what the price of the photo is until they come back and they've got you with the photos that you've now got that emotional attachment to, that you now really want. So, usually if you try and ask the price beforehand, you won't be told. **(Statutory Authority staff)**

Portraits are sold in communities and in shopping centres, with some suggestion that there is, at times, deliberate targeting of Aboriginal people.

They are absolutely going for one thing and from all the anecdotal information, they will target Aboriginal people in the shopping centre. You'll have very few non-Aboriginal customers in the Kimberley. That seems to be what they find to be a bit easy. Sometimes it's door to door, sometimes in a shopping centre. **(Statutory Authority staff)**

There is some question as to whether scams such as the sale of portraits and other high-pressure sales intentionally and specifically pursue, and thereby discriminate against Indigenous people. "I'd say some scams would target them", thought one stakeholder organisation.

Overall, stakeholders seemed to think that it was too hard to generalise about this either way. But, it is clear to stakeholders that some traders *do* prey on the most vulnerable consumers, which includes Aboriginal consumers, particularly those located on remote communities or without a high level of literacy. Remoteness means that consumers have, for example, less choice in terms of purchasing goods and less information about potential scams, and are therefore more susceptible to being pulled in to bad deals.

When asked if going out to a remote community is a deliberate tactic of some traders, one stakeholder replied, “Well it must be lucrative too”. The organisation continued.

(It is) not definitively (racial discrimination). You can kind of get an idea about some traders because of what kind of issues come up and what conversations you have that you think, “Oh, can’t get you on it, but I don’t know if you’re being ethical. You might be following the letter of the law, but are you just slightly taking advantage?” So, I’d definitely say there’s situations where perhaps those vulnerabilities come into play, but they’re not necessarily being taken advantage of, and then also there’d be other situations where people will take advantage. We see that with all sorts of different industries where you’re playing on language, where you’re playing on literacy, playing on high-pressure sales tactics. **(Statutory Authority staff)**

We’ve been pretty observant and haven’t seen any of that (high pressure scamming) happen here. I think it’s areas much more remote than Roebourne where they haven’t got easy access to getting on a bus to go to Karratha and they haven’t got all their friends and relatives where there’s more discussion about that. It’s more remote areas where there’s not a lot of travel into and out of, where the scam guys come in and pfff ... Awful. New cars.

(Indigenous community organisation worker)

And because of the distance and they’re vulnerable, they’re much easier to pick off – more than in metropolitan areas. People who do this would say that’s the way the dice rolls, but I sort of think it’s easy money. It’d be hard to say it’d be deliberate. **(Legal practitioner)**

We found, especially in remote communities, there’s a tendency for door-to-door salesmen to be knocking on doors and selling items that people don’t need, pretty much. **(Indigenous community organisation worker)**

There were first aid kits and water coolers (being sold door to door). We knocked it on the head and actually got ... Consumer Protection to (intervene). Because they’re not being regulated [effectively] ... I had quite a few actually, in about four years. It’s basically around Wyndham and, I think, Turkey Creek. They were just, you know, going around to all these communities. Remote communities. Wyndham is remote. A lot of them in Kununurra, we’ve got banks and, you know, we’ve got most of the facilities that we need, actually, here – whereas Wyndham hasn’t. It’s easy access, going into communities and just threatening people. Even down here, at the [named] reserve. I think it’s all selective. **(Indigenous community organisation worker)**

The one thing I didn’t mention earlier which comes to mind, outside of housing and driving. The third prime area which is really big, in my view, is consumer matters. Indigenous people, just like anyone else that’s part of the Australian community, they’re consumers. But Indigenous people tend to be particularly vulnerable consumers. So, there’s a lot of not just scams, but there’s lots of dodgy service providers, particularly in remote areas. So we’ve got a number of matters up north which relate to the kind of dodgy photographers. **(Indigenous Legal Service staff)**

Being able to say no to high-pressure sales is apparently very difficult for many Indigenous consumers, according to the following stakeholders. Low literacy is also one reason that they may not identify something as a scam.

It's about a lack of education for mostly Indigenous communities. Indigenous communities not knowing that it's okay to say no.... You know, someone's standing there, saying "This is really what you need" and ... some of them can't even read and write. So low literacy and numeracy skills. It's wrong. We have a lot of that in Wyndham area. **(Indigenous community organisation worker)**

But it's also – you can easily be scammed. Anyone can easily be scammed. Any individual. Whether you've got, you know – if you don't have the knowledge of knowing someone's scamming you, then, of course, you're easily targeted. Even myself can be easily targeted, even though I've got a bit of knowledge now. No, it's not racial. I do think though, that they're more vulnerable because people tend to take advantage of their low literacy levels. I mean, that's in any case, non-Indigenous, Indigenous. Anyone with low literacy would be targeted. **(Indigenous community organisation worker)**

"Give us phone numbers. You can win an IPAD!" It's a phone call at teatime. Aboriginal people get sucked in. They think new IPAD, new iPhone. **(Indigenous community organisation worker)**

(ii) Motor vehicles

Problems with motor vehicles, both in terms of vehicle repair and purchase, were also raised as being a fairly common issue. "I took my car to get my aircon fixed up, but it wasn't fixed" **(Roebourne Women's Focus Group Participant)**. Part of the reason these issues are significant is the dependency of people living outside centres, in particular, on cars for transport.

Probably with the consumer issues, motor vehicles are a big issue. There's no public transport in a lot of places and you've got probably the harshest conditions, whether its roads or distances or things like that. So you've got high costs right across. So whether you're buying a car and getting it delivered, your repairs to your car, your fuel - all of those are really big costs to people. **(Statutory Authority staff)**

Issues in this area demonstrate the way in which Indigenous consumers enter into contractual arrangements without fully understanding rights and obligations. They also represent, at times, examples of not receiving a service and/or goods paid for (see further below: *Goods/services paid for*).

You get issues where people have purchased a vehicle and there's problems with it - thinking that they have to return the vehicle to the dealer, whether it's in Perth or Darwin or what have you. Not knowing that actually it's up to the dealer to organise the return or to fix it where it is or organise a local repair. Obviously it's different if the consumer caused the problem. So quite often I'll get phone calls from people with what seems to be buyer's remorse. So perhaps overcommitted, thought about it and realised it's far too much, or sort of not really happy with the condition of the vehicle. That's quite a hard one. I think people often feel obligated and under pressure and are not necessarily aware that they're the valuable commodity in the transaction and that the dealer needs them. I think people more often feel that *they* need the dealer and they need to keep them happy and on side and that the dealer's somehow helping them. So quite often I'll have those sorts of comments... "Oh, I thought he was helping me, I thought he was looking after me." So there are issues around that. **(Statutory Authority staff)**

We have been assisting people and we've got a few ongoing matters to do with vehicles. Sale of vehicles, people purporting to buy a vehicle with a one-line note saying it's now theirs and get a price on it and just signing it. Tricking people into swapping their vehicle for another vehicle. Telling them that that one's a better vehicle... So we've got someone that we assisted where the mechanic, allegedly, told them that their vehicle was going to cost so much to fix. "Why don't you swap it for this one? You can have this one. I'll take yours." The vehicle that they got given broke down 400 kilometres down the road, before they got back to their community. **(Legal Aid staff)**

There was some concern about the impounding of vehicles, including the extent to which cars are being impounded by police and are then sold without notifying the owner.

The police empowerment powers were beefed up here, I think it was last year. So they can impound for a lot more matters than they used to be able to. We've had a couple of matters where people's vehicles appear to have been sold without their consent from the police holdings. The legislation definitely requires the police to notify an owner before they intend to sell a vehicle. So those matters are being looked at at the moment. **(Legal Aid staff)**

Men in the Laverton men's focus group spoke of a local man selling parts from impounded vehicles.

Half these guys are not even on the road. There's been - like at the back of the village in the scrub, they've been picked up for drunk driving and car's unroadworthy and they're not even on the road. Bang. Impounded. Gone to court for dangerous driving.

Once there was a guy down the back here. He had impounded cars. He was selling them. Some were unlicensed and some licensed and some cheap. But, yeah, but he's cleared out now he's gone. So the cars are all gone.

I had people complaining ... that this bloke got picked up for driving and his car got impounded... That bloke can take his [car parts?] off and sell it... if you don't come up with the money. By the time you've got the money...

They got to hold it out there for-

28 days or something.

Because if you don't come up with the money...

It'll get it sold.

You have to pay up about 900 bucks or something to get it out.

But the thing is when he left town, he had quite a few impounded cars, and he had also cars that he was working on, and he gave people 24 hours to pay their bill. He didn't want to take EFTPOS or cheques. He wanted cash.

Problems with purchasing vehicles on credit also illustrate the strong connection between credit and debt and consumer law.

Because it's so expensive people end up committing to big purchases and... people are persuaded to purchase the most expensive vehicle on the lot that they could possibly afford, as opposed to maybe one that was more in their price range. I think a lot of people do get into

difficulty with the finance, not shopping around for finance, so accepting the whole deal, with the vehicle with the finance all together. It can often be quite expensive. So, motor vehicles purchasing is a big one. **(Statutory Authority staff)**

And whilst a dealer's conduct may well be unethical when they take advantage of a vulnerable Indigenous consumer in selling or repairing a vehicle, it is not always easy to identify this conduct as illegal.

I don't think I've dealt with it enough to say that there's a trend really. But I think, clearly, in some of the ones that I've dealt with, people are taking advantage of the assumption – they're assuming these people only have a limited knowledge of their rights and things like that. Or taking advantage of the lack of understanding of – quite often, the legal advice we have to give people who have bought a dud car is, unfortunately, that the law sees it as buyer beware. Unless there's something really unconscionable about what's been done, you really haven't got a cracker's chance of getting anything back. So I think there is an element of people taking advantage. We've seen it more recently not only Indigenous people, but also there's lots of backpackers who are in town who are not from Australia necessarily. Taking advantage of both Indigenous clients and backpackers because they don't understand those laws and they don't understand that, really, it's their obligation to take it to a mechanic before they buy it to make sure that everything's sound, because they're buying it as it is. Unless someone's made a false representation about the vehicle that you're going to be able to prove in court there's not much chance of anything happening. So I suppose it's more kind of preying on that lack of knowledge, I would see it as. Not necessarily doing anything illegal, but unethical. That's something else we've identified and why we really want to continue to talk about vehicles, not only driver's licences, but (consumer) issues in communities. So that people are aware of their obligations and their rights in those regards, so that they can make better decisions for themselves. **(Legal Aid staff)**

Consumers looking to buy or repair a car may have less 'purchasing power' in more remote locations, too. There is not a lot of choice in terms of mechanics or traders in smaller towns and communities. They may have to purchase a vehicle online, and risk the potential trouble this may bring.

A lot of people are buying cars online because they can't get to a dealership. Our message to everybody is always get an independent mechanic whether you get it from a dealership or a private dealer and then you know that the vehicle 'exists' and you know what condition it's in, and that's one of the biggest issues - where people think they're getting something and it's quite different. I mean, they look nice, and the photo looks good. But mechanically it's been hammered on a mine site or something. **(Statutory Authority staff)**

On top of that, the chief services, again, that affect Indigenous people are that in Broome there's a number of difficult automotive mechanics. A town like Broome's only probably got three or four mechanics. If two of them are either dodgy or don't act in an appropriate way or overcharge it becomes really, really difficult for the community. **(Indigenous Legal Service staff)**

(iii) Mobile phones and phone contracts

Phones arose as an issue in the context of scamming and high-pressure sales - but also in terms of contractual issues. Disputes about mobile phone contracts were relatively common. People were, for example, signed up to mobile phone contracts even though there was no phone coverage in their area.

Again, are these providers consciously setting up useless contracts for and thereby deliberately ripping off Indigenous consumers?

What about Wiluna? What was that happening out there when they were going out there and getting them fellas to sign... payment plans or something? It was fancy phones, so much a month or something. They were all signing up... Yeah, there's a lot of that going around. (But there's no reception), only if you're in the town centre. We didn't get many cases come through here, though. We just hear about it, but we don't (see them come in). **(Legal practitioner)**

The TELCOs are promoting their mobile phones in Indigenous remote communities. The only one that you can get is Telstra. So any other mobile phone provider promoting itself and trying to sell a mobile phone deal to consumers in those communities – they're misrepresenting. You'll never be able to get coverage. You're buying something that will never work.... It's another one that would be a great class action, I think, because if a number of people in a community are targeted and they all buy into the deal, it's a non-Telstra deal.... I won't name the provider. **(Statutory Authority staff)**

We had that one in Kalgoorlie... They sold an 84-year old Aboriginal man an I Phone. All he wanted was a little phone. I've got him out of that contract because he was misled and he didn't understand the terms of the contract. Based on the contract, and the way that it was misleading, that's how we were able to get him out of that phone contract. So we have to pin it on either an unfair contract term or unconscionable conduct - quite subjective legal words. Then we have to bring it back to our legal Department to see if that could actually warrant a complaint.... When you're going into the remote communities that you're going into, you know, most of them will speak English as a second or third language. Their ability – not saying that they're – they might be western illiterate with numeracy and literacy... So their ability to read a contract and to actually understand that contract is questionable. And again, could we take you based on unconscionable conduct, because you've given somebody something that doesn't understand English, let alone not understand it, but couldn't even phonetically string this sentence together, or understand? You know, so I think we could get out of things like that, especially with phones. **(Statutory Authority staff)**

(iv) Other Scams and Contractual Issues

There was some discussion relating to funeral funds, including as potential scams where companies have passed themselves off as being 'Aboriginal' in order to attract Indigenous clientele.⁶⁵

We get a lot of funeral problems and the funeral schemes, where they stop paying for a month or two and they lose all their rights under the schemes or else they're paying for years and years and years and have actually paid for their funerals 20 times over. ... It targets Aboriginal people because the death (mortality) rate is more for the population. There's definitely more funerals that they go to... It's called (Aboriginal) but it's not. A lot of people signed up to go to an Aboriginal organisation (but it's not Aboriginal). The Department of Commerce have instructed (people about this) on their website but our clients don't go onto websites, so if they see the paperwork.... A lot of our clients have been caught

⁶⁵ For a discussion on problems with funeral funds 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.

by that. (They don't know) what they actually cover. **(Indigenous community organisation worker)**

In Narrogin, the women talked about how not making a single payment might mean you lose all you've paid into a fund to date. One lady talked about her brother, who stopped his payments just before passing away.

My brother did a life insurance will thing for himself. He started it in about 2002 and he stopped it in 2012 and he passed away on 29 July and don't know what happened. When the children were ringing up about it all they said they're going to look into it further. They're going to find out what happened to all that money he was paying in.

The other women in the Narrogin focus group continued. "They say it lapses if you don't pay anything into it." "You lose all that money." "It was a funeral fund." "Saw one on TV, not long ago." "This happened with my cousin."

Other scams/contractual issues

Comments about other scams or contractual issues follow.

There's a social networking platform called Diva Chat that a lot of people use. I've been seeing fake profiles on there, offering people prizes or telling them they've won prizes. And what they essentially do is they get peoples' passwords, and they log in they'll leave themselves fake feedback. So I had a young girl come in and she's like, "Oh look, my aunties won all this money down in the Pilbara." But in fact they'd got her auntie's profile and left their own fake feedback and I think there's quite a lot of people sending money out. Diva Chat. Romance scams. I've had quite a few Indigenous people come in with romance scams. So people meet them online and then send the money away to them. But that's definitely, that's right across the board as well. **(Statutory Authority staff)**

Scams, it's just huge. So we've seen phone call scams. So people being phoned up, saying "We're from Centrelink, we've basically been underpaying you and you're entitled to a refund of that money. You just have to send a processing fee." So people think they're actually entitled to a refund. So pretending to be from government agencies would probably be one of the ones we've seen. The ATO 'Get tax free funds'. Oh god, there's thousands of them - people buying products online that don't exist, cars that don't exist. I had a young Indigenous couple do that. So, they sent away \$10,000 of a loan that they'd got out. The post offices are really good. So they head people off, try and prevent them sending money as much as they can. But obviously they can't physically prevent people if they really want to send it. They will refer a lot of people through to us. **(Statutory Authority staff)**

Scams/Contractual Issues: Link with Credit and Debt

As noted, problems that arise for Indigenous people as consumers are can link up with other civil and family law issues, including discrimination (for instance in shops (see Section 4.3: Discrimination) and credit and debt (see Section 4.5: Credit/Debt)). This inevitably increases complexity of need. Book up and to a lesser extent payday lending, as well as rent-to-buy schemes, demonstrate a connection between consumer and credit/debt issues.

(i) Book up

As part of their interactions with traders/services (mostly with shops) Indigenous consumers may have little option but to use book up or payday lending due to poverty and difficulties in accessing perhaps more favourable, alternative forms of credit.⁶⁶ There was little criticism raised by Indigenous focus group participants in relation to these forms of credit. In fact, some Indigenous people may actively resist any intervention (on the part of a legal service, for instance) aimed at stopping a trader from using book up. For some stakeholders too, it is recognised that these practices should not necessarily be seen as a problem where Indigenous people feel they need to be able to access them. Other stakeholders were concerned about them.

There's two places here do book up. Well, to a lot of people, it is [helpful]. [As to whether it's exploitation], well, I don't know. I don't sort of go into that, maybe only when they're holding their cards, usually. There's been a few issues where - the hospital, something medical - they're going to be sent to Perth and they won't give them their card. So while they're not here - because of what they owe the shop. Which is totally illegal. I'll step in then and say, "Well, it's too bad. Whatever they owe you, it's too bad because they're going to Perth. They need the card with them." And as I say, when they let it go too high....

(Indigenous community organisation worker)

Actually, the other thing I've come across a couple of times is people getting clothes or whatever from the local shop, then the shop holds their key card. There's book up in Kununurra and in Wyndham.... We've tried a couple of times to do something about that. The clients generally resist. They don't want to. One big reason is that they get humbugged from the family. So, they're trusting these people to hold their cards. I suppose they're particularly untrustworthy over there, although, you know, I've seen some things that are - "Hello, what's this?" But we haven't had anybody who wanted to stop and have us go through it and do all that. Because it's older people, isn't it? So it's a tricky one. I mean, I think it's fair to say that younger people don't do it anymore. ... Those that do it, the older generation, they won't come and want to change that.... They know they're getting their food, they know they're getting their cash there.... But on a pension, they don't receive no money whatsoever because of their booking downs.... I've had a client cancel their card because they didn't want to have the confrontation of "I need my money ... for something more important this fortnight." So, rather than having that discussion in Wyndham with the clothing (store) they cancel their card and then they can't access any money. It just creates all sorts of issues. **(Legal practitioner)**

So much comes down to each situation, because it can be very transparent, very fair, and not having people beholden to a certain store. That was the issue as well, that is people always owing one shop so they never got the benefit of shopping around and perhaps getting goods cheaper somewhere else. They always had to shop at a certain place. So there were lots of negative things about book up, but there were some situations where it was positive as well. There was a question of whether you just throw it all out and say nobody can do this and that has the unintended consequences of affecting those people that really need it, or do you regulate it? **(Statutory Authority staff)**

⁶⁶ See discussion, McDonnell S (2003), *Money Talks: Overcoming the financial exclusion problems faced by Indigenous Australians*, paper for Australian Social Policy Conference 2003, UNSW.

Taxi drivers were the worst. Take a person home and they give them the key card, then they give them the PIN number. They go and get the money out plus whatever other money you owe them, because they book up with the taxi. Not only the fare, they book up money for this fella, you know, and smokes. Then they take out extra because they're drunk... And convenience. But I think that's now – I haven't heard anything. Yeah, I haven't heard of that for a while. It's still commonplace. Not here, but... What was that one over in Kalgoorlie? That was where that bloke was lending them money no matter how much money they wanted. But he kept their key cards and PIN numbers. He was – "You owe me \$200. But I lent you another \$50 last week, so you owe me another – because I lent you \$50, you've got to give me \$60 back."... Some interest as well, wasn't it? Yeah. He'd lend them \$50 and they got to pay \$60 back. Oh it was a lot higher than \$60. He was having a good old time over there. **(Legal practitioner)**

The practice of leaving a key card *and* pin number with a store owner was seen as especially worrying.⁶⁷

Well, in the Wyndham area there is book up. They leave their key cards at the store. We've been doing education around not leaving your card at the store. And if you do – finding out if the storeowner is actually – do they know their PIN number? Then I would be in contact with Department of Consumer Protection for sure. It's not right. But they're telling me no, they leave the key card there for safekeeping, because they get humbugged, some of them, and some of them are booked down. So by the time they get their money the next fortnight, they just go in there, put their PIN in, the money comes out. But I still don't like the idea of that booking down. I still don't think it's right. **(Indigenous community organisation worker)**

Book up is said to not be as common as it once was, partly because shops do not see it as a viable way of doing business.

So, community stores are realising that it's not good business practice to have a whole lot of unsecured debt, so they will have much stricter controls around book up where people are not constantly - and that's the danger, people get constantly behind. But, there's also, to balance that, the issue that people who have a history of financial difficulty, who've maybe got a poor credit rating can't get loans and that sort of thing, might need a little bit extra at times, and who have kids going back to school and you need to get a few things and then it could be something that's unusual, rather than something that's week to week and month to month. I think most businesses are going away from book up as much as possible. If you got to places like Halls Creek, they say that we've got book up for the really old timers who have been doing this for forever. "But we don't start new book ups and we only do it for very limited amounts and in very limited circumstances." So people are not so much talking about book up being a big, a big problem anymore. [It] just seemed to kind of peter out and the more I talk to businesses now they don't do that. They might have accounts, but it's not really book up. I think one of the community stores at Kalumbaru, that actually went under because of the amount of book up. **(Statutory Authority staff)**

⁶⁷ See discussion in Law Reform Commission (WA) *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture. Project 94: Final Report*, Perth WA, pp. 231ff

We've stopped book up in our store because most companies still have book up where you come in every second Thursday - pay day – and settle book up. Comes every second Thursday here, there's no money left after the huge increases in power and water and creeping rent, so they don't fix book up. So we've scrubbed book up. No credit at the store. A very honourable system. They book up. Come pay day every second Thursday, they come and pay. “How much do I owe you?” You give them the bill, they pay it and start again like any normal account. But we had people getting more and more and more in debt and not settling so we drew a line in the sand. Those that could pay paid what they could and at the end of the financial year we wrote off what hadn't been paid, several years ago now, and said, “Okay, no more book up.” **(Indigenous community organisation worker)**

(ii) Payday lending

Problems identified with payday lending include the possibility that lenders may just keep giving out money to borrowers, who accumulate more and more debt, as well as poor record keeping of money lent and repaid.

Payday lending doesn't come up, not so much. I see it advertised on TV, but I've never had it come through me. It might be coming up for financial counsellors though. I know in other places, like around Kalgoorlie, I think there's more of it. I haven't really heard of people taking up that as an issue, but I don't know. There was a payday lender here. I was really waiting to see what was gonna happen, but ... I don't think they're actual doing it anymore, so that sort of went quiet. I'm just trying to think about... Yeah, I mean I do see it advertised a bit and people do have access to it, but I don't know to what extent. **(Statutory Authority staff)**

Payday loans aren't covered because it's not classed as 'licensed credit providing'. It's to do with the length of time because it's such a short-term loan. It didn't fall under the criteria for a licence. So it's incredibly difficult to regulate. **(Indigenous community organisation worker)**

I think there are some payday lenders who were offering a service. It depends. I mean, it depends on your situation. You know, sometimes – yeah, I mean, I just bought a car and I bought it on finance. Some people would say “Well you're being ripped off because you bought a car on finance.” But for me, I weighed it up... I think it's quite subjective. I guess it would be difficult for those who literally couldn't pay it back, so they come under this cycle That's just like, you know, lending money from the family. Well, you can't pay the \$50 back, but you come back for another \$50. So now it's gone to \$100. Then lucky with family, family will just cut you off and won't lend it to you anymore. But it's different with payday lending. So I guess, again, it comes down to your own financial literacy and your ability to track your own money. And what works good for some doesn't work good for others. I suppose the key thing around that, though, is that there should be terms and conditions. There should be some sort of written contract and there should be a record of payments made, money owed, the interest, etcetera. It needs to be an accurate record. So it certainly represents issues that we saw as well in the Sam Tomarchio case, where he was literally writing on tiny

bits of paper. You know, Johnno owes me. I give so-and-so \$100. By Friday, they owe me \$5,000. You know, that's how it went.⁶⁸ (**Statutory Authority staff**)

(iii) Hire purchase

It is suggested by one stakeholder that hire purchase is a form of lending and should be properly regulated as such to ensure it complies with rules governing responsible lending.

Especially if there's not that much credit checking. So they also need to be part of the responsible lending practices that the banks and the building societies, whatever, have signed up for. But they don't. There's a loophole and they jump through it every time there is a remake of legislation. They still – we still – the government still doesn't tie it up. So it's impossible for them to get in there. Because they don't offer – you know, it's a credit. In all the issues when we look at it – it is a credit issue. Because they're getting goods and they're paying it off. But at the end of a period, it only comes into a credit contract as credit if they pay that extra one payment so they can keep the goods. But while they keep it as this rental stuff, it's never going to be cleared up. People have not been listening to that. I know we have been talking about this for seven years, you know. And still nothing has changed. We could change – we helped change the payday lending. Now it's a bit harder. Not really hard, but it's still a bit harder to get it than what it was. We just need to do the rental stuff. (**Legal practitioner**)

At the moment, there is some unease around the way that traders are contracting with Indigenous people who cannot afford to make the necessary payments, leaving them with little money to pay for food each week. Education for both traders and for Indigenous people entering into hire purchase contracts is required. It is also noted that poverty means that hire purchase may be the only form of credit many Aboriginal people can access to gain immediate possession of household goods (see also Section 4.5: Credit/Debt), as noted above.

The biggest problem with white goods is our countrymen can't afford to go out and buy a \$1,300 TV straight out. This looks really attractive – that they can pay \$5 a week to own a TV over three years. That's where they actually get caught. Because, you know, nowhere else can they get a free TV, washing machine, maybe table and chairs and a lounge and things.... So that's the only option for them. But, unfortunately, they fall into that trap. That's where, you know, something needs to be done there to find the white goods fellas that go out – they need to be educated, and our countrymen too. Because all they see is dollar signs coming out of them. Some clients can pay a majority of their whole income just for the rental goods alone. You know, the next pay or a couple of days after their pay, they're coming in looking for food assistance. Why? Because their pay has gone to this. If they don't pay that, they've got to hand back those things. The family goes without. The kids are crying "Where's the TV?" or "How come we can't do our washing?" "Well, I need to pay this bill, therefore, I couldn't put the food on the table." ... It's the pathetic loophole that they can get these things through. It's right there. It's accessible and they can get it right there and then. They're waiting four weeks

⁶⁸ See media on Sam Tomarchio case (The Australian, 16 January 2010): <http://www.theaustralian.com.au/news/nation/jenny-macklin-blasts-appalling-laverton-loan-shark/story-e6frg6nf-1225820155886> and (WA Today, 21 October 2011): <http://www.watoday.com.au/wa-news/illegal-goldfields-moneylender-fined-34000-20111021-1mc1z.html>

or a month down the track. They get it delivered right to their door. Yeah. (**Legal practitioner**)

Some stakeholders suggested that hire purchase equates to scamming, others to a community service, of sorts. It is said that some traders adjust their terms and conditions depending on what they think they can get away with (according to perceptions about a particular customer's financial and other literacy) and that it is not always clear or clearly understood whether the deal is a rental (only) or a hire purchase. There is also some suggestion that Indigenous communities are, again, seen as easy targets for (and are intentionally targeted at times by) rent-to-buy schemes.

Have you guys talked about Roo, Rent The Roo? That is probably the worst one that's in Geraldton. They don't read between the fine lines. Radio Rentals - the same sort of thing. We actually think it's still scamming. Like, because of the way that they can go and do it. You know, there's no cooling off period. Because you invite them to your house, because they don't have an office, so once you invite someone into your house, you've actually agreed to – so there's no cooling off period for that. I think that's the biggest scam. (**Legal practitioner**)

Because it seems, with Mr Rental, every agreement is different. It's negotiated to the client. Because sometimes they will pay for the first year and then they start to own it after that. This client, I had to advocate for her because that's just how it happened. She gave them my name to fix it. That was okay. I got them, after a lot of hassle, to send the agreements to me. The agreement actually stated that she was never going to own it. She was always going to rent it. She was paying \$280 a fortnight. I mean, she has a lot of appliances, but when I showed her, she didn't realise what she'd signed. So I'm finding, with my clients, there's no financial literacy. There's no one to sit with them and say look, be careful. Let's read it together. There's nothing like that. Then they end up in this huge mess. I have this feeling that the Mr Rental staff are trained in the line of - you talk to the client and if she seems stupid enough, you can do this. They possibly don't use those words, but that's what it sort of... Then if they're a bit with it, well then maybe we'd better do a proper agreement, you know. I think if they can get away with it... And the people that come to deliver the goods are always really nice. But I've been to some clients' house when the debt collector's turned up and he's pretty much a thug. That's the other end of it. A client in Corrigin, the agreement was when you've paid it - then you've got to pay \$1.00 to own it. But you'd have to go to Perth to pay that.... Then you own it. But you've got to pay in person. So, there's all sorts of real... You know, so it was weeks before she could pay that dollar, because she had to save up the bus fare.... [And if it] breaks and you have to keep paying for it anyway. (**Community organisation worker**)

The goods often aren't all that good a quality and they fall apart before they're finished paying for them. Well, if you've got four kids jumping on a settee, of course, it's not going to last forever, is it? It's never been the best quality to start with. Some of the beds are that really thin metal. They just buckle. (**Community organisation worker**)

One particular area of concern relates to ongoing deductions being made by these traders directly through Centrelink benefits and Centrepay. Centrepay is discussed further in Section 4.9: Social Security,⁶⁹ but in short, whilst Centrelink might say that they are facilitating these payments as a way

⁶⁹ 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*,

of helping clients to manage their budgets, not only are the contracts between the consumer and trader sometimes unconscionable, the deductions also leave clients with next to nothing for essential items.

Yes. When we – a lot of – when we get like clients with debts, if it's through Centrelink, they'll set up some kind of payment arrangement – make sure it's manageable on their income. But we've got a list of the places where we – who will do Centrepay, if it's – like again, if it's a large debt, that's when it's out of our boundary. We pass it – then do the referral onto the financial counsellor. But most of them are generally like household bills or – yeah, like rent, electricity, gas, etcetera. Radio Rentals. Maybe Rent The Roo. Maybe a school bill they're paying off. Nothing really major. Sort of keep it limited to what, I guess, the family can afford. They direct debit through Centrepay out of Centrelink payments. So one of the things that's come up, in some places there have been people signing these contracts for white goods. Centrelink has actually agreed for the automatic deduction to be made, even though, clearly, it's not in the interests of the person... It's whatever that client has set up, that's – the money goes into that client's bank. Whatever they've set up – you send the form through, and obviously Centrelink's going to take that portion of money to pay that bill. That's it. That's what the client has asked for. That's what Centrelink will pay. They don't look – I don't think Centrelink looks into their contracts or the debt itself, what they set up. Right now, it's how it is. But Financial Counselling Australia is actually... There's this big, huge review that's coming through with FaCSIA. They're looking at what types of payments can Centrepay be used for. Because we have been arguing for years that it shouldn't be used for three-quarters of the things that it is being used for. It needs to be just for the essential items. So there are changes afoot. So we hope they don't muck around too long with that. (At the moment, Centrepay is taking money out for non-essential items). And leaving them with no money. [Because Centrelink actually have a policy in relation to those direct debits through Centrepay which says that it should be about assisting the client, helping them budget.] They'll actually agree with you that they are. They are assisting the client and they are helping with the budget. Well, whose budget? Because I've actually spoken to the senior finance officer down at Centrelink and they don't do any budgets like we do. They don't make a full assessment of the client's financial situation at all. They see that – all right, the rent has to be paid and then, yeah, you need to pay that bill. But they forget about these people who have got kids that need to go to school and they've got to put food on the table. You know, they don't worry about those things. **(Legal practitioner)**

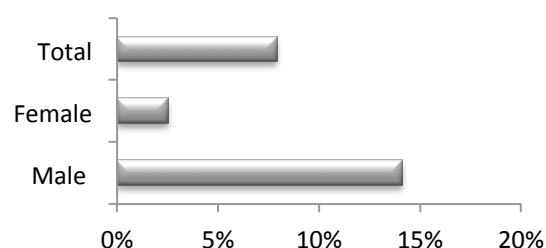
ASIC's also taking action on the – what do they call them? The service providers who use Centrelink, Centrepay. They got them – they tried to link in – well, they've faced some obstacles with that. They've tried to get a memorandum of understanding so that we can share information. But, yeah, they're making some inroads... The amount of people that are on the Centrepay, the amount of traders. So they're using that and coaxing black fellas into - come and get their product – but not only black fellas, also seniors, vulnerable consumers. You know, maybe could be your boat people, refugees, you know, who're just getting on and trying to get their feet on the ground, you know. So these Centrepay traders – and I believe there's 191 of them Australia-wide – are really taking advantage of vulnerable consumers and possibly breaching the law, as well. So they want to further investigate that, which I think would be good for the consumer, in the end. Because, you know, again, they get into it and not understanding what they're signing. It's like Centrepay's facilitating it. I know. We've

just had this Aboriginal woman who's been on this Centrepay for a rental place. She has been on Centrepay for seven years, paying off a laptop, and has paid \$7,500. It's a complaint I'm putting in. Like how can somebody even justify that? She was stressing at stopping her payment. She didn't want us to. So they've put a judgement on her. I'm like... **(Statutory Authority staff)**

Goods/Services Paid For

Figure 4.24 shows that **7.9%** of participants reported a problem with not getting goods or services they had paid for. Again, men were much more likely to report such issues (14.1% of men and 2.5% of women) (See also **Table 4.26: Appendix C**).

Figure 4.24 Number and Percentage of Focus Group Participants Identifying Other Problem Where Participants Didn't Get What They Paid For



A number of problem areas outlined above as scams or contractual issues could well be categorised as not getting goods or services paid for. Problems with the repair or purchase of motor vehicles are one example of this. There was only one specific comment about goods/services paid for but not received, where a woman in Balgo said that the washing machine she had purchased did not wash her clothes properly.

4.6.1 Responses to consumer issues

Of the 24 individuals who identified specific consumer problems, **nine** persons indicated that they had sought legal advice or help. Of these nine, six indicated from whom they sought assistance: three sought help from lawyers (unspecified) and three from financial advisors and community organisations. Rates of responding to consumer related issues could be higher, but for the following barriers to accessing justice.

Education

A first point is that many Aboriginal people are not likely to have a high level of awareness of consumer law or of how to go about addressing a consumer law issue. This lack of awareness means that people are not likely to identify a consumer-related problem as a legal issue, about which they can complain to a lawyer or other advocacy body or which they might attempt to deal with on their own. It also perhaps means that ILNP statistics identifying numbers of consumer-related problems is probably an undercount of the extent of difficulties experienced in this area by Aboriginal people (as participants filling out questionnaires may not have identified relevant issues).

But on saying that, as consumers, I would probably say everyone that I've seen over the last three years, I'd probably say only about a handful would know anything about consumer law. It's really, really... It's not only in WA. I'm sure it's all the way over. But that's one of the

things that came up for me. It's only in the last three years - or since I've been working here because I've only been here for three years - of tracking every year the increase of Aboriginal people that are connecting with us. So it's increased every year. But, you know, we're only talking from ten to now, maybe 45. Which is nothing.... **(Statutory Authority staff)**

People have very, very low awareness of consumer rights. You know, buying things that break down and not knowing you can demand a refund. Well, people don't demand things. You can get a refund or you can, you know – not a lot of stuff about warranties and stuff like that. It's very low... **(Legal practitioner)**

More education in this area may mean disputes or problems are both avoided or are more effectively addressed when they do come up. Examples were provided to the ILNP of the contribution education can make to empowering Indigenous consumers and/or possibly changing trader/service practice.

When I first started in this job book up was the issue that everybody was talking about and we actually did a project ... around book up and we went out to all State borders. We went out to all different communities. We spoke to all the stores and shops and taxi drivers and everybody about book up and it seems to have really petered off as far as I can tell. **(Statutory Authority staff)**

Years ago, we had stuff happening with (scams like first aid kits). But I think – I don't know if it's because of information (we've) generated.... over the years, but we don't get to see much of that type of thing. Yeah, we did before - seven years ago. We don't anymore. [Stakeholder discusses the effectiveness of local media on consumer protection (Mulga Mail, Radio Mama)]. I think there's just been lots of promotion through Financial Counselling Australia as well and the Financial Counselling Association of WA. There's been lots of info put out about that, and there has been lots of community visits. Especially into those regional areas, or remote areas. There's been lots of information. **(Legal practitioner)**

I think there used to be a fair bit of it (people coming in selling stuff or ripping people off). I think Kununurra and them mob, they put out a lot of information out to the communities and things, for them to be a bit more wary of people doing things like that. So yes, I think that, within itself, helped a lot around that. **(Statutory Authority staff)**

Other barriers: shame, avoidance, fear, prioritisation, narrow view of law and legal system

Before you can educate or in addition to education it is suggested you must also overcome barriers other than lack of knowledge, including shame.

It's not just Indigenous people, it's other people who are facing various barriers and disadvantage. It is about not understanding their rights. And again it comes back to education and how you educate people about their rights and the steps they can take. And before you get there it's dealing with the problem of shame, the shame that they're in trouble... You've got to get past that to educate them about the steps they can take. ... It's easier to deny it but then the problems just escalate. **(Legal practitioner)**

It is thought to be a huge step to initiate legal action in a court of law to assert a right – generally recognised within Indigenous communities as a forum that deals with offenders only. The process of complaint is daunting, having to prove your case - particularly for those that have poor literacy. They may well be more likely to walk away from an issue than address it through the law.

Dealing with a car might not be a big deal when you're suddenly dealing with a lot of other really serious issues that are going on in your life. With the disadvantage people face things like family tragedies, those consumer issues are not front and centre and maybe things are in such a way that you want to spend that time on when you're dealing with in that space. I think there's whole services out there that people can access, there's a circuit court, and that would be the limit on, and criminal, I think people see it as only that one avenue for certain things, they don't see it for other things. I think it's hard, it's a long process and it's frustrating, and I mean, I'm doing it on behalf of people and I'm very familiar with the legislation and sometimes I find it hard going and it's a lot of effort and a lot of sort of, analysing things and going through things and that can be really daunting, I think a lot of it really relies on literacy and numeracy and those sorts of things and that might be hard. A lot of it relies on perceptions of time, so when did something happen and what was said and how was it said and that sort of thing can be broad and something about photographers being able to play on those aspects and people's perception of time, people's perception of money and people's perception of what they're entering into and all those sorts of things. So, I think it's really difficult. **(Statutory Authority staff)**

I think, sort of perhaps culturally people haven't had that opportunity to really stand up for themselves and to, to make those choices and to take those steps because they've had the history that they've had and that might be really dictated to and you accept what you're told and so I think that is difficult for people in dealing with authority or dealing with businesses or perhaps being worried about not having the words or the arguments or knowing about things to be able to take them forward. I think people might just be shy or not be that confident on one hand, and I think people are perhaps dealing with a lot of things in their lives, so the whole process of dealing with another thing is maybe not top priority. **(Statutory Authority staff)**

They just throw them away. Walk away and go and buy another phone for \$40, totally new number and use that till it runs out. They've been scammed and they get out of it. They just don't pay it and walk away. Just they buy phones at the post office. **(Indigenous community organisation worker)**

Non-legal help and processes of complaint

Consumer law is one area where legal *and* non-legal service providers, including government agencies such as the Department of Commerce (WA) (Consumer Protection) and financial counsellors, might take on complaints and/or provide information, advocacy and support. These agencies or services may also then be able to refer people to a lawyer for legal advice, where appropriate.

[Financial counsellors are] really on the front line, because [Indigenous people] might not identify when they have consumer issues, but they'll know when they're in financial difficulty. They'll seek help. That's when somebody can sort of have a look and that's where they'll pick apart all these different things that are happening, like there's a problem with the tenancy, there's a problem with a motor vehicle that someone's purchased, there's a problem with a direct debit that's coming out of somebody's account or you know there might be all sorts of different things. So a lot of the time, the financial counsellors will identify a whole lot of different things that somebody may not have gone in there for, but they've all come to light afterwards.... **(Statutory Authority staff)**

Consumer Protection appears to have some good connections, including with legal services, across all the ILNP focus communities. “We haven’t, we don’t get too many walk-ins but we’ve had a couple of referrals from... Consumer Protection”, states one Legal Aid staff member, for instance. “The Department of Commerce is excellent in WA, I think. I think they do their best. They’ve got really good people in throughout the state to try and assist people”, said an Indigenous legal service provider.

We want to educate consumers about the role that our organisation plays because we have legal teams here. We have conciliation officers that, you know, might have a legal background or get advice from all of our lawyers, because we’ve got many lawyers here. On each floor and each section. So they play a real key role, you know, like even teaching me stuff so I can educate people. But they also act as – when you file a complaint in here, they also act - the conciliation officers - and if it goes to court, well it’s only \$27 to take a trader to court. **(Statutory Authority staff)**

It is acknowledged that this agency though, like other government agencies, has to establish trust before people will come to them with a complaint. This is an important point discussed further in Section 5: Observations on legal service delivery. It applies to many government agencies and legal and non-legal services - where the perception is that they are ‘government.’

Consumer Protection is a government department. People might not see it as an advocate. They might just see it as a regulator. They might not see it as available for advice and know that it does act for consumers and tenants, that it is unbiased and that sort of thing. They might think they can’t come to them when they’re upset with another agency or another department or what have you. **(Statutory Authority staff)**

Consumer Protection’s process of formal complaint may also be difficult for Indigenous consumers to use.

Consumer Protection’s processes aren’t tailored to Indigenous consumers. In communities where word of mouth is a preferred communication method and we do all this form filling [for complaints]... And it’s bureaucratic language. It’s hard. That’s why it’s so important to have [Indigenous staff] as the point of contact who can help them with that process. I mean, also you know what it’s like in communities, the fear of outsiders and just keeping things within your own community and, you know, even non-Indigenous consumers in our regional and remote communities – they have this attitude towards the HQ in Perth, if you like. You know, that the government – and even when we turn up in the government car in a remote community, it’s like this pair of government workers. **(Statutory Authority staff)**

The conciliation that forms part of this process, however, is seen in general as a very effective way of resolving disputes in this area. “Thankfully nearly everything is agreed at conciliation. I mean for the most part people want to resolve things” **(Statutory Authority staff)**.

So, Consumer Protection can obviously just give general advice to consumers who phone up if they don’t want to lodge a complaint, they just want to understand, so we can help them with that. The next step, so it can help them lodge a complaint and it can conciliate. It doesn’t have the power to force either party to accept any suggestions that are made, but it’s just a way to get them both together. It provides an opportunity to give them both the full facts of the matter, and then we make suggestions. If they then accept it, that then resolves the dispute at that point and there’s no need to take it further. **(Statutory Authority staff)**

We see a few conciliate, yep, yep, definitely. Unfortunately it's just by phone, so that's where those networks are really important, so whether it's the financial counsellor or something. They could go out and see somebody and say "Protections got back to you, this is the offer on the table" or "We need a bit more information", or "What do you want to do from here", that sort of thing. So it can be really vital. It can be really, really hard to reach people. Phone numbers change quite frequently. But I don't think I've actually lost anyone. We usually find a way to find somebody who can find somebody. **(Statutory Authority staff)**

Most of the conciliated disputes would result in some sort of agreement between the parties. We'll agree to settle it, for instance, if it's like this, perhaps, rent arrears, or tenant liability in regards to damage, perhaps a payment plan would be something that would be agreed to. So it just depends on the circumstances. In some situations, where you've got a good relationship with traders, they'll be very, very quick to just be, "Oh, I'll just cancel that contract, there's no point in us pursuing it". And in a lot of situations there is no point and it just takes explaining that to them, "Look, you're gonna take it further, you're gonna take this person to court, you're gonna be successful perhaps at getting what you think you're owed. They don't have the money to give you, so you will then get a bailiff, and you'll go out to their property" and I'll explain to them, "Look, you'll go out there, there's nothing in this person's house, you can see they don't have a vehicle, there's no point." So, often it is much better just to come to an agreement where both parties walk away at that point rather than continuing on. Sometimes traders will absolutely refuse to negotiate, but that's not very frequent. Usually we can get some concessions and that sort of thing.... As much as possible you try and negotiate in the consumers favour. And most of the time they're comfortable with that.... **(Statutory Authority staff)**

Problems were also raised in relation to the next stage of dispute resolution, after conciliation fails; that is, attendance at court. This is partly as matters are heard in the more formal forum of the Magistrates Court (rather than in a tribunal, as happens in some other jurisdictions).

If they do have a legal remedy to pursue, it's so hard for them - but the problem is partly legislative. In New South Wales, there's a ... Consumer Affairs Tribunal or something. There's no tribunal here in WA. It has to go to the small claims division of the Magistrates' Court. That means it's just not consumer friendly. Because when things have to go to the Magistrates' Court, it's always more difficult. There's more process... Because going through the - I think it's a Consumer Trading Tribunal in New South Wales. I've been through that myself. I found it was really straightforward whereas the process to do it here, in the small claims division, is really a mountain for a vulnerable consumer. **(Indigenous Legal Service staff)**

If it's not resolved through conciliation, that's when consumers need to make a claim in the Magistrates Court, whether its tenancy, or a minor trade claim or what have you. But that pathway will be very, very difficult for Indigenous consumers, for all sorts of reason. For one, having access, having that advice on how to do it, it can be quite a daunting process and also the connotations around court and what that means. So, it's very difficult for people to see it as a positive way of getting things done, as opposed to just something that's imposed on you. **(Statutory Authority staff)**

Need for access to more advocacy and support

It is also noted that there is a huge need for *more* legal advocacy, information and support in the consumer law space in WA, including as Consumer Protection can only do so much.

Consumer Protection has a relationship with Legal Aid, the Aboriginal Legal Service and also the Kimberley Legal Service. It works well. The difficulty is, it can assist before things end up in the legal realm. Once they do, then it no longer has any legal jurisdiction. It can't assist people to take that next step. It can get them ready as much as possible, but they then need to take that step themselves. So I'd say there's a huge lack of any kind of civil, legal assistance. There's Legal Aid and the Aboriginal Legal Service will provide criminal representation and assistance, they might write a letter for somebody who's involved in a tenancy dispute, that sort of thing, but generally not so much civil assistance. The Kimberley Legal Service does have a tenancy section and they perhaps do a bit more, but I still say it's an area where people don't have that help available. It just means that everyone involved in the action does have resources - except for the person who's at the other end of it. So you'd have, if it were public housing taking action against the tenant, they would have all that resourcing and assistance whereas tenants don't. And also, on, not just defending themselves, but actually taking action where, you know, you've been ripped off with a car or you've been, whatever it might be, to be able to actually get some restitution is really, really hard. **(Statutory Authority staff)**

There's not enough consumer advocacy support or support for people who prey on consumers in remote areas. It's a real issue.... Consumer Protection is limited in terms of, I imagine, its funding and the like. The people they have and the work they do is excellent. But it's not enough.... I do think, say, there was more funding around consumer matters, then there'd be people in remote areas who'd be able to assist, particularly with legal education. People don't often know that they've got a remedy. **(Indigenous Legal Service staff)**

Systemic responses

A final point is that more needs to be done to deal with these issues at a strategic level, given that the problems arising appear at times to be systemic in nature. Rather than responding to individual disputes, there should be more opportunity for joint complaints, in part to overcome the fear that many individual consumers feel in initiating action.

There has to be, maybe, other ways, like filing joint complaints instead of individual complaints. We do come across that problem, especially with scams or ripping off money. I've been pushing for it, because I would really actually like to see - you know, at that capacity, how it can help. Because oftentimes, individuals won't want to file that complaint because they're - "Oh my gosh, what have I done wrong?" You know, that fear factor? ... If you've got five people in a community that have been targeted for these scams of professional photography, then surely there could be room to have a joint complaint? So that's something we're working on. I think that it's, again, very important for the community. **(Statutory Authority staff)**

There should be potential, not only with consumer issues, you know, but with other law issues [to run group or class actions].... And purely because we're 400,000 strong (Aboriginal people). We have plenty of people that will come forward in a group, because they feel supported. It can make a difference. **(Statutory Authority staff)**

4.6 STOLEN WAGES/STOLEN GENERATIONS

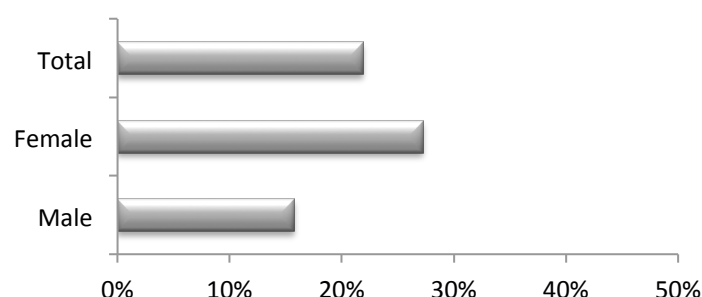
The Stolen Wages compensation scheme was in the forefront of the minds of many focus group participants and stakeholders because at the time of the ILNP interviews the scheme was either open or had recently closed. There had also been a redress scheme for people abused in state care, applications for which were open between 1 May 2008 and 30 April 2009. Perhaps because of the currency of these schemes, as one CLC states, in terms of priority areas ‘In Western Australia, the Stolen Wages and Stolen Generations and all that historical justice and stuff is probably up in the top three... Actually, over the last 12 months, Stolen Wages, Stolen Generations is [number] one’. The issues raised by the occurrence of Stolen Wages and the Stolen Generations, as well as perceived shortcomings in the schemes aimed at redressing these wrongs, make these areas of legal entitlement extremely significant, notes this same CLC. “Yeah, it’s a whole Indigenous justice issue. Not done properly, not done according to the conventions, not done – you know”.

4.6.1 Stolen Generations and Stolen Wages

Focus group participants were asked if they were members of the Stolen Generations.

Figure 4.25 shows that overall, **21.9%** of all participants (or 33 individuals) identified as members of the Stolen Generations. More women identified as members than Indigenous men (27.2% of women compared with 15.7% of men) (see **Table 4.27: Appendix C**).

Figure 4.25 Participants Identifying as a Member of the Stolen Generations



Views and reflections offered by focus group participants about their experiences as members of the Stolen Generations and in relation to Stolen Wages are reproduced below.

I got \$2000 but I made a complaint that it wasn’t enough for what I went through. We worked for 5 years from six to six. I got a lawyer to speak up for me, but we never heard what happened. **(Wyndham Men’s Focus Group Participant)**

We never got enough money for that, that redress. Some people never got it. We were supposed to get 45. I only got 13 (unclear whether hundred or thousand dollars). Some people got it. Some people got 28. **(Narrogin Men’s Focus Group Participant)**

I got the Stolen Generation money. **(Narrogin Women’s Focus Group Participant)**

Participants might not necessarily be stolen but they have siblings who have been stolen.

I have got a brother who was stolen. He’s been taken away... **(Roebourne Women’s Focus Group Participant)**

Not us, but our parents been out at the stations. Our parents used to work for tea and sugar. **(Roebourne Women's Focus Group Participant)**

Those days they were working for free, those days.... We got our money. We got our money.... Stolen Wages. We got our money. **(Balgo Women's Focus Group Participant)**

I've been from mission to mission, home to home, but I got my money (for Stolen Generations and Stolen Wages). I got my money. **(Laverton Women's Focus Group Participant)**

My husband got nothing, he's gone [now], even his uncle [got something]. **(Laverton Women's Focus Group Participant)**

A lot of applications for Stolen Wages [had] very little outcome... **(Legal practitioner)**

In one focus group, responding to a comment that a number of participants were too young to have been part of the Stolen Generations, one woman said:

You can't say we're too young because the Stolen Generation is still happening today. You know that old Mr Neville's times stealing kids, Department of Child Protection's still doing it with the kids of the present. **(Laverton Women's Focus Group Participant)**

The ongoing effects of the Stolen Generations were raised by one stakeholder, here in the context of education.

[Members of the] Stolen Generation in most respects are quite well educated as a result of being taken to another place and being forced to go to school. One of their problems as I see it is their total [lack of] concern at today's kids who don't go to school, aren't being forced to go to school by their parents. Who are these people? The Stolen Generation's kids and grandkids. **(Indigenous community organisation worker)**

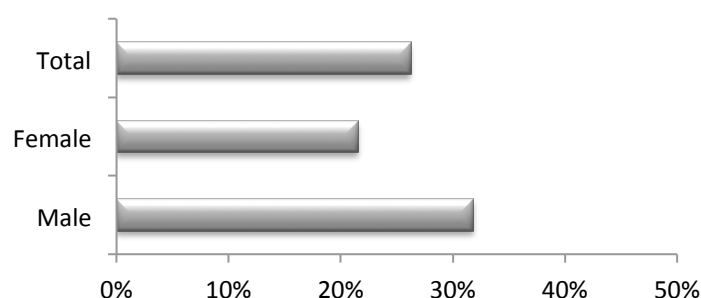
Concerns were raised about the adequacy of the 2008-2009 Redress scheme. A report by the Kimberley Community Legal Service found that the scheme was not carried out in accordance with the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Humanitarian Law*.⁷⁰ A primary concern was that many people missed out on their entitlements, in part because the payouts from the scheme only began after the application cut off date, which precluded a trickling through of information about successful claims to communities. The practice of sending an apology letter to successful applicants was ineffective in communities where literacy levels were low.⁷¹

Figure 4.26 shows that **26.2%** of respondents (or 29 individuals) believed that they were entitled to money held in Aboriginal Trust Funds or as Stolen Wages (see **Table 4.28: Appendix C**).

⁷⁰ Kimberley Community Legal Centre, *The Redress Law Reform/Policy Report, submission to the Royal Commission into Institutional Responses to Child Sexual Abuse*, see <http://www.childabuseroyalcommission.gov.au/getattachment/11dfe294-030d-4517-b173-9105f71a6e7d/79-Kimberley-Community-Legal-Services> accessed 10 November 2014.

⁷¹ Ibid. See also, Community Legal Centres Association (Western Australia) Incorporated and King & Wood Mallesons Human Rights Law Group (Perth) (2013) *Human Rights in Western Australia: A Report Card on Developments in 2012*, 11-12.

Figure 4.26 Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation



The cut off date for the Stolen Wages compensation scheme was 30 November 2012 (extended from 6 September), totaling eight months within which applications were accepted. There was concern among interviewees that this deadline precluded claims by eligible individuals who were not in a position to apply by the stipulated date. The feeling was that the window for application was too short – particularly for more remote communities, that the criteria were too rigid and that the scheme was not well enough advertised. Those involved in assisting Indigenous clients to make claims under the schemes were critical of a number of aspects of the arrangement.

As a scheme, it's a poor scheme; \$2,000 for however many years work... You have to have worked in a native welfare settlement (which was an arbitrary distinction)... so there's the money, there's the restrictions, and there's their own terrible clumsiness of the system. The requirements for proof of birth - a lot of people don't have birth certificates. **(Legal practitioner)**

The distinction between 'native welfare settlements' and other exploitative working arrangements meant that people who suffered equally under inequitable employment arrangements were not *all* recognised under the scheme.⁷²

A lot of the people that have applied for it have worked on stations from the age of 14 and never got paid. So we've got them to fill out the applications anyway. Just so that they know there's heaps out there that didn't get paid. I mean, I don't think anything's going to happen, but. **(Legal practitioner)**

You know with that Stolen Wages thing, well a lot of people were working on sheep stations, cattle stations and all they working for 6 months down the track was a pair of boots and trousers. Cause my brother's been working at a lot of stations.... They work right through and then when the payday come, instead of getting money they get pair of boots and trousers. **(Laverton Women's Focus Group Participant)**

One of the primary criticisms was the inflexibility of the closing dates and failures on the part of the government to properly advertise the existence of the scheme.

A lot of people weren't sure at the time (when the scheme was open) and they can't do it now. It's really hard to appeal and get an old one in. We've got the forms but it's really difficult. So there are a lot of people who are hearing about it now but couldn't because of their feelings

⁷² See Lucy Martin, 'Retired indigenous mission and station workers upset with the Stolen Wages deal' ABC News, 13 Sep 2013, <http://www.abc.net.au/news/2013-09-13/retired-indigenous-mission-and-station-workers/4957734>.

do it at the time. They should have maybe allowed them to do it in five years time or ten years time because people just couldn't write it down. We had quite a few that we'd start and they had to be stopped after about a quarter hour. **(Indigenous community organisation worker)**

There wasn't a great deal of effort made to make sure that everybody in the Kimberley who might be eligible would know about it. Things run from Perth tend to be as in touch with the Kimberley as if it was run from Canberra... A notice went up on the DIA website. There was – I don't think it did ads at Waringarri Radio. We did them. There was a few leaflets, flyers. So it was really not much of an attempt on the part of DIA. We took it up quite strongly, because of the experience we've had with redress. It's a colossal failure to reach the people who were eligible around here. **(Legal practitioner)**

These criticisms echo some of those made of the scheme in the *Human Rights in Western Australia: A Report Card on Developments in 2012*. These include that:

- The scheme does not respond to the effects of stolen wages on Aboriginal people as a group, as families and as communities;
- The scheme does not include people who have passed away. The scheme should allow families to apply to honour deceased family members, for example by putting up a headstone on their grave;
- The scheme should allow families, Aboriginal communities or Aboriginal organisations to apply for funds for programs, projects or events to acknowledge and record what happened,
- The scheme does not help non-Aboriginal people understand, and properly respond to, the treatment Aboriginal people experienced;
- The amount of \$2,000 is too low; and
- The scheme should also apply to Aboriginal people who worked on private stations.⁷³

4.6.2 Access to legal advice for Stolen Generations or Stolen Wages

Of the 38 individuals who had indicated that they might be entitled to compensation, 19 indicated that they had received help or advice in making a claim. Of the 19 individuals, 15 indicated who they had received help from: community organisations (4), Aboriginal Legal Service (3),⁷⁴ the Redress Scheme (3), Department of Indigenous Affairs (2), community legal centres (1), legal aid (1) and unspecified lawyer (1). Nine individuals indicated they were still pursuing a claim.

As mentioned above, stakeholders commented that information about entitlements was not well distributed by government, but rather, dissemination was taken up by certain CLCs: "... a lot of the focus went to assisting people with that and raising the profile of the Stolen Wages reparation, compensation scheme" **(Legal Aid staff)**. The same legal service provider continued.

To be honest, if it wasn't for the Kimberley Community Legal Service (KCLS), I think there would've been very little awareness at all. KCLS made a concerted effort to disseminate the information to all the communities by sending out packs and then by visiting all the communities... So I think the level of awareness in the Kimberley ended up being quite

⁷³ Community Legal Centres Association (Western Australia) et als (2013)

⁷⁴ ALSWA indicates that state-wide it has provided assistance to over 600 applicants seeking compensation under the Stolen Wages Reparation scheme; email from ALSWA, 9 December 2014.

good... I don't think it was as a result of the government advertising campaign, if they had one. **(Legal Aid staff)**

One male focus group participant in Perth noted that it “was basically word of mouth the Noongar grapevine that we found out about it.”

4.7 CHILD PROTECTION AND FAMILY LAW

One area of concern among focus group participants and stakeholders 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. Child removal was particularly identified as problematic by female focus group participants.

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 relevant incidents occurring in the last two years as reported by focus groups. The importance of child protection is also reflected in the alarming statistics. In Western Australia as at 30 June 2013, according to the Australian Institute of Health and Welfare Indigenous children made up 5.5% of the child population (0-17 years), yet comprised just on one in two (48.8%) of all children in out-of-home care.⁷⁵ As SNAICC has noted, even more concerning is that in WA the number of Indigenous children removed has more than trebled in the 10 years from 2003 to 2013.⁷⁶

The Australian Institute of Health and Welfare has pointed out that in WA for 2012-13 the rate of Indigenous children on care and protection orders was 66.7 per 1,000 children (compared to a non-Indigenous rate of 4.1). This is above the national average for Indigenous children on care and protection orders.⁷⁷ The rate of Indigenous children placed in out-of-home care was 53.1 per 1,000 children (compared to a non-Indigenous rate of 3.3). In other words, Indigenous children were 16 times more likely to be in out-of-home care than non-Indigenous children in WA.⁷⁸

4.4.1 Characteristics of family law and child protection legal needs for Aboriginal people in WA

At the outset it is worth noting that family law matters involving Indigenous people are overwhelmingly child-related, either as child protection or as access and custody matters.

The composition of our caseload is mainly, it's probably about fifty per cent child protection stuff and the rest is mostly parenting cases, nine out of every ten cases would be child-related, purely. And then one out of every ten might have some financial aspect, or a child support query or some sort of property matter. **(Indigenous Legal Service staff)**

And further, there is reluctance to become involved in any processes relating to family law because of the fear of state intervention.

⁷⁵ AIHW (2014), p.102, 113

⁷⁶ SNAICC (2014), p.6

⁷⁷ AIHW (2014), p.14

⁷⁸ Ibid, p.52

Aboriginal people have a bit of a reluctance going to the duty lawyer at Family Court because of the history. There's usually care issues for children, and they're worried that, any contact, worried that even in the criminal law system, sometimes they're more worried about their children being taken away than the potential criminal charges. They see police as people coming to take their children away. And there is very much a concern their coming into contact with the family law system anywhere might cause the Department for Child Protection and Family Support to get involved in the lives of children. And certainly our experience in terms of family law services would be much more around child protection family law, and that's what Aboriginal people want to talk to us about, particularly in regional areas and remote areas. **(Legal Aid staff)**

A generalist CLC noted that their experience was that Aboriginal people were not seeking advice in relation to divorce and separation. Their matters invariably involved child protection.

We get occasional divorce enquiries. All those enquiries about divorces and stuff have always been non-Indigenous. Family law's not used much by Aboriginal people. For the care and protection, are they primarily Indigenous - well, exclusively actually. **(Legal practitioner)**

Poor community understanding of the governing legal framework

There are a number of points worth noting at the beginning of this discussion of family law and child protection. The first is the impact of unfamiliarity with the law and its processes, which some stakeholders and focus group participants identified as affecting the use of the system by Aboriginal clients.

I previously worked at (named legal service) and did outreach at Fitzroy Crossing. We did some child protection matters there. Some of the communities, they were telling us, they reckon nobody had challenged the Department of Child Protection for 10 years. I think people don't identify it as a legal issue. They don't think of it as something you go to court about. CPFS just come and take the kids. They just take your kids and that's it. **(Legal practitioner)**

Within this process the voice of the child is also silenced.

And the children not having legal representation... The kids just get lost. Out of all of this, their voice gets lost. So you've got CPFS with all the power. You've got parents with none, floundering, with not understanding the system, not having their kids with them, not knowing what to do and generally not linked into services in time. Before the horrible things happen. And not encouraged to seek support. Then you've got kids who are without parents for – just forever. **(Indigenous Legal Service staff)**

Similarly it was noted in relation to family law that:

I would say that our Indigenous clients are more likely to drop off after the initial stages of giving them some advice and assistance [in family law]. Certainly, I think there is a real lack of awareness of family law, the procedures, the law, everything to do with it, really. **(Legal Aid staff)**

These statements reflect a need for greater awareness within the Indigenous community of the importance of legal advice, and particularly at an early stage, including through increased CLE. As stated by focus group participants, "It needs to be opened right up, and aired in the community for

people to talk about it” (**Perth Women’s Focus Group Participant**), and “[We] need to know what your rights are” (**Wyndham Women’s Focus Group Participant**).

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

I think CPFS have gotten a lot better in the way that they actually come across to people now. Let them know and talk about things. But generally speaking, a lot of kids get taken away and people don’t even realise they have the ability to take CPFS to court or CPFS have taken them to court. (**Indigenous community organisation worker**)

Connections to family violence

Although we do not explicitly discuss family violence in this section, it is important to identify that family violence is a relevant dynamic in family matters and in child protection matters particularly. Stakeholder organisations confirmed that family violence issues cannot always be easily separated from family law and child protection.

The vast majority of the family work we do up here would be care and protection matters. [What sorts of issues come up in relation to that?] It’s very varied, but domestic violence is a very big one. Alcohol abuse, domestic violence and general neglect would be the three main ones, I would say. (**Legal Aid staff**)

Where there is a family violence context to family law issues, the interaction of these issues can cause significant problems in relation to housing, income management and children. The hard line policy of DoH, CPFS and Centrelink in how they interact with Aboriginal families is a point raised in Section 4.1: Housing (*Evictions*).

I don’t know if you’re aware but any more than three reported domestic violence [incidents] in the house it automatically becomes governed by CPFS and Centrelink [and] on the Basics Card. Once after that when it becomes CPFS controlled if there’s any unborn babies with family and children they’re actually being managed by CPFS. They need legal advice/support to go through that process which can be pretty daunting from a government perspective or from a client perspective. A lot of these issues is the government these days put rules in place and [are] really driving our communities into despair. Three strikes in housing, three strikes the violence or reported violence you automatically get referred to CPFS and then CPFS refer it on to Centrelink. It’s up to the CPFS Officer locally to determine what happens, especially with pre-birth planning. (**Community organisation worker**)

Family violence and VROs (violence restraining orders) flows out and it creates other problems because of the local factors. The other thing that’s interesting about VROs, one of our solicitors in Kununurra who has done some work with perpetrators in the family violence program in Kununurra, the session that the perpetrators were most interested in was the child protection session and they were able to engage them around what it is that needs to be happening so that CPFS get out of your lives when you’re a family violence perpetrator – [this] is the thing that the men were interested to hear about more than any other legal issue, much more interested in that than what happens if you breach your VRO. (**Legal Aid staff**)

Grandparents as stakeholders

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

We do quite a bit of family law issues. But particularly with Aboriginal grandparents. They're the ones that we've done more with than anybody else. That's being able to get the children. Quite often, they've come from CPFS and been told by CPFS go and get a family court order, because we can't help you. We're not going to place the kids with you; we're not going to do anything. Just go and get the family court order. You know, rather than them doing the work. **(Legal practitioner)**

I had problems with access to kids, my niece, with CPFS. **(Roebourne Women's Focus Group Participant)**

The extended family, because it is such a different dynamic [comparing Indigenous with non-Indigenous clients]. Like we do have grandparents that are involved in, you know, non-Aboriginal families and they want to be involved in, you know, seeing kids. But I think there's bigger influences – you know, like the one that we were talking about, with the client who had to check in with the sisters about certain arrangements. It's not just a case of a mum and a dad or a grandparent and a parent. It's an auntie and a grandparent and, you know... the family dynamics is quite different. **(Community organisation worker)**

Like the experiences that we've had with some of the families coming through is that they have extended family members who are helping to bring kids up. So, you know, there's other stakeholders. They have different family dynamics to what non-Aboriginal families have. **(Community organisation worker)**

I think because with an Aboriginal family, it's not so much nuclear, just the mum and the dad. It is a whole extended family that bring up a child. So it might be grandma that brings them up for the first five years. It then goes onto dad or uncle. So it's – that's where it seems to be the grandparents are trying to get back in that mediation, more than the parents, I guess. **(Community organisation worker)**

Grandparents can face particular hardship and problems accessing financial support, as this focus group participant noted.

It's put an extra load on us because we've got to pay for five lunches and everything. Sometimes the mother goes off drinking and spends all the money and you don't get nothing but you go to CPFS and they won't even help you. And you go to Centrelink and they tell you the same thing. I'm only a pensioner. I've got no money at the moment. I'm spending all my money on my grandkids. It's not good you know. CPFS were giving me the run around. That's why I said, "What's your role?" **(Narrogin Women's Focus Group Participant)**

There are also additional issues when one parent is Indigenous and the other not.

One thing that's a bit of a theme lately, I reckon, is where one parent is Aboriginal and one's not. Lots of kind of conflict over access to culture and supporting – you know, even that parent's relationship with the extended family versus the non-Aboriginal person's relationship to extended family. Lots of those kind of clashes over that. **(Community organisation worker)**

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.

At a fundamental social level I think there needs to be a lot of emphasis on trying to prevent orders being made and children being taken out of families permanently. But there needs to be support, there needs to be advice, you have to get to the bottom of what the issues are.

(Indigenous Legal Service staff)

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. SNAICC has noted that far more money is spent in WA on child protection and out-of-home care than family support services.

In Western Australia in 2013, \$341.5 million was spent on child protection and out-of-home care services compared to just \$68.1 million expenditure on family support and intensive family support services. Clearly a greater investment in prevention will significantly reduce the number of Aboriginal and Torres Strait Islander children being placed in out-of-home care and will also create significant long-term cost savings for government.⁷⁹

4.4.2 Divorce and separation

The following discussion is divided between issues that follow a divorce or separation, such as disputes about property and issues arising in relation to children. As a general point though it is important to acknowledge the barriers to using the Family Court.

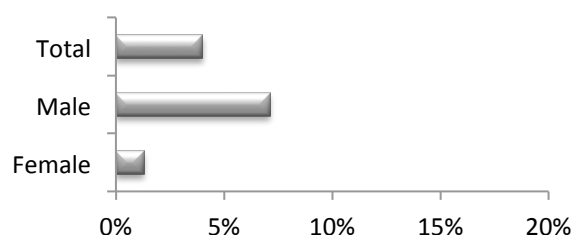
Maybe, in some cases, it might be the issue of not realising it's a legal issue to start with. So not approach it from that perspective. I think they're trying to deal within their families, initially. Then there's the shame matter. You know, it really is a shame. I think that this is what people don't realise. That it's just too shame. And then entering a whitefella process, into a western system. And assuming people are married. And maybe people not understanding, even if you're not married, it may well apply, the same process may well apply. **(Indigenous Legal Service staff)**

It's certainly been recognised as a problem by our Family Court that Aboriginal people are not engaging with the Family Court around family law issues, and there is a concern that they just don't see it as a system that's working for them. And the court would really like to do some work around identifying what the issues are engaging people [but] we're just not resourced to do it. We've had in the last few years an Indigenous Liaison Officer on a one-year contract, but it wasn't extended. **(Legal Aid staff)**

Figure 4.27 shows that **4%** of focus group participants overall identified a dispute over money, property or superannuation following a separation or divorce (see **Table 4.29: Appendix C**). Men were more likely to identify this as a problem than women (7.1% compared to 1.3%). The focus group where participants were most likely to have experienced such an issue was Perth (25% of participants) (see **Table 4.30: Appendix C**).

⁷⁹ SNAICC (2014), p.14

Figure 4.27 Participants Identifying Problem or Dispute in relation to Property, Money or Superannuation Post-Separation or Divorce



Of the 6 people who had identified this type of legal issue, only two (both men) said that they had sought legal advice about it.

It was recognised that most Indigenous family law matters do not involve property.

When I worked in private practice there was more of an emphasis on financial work in the family courts, so property settlements, and here we hardly see any of that. I've got a handful of financial cases where people are really in need and something's got to be sorted because housing might be at risk, a house for the children or there's money that might be dissipated, that kind of thing, but it's not routine. **(Indigenous Legal Service staff)**

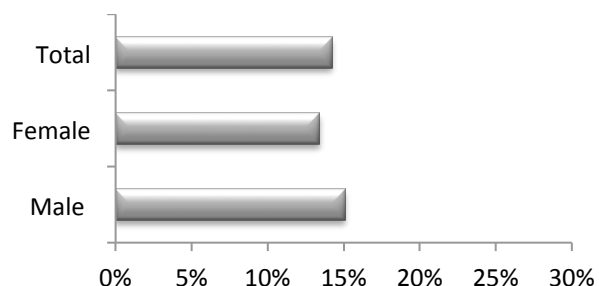
However, it was noted that employment in the mining sector was changing this dynamic somewhat. "A lot too, at the moment, is to do with the mining sector and people getting their money coming through. It can undermine everyone's intention to reach good agreements. Because it comes down to money" **(Community organisation worker)**.

4.4.3 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 4.28**, 14.2% of focus group attendees said that they had experienced an issue with child support, contact or residence. Men were slightly more likely (15.1%) to identify such an issue than women (13.4%) (see also **Table 4.31: Appendix C**).

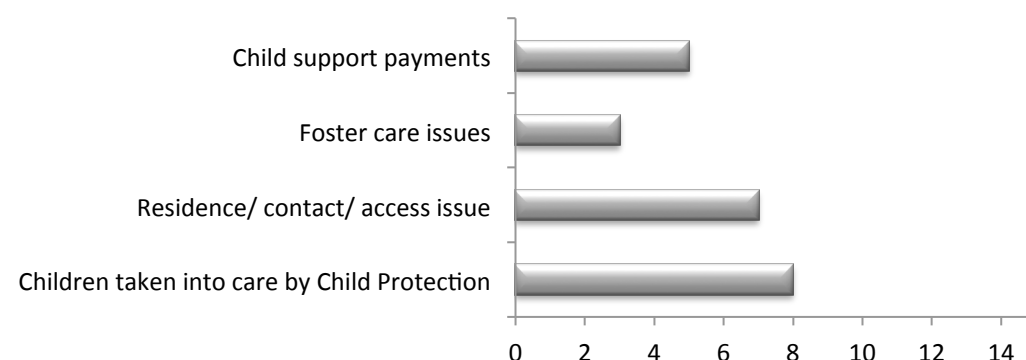
Figure 4.28 Participants Identifying Dispute or Problem Relating to Children's Residence/ Contact or Child Support



Twenty-one individuals responded to the question on the nature of the issues relating to children, identifying 23 issues. As shown in **Figure 4.29**, the most frequent issue related to child removal by

Child Safety (8 out of 23), with the remainder focused on residence or contact issues (7/23), child support payments (5/23) and foster care issues (3/23) (see **Table 4.32: Appendix C**). Child protection (removal) matters are dealt with below in Section 4.4.4. It is worth noting that five of the 21 individuals who responded also indicated that the matter involved grandchildren.

Figure 4.29 Nature of Family Law Issue Relating to Children



Residence and Contact issues

It was recognised by stakeholders that most family law matters involved residency and contact issues. According to one stakeholder the ideal solution involves a longer lasting resolution of such issues.

Getting a solution that brings the conflict or the dispute to some sort of manageable level, if it doesn't resolve completely. So that people can actually get on with their lives and, fundamentally, kids are getting to school, needs are being met, they're not falling into criminal activity, mums and dads are not feeling so desperate that they need to turn to drink or they lose their house. The conflict's resolved to an extent that people go on with their lives and they're able to manage reasonably. And if that means, obviously a final resolution is great, where there's no more litigation and you've got a durable outcome, whether it's court-imposed or the parties have agreed, it's actually going to work for years to come, that's the ideal. Quite often we get bite-size pieces, so an agreement that lasts for six or twelve months or until the kids start school or somebody moves. But it's getting a solution, getting those out of court, getting people to feel like they're not under pressure, as part of a court process, or they're at risk because the other party is constantly threatening them with legal action. That's from our point of view. **(Indigenous Legal Service staff)**

In relation to residence issues, stakeholder interviews suggested that there was still a significant lack of knowledge of the importance of family law.

We don't go through – when we live in de-facto relationships we don't go through divorce. So there's no custody battles. There are arguments, big arguments in the families around who's going to keep the kids and all that. **(Indigenous community staff 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, particularly that the length of the proceedings, remoteness and other factors lead to poor outcomes.

The first party that's approached us would get to the screening and assessment and have done that. Have attended the screening and assessment. Then it sort of all falls apart. Well, not

always, but then it can start falling apart from that point. A huge difficulty is that a lot of Aboriginal people are living north or inland. So it's all by phone. That's not ideal. You know, it can be – we've not even seen these people or met with them personally. You know, you've got to really look at I guess those little triggers to know whether they're getting distressed. It's all over the phone, so you're really monitoring all that stuff, because you don't have any body language. So if we're finding it difficult, I can only imagine how difficult they must find it when they're talking to their ex-partner on the phone. **(Community organisation worker)**

A lady who's up in Tom Price. For her, you know, she lives on a fairly remote Aboriginal community out of Tom Price. She'd tried to get some legal advice from Carnarvon. She was told by Carnarvon that she was under a zone that should be covered by Port Hedland. She then went to Port Hedland. They said no, you're not in our zone. **(Community organisation worker)**

A further problem characteristic of the family law system was the need for more culturally aware and meaningful processes that also acknowledge Aboriginal law and cultural difference.

I think the gaps are probably the lack of specific Indigenous programs, from our point of view. The fact is they have got different needs. **(Legal Aid staff)**

The biggest difference I see [between Indigenous and non-Indigenous clients in mediation] is that it seems to be more specific with the non-Indigenous that are coming to do specific time arrangements, or like it's more concrete, would you say? Whereas the Indigenous people I'm seeing, it's more, you know, relationship issues and communication. It's different styles of time management, too. You might have to remind them a few times, because they don't keep a diary or a calendar or anything. They'll just play it by the day. Or you may say something to them today and they don't give you that answer. But three days later, they might ring up and say remember how we were talking about that? It's like it's all sunk in then. **(Community organisation worker)**

A lot of the family law stuff, there's no understanding of the Aboriginal culture within it at all. **(Indigenous community organisation worker)**

Part of our RAP (Reconciliation Action Plan)⁸⁰ that we've had for a couple of years is to try and get a family dispute resolution chairperson trained who is Indigenous. But it's something that does need a lot more consultation and discussion, because that creates all its own difficulties, in terms of skin and tribe and whether it's appropriate for that person to be a chair. Whether they're going to be put in a difficult position themselves, with their own legal obligations that they have that are not western legal obligations, and the obligations they would have as the chair. So it is something that we've discussed a lot and, I think, have been seeking further funding to do a scoping study with the community. So that we can try and get a model that works in the community. Because it needs to be meaningful and relevant. I absolutely think we do need to do more legal education on family law matters. But I think its impact is only going to be limited until we can make the law meaningful and relevant to Aboriginal people. I can only talk about the Kimberley setting. **(Legal Aid staff)**

⁸⁰ LAW A (2013) *Reconciliation Action Plan*

There's insufficient Aboriginal programs for Aboriginal people. It's not mystery to us really, that they see people out in the Family Court sometimes that's the same people as CPFS and you know everyone else, we're a bunch of whiteys that do it, don't get it, and there's not a program for them... So in this year in the survey there were no ATSI people involved in ADR at all, which is really pretty disturbing because you're going to have matters that are suitable for it. **(Legal Aid staff)**

Whether or not the Family Court here is suitable for Aboriginal people has always been a question. And whether or not what the changes they've tried to make to make it more usable – the Family Relationship Centres – are being utilised by Aboriginal people. The framework doesn't work. You've generally not got Indigenous workers in the positions. If you have an Aboriginal worker, they weren't generally able to work with clients. They were used in a consultative role, rather than a direct service delivery role. **(Indigenous Legal Service staff)**

I think that's the responsibility that we have, to try and find a way to not engage Aboriginal people in our process, [but rather] to find a process that works well for them. Because this is, you know – you can put all the Aboriginal paintings that you want on the walls, and it's not going to cut it. Like this process is really difficult. I've been in a mediation with an Aboriginal woman and I think, you know, sometimes what it takes for people to get here, you know, it can be really difficult. It can be long winded for them and ill fitting. I think we've looked at the process and said look, it's just not appropriate to say to these people who are living so remotely and finding it difficult to engage in our other appointments to say, okay, you must do this, you must do that. So I think we need to really tweak how the process can fit. **(Community organisation worker)**

4.4.4 Child protection

It was noted above that Aboriginal children are over-represented in the child protection system in WA and that the rate of Indigenous children in out of home care has been increasing quickly over recent years. The child protection system in WA has been previously subject to major reviews,⁸¹ but none in the last seven years. It is also worth noting that the two most recent reviews focused on the Department (now CPFS) and their relationships with non-legal service providers. The reviews have not included associated legal processes or the child protection jurisdiction of the Children's Court of WA. CPFS has an *Aboriginal Services Framework*, last updated November 2010.⁸² Key Indigenous positions for service delivery are the Aboriginal Practice Leaders (APL).⁸³

Legislation governing child protection includes various provisions specific to Indigenous children. Special principles for the administration of the *Children and Community Services Act (2004)* WA relate to Aboriginal and Torres Strait Islander children. Indigenous lifestyle, culture and traditions must be taken into account when determining an Indigenous child's best interest (s. 8(1)(j)). Division 3 of the legislation details the principles relating to Indigenous children including the Indigenous child placement principle (ICPP) (s. 12), the principle of self-determination (s. 13) and the principle of community participation (s. 14). When making a special guardianship order the courts are required to

⁸¹ Gordon, S (2002) *Putting the Picture Together*; Ford, P (2007) *Review of the Department for Community Development*.

⁸² Department for Child Protection (2010) *Aboriginal Services Framework*, <https://www.CPFS.wa.gov.au/Resources/Documents/Policies%20and%20Frameworks/Aboriginal%20Services%20Framework%202010.pdf>

⁸³ Ibid, p.2

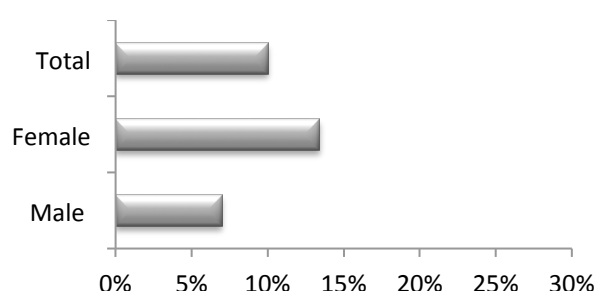
have regard to the ICPP (s. 61(4)). When making a placement arrangement the Department must consult with at least one of the following: an officer who is an Aboriginal person or a Torres Strait Islander; an Aboriginal person or a Torres Strait Islander who, in the opinion of the Department, has relevant knowledge of the child, the child's family or the child's community; or an Aboriginal or Torres Strait Islander agency that, in the opinion of the Department, has relevant knowledge of the child, the child's family or the child's community (s. 81).

SNAICC has been critical of the limited role of Indigenous agencies in decision-making.

Aboriginal and Torres Strait Islander agency involvement is not required in significant decisions such as placement decisions or judicial decision-making. This severely limits the capacity for Aboriginal and Torres Strait Islander involvement in child protection cases, at the beginning of the child's entry into the child protection system, ongoing support throughout the placement and assistance with family reunification.⁸⁴

Child protection emerged in the ILNP research as a priority area of need for Indigenous people in WA. 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 4.30**, which shows that **10%** of participants identified an issue of this nature. Women were more likely than men to nominate these issues 12.7% compared to 7%) (see also **Table 4.33: Appendix C**).

Figure 4.30 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.

4.4.5 Concerns around CPFS practice in care and protection

There's a lot of power given to the caseworkers. Hell of a lot of powers. When you've got situations where CPFS are still standing outside labour wards. The minute that child is born, it is whipped away. I know that happened with one of our staff members who was quite emotional about it. How can we get in here earlier to prevent this from happening? Either that, or seriously, you have a lawyer standing outside the labour ward when CPFS are there.
(Indigenous Legal Service staff)

⁸⁴ SNAICC 2014, p 11

Discussion of child protection in focus groups went beyond the grief of child removal itself to a strong consensus that policies and practices worked to the detriment of the children and their families.

There should be lawyers challenging it. The issue should be addressed.... Because too many of our kids are now being sent away to white families, to other multicultural Indigenous families where they don't belong... I've seen too many of our Noongar kids go into care when they are 4 day old babies and not be released until they are 18 years old, and by then they don't know who they are, where they come from. **(Perth Women's Focus Group Participant)**

Even where programs had been introduced to keep children within families there were complaints about their inadequate use.

Our people are treated unfairly with the apprehensions of kids. If the apprehensions occur, we need to have a reunification process, and that's getting the kids back to their family, you know. So we need to look much more carefully at that and get CPFS to work better with Aboriginal Legal Services or somebody to work harder – they have a reunification process, they have to start using it. They are leaving our kids in there right up until they are 18 years... It's easier for them to do it the way they are doing it. **(Perth Women's Focus Group Participant)**

Focus group participants expressed stress, disempowerment and a sense of injustice in their interactions with the Department for Child Protection and Family Support.

And they're taking them away for petty things. **(Perth Women's Focus Group Participant)**

They take kids off parents who don't drink or smoke, to foster homes, this person who don't drink or smoke go get rehabilitated and the ones that do, drink and smoke, and need to be rehabilitated they give them back to them... doesn't make any sense. **(Wyndham Women's Focus Group Participant)**

This town is real worse for CPFS [and] police especially. **(Wyndham Women's Focus Group Participant)**

Stakeholders observed some of the issues of disempowerment.

Child protection, we have real issues about engaging Aboriginal people to get involved in their child protection matters, because there is a perception that it's a fait accompli and that welfare have all the power, so very often they disengage. **(Legal Aid staff)**

What happened is the grandparents were looking after that child. They wanted respite for four weeks. The respite lasted four years. It wasn't until the APL (Aboriginal Practice Leader) took that CPFS worker out to the family, who, at that stage, refused to see and talk to any CPFS workers, because CPFS weren't responding to their phone calls. They made numerous phone calls into CPFS for a period of six months after the four weeks was up to try and get the grandchildren back. Nobody responded. So they just said they don't want CPFS. The only reason they accepted CPFS was the APL was related to them. So it was due to the inherited network. The kids are now placed back with their grandparents. Haven't seen their grandparents in four years. **(Indigenous Legal Service staff)**

Straight away I think families get nervous once CPFS are involved. They get really nervous because they see CPFS as the welfare and it's still that same mentality as years ago. As soon as CPFS get involved they get really nervous and need that support straight away to get advice where to go with it. Unfortunately with Aboriginal people they tend to hide away with a lot of the issues instead of dealing with them straight away. What happens is they might go to Kalgoorlie for three months and the issue is still back at Laverton, but when they come back they've still got to deal with it and it might be worse. They haven't done anything about it. **(Community organisation worker)**

The disempowerment of Aboriginal parents was also reflected in the extraordinary power exercised by CPFS, including after parents comply with treatment and therapy.

In one particular case, there's been a mother who experienced a breakdown, for want of another word, a drug induced breakdown. Happened twice. Since then, urine analysis, random urine analysis. All clean, fine. Mental health services have said no ongoing issues, no medication required, no further treatment required. No counselling required, no follow-up required. But CPFS don't believe that and have still required – still said that she needs treatment. She still can't have her kids back. So you've got competing diagnostic systems that you can't argue with. CPFS are just saying no. That's clean urines for 10 months, not a month or six, eight weeks. That's 10 months of clean urines. And given they may not be qualified to make that assessment. You know, people have ticked the boxes and still no way. So that's what we're trying to work with CPFS about. **(Indigenous Legal Service staff)**

Stakeholders reiterated concerns around engagement with Aboriginal parents and the community.

I'll give you an example. A recent matter where the Department have an obligation to put forward a proposal under the legislation of how the order's going to work. Our client was a bit worried about the level of access to their child and how that's going to continue. At the moment, they have, essentially, unfettered access, as long as they're sober and there is no domestic violence incident in the relationship. So everything's going really well. But our instructions were to seek, really, a baseline level of contact. So they want it written in the plan that there'll be three days of contact a week. The Department refuses to do that because they say that it's a fluid relationship and they shouldn't be held to a certain amount of days. It doesn't make a great deal of difference, because a proposal is just a proposal. It is fluid and it does change. But it impacts on the relationship with the parents. Unfortunately, the department sees it as the lawyers being difficult and having nothing to do. Sometimes, they think that we're pushing these things and it actually has nothing to do with the parents at all. It's just the lawyers come up with an idea and are pushing a barrow for no apparent reason. Yes, so I think there's some of those issues with engagement with the local community. **(Legal Aid staff)**

There was acknowledgement in stakeholder interviews across WA that once removed children could be placed far from their families and country, thus making access very difficult.

You struggle to provide sufficient services and supports to families that aren't in Kununurra. Clients of ours are 200 km away. Then the child was seen once by the parents for about 90 minutes in that seven week period, which is woefully inadequate. **(Legal practitioner)**

Because Laverton is quite a small place often it means children are placed a long way away. They might go to Perth, they might come to Kalgoorlie, but even that's a long way away. So

they might go down to Esperance, like it's not easy for parents. You can't just pop down to Perth for a contact visit every couple of days. So once that link is broken it's really hard to make that argument that the children should be back with their parents. **(Indigenous Legal Service staff)**

In addition there may be unrealistic expectations placed on parents.

If a child has been taken and they've been taken out of community, they've been placed in town that mother has a lot of unrealistic expectations placed on her. Whether she's – if that community is two or three hours or it could be 300kms on a dirt track out of town. CPFS will put the expectation on that mother has to see those children twice in a week. Now that person then has to get accommodation within town. You know, they're out of their own country. They're away from their kinship. They're placed in a town where they possibly don't know many people. If they do know people, they're within an environment that's not theirs. There's some instances where people in those communities actually have houses, own houses, tenancies. But they've moved into town through the unrealistic expectations of CPFS. This can go on for two to four years. **(Indigenous Legal Service staff)**

Failures in the child protection regime were seen as continuing to cause general mistrust of government agencies and the law, and the outcomes were reminiscent of the Stolen Generations. As a focus group participant simply stated, "The CPFS take kids away. We take it hard.... We grew up in the missions" **(Wyndham Women's Focus Group Participant)**. Others stated:

And the CPFS, just like in the old days, Stolen Generation, they can get away with murder. My daughter just recently got her kids taken off her... She's stressing out.... She don't drink.... She's stressing out. She's going to Darwin next month, to rehab. She wants to get the kids back and in a months time or something. **(Wyndham Women's Focus Group Participant)**

This view was reiterated by stakeholders.

It's Stolen Generations. Our parents were taken away when they were young. It's still happening. **(Indigenous community organisation worker)**

If you ask any Aboriginal person, CPFS has still got the welfare mentality from the fucking 1970s. Sorry for swearing, but ... **(Legal practitioner)**

However one stakeholder thought CPFS was aware of the effects of the Stolen Generations.

Look, I think the department is under some considerable pressure. But look, from my working with the department, they're also very hesitant to get involved, because they're obviously very conscious of stolen generations. They don't want to inflict that upon the children of stolen generations parents. So they're in a bit of a bind about when to take them. **(Legal practitioner)**

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

What she did, she went to see [Doctor] ... the parents like her, and other parents.... they go on to suicide because they love their kid... And then when the kids grown up they be looking for their mum and dad... That's just stealing. **(Wyndham Women's Focus Group Participant)**

This theme of a lack of trust in and esteem for the responsible government agency was common in stakeholder comments. It was suggested that the Department discourages parents from obtaining a lawyer, or advises them that one will not be necessary.

So, in my experience, CPFS don't exactly want families to know what their legal rights are as parents. They don't want people to know what their rights are in the process. They certainly don't want people to have representation, because that makes it tricky. You know, that makes it uncomfortable and that makes it difficult. The social worker will generally want things to go nicely. The system just isn't a nice system. But having the people disempowered makes it easier for CPFS. **(Indigenous Legal Service staff)**

They're not often told that they can seek legal advice... They should be told that they can see a lawyer but they're not... Because when like CPFS contact someone it's like their way or the highway, and they don't really tell people they can get help to keep the kids. It's like "We're taking the kids," or "We're going to start monitoring you and your kids," and they feel like they've got nowhere to go to. **(Indigenous Legal Service staff)**

Poor communication between CPFS and legal service providers can exacerbate parents receiving assistance.

So the Department of Child Protection in Western Australia, they have a few options when they think that a child's in need of care. They can initially take a child from the family and place it somewhere secure. Within three days, they're meant to have filed an application in court seeking interim care for that child. That generally doesn't happen for a couple of weeks up here, which is problematic. So we get notification, at some stage, probably within a fortnight of the child being removed from the parents. We have the distance problem and the inability, then, for family to see the children. It's supposed to be three days. It takes two weeks. **(Legal practitioner)**

I find that staff at the Department of Child Protection are not very – the legal and case workers aren't very good at communicating. **(Indigenous Legal Service staff)**

However, not all stakeholders were critical of CPFS. As one stated:

It's a good thing. Parents need to know they need to look after their kids. CPFS works with the family, gets them involved, teaches them. They are taking kids for good reason. **(Community organisation worker)**

Good outcomes appeared dependant on whether CPFS caseworkers were prepared to work with parents, and not seek an 'easy solution' of long-term orders.

But there are some families that sort of need it, they do get quite a bit of benefit out of it, the involvement of CPFS is not necessarily always a bad thing, it does provide services. Usually what depends on how caseworkers treat the family, the kind of information they provide, whether or not they're realistic about, because they can seek an order till the child turns 18 and that's the end of it, and the only way that can be changed is through a ministerial intervention. So that's very serious and sometimes, they just kind of, I think, they think it's all too hard, they'd rather get an order to 18 and then not have to worry about going back to court every few years and reviewing it. **(Indigenous Legal Service staff)**

Good outcomes can be achieved through specific programs.

In child protection we've had a mediation pilot. We've developed a model that basically combines the Department for Child Protection and Family Support's Risk Assessment Framework (*Signs of Safety*) and our ADR model. And what we have done is offer that within the metro area to pregnant mums at King Edward Hospital who're in a position that the department's already thinking that their children might be at risk when they're born and they'll go into care. As referred from the Perth Children's Court, we ran a pilot program that was successful, that people were engaged with, families were engaged, they were actively participating and feeling like they were heard and there was some really good results in terms of inter-professional collaboration and so on. **(Legal Aid staff)**

LAWA drew attention to the development of the Signs of Safety Pre Hearing Conference (SOS PHC) program that had been developed in partnership between LAWA and CPFS and administered by LAWA. The child protection mediation program combined the LAWA Family Dispute Resolution process and the CPFS Signs of Safety Risk Assessment framework. It has been expanded into regional Western Australia. The expansion "has been an important and challenging development in the current environment of limited resources and uncertain funding" **(Legal Aid staff)**. In 2013/2014 regional SOS PHCs comprised 31% of all conferences held and 46% of all of the families in the program were Aboriginal. In the current financial year to date (2014/2015) 39% of the 69 conferences held have been regional and 48% of those conferences have involved Aboriginal families. Of all conferences held, 43% of families have been Aboriginal. LAWA and CPFS are partners in the Aboriginal Engagement Project that is designed to improve the engagement of Aboriginal families in the SOS PHC program. The *Getting Ready* booklet has been designed for use by CPFS case managers when they meet with families to prepare them for their participation in the SOS PHC process. Further it was noted that:

Legal representation of parents and children is integral to the [SOS PHC] program and its success. ALS and AFWLS are playing an important role in the provision of legal advice and representation to parents in the regions. None of these legal service agencies (LAWA, ALS and AFWLS) have received additional funding for the expansion of the program into regional Western Australia. The expansion has increased demand for legal representation in child protection proceedings and the agencies are concerned about their ongoing capacity to meet demand for this essential service. **(Legal Aid staff)**

Good outcomes can also result through the employment of Indigenous workers.

Throughout it all, it's the need to have workers in your service, with your clients, who are Indigenous. It's about, you know, specified services. It's about language, it's about understanding. Our Indigenous workers get ruthlessly exploited to say, well you come here. Can you come and help me talk to this person? Can you come on this trip? All that sort of thing. But that's client services - if you're not there, you know - people don't understand. I can't emphasise how important that is in the whole legal system. **(Legal practitioner)**

4.4.6 Failures of law and policy: cultural plans, consent and the Indigenous Child Placement Principle.

On the face of it, the *Children and Community Services Act (2004)* WA offers particular protections for Aboriginal and Torres Strait Islander children and families. However, in our research, some stakeholders were critical of the implementation of child protection law and policy.

I think, sometimes, the Department neglects the importance of the relationship that they need to develop with the parents. Particularly when you have time-limited orders, which the whole purpose of... is that the children are going to be reconciled with their parents. It's not a holding order. The legislation doesn't frame it as a holding order so that it's two years for them to either do it themselves or we'll get an until 18 order. The whole idea of a time-limited order is because the Department believes that the children will end up back with the parents and this is the time to work with them for that to happen. **(Legal Aid staff)**

The importance of legal assistance at early stages of intervention by CPFS was seen as crucial for achieving good outcomes.

I think a lot of what happens with Aboriginal families is they disengage once the matter goes to court, and we really think the place for us to be working with them is before the matter goes to court, so that we can engage them and keep them involved, where we can keep their kids out of court. **(Legal Aid staff)**

Cultural Reports / Plans

In practice, stakeholders reported that the formulation and implementation of cultural reports within the context of case planning was variable at best, with very few consequences for the Department for failure to develop anything more than superficial compliances.

One of the things that I've noticed, is I understand that for all Aboriginal and Torres Strait Islander children, the Department are meant to do a cultural report to say how they're going to maintain their links with the family and the culture, and I find those to be very superficial. So it might be something like well the child is placed with family, that's done, or the child is not placed with family but they'll go to X every week, and that's not sufficient, especially for children who are being removed from Laverton who might be growing up speaking language and they're removed and placed with either non-Aboriginal people or Aboriginal people that might not speak language, and then they're denied that growing up. I think that's a big problem. **(Indigenous Legal Service staff)**

Consent

The ILNP was told both by focus group participants and stakeholders that there were serious questions about whether consent orders reflected informed consent by Indigenous parents, although in some geographic locations the problem appears to have improved.

So when we first came up here, it was not irregular for us to have clients and then turn up at court and the department would hand up a signed consent order that we had never seen or our client had ever told us about. Which the department, to its credit, acknowledged was a completely inappropriate practice. I think we actually have a fairly good relationship with the department in the East Kimberley now. They're very aware of their obligations to refer. **(Legal Aid staff)**

Basic understanding of orders can be a significant problem. In the example below the Aboriginal legal service lawyer was required to provide advice over the phone.

You've got people in the regions who, I've had quite a few clients whose English is a second or third language to them, and they're being asked to sign this. I had one where the CPFS case-worker rang me up and said, "I've got Joe here, I've got the order in front of me with a copy of the proposal, can you just give me some advice for 5 or 10 minutes?" Court is on at 10:00 or something that day, and the caseworker who actually wanted the order had the father in there. I had a bad feeling about it from the start but as soon as I spoke to him I realised, he doesn't know, he probably can't even read this document. He couldn't even know what was going on. So, that's an example of some of the stuff that goes on in the regions. And that's just one that did come onto my radar that I know about, imagine how many don't, that we never hear about. **(Indigenous Legal Service staff)**

The quiescence of some families to orders was also seen as an issue, and this was clearly combined with a sense of powerlessness by those affected. Without proper prior legal advice, issues around consent will always be problematic.

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.'⁸⁵ 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.

The Indigenous Child Placement Principle (ICCP)

WA has a low rate of placement of Indigenous children with Indigenous carers - at only 57%, which is below the national average.⁸⁶ Developing the cultural competence of departmental officers and increasing the role of Indigenous child care agencies in decision-making is essential to improving adherence to the Indigenous child placement principle.⁸⁷ WA stakeholders noted that the rate of placements with Indigenous carers was getting worse while number of Indigenous children in care was expanding.

However one stakeholder believed that the ICCP was followed where it could be, although placement of Indigenous children in group-homes was problematic.

Often, it's too late. The situation's almost irretrievable. The parenting is breaking down to that extent that – really, their child won't be placed back with that family. What they do, and what they're obliged to do under the Act, is consider the Indigenous placement principles. They do a pretty good effort in trying to find a suitable and secure placement. It's not uncommon for our clients to have pretty good access to their kids because it's with a family member. [However] there's a cohort of children in all the towns in the Kimberley that go to group homes. That's a real problem. They become institutionalised. **(Legal practitioner)**

4.4.7 The role of the court

One of the main issues that arises in relation to the courts is that child protection cases receive proper scrutiny of departmental decision-making and the rights of parents and children are respected. On the

⁸⁵ SNAICC (2013)

⁸⁶ SNAICC (2014), p.12

⁸⁷ SNAICC (2014)

one hand there was a view by one Indigenous legal service provider staff member that courts “err on the side of caution” in favoring the Department. However practitioners also noted that the courts were increasingly likely to ensure that parents have been advised of their right to obtain legal advice and that CPFS were following their own procedures.

I think the magistrates that have been up here in the past five years have really pushed the importance of parents getting legal advice and, essentially, almost refuse to make orders unless parents have been provided every opportunity available to them to get legal advice and assistance. **(Legal Aid staff)**

It was noted that magistrates had been critical of CPFS processes.

I recently did a submission to the CPFS and referred to that case [a successful challenge against CPFS], because the Magistrate was quite damning of the way CPFS handled it. He wasn't happy at all and he really went through the particular issues for an Indigenous family dealing with that department, and where they really fell down, where they should have done things differently. So it was quite a good decision from our point of view, quite useful, something that gave us the opportunity to, not bash CPFS over the head but, say to them, “Look, things need to change and there needs to be a culture-shift”. **(Indigenous Legal Service staff)**

However, it is also clear that many Indigenous family members appear in court unrepresented, or do not appear in court at all.

Even just parents to go to the court case... So with the court for Laverton, child protection matters are heard in Kalgoorlie every Tuesday. Case records from Kalgoorlie appear, we don't generally video link to Laverton as a matter of course. Sometimes someone from that office might appear by phone, but it's hard for the parents to be involved in those proceedings. [How often would the parents be appearing?] Very rarely, very rarely. **(Indigenous Legal Service staff)**

4.4.8 Access to legal advice and representation for child protection and family law issues

Lack of information about legal rights

There was a sense among stakeholders that it can be difficult to access information about legal and administrative recourses for family law and child protection issues. It was 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.

It's really weird up here sometimes. Because the ones that need to be protected tend not to be. Sometimes, there's more of a jump for those that aren't. When kids do get removed, they don't know that they have, if they wish to, they could actually get a lawyer to represent them. Technically, their children have the rights to have their own lawyer as well, and so on. So they just don't know all this stuff. **(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. This problem is exacerbated when there is not assistance from CPFS in explaining the process.

But they've not done – they've not sat down and talked to them about this is the process, this is where we're going to go now. Bang! [They] get served with papers. Then they have to run and look for legal advice. Legal Aid, apply for a grant of aid. That takes X amount of weeks. Even to get the initial advice. **(Legal practitioner)**

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 Indigenous 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.⁸⁸ As noted previously, there is no requirement in the WA legislation for Indigenous organisations to be involved in decision-making about Indigenous children.

Level of access to legal services

Twenty-one individuals who had 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. As shown in **Table 4.34 (Appendix C)**, a little less than half (10 individuals or 47.6%) indicated they sought legal advice or assistance in relation to the issues around family law and child protection matters, with men and women seeking advice at the same rate. Of those 10 individuals, five sought advice from lawyers (three ALS, one Legal Aid, one private lawyer), two sought advice from CPFS, one utilised Relationships Australia (for mediation), and two were not sure who they had approached for help.

Despite the fact that 47.6% of focus group participants with a family law or child protection issue said that they had sought legal advice, there was a perception among legal practitioners and other organisations that Indigenous clients either did not or were unable to obtain legal advice when they were compelled to take part in legal processes.

Strategies for improving access include a greater emphasis on community legal education and earlier support and preventative intervention (although these are also dependent on adequate resourcing).

We're running some training at the end of this month in partnership with the Department of Child Protection around building the foundations for expanding into the regions. And we've got ten Aboriginal Practice Leaders from the Department who are going to be involved in that training from regional and remote areas. And we are looking to be able to use them as the people who would convene or facilitate these processes and have the local community legal services as well. At the moment the challenge is unlocking the resources to do that. **(Legal Aid staff)**

Quality of legal service provision

Remoteness is another factor that impinges on the ability to deliver legal services and the limited geographic availability of legal services also has a direct impact on the ability to access services.

This is a problem in general with helping people in Laverton. It's fantastic that we go up there once a month, but the times we're not up there can be hard to keep in contact with people, and that's for a lot of reasons. People move around a lot in the Goldfields, so that's a challenge for us, and the Department aren't always very good at communicating with us about clients. **(Indigenous Legal Service staff)**

⁸⁸ SNAICC (2013)

Remoteness also impacts on the ability to access the courts, particularly in family law matters (see discussion Section 5: Observations of legal service delivery (Working regionally in WA)).

But if they're 2000 kilometres from the registry, it's not really fair, how are they going to? They don't have the internet, they don't have all that sort of stuff. They really need you to help them out. I will just comment that care and protection is from judicial resourcing is a lot better than Family Court because the local magistrates just deal with, they just sit as a Children's Court magistrate and do those matters... The Family Court which is based here (in Perth) but does circuit sittings around WA every year. But again, quite limited, they go to Bunbury once a month for a week. They'll send a magistrate or a judge to Bunbury, but they just deal with hundreds and hundreds of matters in one week. You're just sort of getting through them as quickly as possible. Kalgoorlie's the same. And then there's a whole lot, they dropped Karratha, I don't think they go to South Hedland anymore, the Family Courts. And it's become more and more limited, so if a matter is to be dealt with by the Family Court of WA in one of the satellite courts, like a circuit sitting, you've got people they can't get to court anyway, they live 500kms away and they don't have a car, it's just not going to happen. **(Indigenous Legal Service staff)**

4.4.9 The impact of inadequate funding of child protection advocacy and 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 foster productive practitioner/client relationships.

Family lawyers? There's three full-time and one four days a week, so 3.8 all in Perth [covering all of WA]. We don't go out of Perth unless we need to do a court circuit. I try to do all regional hearings by telephone. It would be nice to do an outreach once a quarter. For example, you could go to Kalgoorlie or Broome or somewhere like that but you have to look at what other services are there as well. Because Legal Aid's got quite a big presence in the Goldfields, and Aboriginal Family Law Services, they've got solicitors in Kalgoorlie. So there's a question of where we go and you need to give people plenty of warning that you're coming, because you want to make sure that the maximum number of people can come in and get help. And then there's the cost issues getting people up there, and you've got all the file-work down here all the time anyway. So yeah, we're a pretty small unit for the state, and there's so much work, it's kind of an endless process of prioritising. **(Indigenous Legal Service staff)**

It was acknowledged that challenging CPFS can be resource intensive for legal service providers.

We defeated the Department after a 12-day trial. There's not a lot of those, unfortunately. It's very expensive to run a trial against CPFS because they've got so much in the way of resources, and they can brief whoever they like, and they can have a hundred witnesses if they want. So it's quite difficult and very tricky for us to run matters against them, but if they've got the merit and there's no conflict then we're quite happy to do it because then that's sort of the other end of the Stolen Generation problem. That's us trying to stop the repeating pattern over and over again. **(Indigenous Legal Service staff)**

Resourcing issues were also essential to the expansion of pilot projects and the development of new Indigenous-specific projects. In discussing a successful program run in Perth that "had a significant

increase in the number of mums bringing their bubs home to the family rather than kids being taken to care”, Legal Aid staff commented as follows.

So we put up a budget bid to extend it into the regions. I think they were very sympathetic but of course, the last budget was pretty bad for us... When we were preparing for submission to government to get additional funding for this, we looked at the Department for Child Protection and Family Support care and application stats and in the Kimberley, there’s a massive legal need in that region. What we would really like to do is to expand that into the regions and we’d like to start in the Kimberley because that’s probably the biggest needs area. It would take a lot of work and the model that we’ve got is not going to be able to just be transferred to the Kimberley, obviously we’re going to have to have a lot of local consultation and involve local Aboriginal people. **(Legal Aid staff)**

The Perth program was developed through a partnership between LAWA, King Edward Memorial Hospital for Women (KEMH) and CPFS. The Signs of Safety Pre Birth lawyer assisted child protection mediation program commenced in 2009 in relation to pregnant mothers attending KEMH. The increasing number of babies going into care, and the proportion of those babies that were Aboriginal, was a catalyst for the introduction of the program. Lawyer assisted meetings in the pre-birth process take place prior to the commencement of child protection proceedings and the program has now extended beyond KEMH and into regional areas. The pilot of the pre-birth program and the SOS PHC program (referred to previously) were the subject of an independent evaluation.⁸⁹

The evaluation and ongoing experience of both programs suggests that they can be a vehicle for maintaining family relationships, keeping parents and extended family involved in the child protection process and for building working relationships between CPFS and other professionals. It is considered that this is more likely to achieve safe and durable outcomes in relation to the care arrangements for children, including the option of family court orders, than traditional adversarial children’s court processes. **(Legal Aid staff)**

4.4.10 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, including debt, income management, drug and alcohol issues and housing.

They’re very angry if they’ve been put on compulsory income management. They might ring up from Centrelink and they’re angry or cross or CPFS has said go and see them... So a lot of the compulsory clients either have had their children removed or are at risk of having them removed... We work holistically with the family, if they haven’t got the children, to get their children back. For example, we helped a client to get into drug and alcohol rehab and she now has all her children back. **(Indigenous community organisation worker)**

Normally they get sent to us because they’re compulsory and you’ve got to look at their finances as well, but the large amount of the times you can’t do the budget because it’s a drug and alcohol issue or family issues, where the money is going in 20 million different

⁸⁹ Howieson J and Coburn C (2011) *Pilot of the Signs of Safety Lawyer Assisted Conferences and Meetings Final Evaluation Report*

directions. We know that and we'll work with that and see what we can do to make change. So, they're very complex and they take a large amount of our time. **(Indigenous community organisation worker)**

Housing can be a particular problem in relation to child protection issues.

There's a lot of times when the real problems are to do with things like housing and property and those kinds of things. They're problems that can be fixed, and fixed in other ways besides removing children from their families and placing them elsewhere. **(Indigenous Legal Service staff)**

4.8 EDUCATION

Issues that arise in the education system, especially where it involves children, can have far reaching effects. For example, where children feel unable to stay in school, this can obviously affect employment prospects later in life.

The literacy and numeracy skills are just so low. Then it comes back to the shame factor, because they're not going to say I can't read or write. **(Legal practitioner)**

Often, the education system is not structured to adequately cater to the needs of Indigenous children, including being responsive to cultural needs that are part of the learning that young Indigenous students need.

We need to start from the kids, from early age, not just learn 'one, two, three, ABC' and all that sort of stuff. But able to understand, you know, from an early age, who they belong [to], where they belong and all that sort of stuff, from a mark of respect. The cultural element's got to be brought back into the curriculum. The cultural awareness, you know. It needs to start at a very early age. **(Legal practitioner)**

Some stakeholders doubted whether this kind of cultural component could ever be sufficiently achieved within the mainstream education system.

I've got a project there to create a school outside of Roebourne, far enough away where the kids can't walk back. Bus them out on Monday, have dormitories for boys and girls, and bus them back on Friday so it's like a mini-boarding school...far enough away where they can't walk back but make it interesting and make it law and culture, make it language. Make it reading, writing and arithmetic. Have a couple running the kitchen and the kids go, "What's for dinner tonight?" "I don't know. Go and get a kangaroo or go and get a fish." Teach them their land, their country, where they came from. Get them involved in education to the point where they like it, they're doing things... You've got to get them out of that era of, "I can do what I want to do." **(Indigenous community organisation worker)**

Participants were asked whether in the last couple of years they had been responsible for a young person attending school, TAFE or university, or had attended themselves. For those who responded positively, a question followed about 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 4.31 shows that **44.4%** of participants identified attending or being responsible for someone attending an educational institution. Indigenous women were 10.5 percentage points more likely than Indigenous men to be responsible for someone attending (or themselves attending) an educational institution (49.4 % of women compared with 38.9% of men) (see **Table 4.36: Appendix C**).

Figure 4.31 Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Attending Themselves

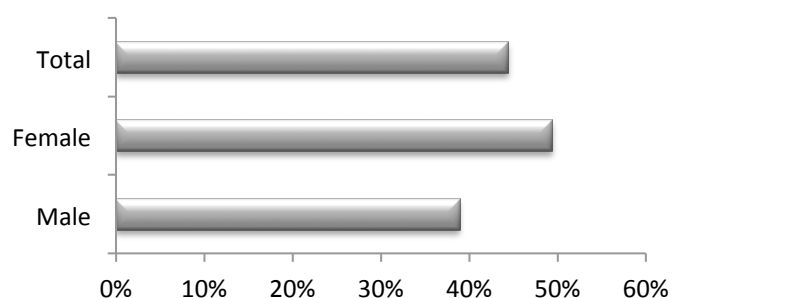
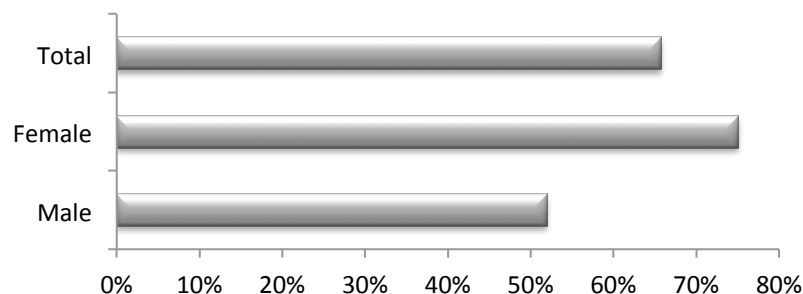


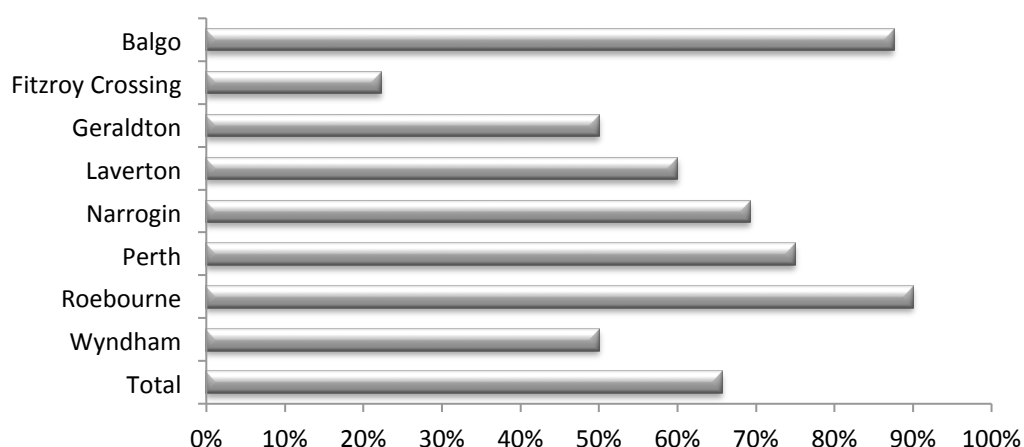
Figure 4.32 provides baseline data for participant responses to the question asking whether they had experienced an education-related dispute or problem. It shows that overall, **65.7%** of all participants with someone in the education system or who were themselves studying reported having experienced an education-related dispute or issue. Three quarters of Indigenous women identified an issue of this type: 23.1 percentage points more than Indigenous male respondents (see **Table 4.37: Appendix C**).

Figure 4.32 Participants Identifying Education-Related Issue



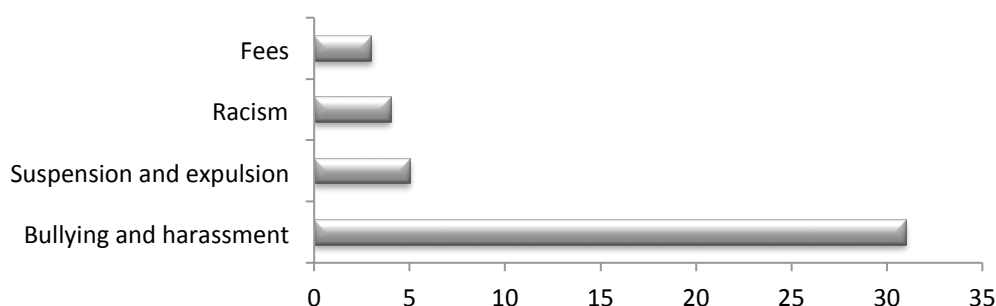
It is apparent, then, that problems in educational settings are extremely widespread. **Figure 4.51** shows that participants in Roebourne and Balgo were most likely to identify an education-related issue, with an enormous 90% and 87.5% of participants in these communities nominating such an issue, respectively. The community least likely to identify an education-related issue was Fitzroy Crossing, at 22.2% (see **Table 4.38: Appendix C**).

Figure 4.33 Education Issue by Community



Participants were asked about the nature of the education-related problem or dispute experienced. Forty of the 46 individuals who had indicated problems with educational institutions identified 43 separate issues that they had experienced. Bullying and harassment, sometimes explicitly coupled with an element of racism, was the most common (see **Table 4.39: Appendix C**).

Figure 4.34 Type of Education Issue Identified



Focus group participants suggested that Indigenous children succeed despite their school experiences, rather than because of them. School authorities may deal insensitively with the circumstances that attend the lives of their students, as demonstrated by this incident recounted by a focus group participant. “The principal said to my little grandson, ‘He turns up dirty to school’”, and I said “If he’s dirty, if he’s clean, he still goes to school” (**Wyndham Women’s Focus Group Participant**).

A great deal of the discussion about problems in education centred around the experience that Indigenous students have of discrimination at school – both from students and teachers. As one focus group participant commented, “A lot of the bullying goes on... Teachers bullying the kids...” (**Wyndham Women’s Focus Group Participant**)

I believe that a lot of the teachers that come up here ... have already got their own morals and belief systems and things like that, in regards to Aboriginal people and things... I do think kids do get discriminated against... Yes, some are good, some are bad. I guess you get that in all walks of life. (**Indigenous community organisation worker**)

There was a feeling that where there was conflict among students – often with a bullying element towards Indigenous students, it is the Indigenous kids who are blamed.

Not so long ago, last week, one young girl wasn't the cause of it... the other kids started off. This young girl was trying to defend herself... she was the one that was expelled from school for a week or two. Last week this happened. **(Wyndham Women's Focus Group Participant)**

Similarly, when discussing troubles that erupted between several groups of children in the school at Narrogin, focus group participants stated:

They sort of blamed my son and wanted to expel him and send him home. I went off my rocket and went up there and said, "There's got to be two sides of the story instead of one, not that you suspend one mob and not the others". Cause it's usually the way, one side all the time. They didn't see what the white kids did to the Noongar kids. **(Narrogin Women's Focus Group Participant)**

They don't treat them the same. They've got two sets of rules for two different people. I had a couple of girls, my granddaughters, going up there... I had to go up there. They don't listen to us. They listen to the white people. **(Narrogin Women's Focus Group Participant)**

Issues arising at school can be complicated by dynamics in the community – either because problems at school spill over into inter-family dynamics, or because existing tensions in the community are brought into the school.

Problems occurring in school that aren't being sorted out... so on the weekends kids are getting to fights... then they get pulled out of school. **(Wyndham Women's Focus Group Participant)**

My daughter hasn't been gone to school for a year because [there's problems] in the community. She never been because there was fighting in the community. [She's worried] other kids will bring their mothers and aunties and what not. **(Roebourne Women's Focus Group Participant)**

There's a huge breakdown in education... Roebourne has about a 42 per cent, I think, attendance rate across the school. That's pitiful... the community we're talking about won't be involved because they didn't go to school and their mum and dad didn't go to school. "Why should my kid go to school? I didn't go to school." **(Indigenous community organisation worker)**

There was also a sense that where Indigenous children present with challenging behaviours, schools are ill-equipped or unwilling to work alongside the family in the best interests of the child. Rather, all too often the issues are deemed too difficult and are not properly addressed. When asked about the prevalence of suspension and expulsion, one stakeholder commented:

Like big time. Just the other day, I know, a boy was suspended because his bike was stolen and he went and reported ... He swore, because he was angry, and he got suspended. He wasn't swearing at anyone, but they are a problem, being quick at suspending children. **(Legal practitioner)**

Focus group participants had similar stories to recount.

They tell children to attend school everyday. Kids go to school in what condition or not... teachers don't even try and provide help for them, and they don't even try sort out their

problems or nothing. They got Aboriginal workers there. They are there to help them. They're not even doing their work. **(Wyndham Women's Focus Group Participant)**

On this note, it was raised by some stakeholders that resources to support Indigenous children in schools need to be increased, but that care must be taken to ensure that what is put into place is effective and appropriate.

I think we need to employ a lot of people in that area. Especially AIOs (Aboriginal and Islander Education Officers) or whatever they call them. They need a lot of them. And they need a lot of males in the primary schools. I see a lot of females, which is not a problem. But I think they need males in there. **(Legal practitioner)**

Teachers, when they first come here, maybe they're getting cultural training and stuff. They don't understand that that boy can't talk to that girl because that's – she's the mother-in-law, that she can't talk to him... **(Legal practitioner)**

Access to legal advice for education related issues

Eleven of the 41 participants (**26.8%**) who had identified an issue in this area sought legal advice or help (see **Table 4.40: Appendix C**). Seven indicated from whom they had sought assistance. One person had contacted a lawyer, one the police, and the remaining five had tried to deal with the issues through the school itself. In some cases, it appears that Indigenous people are at a loss about how to address issues arising in the education system beyond dealing with the Department of Education on its own terms.

Low levels of access to legal services in this area of civil law is evidenced by the comments of this legal service provider, who noted that the service's only involvement with education-related issues had arisen in a criminal (juvenile justice) context. They had never had any requests for assistance from clients on the basis of discrimination, bullying or suspension/expulsion.

It has cropped up several times with our juvenile criminal clients, in terms of suspensions and expulsions from school, and the school's obligations and the Education Department's obligations. So I suppose, in conjunction with youth justice, a couple of times I can think of, we assisted to write to the department and remind them of their obligations to provide all children with education. Yes... the only ones I can think of have been in a criminal context. **(Legal Aid staff)**

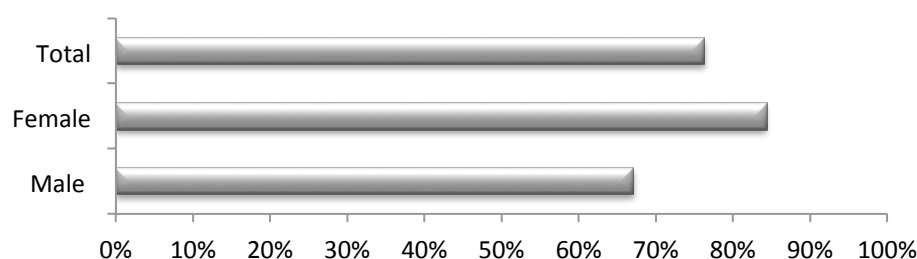
This supports the findings from the focus groups that although there is an extremely high experience of problems within the educational setting, these are generally not viewed by community members as issues that may be assisted to resolution through legal advice.

4.9 SOCIAL SECURITY

Problems relating to Centrelink payments emerged as a priority legal issue in WA. As one focus group member commented in Perth, this is an area in which "We've all had problems" **(Perth Men's Focus Group Participant)**. 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.

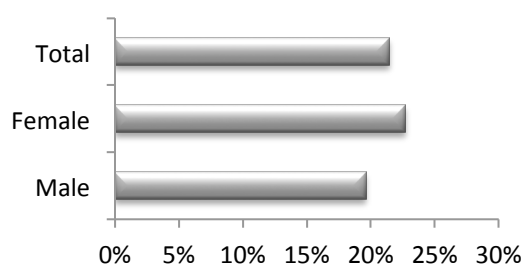
Figure 4.35 shows that overall, **76.3%** of all participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits higher than Indigenous men (84.3% of women compared with 67.1% of men) (see **Table 4.41: Appendix C**).

Figure 4.35 Participants Identifying Receipt of Centrelink Allowance



112 of the 119 focus group participants who were in receipt of a Centrelink allowance responded to the question of whether their income was subject to income management. Fifteen females and 9 males indicated their payments were subject to income management - **21.4%** of all participants in receipt of benefits (see **Figure 4.36** and **Table 4.42: Appendix C**).

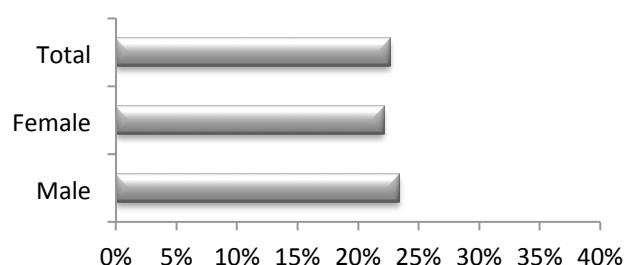
Figure 4.36 Participants Identifying Centrelink Payments Being Subject to Income Management



4.9.1 Extent and Nature of Centrelink and Social Security-Related Issues

Figure 4.37 shows that overall, **22.6%** of all participants receiving Centrelink payments identified having experienced a dispute or problem in this area, with a similar proportion of Indigenous men and women experiencing such problems (23.4% of men compared with 22.1% of women) (see **Table 4.43: Appendix C**).

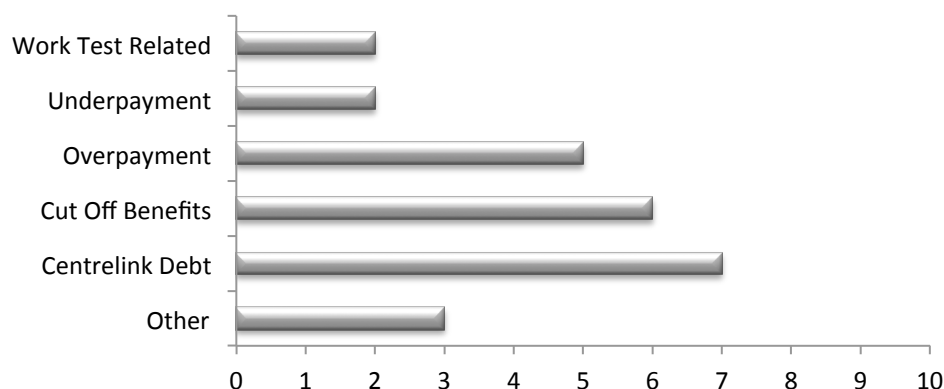
Figure 4.37 Participants Identifying a Problem With Centrelink



Twenty-two of the 26 individuals who had identified problem with Centrelink payments specified a total of 25 different issues, the most common relating to Centrelink debts. **Figure 4.38** shows participant responses to the question asking them to identify the nature of their dispute or problem

with Centrelink. The most common issues identified related to debts (7), being cut off benefits (6) and overpayments (5) (see **Table 4.45: Appendix C**).

Figure 4.38 Reasons Identified For Problem With Centrelink



Access to Centrelink and Engagement with Clients

There were numerous problems relating to access to Centrelink, particularly in regional and remote areas. A stakeholder noted that effects of remoteness and cultural difference were not considered in Centrelink policy and practice.

Even though they've got an office here, a lot of stuff has been dealt with from Kalgoorlie so I think the distance.... I don't know if you've dealt with Centrelink before but you get on the phone and you sit there for an hour waiting for someone to bloody answer the phone. They've got a Centrelink office here – instead of dealing with them, you've got to go and sit on a phone. Aboriginal people are not going to do that. That's not their way and their culture.
(Community organisation worker)

When you do get cut off you've got to stay on the phone for nearly two hours, four hours!
(Laverton Men's Focus Group Participant)

Another stakeholder saw the issue as a lack of consideration of Aboriginality in the way Centrelink operates.

They really haven't taken Aboriginality into consideration. I have Aboriginal clients on Disability Support Pension. When they get to [a certain] age, they have to find their ID, which is extremely hard if they've been on disability (support pension) since they were 18 and came out of a mission [and] they've been maybe beaten [or have] other mental health issues. And suddenly when they turn pension age they've got to find 100 points of ID, birth certificates. Trying to get a birth certificate for them... The clients have no idea how to get them. A lot don't have driver's licences, especially the women, so they haven't got this ID.... So they actually don't have money for a couple of weeks when they are in between [benefits].

.....

It's the same thing for the youth who've been on mum's family tax benefit without a problem, come off of it and gone onto youth allowance. They can go into Centrelink and apply with their 100 points but they're given three months to get all their information. In those three

months they don't do anything because they have no idea how to do it. So then their money drops off and they're back on mum's money, but she doesn't get that payment anymore. And it can be quite simply shame factor. They have to go back to a school to get a school report... you go down to get a bank statement. They say the account hasn't been used for nine months so we can't give you a current statement. **(Indigenous community organisation worker)**

Distance, remoteness and lack of transport impacted negatively on the ability to meet Centrelink requirements. A stakeholder in the Kimberleys noted as follows.

Another thing [is], no cars out in the communities, or people lose their licence. I know a majority of ladies that actually, since CDEP shut down, they have to be forced onto job search. Now, due to no transport from town to come in, they've actually got no income. They get cut off. They actually live off family members. There is no public transport. You can't get in if you don't have a car. **(Legal practitioner)**

New demands for access to computers and computer literacy also caused problems both for clients and community organisations. These problems were exacerbated when there was no Centrelink office.

We've only got a Centrelink agent here. I really think we need a proper Centrelink branch here. (What impact does it have just having an agent?) Well, there's no one to help anyone. I mean there's a phone there and some computers and things. There are older people coming in that didn't know anything about a computer. **(Indigenous community organisation worker)**

The issue of customer service and attitudes to Aboriginal people were also raised. Stakeholders noted that:

If our mob are in financial hardship, then they get really frustrated... angry, impatient, demanding. Then Centrelink goes "No, they threatened me", you know? Then they're suspended from Centrelink for two weeks. But they're not looking at why that person is like that. You know, they just look at you – "Oh no, another bad Aborigine coming in [and] going to swear at me". **(Legal practitioner)**

Yeah. You really need some human beings working at Centrelink. **(Indigenous community organisation worker)**

Problems with customer service were also exacerbated by long periods of waiting in Centrelink offices, particularly when clients had children.

And, another thing like, when you've got to go into Centrelink, and like you've got your kids with you and they make you sit there and wait for like so long and then by that time the kids are starting to play up and that in Centrelink. The people in Centrelink, they come out and start shouting at kids and all!

Yeah, I've seen them blow up at kids. I've seen it happen, yelling at kids in there. **(Geraldton Women's Focus Group Participants)**

Problems with communication between Aboriginal and non-Aboriginal Centrelink workers were also seen as an issue.

We've been taking them in to set up payment plans and stuff like that, and just sit down with them and help them through. Sometimes, they don't understand the workers, you know. So we sit there and we can talk for them. It's just that, you know, that break [in] communication. The main people, when you go in there, are still white that they have to talk to. So you know, like they don't like dealing with Aboriginals, you know. **(Legal practitioner)**

Often a successful, collaborative approach to dealing with problems with Centrelink for both individuals and organisations was dependent on particular personalities. Access to a competent worker at Centrelink can impact on peoples' satisfaction with the way that disputes or issues are dealt with, and with their perceptions of an agency as a whole.

But on the whole, we have a really good relationship with our Centrelink office. We are very, very fortunate that our vice-chairperson works down at Centrelink. Well, he's a senior social worker, so that helps us and we have, we're lucky we can have contact with him. We also have someone else who sits on our committee is down there. So we have a really good – on the whole - we do have a really good working relationship with Centrelink. **(Legal practitioner)**

Another stakeholder noted,

I've a contact there in Centrelink to deal with a lot of the Centrelink issues. This person that I deal with is not the pencil pusher. What I've found is there are key people in a lot of these organisations who deal specifically with these issues. I can just ring them and talk to them and say "This is the issue, what can we do?" "Alright, give me a couple of hours" and then they ring me back and say "Right it's all sorted". **(Community organisation worker)**

Access to Entitlements

A major issue to emerge was problems around people's awareness of and access to their entitlements, including difficulty working out what Centrelink will pay and the criteria to be applied. A focus group participant noted,

I don't know about Centrelink, what they pay or who they pay, how much - but it's not coming out of their pockets... When I first wasn't working, I used to work at CDEP first, when that closed I rang Centrelink. They said I was entitled to \$30 per month or something. I told them, "Keep it. Youse keep it cause I'm a smoker and that's probably my \$30. I'd rather do without". **(Narrogin Women's Focus Group Participant)**

A particular area of concern was the relationship between child support and Centrelink entitlements. Stakeholders commented problems in this area on.

Child support payments and family tax benefits. We find that, often, people at Centrelink don't know their own laws. We're starting to get questions about, you know, where the mother doesn't know where the father is, [or] can't identify [him]. The message has got out into the community that if you don't know where he is, then you're not going to get your payment. So we're dealing with a couple of those and we expect more of those to come in. **(Legal practitioner)**

Child support... a common problem in the regions is lack of registration of births, and lack of sort of keeping track of who the parent might be, so we get a lot of enquiries about actually needing to start that whole process. They can't get child support until they've gone through the process of either establishing who the father is or proving to Centrelink that they don't know. Lack of registration of births is a huge problem out in the regions, and one of the effects of that is that the carer parent can't get child support because Centrelink will say, "Who's the other parent?" and you need to go through the whole process. **(Indigenous Legal Service staff)**

Underpayment may be related to situations of domestic violence.

When I ring Centrelink, they say it's because they haven't put the father's name on the birth certificate. You can get an exemption where there is family violence but you have to go to a social worker... One client, she actually gets \$250 a fortnight more now. She doesn't need a financial counsellor cause she can manage now she's getting the right money. They have no idea they're not getting their right money or the reasons why. **(Indigenous community organisation worker)**

It's not well known or communicated, the exemption in place for family violence, where you don't have to try and contact the other side. But it's coming up – people not knowing, or Centrelink people would actually not know. So we get a lot of people not getting payments that they're eligible for. **(Legal practitioner)**

In relation to assistance for funerals it was noted that:

It's quite common they go round there to Centrelink and they say, "Oh, you've got to see the [Indigenous] Foundation, they've got more money than us for funerals." When it's implicit in their duty of care that they pay for funerals. If someone's on Centrelink and dies, they're saying, "Oh no, we know through our records that their brother's cousin there earned 50 grand last year so get him to pay for the funeral". They're making it very hard, very, very hard. The bottom line is that Aboriginals in remote areas like Roebourne find it increasingly difficult to get assistance. **(Indigenous community organisation worker)**

Sometimes the lack of access is due to the inability to meet requirements. As focus group participant noted, "I put in for sickness benefits. They wouldn't give me that... They wanted a doctor's certificate and this and that" **(Roebourne Women's Focus Group Participant)**. Changes to the Disability Support Pension (DSP) have caused problems.

I've got one on at the moment in relation to the changes to the DSP. I've got one appeals matter. That's just something that's going to come up more and more with people that were previously eligible for a disability support pension now being put on Newstart. Because of their disability, they're unable to comply with the Newstart requirements to go to X amount of trainee hours or job meetings or whatever it is. **(Legal practitioner)**

A particular issue of concern was accessing payments where grandparents were looking after grandchildren. A recent Senate Inquiry report has recommended increased financial and legal support

for grandparent carers.⁹⁰ The ILNP research suggests that many Indigenous grandparents are not receiving the payments they are entitled to. There is a range of reasons for this lack of access.

Another thing that I find that sort of gets to me a bit, as well, is the grandmas with the grandkids. The grandparent's kids have been dropped on them. They've just dropped the kids on them and then taken off and they're (the parents) still getting the family tax benefits.

(Indigenous community organisation worker)

I haven't got the payments for childcare. I am looking after my granddaughter but the mother won't sign the paper so I can't get the payment. **(Narrogin Women's Focus Group Participant)**

(Would you assist someone who's caring for children while the parents are getting the Centrelink money to try to fix that up?) Yeah. But then again, you see, that's where you hit the barrier of the blooming birth certificate. Because even though the parent is already getting the family tax benefits, or they must have seen it, but you have to reapply for the whole thing. Then they have to approach the parent and tell the parent that they're stopping it because the grandma has to get it. It's all sort of – it's so hard, you know. **(Indigenous community organisation worker)**

Debts, Overpayments and Being Cut Off Benefits

The communication issues referred to above may lead to some of the legal problems that arise when individuals incur debts without understanding the debt in question and how it arose. A male focus group participant observed, "They sent me a letter for \$500 and I don't know what for. I had already paid it and they sent me another letter for \$500. I haven't been to see a lawyer" **(Wyndham Men's Focus Group Participant)**.

I've had that much debts from when I was a teenager, and that's over \$15,000 and like I was only on Newstart when I was 16, you know, and they tried to do me for about three, four Abstudy debts, over \$2,000 and I said, I've never ever filled in for Abstudy or anything and when I did do a correspondence course from TAFE, I'd completed it. And they tried to say that I never done it and I got done with a big debt. **(Geraldton Women's Focus Group Participant)**

Being cut off benefits can have particularly dire consequences. The eight-week exclusion period can cause particular hardship for Aboriginal people and often fails to consider cultural and social issues.

The 8 weeks exclusion periods, where they've been sick or they've gone up north or down south for a funeral and they haven't been able to get back. [They don't know they have to attend an appointment, as they don't read their mail]. A lot of our clients don't function in that way. So the exclusion period just creates more stress on the family and it often happens through something done unintentionally. They have not deliberately *not* gone to meetings. Then the mother or the Nan has to provide for them but they're also being charged rent for them because rent's worked out on *all* the household's income. So then you have the breach... So as well as the Centrelink issue you've got the breach notice (housing). And then

⁹⁰ Senate Standing Committee on Community Affairs (2014) *Grandparents who take primary responsibility for raising their grandchildren*, Commonwealth of Australia, Canberra.

they'll try to put some money into Homeswest, so you have the power and gas disconnection. We get this circle that might have started from the exclusion period for one person. It has a massive effect. **(Indigenous community organisation worker)**

Income Management

Income management was introduced into the NT during 2007. The Commonwealth Government saw it as a way of controlling how welfare recipients spend their money (and was directed in part towards preventing child abuse and neglect). 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.⁹¹

Income management exists outside of the NT in declared areas in Western Australia (including the Kimberley and Peel regions, the Ngaanyatjarra lands, Laverton and Perth) and South Australia (the APY lands). In addition, income management was expanded from 1 July 2012 as part of a trial in Victoria, South Australia, Queensland and NSW.

In the ILNP research in WA, 'voluntary' Income Management was related to access to housing: "The Department often insists on voluntary income management. That's a very popular thing now. It's not really voluntary. It's a way of saving the tenancy" **(Legal Practitioner)**.

Focus group participants discussed restrictions imposed on places where goods could be purchased, particularly in remote communities. One woman stated as follows.

That Basics Card is for food only, this shop put up a sign, "No basics card. Cash only". Since this Basics Card came out, the only big supermarket shop in this town got a big sign saying cash only. So they're stuffed. We're trying to get a feed but the sign says cash only.

Even if you do make a complaint (to Centrelink), there's nothing will get done in this place for blackfellas. With them basics card, you can go to the big shop and get about 6, 7 bags full of food, you know? But because they can't use it there, they always run to the BP. Three or four little items you put in one or two bags, that's \$150 or whatever. **(Laverton Women's Focus Group Participant)**

The use of Basics Card has also meant that the repayment of people's debts via the Basics Card is unrealistic or unjustified.

People are signing up to pay back debts that they probably don't have to pay back. You know, that could be their kids' mobile bill. Unconscionable to get away with it. So we're constantly in discussions with them, saying "Please, will you send the people to us before they sign up, so we can go through and see what's legitimate and what isn't?" [So these are being direct debited out of their Basics Card?] When they sign up, yeah, for the Basics Card. It's income.

⁹¹ For further discussion, see for instance Sutton, J (2008) 'Emergency welfare reforms: a mirror to the past?' 33(1) *Alternative Law Journal* 27; Commonwealth Ombudsman (2012) *Review of Centrelink Income Management Decisions in the Northern Territory*, ACT: http://www.ombudsman.gov.au/files/review_of_centrelink_income_management_decisions_nt.pdf; and Buckmaster, Ey & Klapdor (2012).

Yeah, so this much, you'll pay off bills. Some of these bills are contentious, yes. People get a credit card bill – because you know how the banks send credit cards around. I've seen some of the credit cards. It says you have \$5,000. So people get into trouble. **(Legal practitioner)**

The removal of people's ability to manage their own money also impacts on debt problems, as the following legal service provider noted.

One example I can think of was one of my clients was very frustrated because she had some debts that Centrelink didn't recognise as falling into what she could use her 70% for. So they were unwilling to put any of the money towards that. **(Legal Aid staff)**

*Centrepay*⁹²

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. At a broader level, there was considerable disquiet among stakeholders concerning the failure of Centrelink to meet its own objectives in the Centrepay scheme. The objective of the 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'.⁹³ The Centrepay Scheme achieves this through, *inter alia*, 'providing Customers with a means to budget and plan for their household and living expenses'.⁹⁴

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.⁹⁵

Stakeholders noted that the purposes for which Centrepay were established are important, but that they do not appear to be adhered to. This includes lack of oversight over the purposes for which Centrepay is used.

It's whatever that client has set up, that's the money goes into that client's bank. Whatever they've set up. You send the form through, and obviously Centrelink's going to take that portion of money to pay that bill. That's it. That's what the client has asked for. That's what Centrelink will pay. That's it. They don't look into their contracts or the debt itself, what they set up. We have been arguing for years that it shouldn't be used for three-quarters of the things that it is being used for. It needs to be just for the essential items. **(Legal practitioner)**

Stakeholders provided examples of the problems that can be caused through Centrepay.

The gap - if a Centrelink client goes onto another payment, there's that gap. It doesn't follow through. Centrepay, it's not automatic. They have to go and redo it all again. Clients are not knowing that... There's no knowledge there that once you come off a payment, you have to go back and start your Centrepay deductions all over again. It doesn't follow through, yeah. **(Indigenous community organisation worker)**

⁹² See Buduls (2013)

⁹³ Department of Human Services (nd), 3

⁹⁴ Ibid.

⁹⁵ Ibid, 5

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.

I've actually spoken to the senior finance officer down at this Centrelink and they don't do any budgets like we do. They don't make a full assessment of the client's financial situation at all. They see that – all right, the rent has to be paid and then, yeah, you need to pay that bill. But they forget about these people have got kids that need to go to school and they've got to put food on the table. You know, they don't worry about those things. **(Legal practitioner)**

4.9.2 Centrelink and Legal Advice

Only three of the 27 individuals who had identified a problem with Centrelink also indicated they sought legal assistance or advice (all were female). One person indicated who they had sought assistance from, which in that case was the Ombudsman. Seventeen individuals responded to the question of how they resolved the problem with Centrelink. For the majority the problem was either unresolved (8) or ongoing (4).

Several individuals who had significant debts with Centrelink did not know whom to turn to for legal advice. Focus group participants noted,

Sometimes we don't sort it out. We just leave it. **(Roebourne Women's Focus Group Participant)**

Legal service providers said that on occasions they do deal with social security-related matters.

Social security, pensions, Centrelink. We deal with a few criminal matters. The criminal matters, when they arise, [are] to do with social security and Centrelink. In terms of people's benefits and the rights associated with that, we don't get too many queries. **(Legal Aid staff)**

The criminal matters that arise tend to do so from a lack of understanding rather than a conscious attempt to defraud.

As a broad generalisation, I think probably an awareness that something's not right with their payments, but a lack of understanding or knowledge of the seriousness of that and of how to go about dealing with that and kind of just letting it lie rather than a deliberate attempt to defraud... I can't really recall one where I've seen an absolutely deliberate attempt to defraud. But I suppose there's that blurry line where you become aware of something and you let it continue to happen without taking steps to -- so I think there was that case law about it last year.⁹⁶ An omission, as opposed to an overt act. **(Legal Aid staff)**

[Do you think that the inability to provide advice or assistance in that early stage actually has a criminalising effect later on?] Yes, absolutely. That's why we're so keen to continue trying different ways to get legal education out into the communities. So that people are aware of these things. They develop an awareness of their obligations, I suppose. Their rights and obligations. **(Legal Aid staff)**

This highlights the fact that unaddressed social security issues can indeed escalate to become criminal matters where inadequate legal or other support is provided.

⁹⁶ See *Director of Public Prosecutions (Cth) v Keating* [2013] HCA 20 (8 May 2013) <http://www.austlii.edu.au/au/cases/cth/HCA/2013/20.html>

4.10 WILLS AND INTESTACY

Participants were asked whether they had completed a will and if so, whether they had received legal advice to do so and who had provided any advice received. Participants who had not completed a will were asked whether they would like legal advice to do so, and if so, who they would prefer to approach for that advice or 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) or whether they had ever been involved in any disputes over a deceased estate.

Issues relating to wills can intersect with a range of other legal areas. Family law and child protection, credit/debt, discrimination and employment/superannuation issues all feature in discussions with focus groups and service providers.

One dynamic which is particular to Western Australia is a recent change in law through the enactment of the *Aboriginal Affairs Planning Authority Amendment Act 2012* (WA), which came into operation on 7 August 2013. Prior to this legislation, Indigenous people who died intestate had their estate managed by the Public Trustee, irrespective of whether this accorded with the wishes of the next of kin. The change in the law is said to have been brought about because 'this was seen as being unfair to aboriginal people,'⁹⁷ or in other words, because the existence of a separate and mandatory scheme for the administration of estates of persons of Aboriginal descent who died without a valid will was discriminatory. The change in law means that Aboriginal people have the same right to administer the estate of their deceased relative as any other person living in WA.

This recent change in law highlights the need for Aboriginal people to be informed about the range of issues that can attend the death of a family member. Legal service providers recognised that this change in law impacts on the nature and extent of the legal need.

Everything used to go to the public trustee if someone didn't have a will. That's not the case anymore... Now the public trustee's not going to be there, so things will stand still, really, until people are aware of their legal rights and executors and all those kind of matters that most people just don't know about. **(Legal Aid staff)**

People will be wanting information on how to administer their relatives' estates as the Public Trustee will no longer be doing it. So that's something as a service we need to be looking at, and it will have an impact on us as people will be calling to say "What do we do, how do we deal with this?" **(Indigenous Legal Service staff)**

Another issue that arises in the Western Australian context is the impact on wills and estates of the mining industry. Access to employment in the resources sector means that more Indigenous people have assets and superannuation, which intensifies possible conflict where someone dies intestate. As one Indigenous community organisation stakeholder put it, "There's money that wasn't there before". They continued.

A lot of people don't have wills. A lot of people, well, as you probably know, I would say the majority of Aboriginal couples aren't married in the white man's sense. So any split of that

⁹⁷ Government of Western Australia: Department of Aboriginal Affairs, *Legislative changes affecting Aboriginal people in WA who die without a will*, <http://www.daa.wa.gov.au/Documents/ReportsPublications/DAA-Legislative-DL-LR.pdf> accessed 6 November 2014. For discussion of the earlier provisions see Law Reform Commission (WA) (2006), pp. 234ff

couple can incur huge legal disputes where there's no marriage laws in place or no wills in place. So who takes what and who gets what, big problems, big problems.

With the increase in people being employed in the mining industry, “The effect of splits are becoming harder to handle. Pretty much it's a nightmare”.

As stated by another stakeholder, this trend acts against the idea – which is in any event arguable - that Indigenous people don't need a will because they may not have anything to leave behind. An increase in the number of people in the community with significant assets can complicate outcomes when people die intestate.

There are a lot of Aboriginal families now who actually have working – like mining work. You know, where – you know, a long time ago, we didn't have a lot of assets. We didn't. We just had, you know, our basic furniture and, you know, Koori car and, you know – we got around. Yeah, I walked. But now, because the mining industry has opened up, we have lots of Aboriginal people who have got lots of assets. They have got the flash cars. They have got the flash house. They have got the flash furniture. So, you know, that needs to be protected for their families. You know, so there are no arguments. **(Legal practitioner)**

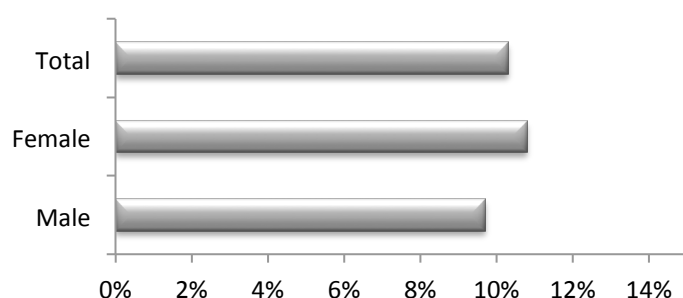
The increase in employment in mining also means that employees can accumulate significant superannuation. “It's quite substantial. They've often got life insurance policies and that attached. Which can mean a lot of money”, states one CLC. Given that superannuation is the biggest asset for the majority of Indigenous clients, this legal service provider suggests that it is more important now than in the past for clients to get assistance to formally name the beneficiary of their superannuation in the case of death, including as superannuation companies are typically seen as being difficult to deal with, according to this same stakeholder (see also Section 4.6: Consumer Issues).

I'm doing another deceased estate at the moment with the super. It's of a small enough size that we don't need to worry about probate. There was no will or anything like that. I'm just getting it paid out directly. I know our financial advisor is really pushing for clients to do binding nominations. Given that super's probably the biggest asset of most of our clients, if we can get them to do the binding nomination... where you actually name the beneficiary. You have to have it witnessed. As long as it's to a dependent – so it has to be a spouse or a child, the trustee can't dispute it. It can't be contested. **(Legal practitioner)**

Completion of Wills

Few focus group participants had completed wills. **Figure 4.39** shows that overall, only **10.3%** of all focus group participants (16 participants in total) had a will. Indigenous women were slightly more likely than Indigenous men to have completed a will (10.8% of women compared with 9.7% of men) (see **Table 4.46: Appendix C**).

Figure 4.39 Participants Who Have Completed a Will



A number of factors may contribute to why people have not made a will. Some may not know much about them. “Some of these mob don’t know about this stuff” (**Indigenous community organisation worker**). This may be because of lack of community legal education on the range of issues that can be covered in a will. A woman in the Laverton women’s focus group notes “Nobody been come talk about this, nobody. You’re the first to come and talk about this”.

People may think that because they have few or no assets, a will is not necessary. This point was made in a number of locations. “None of us done that, we’ve got nothing to give” (**Narrogin Women’s Focus Group Participant**). This was reiterated by a stakeholder who explained “Those on Centrelink don’t worry about these things” (**Indigenous community organisation worker**).

A view was expressed among some focus groups and other interviewees that Aboriginal people may prefer to sort things out internally rather than rely on formal mechanisms.

Families share the kids around [when someone’s deceased]. (**Roebourne Women’s Focus Group Participant**)

If they leave a house, usually families will work out whose going to live there. (**Roebourne Women’s Focus Group Participant**)

In some cases, tenancy is what they have and that’s all they have. They’re not really owning. There’s nothing valuable that they believe should be given off to anyone else. Clothing and things like that of the deceased is kept with the family. (**Indigenous community organisation worker**)

Another impediment to creating a will is that planning for death can be considered bringing bad luck upon yourself.

Some people tend to say no, you know. They don’t plan ahead because it’s bad luck... It’s bad luck to plan ahead for when you die. You are cursing yourself. So, you know, it’s taboo. (**Indigenous community organisation worker**)

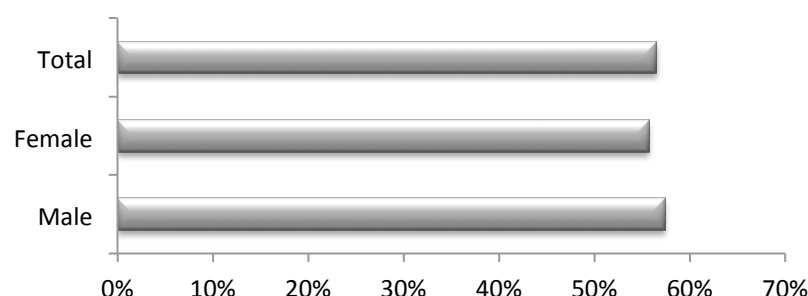
The use of legal practitioners in drawing up wills

Less than half of participants who had completed a will had done so with external assistance. Of the 16 participants who had completed a will, 7 participants (5 women and 2 men) had received advice to do so (see **Table 4.47: Appendix C**).

The fact that few Indigenous participants indicated that they have completed a will does not mean that there is little need for assistance in this area. On the contrary, as **Figure 4.40** indicates, more than half

(56.5%) of participants who had not completed a will would like legal advice to do so (55.7% of Indigenous women and 57.4% of Indigenous men) (see **Table 4.48: Appendix C**).

Figure 4.40 Participants Who Would Like Legal Advice to Complete a Will



Stakeholders also identified wills as a priority for Indigenous clients, in part because of the extent of unmet need in this area.

While some communities have had sporadic assistance in completing wills and dealing with issues that arise after a death, this has not been sufficient to meet existing need. In terms of the availability of legal assistance, “Really there’s nothing, but there’s a real need for Aboriginal people just to have processes explained and better referrals made for them” (**Statutory Authority staff**).

Because it’s not a priority, of course, with Aboriginal people. I find that most of them -- like somebody dies and they come in to me and said oh, you know, they’ve got this letter. What do they do about it all? There’s some super or something, how do they get it? Well, you can’t get it. (**Indigenous community organisation worker**)

It is worth noting that a Wills Working Group for Aboriginal Western Australians has been established to reduce the high levels of intestacy in Indigenous communities in the State. Membership of this group includes LAWA, ALSWA, Arts Law Centre of Australia (a CLC) and the Public Trustee, with the Department of Aboriginal Affairs providing Executive Officer support to the group. The group is focussed on identifying opportunities for providing CLE on aspects of estate administration and ways to resolve burial disputes and on fostering coordination and linkages between organisations that support the writing of wills, for instance.⁹⁸

One new outreach project focusing on wills was spoken of with enthusiasm.

The wills project came about – we’d been trying to get funding for ages, because there is a lot of Aboriginal people who don’t have wills. There have been lots of family arguments about what happens when a family member passes away. What we think is – what should happen – well, it’s not legal... We always look for the matriarch or the patriarch of our families and, of course, western society doesn’t allow us to actually – if there’s an argument, it doesn’t allow us to settle it in our own way. So we’ve actually received funding from Clayton Utz foundation for two years so we can actually promote our wills program. So it goes to the whole area that we cover... The numbers are coming in. Dave’s quite busy, which I’m really, really happy for. But he walks around the towns and yells... He’s so keen. Just so keen. He just – yeah, fantastic. (**Legal practitioner**)

⁹⁸ Wills Working Group for Aboriginal Western Australians *Terms of Reference*, provided by email from Department of Aboriginal Affairs via LAWA, 19 November 2014

However, it should be noted that not all focus group participants felt that legal practitioners would represent the best avenue for seeking advice about completing a will.

We'd go to our group, language group, for help with making that will. **(Roebourne Women's Focus Group Participant)**

You can get 'em online and things like that now. **(Wyndham Women's Focus Group Participant)**

Does it have to be legal, a legal service? **(Narrogin Women's Focus Group Participant)**

You just got to get the wills kit. **(Narrogin Women's Focus Group Participant)**

The creation of wills is an area where cultural knowledge and sensitivity is particularly important. Legal practitioners have to develop a special skill set around these issues, as exemplified in this comment.

I'm finding it really different doing wills for indigenous clients. It's a big adjustment. So I'm slowly getting my head around it... I think because the family dynamics are different. They've got much larger families.... with private clients, I would sit down and go through their assets and how they all would act in an estate point of view. But my Indigenous clients just don't understand. So it's really a matter of simplifying my interview process and trying to write wills as simple as possible that are still effective. **(Legal practitioner)**

In WA, there has come to be a particular focus on putting wills in place for artists associated with arts centres. As recounted by stakeholders below, this may take the form of outreach targeting those communities with arts centres, or the centres themselves might initiate legal assistance for this purpose.⁹⁹

Lots of people were asking about wills. In fact, lots of -- probably lots of other agencies, more than anything. So the corporations themselves or, for example, the art centre in Warmun. I think the agencies tend to be picking up the slack and assisting people with wills and estates when there is no legal service for them. As far as I'm aware, people aren't coming into the office that regularly asking for help. But other agencies -- so the corporations, the arts centres, they're approaching us and saying these people need help with wills. And after people pass away, these people need help with their estates because there is no will. **(Legal Aid staff)**

We'll do artists' wills. We do a lot of work with that... You know, a lot of the artefacts get sold for big money. Particularly the ones, artefacts that they got still in the art centres that need to be sold and then passed on. Who then gets that benefit from those arts.... There's a fair bit done for that. **(Legal practitioner)**

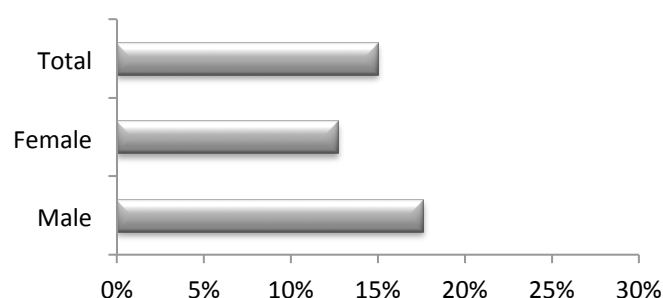
Deceased Estates

Figure 4.41 provides baseline data for responses to whether participants had taken charge of a deceased estate. This graph shows that overall, **15%** of all focus group participants had been required to take on this role. Indigenous men were more likely to have taken charge of a deceased estate than

⁹⁹ See also the Arts Law Centre's initiative, Artists in the Black: <http://www.aitb.com.au/>

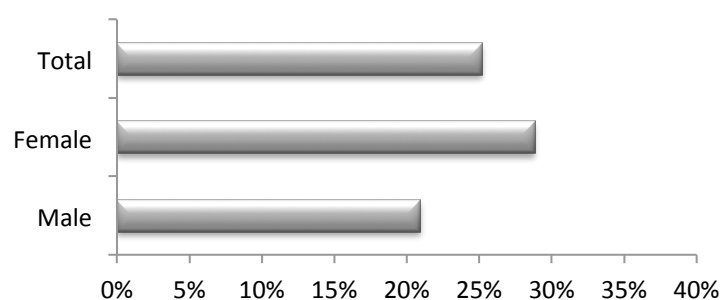
women (17.6% of men compared with 12.7% of women) (see **Table 4.49: Appendix C**).

Figure 4.41 Participants Identifying Having to Take Charge of Estate After a Death



Overall, one in four, or **25.2%** of focus group participants identified that they had experienced a dispute over a deceased estate after death. Indigenous women were more likely than men to identify such a dispute (28.8% of women compared with 20.9% of men) (see **Figure 4.42, Table 4.50: Appendix C**).

Figure 4.42 Participants Identifying a Dispute Over Deceased Estate After a Death



Focus group participants and service providers alike acknowledged the prevalence of disputes after deaths. “Some families do fight” (**Narrogin Women’s Focus Group Participant**).

It’s lack of education too... [If you have a will] when something happens to you, at least everything’s settled properly instead of arguments. Because in Aboriginal families there is arguments after someone passes away because they all argue about who takes what, who did this and who did that. I’m encouraging our mob to do that, but some people just don’t have the – just don’t – not worried about it. (**Indigenous community organisation worker**)

Some disputes are among family members, whereas others concern gaining access to an estate after a family member dies intestate.

Right now I’m fighting for my son’s stuff. He didn’t leave a will... He died at an early age... passed away with cancer... I’ll talk to the lawyers... I’ve got all the letters and everything. (**Wyndham Women’s Focus Group Participant**)

Been going on for a year now... Mainly to do getting into his super... (**Wyndham Women’s Focus Group Participant**)

In some cases, the experience of family disputes following a death can provide impetus for others to look into having a will made, as noted by this legal service provider.

In the few ones I've done, it's been because someone's passed away and it's all gone bad and they've realised that they need to make one. The main concern was they're going to annoy people and the family are going to fight...worried family will fight because they don't have a will and they want the will in place for that. **(Legal practitioner)**

Burial disputes

Where a conflict following a death is between family members, one issue that arises frequently is the question of where the deceased person will be buried.

If you're an Aboriginal person, you get buried back where you come from. Supposed to be. But if that Aboriginal person has a – I know an Aboriginal person from somewhere else, or a non-Indigenous person with them that's their partner – the law will say what his partner or her partner says [should happen]. That's the final say. Family members will fight and argue no, you've got to bring back home. Because in our culture, if you're buried outside where you was born outside of your country your spirit is not resting. It's forever roaming. That's our strong belief. That's why a lot of families have arguments about where a person should be buried. **(Legal practitioner)**

A lot of families in Roebourne fight about where they're going to bury. Sometimes it's the sisters or the brothers, it's the wife or the husband want to do it. **(Roebourne Women's Focus Group Participant)**

It was suggested by one Indigenous service provider that it would assist people to know what rights they had as kin to input into the site of burial.

With the burials over the years, there's not a lot of legal advice that's available to people just to explain the simple process as to what the law is around next of kin and where you fit into in the pecking order of things and what options you may have available or even the simple process of when you have a deceased family member and they don't have a will what's going to happen to that individual and their affairs and the family too, often the immediate family. **(Statutory Authority staff)**

Where the burial site is disputed because there is no will, this can be a real source of distress for the extended family, as exemplified by the following account.

We had a case recently where the family members contacted us and said it was their sister and they wanted her buried in a certain place. But then she had children and they were split about where she should be buried. And then out of the woodwork comes a de facto who we thought was an ex, but actually wasn't an ex, strictly speaking. So he had a view as well. So you had all these people arguing over this woman, and the funeral director is in the middle saying we can't release the body until we know where it's going. **(Statutory Authority staff)**

4.11 EMPLOYMENT

Focus group participants were asked whether they had experienced disputes or problems with a job in the last couple of years (for instance, in relation to matters such as bullying, working hours, unfair dismissal, or pay). Participants were also asked whether they had sought legal help in relation to an employment issue.

Just under one in ten focus group participants (**9.8%**) said that they had experienced a problem in their employment in the last couple of years. **Figure 4.43** shows that the response rate was roughly equal among male and female respondents (see also **Table 4.51: Appendix C**).

Figure 4.43 Participants Identifying an Employment Dispute

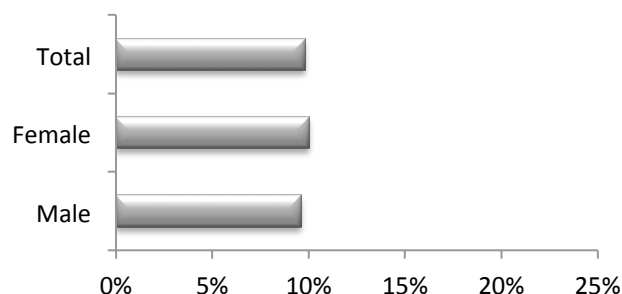


Figure 4.44 indicates that employment issues were more commonly identified in Perth (17.6%) and least commonly identified Balgo and Geraldton (no issues in either of these communities) (see **Table 4.52: Appendix C**).

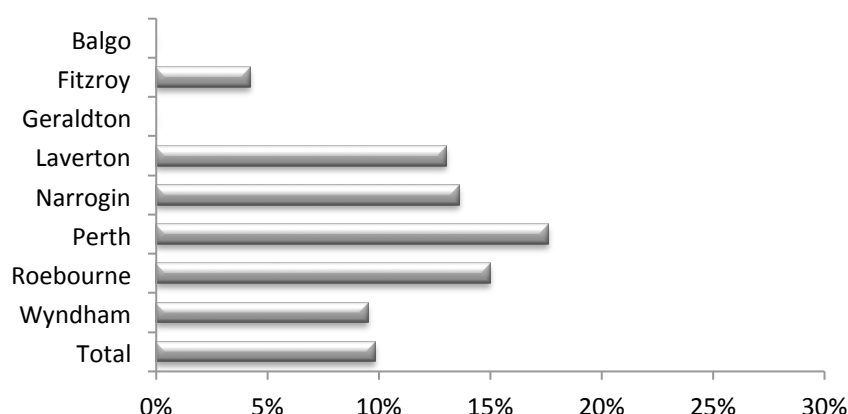
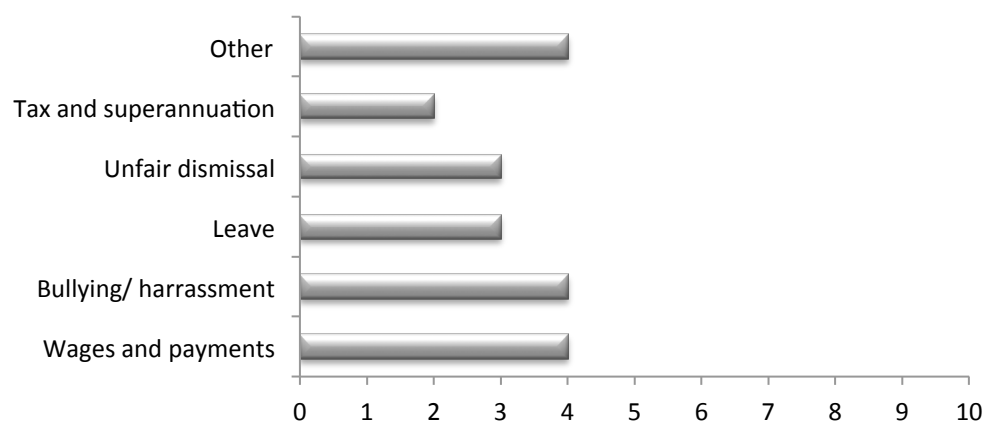


Figure 4.45 shows the nature of employment-related issues identified by participants. Fourteen individuals identified 20 reasons for employment disputes or problems (see **Table 4.53: Appendix C**).

Figure 4.45 Reason Identified for Employment Dispute



This example from the Wyndham women's focus group evidences a number of issues, including problems with wages, with remoteness, and with the formal requirements of the workplace.

[When I was working in] aged-care... they didn't pay me... I didn't know who to see about it ... I was only there for, well I stopped working because they didn't pay me for the previous hours I did... I was part-time... It was a simple thing. I didn't do my timesheet... because I live out of town... I was worried about getting back out again... I told 'em I had transport problems, but when it came down to it, if you're not here, if you don't show up, you're not working... I left because it didn't seem fair. **(Wyndham Women's Focus Group Participant)**

Similarly, the circumstances raised by the following participant contain issues concerning employment, discrimination, social security, and a 'snowballing' to debt issues. It is a clear example of the often-complex nature of civil law needs, and the multiple ramifications of leaving civil law needs unaddressed.

I've been working and I've been put off work because they can't cater for me because I've got osteoarthritis in my arm and I work in the hospital. And because I can't do the 8 hours they put me as a four-hour shift. But the manager she said she can't cater for me to work. I never got paid since March this year. I had to put in what they owed me, all my holidays. But I got nothing back. I didn't get anything from Centrelink... You've just got to put up with it. You're used to getting your own wage then you're living on your husband's wage. Then you're depressed because you can't pay your bills. Now I think, just don't worry. Life goes on. **(Narrogin Women's Focus Group Participant)**

However, the major issue identified by focus groups around employment was that it was hard to get a job in the first place. Perceived favouritism or discrimination – including within Indigenous organisations, was raised, such as in these comments from the Wyndham women's focus group (see also Section 4.3: Discrimination).

Same families... they don't give anybody else a chance.

My partner applied around town and got no phone call, nothing. Gone on for three years that he applied... They should change their name because they are not an Aboriginal Corporation. They only recruit people they associate with, won't give everyone a chance... or a chance to learn or experience it.

You have to be in a certain family or group to get a job here.

In Geraldton, women also raised inflexible working conditions as a barrier to employment.

They don't really give you a fair go. Um, yeah, it's not advertised enough for, you know, Aboriginal people. Well, I don't think it is anyway. And sometimes they don't have flexible hours and stuff and some people have kids. I'm a single mother raising two kids. You know, I want to work but it's just that the times you know and the rates of day care centres.

Insufficient literacy and numeracy skills were said to prevent some Indigenous people from taking advantage of employment opportunities in certain areas. This is an issue that links in with those relating to education as a civil law issue as employment opportunities are often impacted negatively because of negative experiences in school (see also Section 4.8: Education).

The problem particularly in the Pilbara where we are, where the majority of employment is resource-company driven, is lack of your basic skills of reading, writing and arithmetic. Because to work on a mine or a railway line or a miner's camp or the docks, the ports at Cape Lambert or Dampier, they're all considered mine sites and you have to have minimum skills in literacy and numeracy so you can read signs obviously. Numeracy, you've got to be able to do the numbers on reports and what have you....

That's often. We've got an opportunity for employing people out at a [current] joint venture... Whilst they have the operating skills, a lot of them haven't got those back up literacy and numeracy skills which we try and overcome with training but it takes a while. It takes a while.
(Indigenous community organisation worker)

Related to this is an absence of support in putting in place some of the pre-requisites to obtaining employment.

You have to have everything else before you get a job, working with children's check, drivers license, some of it's hard to get and there's no help in getting it. There's no applications, or no one going around and asking if you want a job, this is what you need, you have to apply for it.
(Wyndham Women's Focus Group Participant)

One Indigenous service provider noted that criminal record checks can lead to discrimination in employment, and added that "Aboriginal people are not so educated as non-Indigenous people... This lack of education means they can't get a job".

Opportunities to work in the mines in some areas of WA can be fraught with difficulty, including because of the lack of flexibility in working schedules and distances from home. In addition, there may be cultural reasons why employment cannot be taken up. Thus, while, mining companies may commit to certain levels of Indigenous employment, this may not bear out in reality.

I worked for a mining company for a couple of years and they did 12 indigenous traineeships. At the end of the 12 months, there was only two guys left. A lot of it went back to – it's to do with their cultural things. Like they don't like being away – because, you know, it's two weeks on and one week off. The income and stuff like that. So there's lots of things that – they don't factor into it.

...You'd even find, say, if guys go from here up to Pilbara. You might have the grandma – and grandma's saying you're not allowed to go up to that country. Yeah, so then they're sort of being left here, like having the opportunities and then taking away. Or they stayed with the opportunities and abusing it. So it's – I guess it's more about people feeling more self-empowered and positive. **(Community organisation worker)**

It is perhaps unsurprising given the difficulties in obtaining work that in the Narrogin women's focus group participants commented that everyone stopped working when the CDEP closed down.

Another issue raised by a stakeholder was lack of knowledge around superannuation, including a cultural disconnect with the concept of deferred savings and the questionable relevance of access to funds at 65, given disparity in life expectancy between Indigenous people and the rest of the population. In addition, the view was expressed that the superannuation framework did not recognise the realities for Indigenous family life (see also Section 4.6: Consumer Issues).

There is little or no knowledge of super and the biggest question is why super? I'm not going to live till I'm 65. Why are you taking money out and saving it for me till I'm 65? I want it now! And quite understandably. The concept of taking something out for when I turn 65 is totally alien to Aboriginal culture. You live for today. It's one of the problems with people who do have an income. They get paid today and it's all gone tomorrow. All the family come round and they put their hand out, want money. At the end of the day after payday they're broke.

... We have some programs in place where we put in financial training programs at very low level and at mid-level about the wisdom of having separate bank accounts, having two bank accounts. Having an open one and an undisclosed one. Save some for yourself. We've had training programs in Why Super? I know the Federal Government's got to change bloody super. You've got to have an Aboriginal super and a white man's super. We are not one and the same. Life expectancy is not the same.

... The very fact of families, and good on them, Aboriginal families are strong even if the negative side is they put their hands out to the guy who does earn a quid. But the positive side, they do go to the funerals together. They stick together. They support each other. Whereas I fear a lot of white Australia families are falling apart. But we're not respecting that in any way, shape or form, particularly in super. **(Indigenous community organisation worker)**

Four people (or **28.6%**) of participants who had experienced a legal problem with employment sought advice or help. Two sought assistance from ATSIILS, and two from the employer (see **Table 4.54: Appendix C**). Despite relatively low numbers of focus group participants indicating the existence of an employment-related legal issue, one legal service provider commented on the high rate of queries received from Indigenous clients about employment matters.

Employment law, we get quite a few queries. That is probably one where it would probably be 50/50 indigenous and non-indigenous with employment queries.

... To be honest, the main issue that probably comes up with Indigenous clients is poor employment practices and possibly leading to unfair dismissal claims, mainly in relation to Indigenous organisations. **(Legal Aid staff)**

Another legal service provider noted that the employment related matters for Indigenous clients included

Queries in relation to underpayments or sort of entitlements, that sort of thing... But yeah, I can't recall actually doing any unfair dismissal... Lots of enquires we think we're going to get sacked, sort of seeking advice before it's happened, which is good. People don't come back, so... **(Legal practitioner)**

4.12 VICTIMS COMPENSATION

The WA Government Criminal Injuries Compensation Scheme enables victims of crime to apply for compensation for injury or loss as a result of an offence. Applications can be made under the *Criminal Injuries Compensation Act 2003* (WA) where, in the last three years, a person has been the victim of an offence and are injured and/or experience financial loss as a result of the injury. Close relatives of a

person killed as a result of an offence can also apply if they have experienced financial loss as a result of the offence.

The scheme provides compensation for bodily harm, mental or nervous shock or pregnancy resulting from an offence. Compensation may cover:

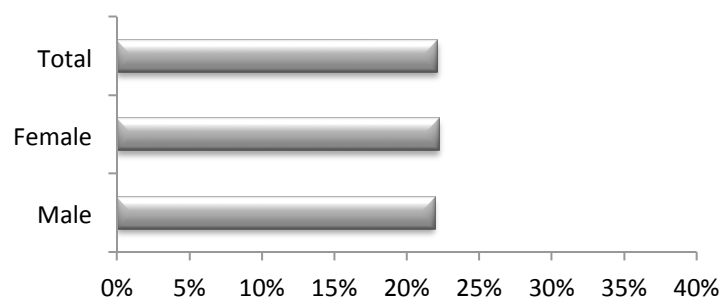
- pain and suffering
- loss of enjoyment of life
- loss of income
- medical or psychological expenses
- other incidental expenses, such as travel for medical treatment or damage of clothing.

In the case of a death, a close relative can apply for funeral expenses and loss of financial support. The assessor of criminal injuries compensation is responsible for assessing each claim and making a decision about compensation.¹⁰⁰

Focus group participants were asked whether they had ever been the victim of a violent crime, whether they knew about the victim's compensation scheme (called criminal injuries compensation in WA) and questions around accessing the scheme for those who did know about it.

Figure 4.46 shows that in the WA focus groups, **22%** of participants said that they had been a victim of a violent crime, with the rate of positive response to the question being roughly equal among men and women (see **Table 4.55: Appendix C**).

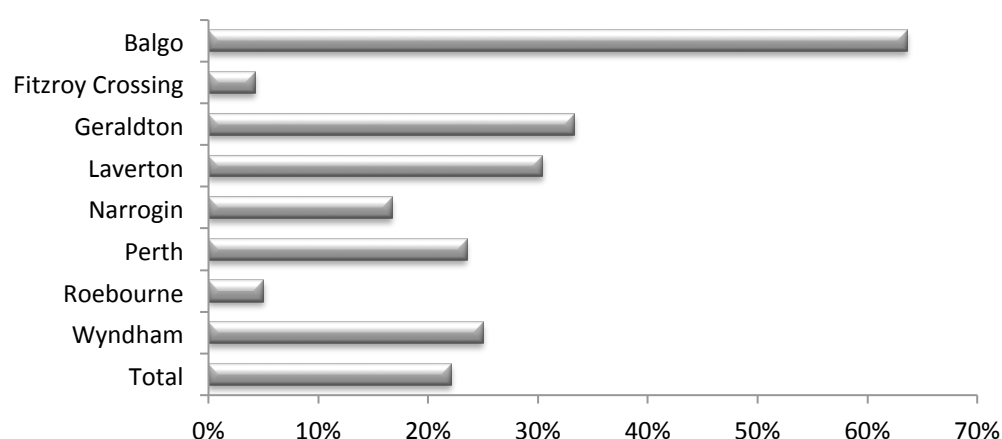
Figure 4.46 Participants Identifying as a Victim of Violent Crime



There was significant variance in the reported experience of violent crime between communities, as shown in **Figure 4.47**. Participants in Balga were most likely to identify as victims of crimes of this nature (**63.6%** of all participants), with Roebourne and Fitzroy Crossing the least likely (4.2% and 5% respectively) (see **Table 4.56: Appendix C**).

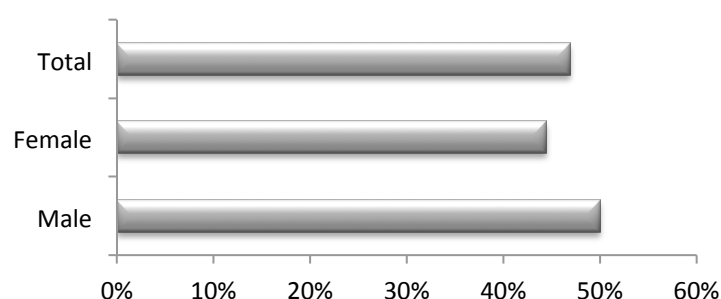
¹⁰⁰ See Government of Western Australia: *Victims of Crime: Criminal Injuries Compensation*, http://www.victimsofcrime.wa.gov.au/C/criminal_injuries_compensation.aspx?uid=3450-1110-0445-3444, accessed 5 November 2014.

Figure 4.47 Participants Identifying as a Victim of Violent Crime by Community



Of the participants who did identify as victims of a violent crime ($N = 32$), under half knew about the criminal injuries compensation scheme (50% of men and 44.4% of women). This is illustrated in **Figure 4.48** (see **Table 4.57: Appendix C**)

Figure 4.48 Participants Identifying as Victim of Violent Crime Who Knew About the Victim's Compensation Scheme



Anecdotally, legal service providers estimated a higher level of knowledge at community level than was actually evidenced by community members/organisations. Some comments from focus groups and stakeholder interviews bear this out:

A lot of people don't understand about this. (**Roebourne Women's Focus Group Participant**)

A lot of people don't get compensation. (**Roebourne Women's Focus Group Participant**)

What about that shooting that time? I, no, I never got that [compensation]. (**Narrogin Men's Focus Group**)

How long does this go back? The bloke was imprisoned because I was hospitalised but I was denied compensation and he did time for the assault... It's still affected me, it's affected me for life. (**Narrogin Women's Focus Group Participant**)

Bugger all. Very low knowledge of anything on that (**Indigenous community organisation worker**)

This service provider suggests that it is only in certain circumstances that people become aware of the scheme – and often this is not when they are victims, but rather perpetrators of violent crimes.

Where I think there's a real gap for people is that they don't become aware of what they are entitled to, as far as compensation goes, until they have offended themselves. So yeah, some people used to say to me – I used to go to the prison every week and they would say to me, "You know, well he's got money from me because I did this. What about when he did that to me five years ago?" So they're not aware of that. So there's this reoffending stuff and this cycle of offences because, potentially, they didn't get the support that they needed back when. **(Community organisation worker)**

There was, however, a sense among some stakeholders that increased outreach was making a difference to the levels of knowledge about the scheme.

I think they're becoming more aware of it. Again, a lot of legal services around here are getting out there and getting information to the victims and things like that... So yes, it's all there. **(Indigenous community organisation worker)**

I think it's certainly out there that it's something that's available. We get a lot of enquiries... They're probably our second biggest caseload after tenancy. **(Legal practitioner)**

This same legal service provider commented that although there was a high level of legal service provision in this area, the client base was clearly divided along gender lines. "We haven't had any men... I don't recall ever having an enquiry from a male."

Of those who had been the victim of a violent crime, **32.1%** had sought criminal injuries compensation. Although numbers were small, and in variance with the experience of the stakeholder recounted above, the rate of application was roughly equal among men and women (see **Table 4.58: Appendix C**).

The comments of this focus group participant suggests that for at least some Indigenous people who are aware of the scheme, obstacles to successful access to it can arise from difficulties communicating with legal representatives:

My son, he was a victim of crime. He hasn't heard anything back from them. He put in a claim. He had a lawyer in Northam. He went to prison and I don't know if they're still keeping in contact with him... She rang up to us once and told us about it. They just sent in a survey we were to answer.... We never heard nothing back. One of my son's got \$10000. He got stabbed. His own father stabbed him so.... He got it. My other son was involved with a bit of thingy in Narrogin. They attacked him. (The lawyer) was supposed to keep in touch with us because he's in prison but she never. I lost that phone number. **(Narrogin Women's Focus Group Participant)**

The difficulties in accessing legal help with completing the required process was also alluded to by these legal service providers.

I know when it comes to criminal injuries compensation, I like to take those particular matters on because I don't really think there's many services out there ... what I do hear about in the city, was if it's a basic matter, they'll just give instructions about how to do it, and send you on your way to go and lodge it yourself. And that just won't work with just about every single client I've ever worked with. **(Indigenous Legal Service staff)**

For us, in terms of a grant of aid, to do criminal injuries compensation, it does have to be more serious... If there's domestic violence, then it's always indicated for us to assist someone, in terms of prioritisation. **(Legal Aid staff)**

The reflections of this legal service provider stress the importance of outreach to make people aware of the scheme, especially given the limitation period that applies to applications.

People don't necessarily know that they can get compensation, but certainly when you go out and you start talking to people you pick up a lot of clients that way. So I guess there might be a need to educate people a bit more or make people more aware that this is something they can get compensated for. That is the first issue, people not knowing that they can get compensation. **(Indigenous legal service staff)**

It's very difficult for people up there to access advice within the limitation period. That can be a problem. Most clients are successful in getting an extension because of the reason that they live in a community where access to legal services is not good and it can be very hard for them to find and communicate with a lawyer. But it's not always guaranteed, so that's a problem for people... in WA you've got three years to make your claim. If you don't make it within three years you've got to ask for an extension of time. Most of the time you can get one but you're not always guaranteed to get one, so people should be given as much help and as much – they should be given appropriate resources and access to justice to make their claim within that time. They shouldn't be relying on the assessor to give them an extension. **(Indigenous Legal Service staff)**

There may be other reasons, however, why a victim of crime may not choose to access the compensation scheme. As this legal service provider comments, "For the clients, it's really hard... The whole re-traumatisation of people, going through how it's impacted them".

Another legal service provider spoke of situations in which even where a person successfully applies to the scheme, they may not have their compensation granted directly to them. Instead, for a range of reasons, the money may go to the Public Trustee who manages the release of the funds in ways that are concerning.

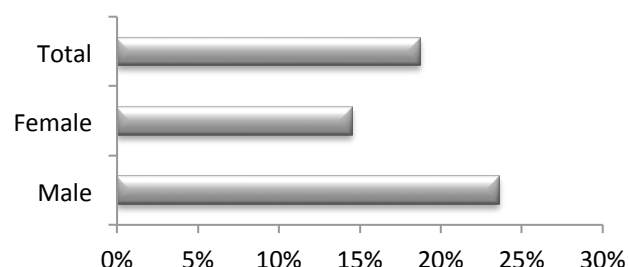
There's also issues for some people – it's not something that I've experienced, but people in other offices have, about people's awards being placed in the hands of the Public Trustee and people not being able to access and spend their money. So as far as I'm aware it's happening to people that might like have problems with drug and alcohol use, and that's not necessarily a reason to withhold someone's money. I mean if they're competent enough to make the application then they're competent enough to spend it. It's their money and what they do with it is their choice, and if they've got problems because they've suffered years of abuse or have had a horrible childhood or whatever... the Public Trustee, they kind of treat it like it's coming out of their pocket. Because we've had one client... when she first got her payout she bought all brand new furniture for her house, and this was about five years ago, and then a couple of her things have broken and she wanted to replace them, and it was just so hard for her to get her furniture replaced [through the Public Trustee]. **(Indigenous Legal Service staff)**

4.13 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 or 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 the injuries suffered had required medical treatment. Finally, participants were asked whether they had sought legal advice about compensation or insurance for an issue of this type.

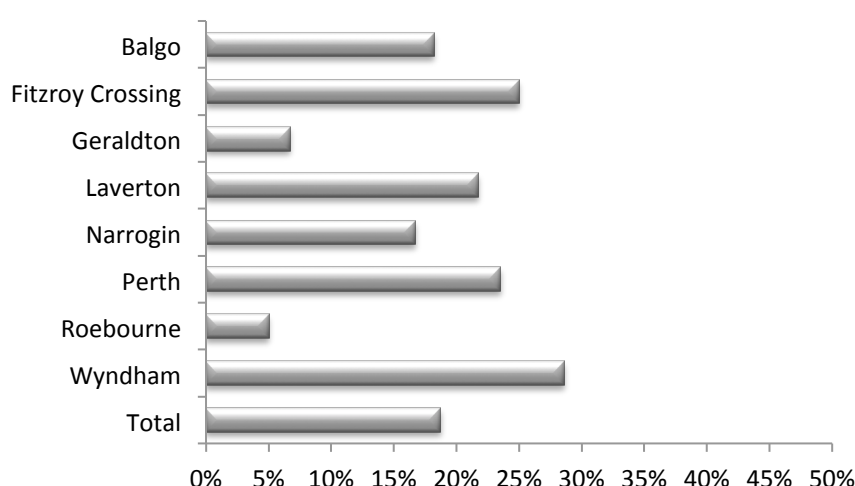
Figure 4.49 shows that **18.7%** of focus group participants said that they had experienced an accident or an injury in the last couple of years. More men (23.6%) than women (14.5%) identified having experienced an incident of this nature (see **Table 4.59: Appendix C**).

Figure 4.49 Participants Identifying Accident or Injury-Related Issue



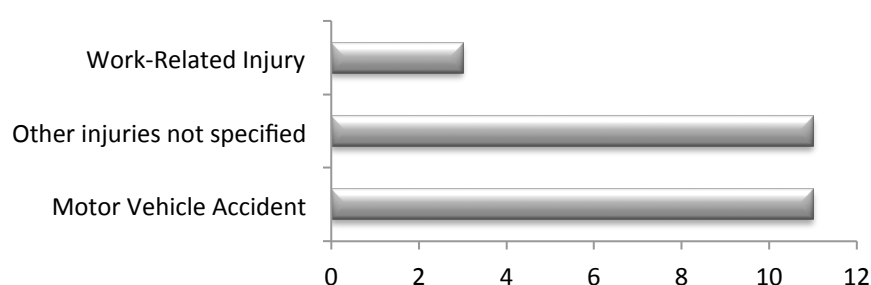
There was some variability between communities in the frequency of experience of accident and injury (**Figure 4.50**). Participants from Wyndham (28.6%), Fitzroy Crossing (25%) and Perth (23.5%) were most likely to report having had an accident/injury, whereas Geraldton (6.7%) and Roebourne (5%) were least likely (see **Table 4.60: Appendix C**).

Figure 4.50 Participants Identifying Accident or Injury-Related Issue by Community



As shown in **Figure 4.51** the most frequently reported types of accident/injury across all focus groups were those involving a motor vehicle and a general category of 'injury' (11 responses each) (see also **Table 4.61: Appendix C**).

Figure 4.51 Type of Accident/Injury-Related Issue



Some **77.8%** of all participants who had an accident or injury-related issue also identified having to seek medical treatment (see **Table 4.62: Appendix C** for a gendered breakdown).

Level of legal assistance sought for accidents and injury

Roughly two in five people (**38.5%**) of those who had identified an issue of this type had sought legal advice or help. Although the numbers were small, Indigenous women sought assistance at a higher rate than Indigenous men (45% of women compared to 33% of men) (see **Table 4.63: Appendix C**).

It may not always be clear to clients the source of the compensation being sought. As stated by one woman in the focus group at Narrogin:

My lawyer put in a claim. But that was third party. I'm confused about third party and criminal (compensation). Are they the same? I got hit by a car... Hit and run. They broke my pelvis.

Nine of the ten individuals who sought legal advice or assistance provided details about from whom they had received assistance. Four has used a private lawyer, two had sought help from ATSILS, two from an insurance company or employer, and one from a CLC.

4.14 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 included particularly matters relating to motor vehicles (including licensing, the forfeiture of vehicles and fines), police complaints, family violence, birth certificates, coronial inquests, taxation, copyright, prison issues, and the public trustee. The most frequently mentioned matters are discussed in more detail below.

4.14.1 Motor Vehicle Related Matters

There was considerable discussion by stakeholders in relation to legal problems around motor vehicles. For example, one CLC states, "I reckon the main thing we get queries on that we don't do is car stuff... The car impounded, getting the car out and the fine".

Licensing Issues

Many of the legal problems relating to motor vehicles arise because of unlicensed driving.

The way it works in WA is you either seek a removal of their life disqualifications after about 10 years. Or, alternatively, people need something like called an extraordinary driver's licence, which basically allows them to drive between certain specific places, just for work purposes and the like. Being such a vast state driving is so integral to people's lives in remote areas. Whether or not they have a licence is of no concern to them. They'll still drive. Then they get in trouble with the law and then they just continue to drive, but it just ends up spiralling. So yeah, that's a very, very big issue. Aboriginal people [need to] get around because their family and community networks are so vast. **(Indigenous Legal Service staff)**

One of the big areas in many of the regional offices is driver's licences, it's a big issue, everyone out there drives without a licence, you can't get from A to B. It overlaps every area of law because people don't have driver's licences, when kids are placed with family who're in a different location they can't get there to see them, unless they drive without a licence. And they drive without a licence and then it becomes a vicious circle. It's interesting because the Great Southern Aboriginal Corporation in Albany which has got family violence funding, quite a bit of the work they do is on extraordinary drivers, and it's for that purpose. It impacts on every area of their life. **(Legal Aid staff)**

When you go to Halls Creek, the vast majority of the list in the court is going to be driving offences, isn't it? That is a path to criminalisation. There's no public transport system. You have no options. You live on a community [and] all the services are in town. They have to get in. You have to get in to shop, for anything. You drive the car and you get picked up because you haven't got a licence. Now, usually its not having lost the licence. The first run is you haven't got a licence. So then you can't get a licence to drive. So you get picked up again, the next time. You know how that progresses then. Into court and into court again, and eventually to jail. It's an enormous problem. **(Legal practitioner)**

There can be great difficulty in obtaining a license because of language and literacy difficulties.¹⁰¹

Language is a very big barrier. There's language and culture, as well. So, for example, with these driving matters, there's no driving instructions in any Indigenous language in WA. So that makes it very difficult. So these driver booklets that people have to read and be examined on are not in simple English enough for our clients to often understand. **(Indigenous Legal Service staff)**

Extraordinary Drivers Licenses

Changes to the criteria for eligibility for Extraordinary Drivers Licenses (EDL) were also seen as problematic. "The system of how to get an extraordinary driver's licence here is incredibly difficult [compared to] other states," observes one CLC.

[The law] changed last year. That's causing us all sorts of problems. The terms for which you can get an extraordinary driver's licence has been seriously contracted. Basically, you need to be able to prove that you will lose your employment if you don't get it... you can only use it

¹⁰¹ For further discussion see Barter, A (2013) *White Law, Red Dirt: An Investigation into the Over-representation of Indigenous Australians in Prison for Driving and Licensing Offences in the Pilbara Region of Western Australia*, unpublished thesis, University of Melbourne

for your employment and no other purpose. [Or] if you can prove, essentially, someone with an illness and there's no other way that they can get to hospital or anything like that. You can use it for a medical purpose. The financial test has been made a lot stricter as well. So basically, you have to show that you're going to be in 'extreme financial hardship' if you're not granted the licence. **(Legal Aid staff)**

Changes to the law were also seen as potentially discriminatory.

That's a law that's very discriminatory... Previously, people could get it for training, so that when they're engaged in training, working towards employment, they could get an extraordinary driver's licence for that training. Then they could amend the licence when they do get employment. So they could move into employment. Now, they can't get it for training at all. If they get it for employment, they can't use it for anything else. So if they live in a community 45 kilometres out of town, unless the shop is on a direct route from their place of work to their community, they're not even allowed to deviate to go to the shop. I know it's indirect, but I think it's really discriminatory. Not just to indigenous. Everyone who lives out in the bush, really. But it really impacts harshly on a lot of our clients because of their living circumstances. **(Legal Aid staff)**

Forfeiture of Vehicles

The forfeiture of vehicles was also seen as a legal problem (see also Section 4.6: Consumer Issues (*Scams and Contracts*)).

People have driven without a licence and the car gets impounded immediately. It's just automatic impound for a month. It's over \$1,000 to get it out. In addition to the fine. Plus you're without a car for a month. There's a lady that came in actually the other day. Her nephew had borrowed her car and had it impounded. So she's stuck... So she's got no car. She said she's just going to leave it in there. She can't afford to get it out. **(Legal practitioner)**

4.14.2 Police Complaints

Complaints concerning racially biased action or inaction on the part of police in their interactions with Aboriginal people in WA is discussed at some length in Section 4.3: Discrimination.

Stakeholders raised on several occasions the difficulty of raising complaints against the police, particularly in terms of what was seen to be 'biased' policing in favouring one side of the community in disputes, or the over-policing of particular communities and community members. For example:

It's a very bad scene because every time when they seem to be fighting and everything, the policemen are there first at that place and then other mob, there's two sides to the story. They only hear one and it's not right. The kids have to suffer. And sometimes they don't even go to school because of what's happening. Police are not doing their job properly. **(Roebourne Women's Focus Group Participant)**

According to stakeholders there was significant unmet legal need in the area of police complaints.

As soon as you talk about it, you see the floodgates kind of opening. Something we observed in Laverton, which I've seen, as well, up north quite a bit, is people wanting to make police complaints. And not really thinking about it in the beginning, but once they start thinking

about it, then all of a sudden, there's ten people who will come and talk to you about issues they've had with this police officer and that police officer. **(Indigenous Legal Service staff)**

The need for an independent police complaints process was commented upon.

My view is that there needs to be independent processes. So if we make a police complaint, we have the choice of referring it internally to the police Complaints Administration Centre. And there are very few matters which we believe are substantiated that they actually act upon. But then if we were to go external, we'd go to the Corruption and Crime Commission. Essentially, what they do is they – unless it's an extremely serious case of corruption, they ask the Police Complaints Administration Centre to do the review, and then it goes back to them. It's almost like there's a final tick. If there was a proper independent complaints process, it would be much more effective. What we're experiencing is that, ultimately, when these complaint mechanisms are internal, they serve to protect the institution more than they do heed the complaint. **(Indigenous Legal Service staff)**

4.14.3 Family Violence Related Issues

It is clear that family violence is related to a range of civil and family law issues including housing, child protection and Centrelink, and we have drawn out these links earlier in this Report.

I would say that it's [family violence] something that spills over into a lot of these other issues [civil and family law] and once you start looking at the rates of family violence in these communities and also the types of family violence – like I think it's quite extreme, and I don't think it's being given the right resources to address that and to help victims. Out there people are very much on their own. **(Indigenous Legal Service staff)**

It was noted that the use of VROs can also cause particular problems.

It can have huge implications in the communities because, you're living in a community and get a VRO that says you can't come within 100 metres of people or whatever, we've had situations out in the communities where people haven't been able to go to the shop to get food because of where they live is so close to each. **(Legal Aid staff)**

In addition to these issues, family violence was also raised in the context of policing and police responses to violence. Several focus group participants and stakeholders raised issues concerning what they saw as inappropriate police responses, particularly in under-policing family violence. Concerns were also raised in relation to inadequate police training in responding to family violence, and potentially discriminatory attitudes towards Aboriginal people. "Police are not really understanding the severity of the problem. I mean as a result, there's been some deaths" **(Indigenous Legal Service staff)**. The depth of these problems has been recently highlighted in the conviction of Mervyn Bell for the sexual assault and murder of 10-month-old baby in Broome, and the problems of poor police responses.¹⁰² Police responses to family violence were also seen as contextual.

We did a survey as part of the gender bias work, with the review work. It was surprising to see that we had quite a few responses that were positive. In saying that their treatment by the police was positive when they made complaints about DV. Unless they were drunk. When they were drunk, they were treated poorly. Poorly underestimates the way they were treated.

¹⁰² See ABC media (September 2014): <http://www.abc.net.au/news/2014-09-26/mervyn-bell-guilty-of-murder-of-10-month-old-baby/5771392>

... [However] a lot of police responses were poor and quite dismissive. So reports of women going to the police station to report DV incidents, “Oh well, no point us taking a report. We can’t tell if anything’s happened. Go and get a restraining order”. Those sorts of things.

(Indigenous Legal Service staff)

There has been a significant increase in WA of police taking out restraining orders in response to domestic violence, but the data does not identify whether the victim was Aboriginal so it is not clear how this increase may have impacted on Aboriginal women.

Poor communication between police and community members was also raised as an issue.

I’d like to see police have a better relationship with the victims, so, informing them about what’s happening, prosecutions and with court matters, because they don’t do that and they don’t keep people informed. I can think of one lady who I’m helping for a victim compensation matter. So it was reported to police and the matter did go to court. It was going to go to court in Kalgoorlie. She was living in a community that was a long way away, didn’t have any transport to get to Kalgoorlie, didn’t know what was happening with the court case, and she had to come and give evidence and the police never communicated anything to her, and I think the charges were actually dropped. **(Indigenous Legal Service staff)**

4.14.4 Birth Certificates

The difficulty of getting hold of a birth certificate was related to driving and licensing issues. “You’ve probably had lots of people bring that up, but that’s a huge thing, and even getting a birth certificate so you can get a licence and are not caught driving without a licence and you end up in jail – a horrible cycle” **(Indigenous Legal Service staff)**.

The cost of a birth certificate was seen as problematic and had negative impacts in accessing a range of social services and entitlements.

Something that came up the other day with a client is that when a baby is born, you have to pay for your birth certificate. Well, she can’t afford that. They need that for the child to enrol at school. Also, Department of Housing want it to go on the tenancy. That’s why [worker at St Vincent De Paul] spends half of his time applying for money to buy birth certificates... You have kids coming in that are applying for a Centrelink payment. They can’t - where are they going to get the money, the sixty-odd dollars to get a birth certificate, if they haven’t got any money coming in, you know? It’s just totally impossible. I mean, anything they need to do, they need to have it. **(Indigenous community organisation worker)**

5. Observations on Service Delivery

5.1 Under-servicing of Aboriginal civil and family law need

As the data presented in this report indicates, a substantial level of civil and family law need exists in Aboriginal communities in WA. “We need a lot of help, hey, a lot of help”, states a woman in the Roebourne focus group. Civil and family law problems are experienced with some frequency for Aboriginal people and, on the whole, they are *not* satisfactorily resolved.

Aboriginal people have a right to quality legal assistance, in particular, to help ‘fix up their lives’. Improved access to legal and other services for Aboriginal people is likely to reduce the extent to which relevant problems arise and to improve capacity to effectively address them when they occur. This will go some way towards meeting existing need.

They need support out here with legal advice. People do have the right to fix their lives up [through] legal advice. We need more services out here especially to really tackle some of these issues that you’ve written down here. **(Community organisation worker)**

Presently, significant barriers inhibit the extent to which Aboriginal people are accessing justice through legal or other help. Probably the most significant barrier to Indigenous access to civil and family law justice is the current under-servicing by legal services of existing need.

There are not enough legal service providers for Indigenous communities in WA and there are problems of engagement between Aboriginal communities and those services that do exist.

We feel completely overloaded because of the gaps in the services... There are gaps in the services available and then there are gaps - even if a service is available, it’s not necessarily accessed by Indigenous people because it’s not culturally appropriate or they don’t feel comfortable there. So there are those two types of gaps. **(Indigenous Legal Service staff)**

Resourcing shortfalls lead to under-servicing

Gaps in legal service delivery around civil and family law issues are primarily due to under-resourcing of services. Generally, services are doing what they can with the little that they have - but demand outstrips supply.

I think the volume’s picked up, the amount of clients that actually come to us, that’s been growing and growing... I think the services are the best quality they’ve ever been, though they can always be better. But it’s the volume, the demand that’s coming in that’s outstripping what’s available to service it - which continues to increase. And that’s the problem, the services are not growing to keep pace at all, not anywhere near keep pace with the amount of work. You could just employ so many lawyers to do all this work, you would always have more work for them. **(Indigenous Legal Service staff)**

Legal services must consider how to expend limited resources in order to produce the most beneficial outcomes. Where another legal service is already covering an area of law, if services feel that they don’t have appropriate expertise in a specific area, or have to be a strategic in casework undertaken to have maximum effect – these and other considerations impact on decisions made in relation to what work legal services can and can’t take on. Funding guidelines establish further boundaries.

It does really come back to just funding. Everything we do is based upon rationing the supply we have available, the resources. **(Legal Aid staff)**

I suppose, prioritisation – in the sense that we really have to be able to match our skill set to the legal issue, as well. Because if it's outside of our skill set, then we just can't necessarily be involved with it. Then that comes back to being able to make the right referral, as well.

(Legal Aid staff)

We have very specific areas, in terms of the types of matters we take on. That's because the view is that we're a civil and human rights unit. To that extent, the decision from senior management has been we should be looking at areas where we can be involved in systemic change. Because there are enough other services that can do other types of work. So the types of work we look to attract – every time, up in Kununurra, I'm seeking out certain areas of work. They're not necessarily the most kind of prevalent matters. **(Indigenous Legal Service staff)**

Civil and family law matters may require *more* resources than criminal law, which necessarily restricts the amount of civil law work legal services can do.

A lot of the civil matters that we get, whether they're minor assistance claims, or even tenancy matters or consumer protection, the process and the time involved in assisting people with these matters is, I think, to be honest, far greater than it is with criminal matters. Sometimes, we just don't have that time. **(Legal Aid staff)**

Whilst the ILNP has presented in this report statistical measures of the extent to which Aboriginal people are accessing legal and other assistance in relation to civil and family law problems, one statutory authority stakeholder felt that services across the board – government, non-government or otherwise - should be paying closer attention through collection, monitoring and evaluation of their own data to Aboriginal access to such services.

Prioritising criminal law

There is a strong perception that the ALSWA and LAWA have too much focus on criminal law, and that civil and family law service provision quality is impacted by time constraints due to under-resourcing. Some stakeholders and community participants thought that there might be capacity for these legal services to shift priorities so as to better meet civil and family law need, using existing resources.

It's all about plea mitigation with ALS and Legal Aid. They are too time poor, only five minutes of their time. They need more time. **(Legal practitioner)**

With the legal system, you can't help but be unhappy... I sat in court a couple of weeks ago and all the young people there... They should come and maybe prevent [people being charged]. Well, I tell you, [police] come arrest anyone [even if they're not] committing an offence. It's a verbal thing: "I'll accept what you're saying"... And then he's gone on to a more serious charge, and now he's been waiting for ALS to appear at the court... He hasn't seen the ALS visiting him out there in the regional prison. They're so limited. I know. I can understand that. But if you're due to go to court within that week, you should be visiting that client, you know. And, that has just been happening for years and years. And, then the Magistrate only has that little time to read about the situation, and of course, the Magistrate

just makes up his mind in the hour or whatever, whatever, what's going to happen to that prisoner, that client, you know, that's got a charge on him. And, there's just so much of it... I just sat there and listened to these people last week and I thought, you poor fellas. **(Geraldton Men's Focus Group Participant)**

This issue is exacerbated in the context of Aboriginal Legal Service work as the preferred provider of legal services to Indigenous communities, since they are perceived as under-servicing Aboriginal civil and family law need, while having funding constraints that preclude it. The focus they have on criminal law may also lead to a perception that they only assist Aboriginal *men*, but not women. This point is raised, too, in the context of conflicts of interests disproportionately excluding women (see below: *Legal service policy and under-servicing*).

People go to the ALS [for non-criminal law matters] but they say they don't do that sort of stuff. So where do you go? What they should be doing is giving out pamphlets to all the Aboriginal organisations to say if you have a particular problem then you need to go to such and such service. **(Perth Men's Focus Group Participant)**

There's no place for women, its all for men. **(Wyndham Women's Focus Group Participant)**

I know there's the ALS but there should be another legal service that's set up for the community for this sort of stuff where you can go straight to 'em with an open door policy. Where we can walk in, sit down and make complaints, because you know, our lifestyles, our families and our stresses of life - you know, as women, we are the watchers in our families... we are the go to people within our groups. **(Perth Women's Focus Group Participant)**

I think there is way too much emphasis on crime for ALS... But also we tend to see more women and women's issues tend to be those other things – tenancy, cause they're the main person on lease and the CPFS issues and the consumer issues and the family violence.... I tend to see that the ALS is more male oriented. **(Indigenous Legal Service staff)**

Comment was made, however, about what is seen as a recent shift in focus at ALSWA to increase the amount of civil law work undertaken, including through increased civil and human rights outreach to regional areas, as discussed above.

My understanding is that the ALS, the new arrangements that they struck about 12 months ago, a new agreement, gave far more flexibility in a sense to determine their own policy parameters. That might explain perhaps why they're shifting into civil. **(Legal Aid staff)**

We've started – basically, since the ILNP. We came into some funding to run a remote area [civil law] service. It's taken a good six to eight months for people to know we're there. **(Indigenous Legal Service staff)**

For some, this focus on criminal law is evidenced by the way legal services may appear to tie their civil/family law outreach work to *criminal* law circuits, although it is noted that initiatives such as 'yarning about the law' (see below, Section 5.3: Improving access to justice through education) and ALSWA's recent increase in civil and human rights outreach independent of the criminal law court circuit are steps in the right direction. There is a *sense* that these services' work is largely 'case-driven,' in this respect, without sufficient emphasis on civil and family law *or* CLE.

I mean for example Legal Aid and ALS mostly just go up on the court days, so the assistance that they can provide to people is quite limited, and it's in that criminal context so there really aren't many legal services up there for non-criminal matters. You can't just go, alright, I'll do my criminal stuff and then I'll give someone advice about victims' compensation. Obviously they've got issues of conflict, so they are conflicted out of a lot of matters, and also my experience when I worked at Legal Aid was that you've got the court circuit, so you fly up in the morning, you do your court and you fly back. You don't have any time to do appointments. Like, you're at the mercy of the court schedule. So people aren't being serviced for these other kinds of issues. **(Indigenous Legal Service staff)**

One community based stakeholder organisation in a regional area said it would only ever use the AFLS or local CLCs because LAWA or ALSWA do not do *any* civil or family law. Whilst this is incorrect, it demonstrates how strongly these services are associated in the community with criminal law.

To me, my understanding is more around - the ALS going for court hearings, you know what I mean? Criminal law stuff. That's what I'm hearing. I'm not really seeing or hearing anything else, really. **(Indigenous community organisation worker)**

Gaps in the regions are dealt with in more detail below (see Section 5.2: *Working regionally in WA*).

Unmet civil and family law need - links to criminal law/social exclusion

Whilst it might be tempting to take away from resources targeting criminal law need to supply demand in civil and family law areas, as the following material indicates, civil, family and criminal law issues are closely interwoven. Existing levels of resourcing for criminal law work must be retained (or ideally, substantially increased), with additional funds provided for civil and family law work. At this point of time, cuts to funding are promised rather than an increase.¹⁰³

Many times the ILNP has heard during fieldwork that failing to properly resource the work legal (and other) services undertake with respect to civil and family law problems makes little economic sense. First, unmet civil/family law need leads to an escalation of criminal law need. Unaddressed civil and family law problems can become criminal law matters very easily, as discussed in this report in relation to, for example, neighbourhood disputes, housing and discrimination. And of course, Indigenous contact with the criminal justice system, including through incarceration, costs governments money. Criminal law issues can also lead to civil or family law problems. Family violence is an example of this, whereby child protection or housing-related debt for damage to homes (to take two examples) can ensue.

Secondly, there are also numerous instances where unmet civil and family law issues connect with social problems. A good example of this is discussed in relation to housing, where evictions by Homeswest are said to be leading to increased homelessness, vulnerability of children to sexual and other abuse and dispossession more generally (see Section 4.1: Housing). These social issues also inevitably place serious financial demand on government resources. The ways in which civil, family, criminal and social issues are tied together are illustrated by the following quotes.

¹⁰³ See for instance (NATSILS) (2013) *Factsheet: Funding cuts to Aboriginal and Torres Strait Islander Legal Services*:
<http://www.natsils.org.au/portals/natsils/submission/Funding%20Cuts%20Factsheet%202%20April%202013.pdf>

This Homeswest matter that I've been talking about and the three strikes policy, it results in... There are two areas. This three strikes policy kind of essentially pushes people outside of social housing so what happens is they automatically become marginalised. Of course, that leads into cycles of further social problems. So if you don't have an appropriate living space, then, of course, if someone's got a history of social problems, they're going to then move towards – say, if there is substance abuse, they're going to move further towards substance abuse. So yes, I absolutely see a connection [of unmet civil/family law need, social issues and criminalisation] in other areas such as housing. **(Indigenous Legal Service staff)**

Given this, resources directed towards addressing civil and family law need is money well spent as it prevents problems (such as a threatened eviction or debt) from snowballing into other issues and creating a broader impact.

A good example is driving matters. So if someone wants to apply to have their life disqualification removed or is able to apply for an extraordinary general licence and it's too hard, those people will drive anyway. What will happen is, essentially, it criminalises people that don't need to be criminalised. They're not people who – it's almost as though they're criminalised through insufficient administrative legal support, essentially... it's not really like the punishment is in keeping with the 'spirit' of the offence, if that makes sense? But what ends up happening is, particularly with the younger kids, once they become criminalised into the system, then it all becomes quite cyclical. So I think there's such a detriment to the community and to government, in terms of the costs involved [in the criminal justice system], that it's not forward thinking for there not to be the provision of this support - because from a law and order perspective and from a health perspective, the flow on effects of not having appropriate legal support is enormous. **(Indigenous Legal Service staff)**

On top of housing, I think there's certain issues which I really object to in WA, in particular, and that is that people serve time to cut out fines. I think it's a complete failure of justice for a system to allow people to serve prison time when they have family to look after, they've got kids to look after, and the like. To serve prison time to kind of cut out some kind of pecuniary fine. So that, as well, is automatically pushing someone to criminalisation, in a sense... The flow on effects go to everything. It goes to people's health issues. Then that's a burden on the health system. It's a further burden on the health system. It pushes people to substance abuse. That's, again, a burden on the health system. It's also a burden on law and order, because then it requires the police. It also requires vigilance in the community. Obviously, private citizens then get concerned. All of these things are kind of quite cyclical. It's kind of backwards thinking for government not to consider the flow on effects that a cut to [legal] services has. At the end of the day, the basic point is this. It's not cheaper for government to cut back on these services. It will end up costing government more. **(Indigenous Legal Service staff)**

CLCs engage to the best that they are able to. It's the resources that are required to engage. It's very resource intensive. I think that this comes back to policy issues about how much are governments prepared to invest in that. They're wanting value for money, I get that. It's taxpayer's money and all that. But given the complexity of the problems that we're dealing with - and it's not just the complexity, it's that they are so entrenched... it's not as if not investing in this area means there's no cost elsewhere, it just gets transferred to justice and mental health, etcetera. **(Legal practitioner)**

The importance of making sure there are enough resources to deal with civil and family law need *without* pulling any existing funding from criminal law focussed service delivery, given the extent of criminal law need in Aboriginal communities, is noted in the following comment.

I think it is lack of services. I think that for many people it gets to the criminal stage... I'm thinking about CLCs in more rural remote areas. A lot of the work gets caught up in either family or domestic violence or criminal matters because that's the pointy end. So their resources are taken up to deal with that urgent stuff. They don't have the resources to deal with perhaps some of these things that have happened back here. So they get left behind. It's almost like you need the resources to deal with things before they get to the pointy end. But given the level of need, you can't take away from the pointy end stuff because lives are at risk... In my previous work, a lack of medical services meant that the person was often untreated so they would commit crimes in an unwell state. The only way that they could get medical attention was to be incarcerated. **(Legal practitioner)**

One stakeholder pointed out that these issues should not ultimately be questions of economics. Aboriginal people have a right to legal assistance. And often, legal services are working with Indigenous people in relation to problems that arise through their interactions with government agencies (such as CPFS or Homeswest). Government then fails to provide sufficient funding for organisations tasked with supporting individuals to respond effectively to such problems.

I get concerned myself when we kind of reason on economic grounds... It is a right of people to have these kinds of [legal] services available to them... I think it's one of the modern challenges of globalisation in particular, that it forces everything into being about efficiencies and being streamlined... But I think that it is a basic right for people to have provision and to be able [to access services]... It fundamentally goes back to the social contract between government and the individual. Because what ends up happening, primarily, is that these kinds of matters that ALS take on are matters where there's been a breakdown of that social contract. So in terms of social contract theory, I give up my individual freedom to exist in a state of nature or whatever and, in return, the government protects me. But what happens to these people is the police have failed them. Or a government institution's failed them. Or some kind of – you know, Homeswest has failed them. So when there's been a complete failure on the part of the executive, there needs to be support there, because it's a breakdown – that's government not meeting its basic needs when it's kind of signed into that, in terms of providing a certain degree of protection for citizens and individuals... [ALS steps in] quite often when there's been a failure of a state-based institution to provide the service that it's promised to provide, effectively, and within those set of public service values that all states and governments have. **(Indigenous Legal Service staff)**

That much of the contact Aboriginal people have with lawyers in relation to civil and family law problems concerns negative intervention in their lives by government is further highlighted here.

[Commonly, we see people around civil/family law problems] where people just need some intervention, like police complaints, rather than where they are themselves initiating contact with lawyers at an earlier stage for something. They're coming because they're responding to something. They've either been charged or CPFS comes knocking and says, "We want to take the kids off you". They're coming in saying, "This has happened, I need to respond to this", rather than proactively going, "Well, there's a dispute in the family, I can see where this is

leading, maybe I should get some legal advice and see if I can prevent something”.
(Indigenous Legal Service staff)

Funding of legal services

Funding adequate to enable legal services to meet existing Aboriginal legal need should be directed, as a first starting point, to *Aboriginal* legal services. They will generally be the preferred provider within Aboriginal communities, as noted, and are seen by some in their communities as more than just a source of legal advice.

When we had ATSIC we had a voice. When ATSIC went, we all sort of looked to ALS now, we got nothing else. We haven't got another voice for the Southwest land and sea.
(Perth Women's Focus Group Participant)

However, Aboriginal people need to be given a real choice. For some, having different services available to help Aboriginal people is preferable to setting up 'one super-ALS'. Not everyone wants to engage with an Aboriginal legal service – just because they are Aboriginal. Some focus group participants reported levels of discomfort in their interactions with their local ALS. The women in the Perth women's focus group, for instance, had had some negative experiences with the ALS, as follows.

There's a problem with the reputation at ALS. Walking in there is like walking into prison. You are treated like a criminal. You could be going there for the littlest thing, an advice. And you have to wait for hours to talk to somebody. It's not a user-friendly service... You need to be met by a Noongar who is going to welcome you in, maybe offer you a cup of tea. Maybe sit down with you in a lounge room area where there's room for kids to play... You'd expect to be able to walk in there and feel comfortable about the place that you're going into, and not feel like you've got to tread around carefully and shut the kids up.

Lot of young fellas, they don't want to go in there (the ALS office). Walk into that big flash office, and you've gotta ask for help. Fellas don't like doing it there. But if it was local, and good laid back people who would understand you when you walk in the door and not judge you, maybe they *would* ask for help.

Sometimes, people may choose to engage with a *non*-Aboriginal legal service for various reasons, including confidentiality.

I think you might have a few issues though in the regions with people coming into the Aboriginal legal service there because being a small town, people know each other and some people feel a little bit funny about talking about their personal situations. I have had people say that on a couple of occasions.... That's just people talking, wanting to keep it confidential. (Indigenous Legal Service staff)

It is worth noting that some non-Indigenous legal services do have very high levels of engagement with Indigenous people, discussed further in below (see Section 5.5: *Engaging with Aboriginal communities*). Thus, it is important that *all* legal services are sufficiently resourced to be able to work effectively with Aboriginal people around civil and family law need, but with the resourcing of Aboriginal legal services seen as a priority.

There are people who choose one service or the other. I think, like anyone, people once they've had a lawyer or used a service if they were happy with that they want to continue using that service. **(Legal Aid staff)**

Certainly, we have had people who have come in - I don't say this as a disservice to ALS at all - but people who have come in and say they'd like to be represented by us and not ALS. I'm sure the same applies for former clients of ours who go over to ALS and say they want to be represented by the ALS and not by us. Stolen wages, we're doing a little bit of stolen wages. Pretty much all of those clients have said to us we don't want to go to ALS about this. So that's why they've come to us. **(Legal Aid staff)**

I know of some Aboriginal clients coming here because they've expressly said they don't want to go to the ALS.... They don't want to go there so they prefer to come here. We're very open about providing services that are inclusive to everybody. I think probably Aboriginal people would in the first instance try ALS. I've also had clients say to me in the past that they thought that we are only for white people, and they just had to go to ALS. Which would fit into what we have as a theory that once they're knocked back they then don't come. **(Legal Aid staff)**

Legal service policy and under-servicing

Stakeholders were asked to identify service delivery related policies likely to inhibit Indigenous access to civil and family law justice. Conflict of interest is one area that attracted comment and criticism.

One of the problems that we always deal with is the problem of conflicts. Quite often, we're conflicted out of matters where we would like to act but because we've acted for one of the parties in the past on a related matter, then it becomes very difficult for us to do so, even if no one would act outside of their duties but there's a perceived conflict. So one of the issues that we've had and we believe that the profession needs to look at is looking at ways to relax duties insofar as how they impose on the legal assistance and community legal sector - because it's such a big issue for all the legal aid services. **(Indigenous Legal Service staff)**

Internally we have issues obviously around conflicts. This is a really big issue for us. Because it's a small community, we only have a number of people, there are overlaps on so many different levels, and if you were to take a strict view about that, we'd do ourselves out of a service. We'd just be so conflicted at every level. Well you have to [be a bit flexible], otherwise we wouldn't be able to help. If you didn't take a relaxed view of things, and it's not just our service, ...we wouldn't be able to do very much at all. **(Indigenous Legal Service staff)**

Always a conflict when it comes to family law. There's a grey area about what constitutes conflict anyway. **(Legal practitioner)**

Whilst conflict may not be deterring potential clients from coming forward for help, non-legal services may feel it's not worthwhile to make a referral because the client may be refused on this basis. It is also noted that many Aboriginal people may not have an understanding of conflict, including that it is the reason why service was refused in a particular case.

I don't think conflict deters people from coming to ALS because I don't think people in the general community really grasp that as an issue. If they are refused a service and we give an explanation, then they're forced to get their head around it. But on another level they don't really get it, because all they really get is that they're being refused a service. And often they're not sure why. People ring up and that thought doesn't come into it for them. We are the Aboriginal Legal Service, they are an Aboriginal person, they have a legal problem, they ring us. If we say, we can't help you because of some concept or some professional requirement that's imposed on us as a legal practice, they haven't thought about it. And then you have to try and explain it without disclosing anything. That's when you move into the area of referral and getting people to off to other services and contacting that service and let them know they're coming. **(Indigenous Legal Service staff)**

It is worth noting that LAWA has said that they don't get as many referrals from ALSWA in civil/family law as might be expected. It is suggested that when the ALS can't assist an Aboriginal person because of conflict, this person may not seek help from another legal service, including LAWA because, for instance, they may have a preference for accessing an Aboriginal legal service *or* they may perceive that ALSWA and LAWA are the same; and so, refusal by one equates to refusal by the other.

What tends to happen is [that the ALS is] conflicted out when a woman who is a victim of violence or is involved in a relationship that is breaking down comes to the service. They're very often conflicted out because of the work they've done for the male perpetrator in the criminal context. That gives us a bit of a worry for what you were saying about people not coming through to Legal Aid. A worry that I might have, if a person is particularly concerned about having an Aboriginal service help them... whether they would, having been knocked back at ALS, then not come to Legal Aid because they see themselves as needing to have an Aboriginal service. Or even worse, that the ALS and Legal Aid are the same thing and they're feeling that they're not going to get help somewhere else. Not understanding why they have been knocked back. Just difficult to know what impact that has on people in terms of where they then go for help after that. We're always very concerned about them falling between the gaps, that very often people just see "no" as "no" and don't understand the nuances. I don't get a sense from a grants application point of view that we're getting a lot of those referrals from ALS. They may be making them. I'm not doubting that they're making them. But they aren't coming here [to Legal Aid]. Getting them over here - and that's the worry that we have, and we have that worry both in metropolitan areas and regionally. If people are going to ALS in relation to their family law/child protection problem or their family violence issue and are being knocked back because of the conflict situation, where are they going? Are they going to other services or not? We're not well placed to track whether they're actually coming to us as clients. We don't know. As a practitioner I was always struck by the number of Aboriginal clients who thought both the services were the same. **(Legal Aid staff)**

Another possible barrier in the policy area identified by stakeholders is means testing.

I think it's a gap in the justice system in the civil/family law area where people don't qualify for Legal Aid and they can't afford a lawyer. That general gap, it's huge and it's commented upon regularly... You have to be under the poverty line basically from a means point of view for civil and family law... what the general public says, "You've got to be really poor or really rich to [access a lawyer]", they're right. **(Legal Aid staff)**

One LAWA staff member suggests that assistance, including through a grant of aid, is much more difficult to access through Legal Aid than other legal services because there are much tighter, more consistently applied controls or limitations around the work they are able to undertake. Those seeking help from ALSWA, for example, may not be as strictly means tested.

It could also be [that we're not getting referrals from the ALS because] the expectation could be the person wouldn't get a grant of aid. Because I know in the criminal law area in ALS there's no real limits. If you're acting for a person you can act for them... without any sort of limits or guidelines as to the seriousness of the matter. And that's why you get the situation in the Magistrates Court for criminal matters where they say they're conflicted out and it might be a hearing, and they come to us and we say, "Well we can't grant aid. Under our guidelines the charge is so minor we can't grant aid". So that could also happen in the family law area. They wouldn't get a grant of aid but we would try to assist them, if they went along to the family law duty lawyer service we would try to assist them. **(Legal Aid staff)**

My understanding is that [other legal services] don't operate under a prioritisation process, whereas we've always acted under a prioritisation process ... With ALS, you walk in the door, and they [don't] means test. They'll help you. The CLCs are a bit the same too. They don't have the same sorts of guidelines that we do. They prioritise however they like within their centre, and it's not necessarily the same from centre to centre. They'd have to [prioritise somewhat], but not to the same level that we would. We've got our means test and our merits test and it's quite [inflexible]. **(Legal Aid staff)**

In this context, however, Legal Aid also discussed the flexibility of its social inclusion program,¹⁰⁴ which aims to prioritise the most vulnerable clients, including Aboriginal clients, by offering assistance to them outside of stricter eligibility criteria. The program's inclusion criteria focus on the extent to which a client is able to tackle relevant problems on their own.

What we do is provide advice in a really broad area of civil law, and there's no prioritisation within that. If the person had particular personal issues that make them a priority, then we would endeavour to see them as soon as possible. We have our guidelines for grant of aid matters. So we're restricted by those guidelines. The social inclusion program, the way they prioritise is really to ensure that they give advice to people who cannot advocate well enough for themselves, or can't interact with the legal system, who are vulnerable, who are being exploited or at risk of exploitation... I'm very particular about having an open door policy about the types of matters and considering each case on its own merits, rather than saying no. **(Legal Aid staff)**

As a further point concerning policy, restrictions are placed by the ALS on representation of one Aboriginal person against another Aboriginal person. This might arise with respect to disputes about burial or neighbourhood disputes, for instance (see also Section 4.2: Neighbours).

They'll fob you off, if they are representing another Aboriginal family, you'll go somewhere else to get representation. They can't represent two Aboriginal families, which is stupid really. **(Perth Women's Focus Group Participant)**

¹⁰⁴ Information on LAWA's social inclusion program is available at:
<http://www.legalaid.wa.gov.au/LegalAidServices/specialist/Pages/SocialInclusionProgram.aspx>

Finally, there was comment about ‘policy’ in a broader sense.

I think it would be really beneficial if there were more support for ATSILS and CLCs around governance and support, for instance. There are some big-picture issues around whether or not we should be thinking of a different way of modelling and delivering our services. But for us to constantly spend time reviewing things, there are really big resourcing issues, because you’d have to do the scoping studies and you’d have to go back to the drawing board for that big picture stuff. It actually requires a lot of resourcing to restructure. **(Indigenous Legal Service staff)**

5.2 Working regionally in WA

The size of WA creates enormous *physical* barriers to accessing justice, manifesting as significant gaps in civil and family law service delivery outside Perth. This was a particularly prominent issue emerging from the ILNP fieldwork in this State. Those located in many regional and (particularly) remote communities felt that more legal help was urgently needed. ‘They should get more legal aid services in Fitzroy Crossing’ states a woman in the focus group in that community. ‘Remote communities miss out on services’. ‘It’s an isolated area we live in’, states one Indigenous community organisation.

There’s no legal advice out here. There’s hardly any people that come out to give legal advice. We’ve just started to work with the [AFLS and CLC] to come out once a month starting next month to provide this advice for people. It could be civil. It would be family matters. These two lawyers who come out, they’re going to provide services about housing, the alcohol restrictions, family and children. Because that’s what’s affecting families - housing, alcohol, family and children... **(Community organisation worker)**

Organisations based in Perth also expressed an acute awareness of the impact distance has on effective service delivery. The civil law sections of Legal Aid and ALSWA are largely based in Perth, as are a number of specialist CLCs (those dealing with employment or consumer law matters, for instance). These services are, however, expected to provide assistance across the State. In this context, LAWAG believed that ALSWA had more regional offices than them, and would be able to offer a reasonable service outside Perth – but, it should be noted that regional ALSWA offices are *largely* criminal law focussed.

We’ve got four¹⁰⁵ [civil] solicitors and they’re all in Perth. Clients may ring up and speak to us directly or one of the Court Officers or solicitors in the regions, who do all criminal law work, will ring up and ask if we can take it on. [Sometimes files start in the regions] but they may not be competent to carry on so they’ll contact us. So there’s a couple of ways that regional matters come to us but by and large there’s a huge gap. **(Indigenous Legal Service staff)**

The way that the practice works is that any civil or family law matter in the regions gets referred to the city because we don’t have civil or family law practitioners out there... With family law, it’s a little bit different because if someone has a family law matter listed in Broome, for example, and it has merit, a solicitor from Perth would go out there... But it generally all happens from Perth and it is about budgetary constraints. **(Indigenous Legal Service staff)**

¹⁰⁵ ALSWA advises that at the time of publication of this report it has 7 solicitors working in its civil unit.

I think in terms of being in St Georges Terrace [Perth city] - from the simple perspective that the civil practice is only in St Georges Terrace, so there isn't a civil practice in any of the regional offices, so just that physical barrier... **(Legal Aid staff)**

I've got no evidence on this, but because the ALS has a civil section that is comparable in size to the section here, I imagine that they would be able to still provide... good service. And because they do have a significant number of regional offices, they're in a lot [more] smaller towns than the Legal Aid offices. Although there's been some changes recently, with closing down some services. But they're still in communities where Legal Aid doesn't have a direct presence. **(Indigenous Legal Service staff)**

To some degree these Perth-based legal services engage in outreach, which generally involves working with lawyers, most likely from the same service, located closer to the client in question.

The challenges for us are that we are metropolitan-based. We don't have the resources to travel. We're not seen in the community so there's no sense of trust being built.... The best we can do is to provide the support to other CLCs who are out there. **(Legal practitioner)**

Some service providers felt that this arrangement works well.

[LAWA in Perth] have a social inclusion unit now... in Perth, which is fantastic. They've also - this is just my opinion, not Legal Aid's - I feel that they've expanded the types of matters that they'll take on, just in their general civil law department, as well. So that's given us a lot more opportunity to refer those matters, if they come in and we just don't have the capacity. Because I think the main difficulty we have is a capacity one. [Civil law matters are time intensive]. We've found it a lot more manageable now that we can refer them down to Perth and kind of assist them in the field when they need the assistance. So they have the carriage of it down there and just call on us to do what we need to do to get the clients in to sign the documents and get them in for their appointments and things like that. They manage it from Perth but we provide the outreach [to clients], I suppose. If there's an appearance in court [locally], generally we will appear. So I think it works quite well. One of the difficulties we run into is how with a lot of our Indigenous clients, phone numbers seem to change quite regularly. I lose contact with them by the phone. But that's the benefit of having us here, is that we then can generally find them and find a new phone number. **(Legal Aid staff)**

Overall, however, the Perth-centric focus of these legal services is viewed as far from ideal for those located in the regions.

So in civil law practice, there are about 11 full time equivalents (solicitors) in Perth. Since I've been here, the practice has grown a little bit. We don't have any regional civil law practitioners. So that's an issue in terms of having that presence in local communities. We do have regional lawyers referring matters to us, but it's just not the best.... So the civil practice itself is quite small by comparison to the other areas of law. **(Legal Aid staff)**

Very few Indigenous people come through our service [in Perth]... We have tried but the difficulty is the distance to get proper instructions. Often you are reliant on another service in a particular area. And then if they went to another location, if there were funerals, then you lose contact for months on end. **(Legal practitioner)**

Part of the problem with using lawyers outside of a particular community is that they lack local knowledge.

We can usually get somebody to see a client and that. But we need somebody in town. Because we need somebody here that can see what it's all about, too. Because it's all very well to sit in your nice cosy office in the city and have a look at this bit of paper that I've written out. It doesn't have the same impact, does it? We've got a couple of lawyers, but unfortunately, they charge like wounded bulls. There's only two private professionals here. **(Indigenous community organisation worker)**

Civil or family lawyers who *do* have a more permanent presence in the regions, including those working in CLCs and AFLS, often have massive geographic areas to cover and limited resources restrict capacity to provide outreach beyond the towns in which they are based. Speaking from a slightly different perspective but facing the same challenges, one statutory authority organisation, for instance, states: 'I think being located in Broome where consumers are right across the Kimberley is a real challenge. It's a big challenge. It's a huge, huge area' **(Statutory Authority staff)**.

The issue is that Legal Aid is in Hedland, so there are the time constraints, you know, with them coming out. They obviously don't come out every day. Two and a half hour drive. I don't know if they actually just come out a day a week or if they only come out when they've got a client. I'm not sure how it all works. **(Legal practitioner)**

In general it's hard for people in this area to get help with these issues, and that is because services are Kalgoorlie based and they will just go up to Laverton (outside Kalgoorlie) for the day or one day. We do as much as we can with the limitations in funding, but if we had more and we could go to Laverton once a week, then how much more could we do? And I think that's one of the biggest things that we come up against. I mean, I'm the only lawyer here, but if we had two then we double the amount of cases. So we do what we can with what we've got, but if we had more then... and other organisations share the same limitations, other legal organisations in Kalgoorlie, in servicing these communities effectively. **(Indigenous Legal Service staff)**

Legal services are not the only services in short supply in the regions. Courts and *non*-legal services (health and other support services) are similarly difficult to access. Access to justice is not just about access to legal services. As one stakeholder states below, 'I don't think you can look at the legal needs without looking at the non-legal needs'. These might be needs relating to mental health or substance abuse (see also below Section 5.4: *Complexity of Indigenous legal need*) and they also require adequate servicing.

I think a lot of family court issues - That's difficult. But, you know, if they want to put a VRO on their partner or someone, it's - everything is hard. Everything is difficult. I had a client in Brookton. She's still with me. She wanted to put a VRO on her partner. He'd just done all sorts of things. So she had to do about four or five trips to Rockingham. How far's that from Brookton? ... At least two hours, two and a half hours. **(Indigenous community organisation worker)**

The biggest gaps are in the regional and remote areas. The services just aren't there... In the child protection context, it's difficult to actually get what it is that people need to be able to support their children getting assessed in the first place and once they are assessed, to actually plug people into local services. The services just aren't there to provide the support. That's

probably the biggest issue. The services just aren't there on the ground. In a lot of regional areas CPFS is the only service there that's providing any kind of non-legal service, and of course Aboriginal people don't want to touch them with a barge pole. So that's a real challenge. **(Legal Aid staff)**

This interviewee goes on to discuss the ramifications of cyclic funding environments on the willingness of community to access services.

In the Kimberley area there were some programs that were funded around family violence hubs, it had some really good results, but it's gone. The money's run out and it hasn't been renewed. There's a real concern that sometimes even good things that get started, they don't continue, and there's a perception from the local community that that's what's going to happen. So even in terms of engaging with the service, it's hard to start because they think these guys will probably run out of money in a year. I don't think you can look at the legal needs without looking at the non-legal needs. If we talk about gaps in the legal, well it doesn't operate on its own. Some of those places the legal needs arguably even though they're extremely sparse, are probably provided in a greater amount than the non-legal needs. A place like Balgo for example, Balgo community will have a lawyer on circuit one day every three weeks, and can service as many clients as he or she possibly can, but they'll be doing that in the absence of any support person other than the police. **(Legal Aid staff)**

In regional areas, even if there is an accessible legal service in a nearby town, there question arises of how people travel to the service, including without a car, and where they stay when they do so. These are just some of the practical barriers for those living outside more major centres.

It's not that services aren't there. People know of them but don't know how to get to them. If they come in to Laverton, where will they stay? **(Legal practitioner)**

Unfortunately, again, it's the same as everything, isn't it? By the time they've saved up to get to, got somebody to give them a lift or saved up the bus fare, or they go and they haven't got anywhere to stay.... They might skip paying rent to get there.... It's a huge problem, not having a legal service in town. **(Community organisation worker)**

In discussing how things might be done differently, establishing permanent offices outside Perth is seen by stakeholders as next to impossible. Providing effective outreach, as an alternative, is also very problematic: issues include staff recruitment and retention, selecting where to target services, as well as costs associated with travelling to or setting up business in more remote areas.

It's going to cost us a packet to do those sorts of services [in the regions]. It would mean we'd have to secure alternative premises. It would be a completely different model. You'd have to have hubs with criminal, civil and family lawyers. And because of the costs in those areas, a lot of our costs would go on accommodation. And even with outreach once every couple of months to a couple of sites that we're not normally at, to put someone up for a week or so would cost heaps. There's always constant pressure down here for all the matters coming in so you effectively lose someone for a week or two. And WA is such a big state. How would you service all the different areas? Some areas would be neglected while others aren't, even if you were trying to do that. Even if you do get close to where someone is having problems, they might have to travel hundreds of kilometres to get to you. Sorry business or something might also be going on even after you have made a big trip like that anyway. Recruitment generally in the regions is a huge issue, not just for our service, but for others. And it's about

retention too. At the moment, there's so much work in the city. It requires a special sort of person. **(Indigenous Legal Service staff)**

The costs, it's not specific to Aboriginal people, the cost of the travel really for an Independent Children's Lawyer matter to send a psychologist up to some of these remote areas to do a psych assessment - you're talking about \$7000-8000 for the person just to go up there and do the assessment and visit in situ. **(Legal Aid staff)**

Outreach

The likelihood of services being accessed is increased if legal services can provide outreach assistance, rather than expecting individuals to make their way to the service.

Grassroots people aren't going to take a train all the way into the city to go and see a lawyer. People stay in their own territory. **(Perth Women's Focus Group Participant)**

Outreach services are being provided, to some extent. But, as one legal practitioner notes, 'any visits made to a particular community will never be enough' **(Legal practitioner)**.

What we've found with Wyndham is the access to legal support. It's there once a fortnight, but it's needed too much. The availability, it's not there... More access is needed in Wyndham because of the issues in that area and the lack of services.... [The fact that one particular service is about to stop working in Wyndham] means they then have to come to Kununurra, the next town. That's 100kms away.... Nobody has a car. **(Indigenous community organisation worker)**

The women in Wyndham's focus group said that they didn't know when outreach services were in town and felt that they stayed too short a time: "Didn't even know they were there... We don't get help here"; "They come here on Monday. They stay three hours then go back at 12"; "It's hard from everybody here to get to Kununurra and usually you got to ring up to make an appointment"; "Even when they do come, I don't know they here". "We either have to hear it through the grapevine or... we don't... and then it's too late."

And given the resources required to deliver outreach, legal services may want to see 'real' outcomes - in terms of numbers of clients making contact with lawyers to make the expense worthwhile. This doesn't always happen, for a number of reasons.

We go out fortnightly. We're there for a day.... We're based at (named local organisation). But the thing is, there was no take up, not a big take-up on coming in and seeing us. We're not reaching them. We're not meeting the needs of the people as well. We're not getting to all the groups... people tend to feel, you know, they're either missing us when we're there, they're not even knowing that we're there. Not enough communication out there, support from other service providers, you know, all coming together and being there for the people. **(Indigenous community organisation worker)**

Problems concerning the type of engagement in outreach service delivery were discussed as follows. Some felt that services were not providing outreach in the right way, including when travelling in and out only on court days. One stakeholder, on the other hand, has had a lot of success with 'bring your bills days' and another finds their contact with clients is improved if they don't use scheduled appointment times.

We have tried several different methods, I suppose, over the five years that we've been open, including having scheduled, set appointment times in, particularly, Wyndham and Halls Creek. But we've found that, often, even when we set the appointments, if we're not physically chasing up the clients by ourselves, quite often they won't make it to the appointments and they won't -- so instead of having set scheduled times at the moment, what we'll do is - the admin staff will just field the calls and they will liaise with the lawyer who's going on circuit and ask them if they've got any time and when their spare time is. Quite often, there's a spill over day in Halls Creek, a second day where there's not too much court work on. We'll quite often follow up on stuff that we have to follow up on, as well as have people meet us down at court or in another space for appointments, which we're down in Halls Creek and the same with Wyndham. **(Legal Aid staff)**

Aboriginal people don't know where to start to get legal advice on a lot of these issues, where they can get legal advice and culturally appropriate programmes that support Aboriginal people. Not this government mentality of sitting in an air-conditioned office, because they won't come to you. You've actually got to get out and be in the same environment as them. **(Community organisation worker)**

Our actual circuit commitments are quite time intensive and take one to two solicitors every couple of weeks, really. When we're out on circuit, if we can, particularly to the ones that are closer, we'll try and drive as opposed to fly so that we have the opportunity to provide other services in the community. Because if you go with the Court, the Magistrate understandably doesn't tend to want to hang around afterwards waiting for lawyers to provide legal advice on matters that aren't in Court and things like that. So I'd probably describe our services, other than those that are directly related to the court circuit at the moment, generally, they're fairly ad hoc, on an 'as needs' basis. **(Legal Aid staff)**

The 'bring your bills day' is where a lot of [our matters] come from. Get [a venue] and get it known, set up, having like a community type thing. Get everybody there and then things will come in. It's a great day. You know, built up over a long time. The thing that we learnt from that is a thing that we already knew but forgot. Just don't go for one day. Always go for two. Because the word had got out... as much as we let them know we're coming, it's the next day [when they come] because the word goes out. So that's something we try and deal with by being in the community more than one day, where it's going to be effective. So Legal Aid service provision - I mean, they do their job, which is different to ours.... but they tend to go to court. We go on court dates because that's when people come to town. But we try to stay [longer]. An in and out service is not doing it, especially not in terms of civil law. **(Legal practitioner)**

Linking in with services on the ground where you do not have a permanent presence in the communities in question also appears to work well.

So that's why we also try and work through those groups already there and explain this to people. Where the consumers are in a remote community, to deal with an agency - as well as going out there - and going through them so that people are going through somebody who is willing to explain. It's not just a voice on the end of a phone. **(Statutory Authority staff)**

5.3 Improving access to justice through education

Along with problems of availability of legal services to Aboriginal people, stakeholder organisations identified a lack of awareness of civil and family law as a significant barrier to access to justice.

You have to be in the community to be seen and to earn the trust and then to educate, as a lot of people don't even recognise these as legal issues. **(Legal practitioner)**

Partly, there's not enough funding for there to be enough of a presence, and partly, people don't have enough awareness of what their rights are with regards to civil law areas. **(Indigenous Legal Service staff)**

As suggested in the quote above, Aboriginal people may not know that the issues they face are legal issues, or how to go about getting even initial advice in relation to them, if they are recognised.

Because there's no legal advice out here people don't tend to access – don't know where to access that legal advice. You know sometimes you can ring up and things like that. I think just the fact that they don't know a starting point to go and get advice on tenancy and they probably don't realise they can get a lot of legal advice on a lot of this stuff, housing and family and children and stuff like that. I just think initial contact. People come to me all day and say "Can you help me with this?" [because they know me]. And I've got to get on the phone and find out legally where does that person stand. I think it's just the main core thing, that they don't know how to access that legal advice. **(Community organisation worker)**

Just understanding as well, being able to get across the understanding of what process they're actually going through, timeframes and the gist of a lot of other things which come with what is going on, just a lack of understanding really. Many people, particularly in the regions, they don't understand or they just fundamentally don't get process. Lack of awareness, they just don't know what's out there so they don't know where to go or who to contact **(Indigenous Legal Service staff)**

Under resourcing not only undermines capacity to undertake individual casework, but also reduces the extent to which services are able to provide CLE. CLE is important so that people can better respond to legal problems as they occur, perhaps directly and without an advocate, but it also assists in preventing issues arising to start with (because, for instance, individuals are more aware of rights and obligations).

I think there's a big appetite for people to go and do CLE around those issues in that community. Again though it's just an issue of getting funding and getting the resources. If you had the resources then you could do all those things, but unfortunately there's not a lot of money in the space in the moment, and especially with our funding cuts, we're having to do more with less or the same with less. **(Indigenous Legal Service staff)**

I reckon education. I'm always going to say that, go back to that... That is what is really needed. Until, you know, they're educated in these areas. Then they'll be empowered to stand up for themselves and then be able to be assertive. Yeah, it's always got to fall back to education. To empower themselves, they need to learn that. With that information, learn it. Then they'll be able to stick up for themselves and be assertive. **(Indigenous community organisation worker)**

Education is not just about *legal* services delivering *legal* information, as the following comment suggests. In this context, non-legal services also have a part to play.

You know, we're still fighting. Fighting for our land and just our rights. But, I mean, I've seen the change as a young child, you know. I've seen more non-Indigenous people are starting to see – you know, wanting to know how we do things and work with us. They're starting to respect our thing and wanting to know our history and things like that. Which is a very painful history, but it's time to go forward. You can't heal by not going forward. You're going to keep going backward, in the same rut, you always will be. I think that's part of our education as well, to most of our clients, that healing factor. By dealing with all this – having a safe home, clean home, paying all your bills on time will get your – you'll have a roof over your head, your kids going to school. Everything falls into place. You feel good. You know, having money, things like that. Doing the right things. You feel good about yourself. But the minute you – you know, it happens to the best of us - that we all fall through at some stage, for something or other. But we need to get back on track again. But a lot of people have a lot of issues that, sadly, keep them there. **(Indigenous community organisation worker)**

What I've heard from everybody is that they all want to say what they think, but they're scared when they say it, they're just going to get trampled or not taken seriously. That's where the Straight Talk works – we're coming in to try and give them that confidence. To be able to approach an agency and help get across what they want to say. So that's the big goals. We're reaching for the skies. **(Community organisation worker)**

Services are trying to do what they can with limited resources. The East Kimberley Legal Services Network, for instance, has established a CLE subcommittee, which aims to reduce the double up in provision of CLE, increase collaboration and consolidate resources. LAWA, Kimberley Community Legal Service, ALSWA (both the local office and the civil/CLE section in Perth) and AFLS are all involved in the committee.

Problems identified with CLE include the way it is delivered and its content. Services, for instance, may be missing the mark unless they do some careful scoping of need in communities prior to heading out to communities. In one CLE initiative involving collaboration between legal services located in the Kimberley, Legal Aid has consulted directly with communities by, for example, asking them what the main legal issues are that they need to know more about and, significantly, provides CLE to communities which are not ordinarily included in the local court circuit (and so would have minimal contact with lawyers).

As soon as the Stolen Wages came in it just, bang, took over everything. So what we've said to these guys is, to help them with information and that sort of work, is to go out and design a little survey that we're doing upstairs to give to various people in the community.... they might be giving legal advice on particular topics, but to find out exactly what might be sitting underneath it. **(Legal Aid staff)**

Last year, we started trialling something that we called 'yarning about the law', where we set aside five weeks dedicated to providing legal education and assistance and targeting areas, I suppose, and spending a week in those areas and visiting the communities. We did that as recognition that there is an unmet need, particularly for non-court work matters, and to provide legal education. We did a bit of scoping first. It probably wasn't very scientific. But we spoke to the corporations, the chairs and the CEOs of each of the corporations and sent

them a letter and... something for them to send back to us just highlighting what they thought... their community would like legal education about and what are the main legal concerns in the community at the moment. Then we also discussed, from our own experience, what some of those issues were.... But the whole idea was to focus on civil and family. **(Legal Aid staff)**¹⁰⁶

Working in with existing organisations means you are much more likely to have an audience.

Usually it's through those [local] organisations, but when you go to a town or go for a week... I do education with the students at the schools and things like that. I'll go to already established groups and do a presentation to a Mum's group, or if there's a young women's group or a men's shed or that sort of thing. So I try to go to things that are already there, I work around rather than try and get a separate time, and then just all through those organisations as well. **(Statutory Authority staff)**

Some of the best CLE might be that which engages community using less 'traditional' CLE formats, including empowering community members to educate from within. The first quote speaks about a different type of CLE in a mental health service context, but was raised by the stakeholder as relevant to legal service delivery.

We found ultimately that [service delivery] was most effective when you got the mothers and the grandmothers [of clients] on side. It was almost like they held the power... We often think of education as going in and educating one by one. Giving the matriarchs and the people that hold the power the information... Because once they understand they can look out for the family members. And that way, you're not having to deal with issues of trust because if the information has come from the women and all, it's trusted information... You are not having to reinvent the wheel all the time, you are using the circles of trust that are there. You are empowering the women, or whoever the group is, to give out the information. **(Legal practitioner)**

Moving away from pamphlets and other written material, the Department of Commerce also uses various platforms or avenues, including social media, to educate the public about consumer law.

We've got a big Indigenous education area and team that has developed things specifically for Indigenous peoples. [For instance], there's a radio series about buying a car and getting a car repaired which has interviewed dealers and Consumer Protection and has stories from consumers. A lot of them were up in the Kimberley, giving their stories about buying cars and then getting them repaired, and that's also got a Facebook link to it. That one's been one of the most recent ones that we've done ... as a way to get information out that's not in booklets or pamphlets. We've got a Tenancy App... Yeah, we're looking at Diva Chat and how we can perhaps have a presence there to reach people. A lot of it is just the old school way of sending out a warning to all communities and you put it on a notice board or sending it out to people to share it out, but that's more by email than actually to social media. So, I think definitely there's a lot of potential in new ways of getting information out too. So, we do have Facebook and Twitter and that sort of thing too. **(Statutory Authority staff)**

¹⁰⁶ Information relating to 'yarning about the law', an initiative introduced in 2012, is available in the LAW A Reconciliation Action Plan 2013-2014: see LAW A (2013) *Reconciliation Action Plan*

5.4 Complexity of Indigenous legal need

Compounding of legal and non-legal need issues

It is generally accepted amongst stakeholder organisations that Aboriginal people are likely to have more than one legal problem that they require assistance with at any given time. Criminal law issues can link in with civil or family law matters, and vice versa, as discussed above, and civil and family law problems often multiply as well. There are numerous examples of these phenomena throughout this report: eviction can be connected with debt, social security and child protection issues, for example. This all creates complexity of legal need for Aboriginal people.

With civil, you'll have a number of subject areas rolled into one. So they might have Centrelink problems and housing problems and employment and discrimination. **(Legal Aid staff)**

We have different colour files for different areas of work. It's not unusual for the client to have a few different coloured files. **(Legal practitioner)**

Need is also rendered complex by the *non-legal* issues people are facing personally or within their family unit, including substance abuse, mental health and disability. The latter type of issues can both cause and be exacerbated by civil or family law problems, as well as making it much more difficult to address relevant legal matters. Non-legal issues therefore present as a barrier to accessing justice.

Most of the [tenancy] cases we all have are to do with – overcrowding's one, but certainly the big two for us have been family violence and mental health. Mental health is a really big thing and intellectual disability is a really big issue not only in the Aboriginal community, but also in the broader community. Intellectual disability, mental health and family violence are the causes of most of the evictions. **(Legal practitioner)**

The make-up of cases here is that there's more high conflict stuff, there's more substance abuse issues, so that leads to a lot of family breakdown. There's obviously a higher number of people involved in criminal matters, or defending criminal matters, or they've been incarcerated - and the issues that will go with that... High conflict, substance abuse, parents often in jail or at risk of going to jail or just coming out of jail so that has a big impact on contact with their children. **(Indigenous Legal Service staff)**

We tend to live in big groups. You know, mother and in-laws and – it's hard, because we're family obligated. And having that education of living in two worlds where – with me now, I just live with my kids and my mum. I don't worry about my extended family because of the fact that I'm not going to look after them, you know. They can look after themselves. But back in the day... I would have been obligated to look after my mother, my grandmother, my uncle, you name it. But this day and age, I can only afford to look after me and my children and my mum. So in that little family – in that big family, there's all these other issues. Everybody's having issues. So can you imagine the overload... you know what I mean? There could be – there's alcohol, substance abuse. People could be angry, people could be – they're unemployed, there's no income coming into the house. There are arguments about contribution to the house for food and bills being paid. So all these things start happening. Until they all work together and do a household budget and go and seek help and get rehabilitated, whatever it might be, there's always – people going to be on the street and going off and getting into trouble. **(Indigenous community organisation worker)**

There was some discussion of how best to deal with this complexity of need. There was a sense that services offering support and assistance need to work as collaboratively as possible in order to cover the various issues arising for clients, as the following comment suggests (see also Section 5.6: *Services working in collaboration*).

You provide a bit of a safety net, because if you don't provide that little bit extra, sometimes they just drop off the radar, or they can't be bothered participating or they give up or they just think there's no point. So you might have a reasonable case, or you might really be able to help this person and help them with their dispute, and make progress. Just link them in maybe with some other services or give them a little bit of extra time so that they can remain a little bit hopeful that things will improve. **(Indigenous Legal Service staff)**

As noted, however, there are significant gaps in non-legal support services in more remote locations, which is likely to give rise to particular difficulties in resolving legal need, given its interconnection with non-legal need. The following comment from a Legal Aid lawyer illustrates this point very effectively.

Mental health and disability services are lacking [in the Pilbara]. Given the alarming rates of FASD (Foetal Alcohol Spectrum Disorder) in the community there really appears to be limited resources for these people and their carers. In addition, families who support a family member suffering from mental illness are often isolated and unsupported, suffering their own housing issues, sometimes as a result of an unwell family members behaviour, such as criminal damage to a Homeswest property, resulting in a strike. Obviously people suffering with mental health issues and undiagnosed disabilities like FASD are living in a region where there are really limited resources for them and limited supports.... There is no local facility for persons suffering from a crisis in their mental health. They either need to go to Broome or Perth, a long way from home, a long way from country and their family. Often a person's decline in mental health or health generally is exacerbated by their homelessness, lengthy waiting lists for accommodation, which again results in increased contact with the criminal justice system. It really is a nasty cycle. Without those basic supports, people suffering under a mental illness or a disability are simply not aware of their rights. This in turn is a whole group of people that are just not accessing justice. **(Legal Aid staff)**

We also note that a service such as the Indigenous-specific Jacaranda Community Centre in Perth may tackle a range of issues under a single roof, combining quasi-legal and non-legal service delivery. Jacaranda, for instance, has assisted many Aboriginal people with applications for Stolen Wages compensation, social security matters, housing disputes and financial counselling, as well as providing support in Children's Court, computer training, emergency relief and other similarly practical forms of family and individual support and consumer credit education.¹⁰⁷

Language & literacy

Language and literacy issues also feed into complexity of need. These issues can both cause legal problems to occur *and* can also present as a significant barrier to effectively accessing justice. Having to fill in forms is one example of the latter.

Definitely literacy is an issue, more so now with the younger ones. I think they can read, but it's the understanding. They're not understanding. They don't understand what the implication

¹⁰⁷ Visit the Jacaranda Community Centre website: <http://www.jacarandacommunitycentre.org.au/>

is. They don't understand. You sort of say, "Right, now you've got this much money coming in and you've got this and this and this going out"... They just have no understanding. I mean most of them have only just left school. For me, the one's I see that are struggling, a lot of them have had a really disrupted schooling. Because they do move a lot, don't they? They support each other. "We're just going up to Brookton for four weeks because Auntie's sick..." So they all go and then the kids don't go to school for that four weeks. **(Indigenous community organisation worker)**

Language is a big issue for a lot of people where English is their second language. There are no interpreters available really to communicate with people, so you've just got to do the best that you can. It's also about education. Like if they can't read or write then – not so much the kids, the people we deal with, like the adults... If you can't read what you're signing and you just get told to sign stuff, you just sign it. **(Indigenous Legal Service staff)**

Language is a very big barrier... So, for example, with these driving matters, there are no driving instructions in any Indigenous language in WA, so that makes it very difficult. Aside from, I suppose, not being in the right language, it's also difficult English. So these driver booklets that people have to read and be examined on are often in – perhaps they're not that complicated to English speakers, but it's not in English simple enough for our clients to often understand. So yes, I definitely think language. **(Indigenous Legal Service staff)**

I think there are barriers around language. Because even -- the difficulty I have, and I'm very strong on the use of interpreters and very keen to promote the use of them, but the difficulty I have in my head, and I think lots of the lawyers have, is where language and literacy and academic literacy and education all interconnect. I really do think it's a really difficult exercise, sometimes, to determine with your client whether it's a language barrier or whether it's more to do with literacy and education and just simply not having the high English. That's what all the locals will call it around here. They'll say – 'I don't know what they were saying. They were talking in that high English.' **(Legal Aid staff)**

Culture

Culture also increases complexity of need. Services *must* have capacity to work responsively with culture.

Culture is also another part of it. There's cultural issues in terms of the ways in which service providers should be engaging with communities and aren't. They're not doing it *not* because there's no desire for them to, but there's not enough provision of support to provide people and service providers with enough competent cross-cultural training. So there is some cross-cultural training generally that's provided. But it's usually not sufficient. **(Indigenous Legal Service staff)**

Cultural training son... When they come into certain areas, they can have cultural training with the community. Most come fresh out of uni, you know. **(Geraldton Men's Focus Group Participant)**

Understanding what effective cross-cultural communication means is part of this.

Law is very white middle class in how it's taught. We have up to 20 volunteers come through here from universities. The whole way the law is structured, you have to get the facts,

you have to interrogate the person to get the facts. We keep trying to educate our volunteers that it's not about interrogation to get the facts when you're dealing with people from different cultures. It's about learning different communication styles. So for Indigenous people it's not just the mistrust, it's almost like you're speaking a different language. You can see them sometimes, they come in and they get this interrogation. How do you answer that when your whole style of communicating is so different? **(Legal practitioner)**

With some cases, yes, because of the shame factor they do need an advocate. Because some of them are not very thing with communicating with [non-Aboriginal people] – and then there's the issue of the traditional side, with Aboriginal people. That women talk to women, that thing. Not talking to a woman – man won't talk to a woman. Depends on the personality on the other side of the table. **(Indigenous community organisation worker)**

Well, the big key issue with any Aboriginal people is - yarning is just a universal word. You have to sit down and talk. You can't go in and say "Right, let's talk about housing." You might start talking about something totally different, and then it comes up "I'm having trouble with Homeswest. Do you reckon you could help me?" You say "Well, I can't help you but we can find someone who can." That's what we've been trying to do. **(Community organisation worker)**

I've had a lot of non-Indigenous people coming up to me and asking how to talk to Aboriginal people... you sort of get there and you think "Oh, here comes an Aboriginal. How am I going to act?" **(Community organisation worker)**

5.5 Engaging with Aboriginal communities

Community engagement with non-Indigenous services

Non-Indigenous legal services recognise that their level of engagement with Aboriginal communities, generally, needs to be improved. This is, to some extent, a resourcing issue.

I think CLCs engage to the best that they are able to. It's the resources that are required to engage. **(Legal practitioner)**

Some of it's about engaging communities for them to feel confident about coming in as well. It's about the benefit of having Aboriginal field officers and so on... Some of the challenges that we have [are]... getting the client to come to your office, and we're not well placed to go out and find out why they're not here... Our duty lawyer services in the child protection context and in the family law context get clients because we're actually in the place (court) where they need to be for whatever it is that's going on and we're engaging them there. But there's some work to be done. I think that is a real challenge for us in terms of understanding, and it's working okay in the context of contact at court, but it's... about engaging with communities so that the court isn't the only place that you see them. **(Legal Aid staff)**

It is strongly suggested that in order to determine what needs to be improved and how, organisations need to truly listen to what *Aboriginal people* indicate will work best. This sets the groundwork for genuinely effective engagement.

I think, largely, that's the biggest problem. Is that a lot of consultation occurs with Aboriginal people, but nobody's listening. We need to listen to what it is that's going to make a difference. **(Indigenous Legal Service staff)**

As just one example of this, there might be more opportunity for mediation to resolve civil/family law disputes, but mediation on Aboriginal terms.

There's always a place for mediation (of disputes). Historically Aboriginal people used to mediate very well and were very diplomatic when it came to issues in the community... I think it runs very well when it's understood and runs effectively parallel to the legal process... It also has a place in provides people with closure and peace and empowers people to... feel confident in dealing with their own issues when confronted with them. **(Statutory Authority staff)**¹⁰⁸

Non-Indigenous legal services may be seen as not available to, or working *for* Aboriginal people.

I think the way that the legal service is perceived in the community [is a barrier]. We are still regularly referred to, by Indigenous and non-Indigenous people, as 'white fella legal aid'. Probably on a fortnightly basis when I'm out on circuit court, particularly, you'll have people say you're from white fella legal aid. Or they'll be surprised when I'm representing them. They'll say that "Are you that lawyer from ALS?" "No, no, we're Western Australia Legal Aid". The ALS is Aboriginal or black fella legal aid. Although we do have a significant number of Indigenous clients, I think that would create a barrier to some clients coming to us for assistance, because they perceive it as, "That's where white people go. I won't be welcome there". Or "They just don't provide a service for us". **(Legal Aid staff)**

Some CLCs and Legal Aid offices, however, do have a fair proportion or sometimes an overwhelming majority of Aboriginal clients. Though this is not always accounted for by the location, being based in areas where there is a large, local Indigenous population certainly helps.

Well, we provide a service to all clients. It can be Indigenous, non-Indigenous. The community is almost completely Indigenous. So I would say 98% of our clients would be Indigenous. **(Legal practitioner)**

We obviously are the main provider and the main provider of civil law services in the Kimberley. We're probably the biggest legal service in the Kimberley now, in terms of employment, numbers of lawyers and stuff. Civil law is our – well, as you know, it's our area... and 96% of our clients are Aboriginal... It's the disadvantage [that leads to so many Indigenous clients]. **(Legal practitioner)**

At Fremantle, we get a lot of Aboriginal clients. About a third of my clients would be Aboriginal - some referrals, some walk-ins. We also do financial counselling and welfare rights. There's probably about the same proportion. So they're really good at accessing the service. Like, the people know about it. **(Legal practitioner)**

¹⁰⁸ National Aboriginal and Torres Strait Islander Legal Service (NATSILS) (2010) *Joint ATSILS Proposal to the Commonwealth Attorney-General for the Establishment of a National Aboriginal and Torres Dispute Management Service*: <http://www.natsils.org.au/portals/natsils/Joint%20ATSILS%20National%20Aboriginal%20and%20Torres%20Strait%20Islander%20Dispute%20Management%20Service%20Proposal%20Nov%202010.pdf>

Legal Aid in Kununurra has high numbers of Aboriginal clients in civil and family law areas.

I would estimate it would be, I think, at least 95% of our clients are Indigenous... with civil, I think it would probably be a little bit less than that, but not too much. With family, it would probably be significantly less than that. **(Legal Aid staff)**¹⁰⁹

This is due to a number of factors, including their location - but probably also, in part, they pick up civil and family law matters in Aboriginal communities through the criminal law work they do in those communities: "Quite a lot of our civil and family stuff will come out of criminal stuff, as well". This particular office does a lot of criminal law circuit work alongside the local ALS. As they are already engaged with Aboriginal people charged with criminal matters, the Legal Aid lawyers can also then assist with civil or family law problems arising - problems about which those clients may not have ordinarily initiated contact with a lawyer.

The MOU in Western Australia between ALS and Legal Aid is, essentially, that we will assist when they are at capacity. I suppose the assumption we make up here is that the ALS is at capacity every day [so we share circuit work]. So when we go on criminal circuit, when we go down to court, we just generally split the matters that are there... It's quite unusual, I think.... I haven't encountered it. I used to work for [the ALS in the NT].... The Legal Aid lawyer in Katherine never, the only time I remember him coming out on circuit is when we had a conflict, so we all had a client each in a trial. Co-defendants. I think Hedland and Broome both have pretty similar practices to us, to go on most of the circuits. But I think, traditionally, Legal Aid here was pretty similar to other states where, essentially, you only go out if there are non-Indigenous people or if they request you for a conflict. Well, I think traditionally, [we are seen as 'white fella legal aid'], that's probably right. **(Legal Aid staff)**

Sometimes there might be a higher proportion of Aboriginal clients because of the area of law in which assistance is being offered. So housing advocates may be more likely to have contact with Aboriginal people because it is such a huge area of Indigenous legal need. As one tenancy focused CLC states, "[Of] our open files, our ongoing casework and representation- probably about a third to half are Aboriginal people".

What the following comment suggests, too – and this is an important point - is that it is certainly not just about having or not having sufficient resources to actively engage. Services have to consciously work and work hard to build their Indigenous clientele, even with funding for this purpose.

[Some CLCs]... get funded for various Indigenous programs. Like I think Gosnells has got the Indigenous Anti-Violence Program... And because they're also placed in an area that has a high Indigenous population they're used by [Aboriginal] people. They've usually had, for a long time, a pretty good reputation for working well with Aboriginal people. But obviously, they've *tried* to do that. You know, it works both ways. You've got to be – you've got to work at that, as well, as a service. So I think, you know, if services want to make the effort, they can do it. There's no real excuse. But there's really *none* that shouldn't be *not* able to do it. **(Indigenous Legal Service staff)**

¹⁰⁹ Legal Aid in Kununurra provided specific data about Indigenous client usage of their services. For the July 2012/June 2013 financial year, 100% of this office's civil and family law grants of aid were for Aboriginal clients. Between 62% and 84.3% of civil law services (ranging from duty lawyer services to advocacy) were provided to Indigenous clients. Further, 83.4% of State family law services were provided to Aboriginal people. 100% of grants of aid and 97.4% of duty lawyer services in the State 'Care and Protection' category were for Aboriginal clients. Email, Matt Payani, Legal Aid Kununurra, 7 November 2014.

Mistrust of non-Indigenous services, government agencies, legal services

Lack of engagement with non-Indigenous legal services, at least in part, is seen as relating to mistrust or fear of non-Indigenous services. Speaking of non-Indigenous organisations generally, one Indigenous legal service provider staff member states, “Look, seriously, a lot of the Aboriginal people will not go to non-Indigenous services”.

While there are a lot of Aboriginal service providers (staff), Aboriginal people still have to get past the gate. Most people on the gate are white. So they’re walking into like white organisations. It must be terrifying for some people. **(Community organisation worker)**

Well, what they feel is if they go into anywhere, that there’s still a big issue with the white community taking over. You know, a lot of people still got open scars, but not necessarily theirs. It could be from a couple of generations back, but they’ve just held onto it because the family unit’s been affected. They might say, “Oh, someone had a problem with ALS. I’m never going to go there because they’re all”... They think they’re all white now.... Whereas it’s more about, what we’re trying to do is teach them - okay, it’s time to stop this cycle... Work out what it is you want. Find the way to say it. Realise that we’re all equal.

(Community organisation worker)

As this last comment suggests, these emotions (fear, mistrust) relate to negative interactions with mainstream society, especially government agencies, over generations and into the present time (in housing, police or child protection, for instance). This leads in turn to disengagement with anything like a government service.

Indigenous people, in particular, have – and the Royal Commission is a good example - been failed by government institutions in multiple ways until very recent history. People can argue that it continues to fail them. That’s probably a more contentious point. But we can definitely say until the 1970s, institutions were seriously negligent in relation to Indigenous people. We can see that with all the child sexual abuse that took place in state institutions and in non-state institutions. The issue for me is that that means for any Indigenous person.... someone’s uncle, auntie, mother or father who is either a Stolen Generation person or was somehow in state care, they were then abused or they were mistreated. There’s generations of cyclical trauma that follow that. So I believe I can’t overstate enough how much the mistrust against government service providers plays into a lot of the issues in relation to Indigenous peoples. So social services and health services and all of this – there continues to be a lingering mistrust of anyone in any official capacity in all those areas. That’s completely understandable. I suppose, the community can’t possibly think that providing a relevant service is enough. The community has to be put in a position where that mistrust no longer exists. So, backwards thinking on issues like driving matters or housing matters only does a disservice in extending this distrust and extending the cyclical breakdown within these communities. There needs to be a real forward, progressive way to think about these issues. Because all it does is it just leads into this mistrust between institutions and individuals in the Indigenous community generally. **(Indigenous Legal Service staff)**

An unwillingness to engage sometimes - so an example would be the intergenerational mistrust that’s quite fundamental in a lot of Aboriginal families now; not engaging with child protection at all, so not even willing to discuss anything, go to a meeting, entertain a phone

call, anything like that. And that can extend into the courts, so going to see the Magistrate about anything even though that Magistrate might actually help you. **(Indigenous Legal Service staff)**

Problems around engagement in this context extend to legal services. Note, this comment was provided by an ALS solicitor, so these issues are not solely applicable to non-Indigenous legal services.

We're still part of, essentially, a foreign system imposed on an Indigenous people. So it doesn't matter how culturally appropriate I am, I'm still part of 'the other' for them. That other has been oppressive for 240 years. So it's completely understandable why I'll walk into a community and people will put up barriers. **(Indigenous Legal Service staff)**

Organisations often recognise these difficulties and may attempt to adjust their service delivery accordingly to improve engagement.

Sometimes I go through [local] service providers. But then it might be where I've been invited to go to their home for a cup of tea, and that's when more stuff will come out. So I really try to make it an environment that is appropriate for the [individual], and for them to feel comfortable in explaining their situation, you know - because it can be very overwhelming sometimes. So I'm very flexible in those areas. **(Statutory Authority staff)**

A case that I'm working on recently involves a lady in Meekatharra. She had this [stuff] happen to her and had no idea where to go. The only way the other lady knew where to go was because she came down here on a conference. We were at a conference. But then even to meet the other lady - it was a matter of the other lady, who worked for this organisation, having to create that trust and then for me to come in. You know, so it is difficult. **(Statutory Authority staff)**

Engagement with the law and legal system generally

There's a lack of faith in the legal system. Such high staff turnover, different face all the time and they have to tell their story all over again. **(Legal practitioner)**

Beyond observations about particular shortcomings of service delivery, there is a strong sense that many Aboriginal people are fairly reluctant to engage with the legal system *in general*. Civil and family law issues, in particular, often require a person to be sufficiently resourced and motivated to initiate or respond to a problem or dispute. Criminal matters, on the other hand, effectively compel a person to engage with the legal system - and Aboriginal peoples' experience of the law, lawyers and courts will generally be around negative intervention such as this.

It's just a perception, I'm not sure how correct I am in seeing it that way, but I think quite often for Aboriginal and Indigenous [people] the courts are seen as a one way street. It's when you're accused of doing something wrong, that's where you end up. It's not so much seen as a place for, "Well I need something done, because something's been done wrong to me and this is my right, and this is will get that outcome". So I think it's been seen from a negative way as opposed perhaps to as a way where you can get your rights acknowledged. **(Statutory Authority staff)**

Focus group participants in Geraldton, for example, were asked where they get help for the issues being discussed. Had they ever been to a lawyer for such problems? "Well, you could but they're not

going to do much about it”, replied one man. The lack of contact with lawyers or the law around these types of matters was explained as follows.

It seems to be steps you think you’ve got to... To get here, you’ve got to get all these steps done and then you look up there and you think, why bother? **(Geraldton Men’s Focus Group Participant)**

One community-based organisation also identified a sense of exhaustion or resignation around legal issues and noted the impact of this on the way relevant problems are responded to.

Literacy, numeracy, geography are all barriers. Then, I think there’s a lovely feeling of ‘ignore it, it might go away’. Which, again, doesn’t help anybody anywhere... You can sort of try to explain to them, “Well that only makes the situation worse, because it’s only going to get bigger and bigger”... I think it’s the constantly -- you know, some of them who are a bit more tenacious. They just feel that they are hitting their head against a brick wall all the time. It just goes on and on and on. They can’t see an end to it, can they? There’s just no end to... They just give up. Half of them say “Look, I’m just going to do some time in jail and that’ll wipe my fines”. A lot of them say that. **(Indigenous community organisation worker)**

Aboriginal staffing

One fairly sure-fire way of improving engagement, and of lifting numbers of Aboriginal clients, is the employment in a service of quality Indigenous staff. Conversely, not having Aboriginal staff can make engagement difficult. No one goes to CLCs, claims one woman in the focus group in Perth, because “There’s no faces there that any blackfellas know”.

You need someone local from the community out there, who will know, and who you can trust. **(Perth Women’s Focus Group Participant)**

Having more Aboriginal staff in there... Black staff, yeah! Proper Noongars, not them coconut fellas! Grassroots people, ones that have got a lot of common sense... You just want to have a yarn with them too. You don’t want to be, like, looked down at. **(Perth Women’s Focus Group Participant)**

You want to be able to go into an Aboriginal Legal Service, which is an Aboriginal service. You’d expect to see a blackfella at the counter ready to serve you. **(Perth Women’s Focus Group Participant)**

Culturally, we’re whiteys mostly, although we do try to employ Aboriginal people. I think about half of our staff in Kununurra office are Aboriginal people. **(Legal Aid staff)**

Aboriginal staff can create a ‘bridge of trust’ for clients, and a clearer pathway to relevant contacts within a community.

Absolutely, having Aboriginal staff is so important. Yes, I think it’s important and it’s empowering, as well, for the community. Because when they have a lawyer come out sometimes – I mean, if they see an Aboriginal person come out or an Aboriginal field officer come out with the lawyer, I think it gives the community comfort ... At the end of the day, lawyers are still Western trained professionals... in my role, even if I’m there to support them, I’m there to support them in engaging with institutions that make no sense in their day-to-day life. The driving example’s the perfect example. If I can drive perfectly well and the only

reason I don't have an official licence is either because I don't have my birth registered, I don't have my birth certificate or because I don't understand the driving instruction booklet because either it talks about traffic lights and I haven't seen a traffic light in my life, even though I've been driving all my life, or the actual driving instruction booklet's too complicated... The driving instruction centre's maybe so far. None of these make sense for me because it doesn't relate to me driving in my day-to-day life. So me, as the lawyer, even if I'm on their side, I'm still representing a system that's really ridiculous for anyone who lives in a remote area, you see. So for that reason, it's so key for there to be a field officer or an Aboriginal liaison person, because that person, I believe, is ultimately creating that bridge of trust. Where the system that has failed them for 240 years, there's someone that's saying well, look. This is part of the system that you're part of, whether you like it or not. Let's try and engage you with the system so that system actually meets your needs rather than fails you again. **(Indigenous Legal Service staff)**

(Talking about a particular Aboriginal staff member at Legal Aid). He was formerly at ALS here for six years, five years. He's been here for a year, almost a year, yes. Look, his local knowledge and local connections - it's just amazing. He certainly makes it easier contacting people and knowing who to go to and all those kind of things. I think it's probably assisted in that regard cause people who knew him when he was at ALS, lots of them have wanted to follow him over here. It's probably assisted in busting that perception by some people that it is 'white fella legal aid', because now he works here... I think that really has helped us. **(Legal Aid staff)**

I think the gaps are that there are not enough Aboriginal workers delivering those programs and services. [Named Indigenous worker] is a big influence at the courthouse. A lot come to her. Even though she just does the Indigenous family violence, but they do ask her for a lot of help. **(Legal Aid staff)**

Often having a male *and* a female Aboriginal worker is important, as far as possible, so as to provide for clients of both genders.

A prime example I can give is that the ALS has been funded to provide some kind of gateway support for the Royal Commission into Child Sexual Abuse. So we've got one employee, she's a female, who finds it - we've had clients who have called from prisons, men who have been sexually abused. Like I had someone who - I broke down when he told me his story. It was so overwhelming. He would've been best speaking to an Aboriginal man. An older Aboriginal man would probably be ideal for him to speak to. The only option he had was to speak to me or another lawyer or a female Aboriginal field officer. He would not be able to get out his story to her. The cultural barriers between them that would - aside from the normal cultural barriers. Any two people would find that gender divide difficult to breach. So it's not always just culture. It's the kind of basic gender issue that might be across the community. But it was particularly difficult for him. Our field officer has had some real issues speaking to men, in particular. **(Indigenous Legal Service staff)**

One Indigenous legal service provider emphasised that just talking about employing Aboriginal workers was not enough. There needs to be firm and formal commitment to do so at an organisational level.¹¹⁰

¹¹⁰ LAWA (2013), *Reconciliation Action Plan*

Saying you need to employ an Aboriginal person, an Aboriginal worker [is not the end of the story]. What's in your strategic plan? If it's not entrenched in there, you're not going to go anywhere - because you avoid it. **(Indigenous Legal Service staff)**

5.6 Services working in collaboration

As briefly noted above in the context of meeting complex needs, effective collaboration between services is a crucial component in improved Aboriginal access to justice.

Referrals between legal services

One area where collaboration is especially important is in the referral process between legal services, given that all services are limited in what they can do for individuals. Aboriginal people generally do not know where to start when dealing with civil or family law issues so may make initial contact with a service that is not able to help them. In these and other cases, a warm referral is required. There were mixed opinions about how well referrals are working at present. Note that referrals involve both legal and non-legal services in the comments below.

The remote areas are unique because I think there's more of the willingness to work together because of what you have to deal with. **(Indigenous Legal Service staff)**

Probably because of the location of our service, we don't have a lot of foot traffic... But we do get quite a lot of referrals from Daydawn, which is a Catholic advocacy service.¹¹¹ The vast majority of their clients are Aboriginal so the vast majority of their referrals are Aboriginal. **(Legal practitioner)**

I'm the tenancy solicitor. I've also been doing some wills and estates. Whatever comes through, I will try and do. We try and have a policy where we'll always try and help someone. If we don't offer the service, we'll always try and refer them on. **(Legal practitioner)**

[In terms of whether referrals works to fill gaps] it's hard to know... We do a lot of referring of people out to other places, and that could be a capacity issue or conflict's a big problem, because you may have acted for the other party at some point, but we have a reasonable relationship with all of our, with other agencies... if you need a partner service to take on a caller, we've got a huge list of them. **(Indigenous Legal Service staff)**

The problems that appear to arise in this area include that referred clients are not then connecting with the next relevant service.

Even just finding out a bit more about ALS referrals and what's happening, if they've got stats about how many they are actually referring out when there's a conflict and where they're going because it sounds like they're not coming here. I don't think they're coming here. It's not as if we're knocking them back. I don't get a sense in the grants area that that's happening. **(Legal Aid staff)**

Services also suggest that they need to know more about what type of work other services do so that referrals are made appropriately. People are understandably frustrated when they are sent to the wrong place, particularly if that occurs on more than one occasion.

¹¹¹ Information about Daydawn, based in Perth, is at <http://daydawn.org.au/>

I don't know how many matters are being referred to us. I mean, it could be – you know, now that I reflect more, it could be that the ALS doesn't know the extent of the in-house civil practice and so they don't necessarily know what's appropriate to refer to us. **(Legal Aid staff)**

There's a lack of warm referrals too. If you walk in and it's not the place, and then just being told, "No, you have to go here"... Then when you get there and say – "that organisation said no, you have to go there first". Because it's so – especially with legal matters, it's so wordy and it's so complex that it's confusing. So, you know, it's no wonder they get angry. We get them rock up here after they've been standing... and we go "No, no, you have to go back". They just get angry: "I've been to three places now, and you're going to send me out the door. All I want to do is feed my kids", or whatever it is. We make calls now, from here though. Like, because the courthouse will send people here that clearly had an easier pathway. You know, so then we get back on the phone with the client here. Like we try to do that legwork now to make sure the next place I go to is going to be the right one. It makes a huge difference. People just calm down and they say, "Oh thanks. That's all I wanted was just for you to make it clear". **(Community organisation worker)**

Having greater capacity to follow up what has happened with a referral is also seen as beneficial, but this doesn't always happen.

A lot of people just not knowing where to go and they come in – like when you're dealing with one issue as Money Management, there could be five other issues that they have. Then you hear about it and you think - okay, I'll get you in contact with, you know – it could be Kimberley Legal Centre, because they can help you with financial counselling, they can help you with a solicitor, they can help you deal with those issues... So anything that comes to us that's out of our depth, we will then refer. I do follow-ups where I find out how that went. Feedback from the financial counsellor... where I can tick off - yes, my client has got the assistance she asked for. So it's a full approach, yeah. **(Indigenous community organisation worker)**

Relationships between legal services

One stakeholder felt that referrals do seem to work well – but because of connections that have been established between individual practitioners, rather than as a result of more formal relationships developed between legal services. There was a strong sense, for some, that these relationships require ongoing maintenance and/or that further effort needs to be expended to progress them.

The office has an MOU with Legal Aid, but we don't seem to have much engagement... We don't seem to have much contact with the other services at all. **(Indigenous Legal Service staff)**

And sometimes organisationally it doesn't work very well [between ALSWA and LAWA]. For example, I've got contacts, so if a care and protection client comes in but there's a conflict, I know straight away I can't help them, I will ring a certain person within Legal Aid who I know is a duty lawyer who does Children's Court work and say, "Can you see this person?" So I send them directly to that person. There's cooperation on an individual level between practitioners and people at the lower levels but organisationally there can be a problem. So you don't have a lot from management, I could be wrong but you don't have Legal Aid and ALS and AFLS and all the CLCs and all get together and say, "Let's

coordinate how family law referrals are going to work, who's going where and what client goes where, and actually manage how the referrals are gonna work" so that everybody in all the organisations are aware. There's no coordination like that. **(Indigenous Legal Service staff)**

Others felt that legal services were working well together in this broader or more formal sense, including through established MOUs or specific initiatives such as the Country Lawyer's Program.

We've had some contact lately in relation to some Stolen Wages work. Kimberley Legal Service has been engaged and gets involved in doing things with us and other legal services, trying to get organisations getting together and taking about it, especially since it has got such a short time-frame. We were pretty outraged about it as well. **(Indigenous Legal Service staff)**

We have an East Kimberley Legal Services Network. We try to meet every six to eight weeks. It doesn't always happen, but we meet regularly. We discuss all of these things. We discuss what the legal needs are in the community, anything - concerns about the court itself or other legal needs. I think it's so important to have a forum like that to discuss those things. Because if you don't have that forum, you just don't know. So I think that's been useful in assisting the services to try and target the needs. **(Legal Aid staff)**

Some stakeholders had positive comments in terms of connections between the legal assistance sector and private practitioners, but in general not many Aboriginal people appear to be engaging with private lawyers around civil and family law issues.

I think we've had more contact with private law firms in relation to pro bono services. That's been pretty good. We've got some that work for us depending on what we've got. A lot of ... criminal injuries... law firms [will] take on at a certain point.... With the Stolen Wages work as well, we've got a few pro bono legal services also assisting and going out to the regions with us. They're donating funds to organisations that can go and do that work as well.... So that's been really good. **(Indigenous Legal Service staff)**

There's a law firm. It's eastern states, but he's also Perth. Most of the Aboriginal people up here know him. So he works with me. I say 'with me', because if somebody comes in here, they can use the phone to ring him or if he rings me, he faxes stuff through or it's posted, whatever, any paperwork. So you can say I'm in between. But I'm in between for quite a few organisations and different people dealing with this type of thing. **(Indigenous community organisation worker)**

'Non-legal' need and non-legal services

Access to justice is not solely about contact with legal services and the law, a point raised previously. Firstly, many *non-legal* services in WA are working hard to assist Aboriginal people with civil and family law related issues, though not in a formal legal capacity. Government or quasi-government agencies such as WA's Department of Commerce or the EOC WA are also trying to engage with communities around these issues. Financial counsellors are dealing with credit and debt and a range of community-based organisations offer court support, fill in forms and/or provide information about the law and legal processes, for example.

Of note, *non*-legal services, particularly if they are community based and Indigenous-specific or focussed, are probably more likely to be successfully engaging with Aboriginal communities than most legal services. Given this, they are well placed to be identifying and responding within their capacity to civil and family law problems in those communities.

People in non-legal services often have much more engagement with community so there is that level of trust being built up. The lawyer gets the facts... but there's no actual communication back to the individual. So the individual might think their case has gone into a black hole... Often housing advocates and financial counsellors have much more immediate contact with clients. **(Legal practitioner)**

Positive outcomes for Aboriginal clients are most likely if non-legal and legal services work cooperatively to respond to civil and family law need: legal services with legal services, non-legal services with non-legal services *and* legal with non-legal services.

We have to work with ACCC, ASIC. ACCC, ASIC and Commerce, well, they're your three major agencies right there [around consumer issues]. Whether it's to do with traders, finance or consumers. Then, in all of that comes discrimination. So the EOC is part of that as well. So those four agencies, I think, are really key for us, working across the board. That's why we work in partnership, nationally, on different projects. But it is very, very important. **(Statutory authority)**

The ILNP has seen some great examples of effective relationships between various services in the different communities visited. Non-legal services, for instance, might be a good source of referrals for legal services. Legal services can assist financial counsellors, for example, to recognise legal issues (and to refer them on for legal advice, as appropriate). Financial counsellors might also work with a client on budgeting prior to their contact with a lawyer.

Generally, I'd do income and expenditure statement and write up what, you know, I think the best I can then refer them to Legal Aid. So that when they get there, their time isn't totally wasted by telling the same story that they've told me. You know, at least they have - there's something concrete there to hand over so that they can possibly get a better... My trouble is with Legal Aid, there's not enough of it. **(Indigenous community organisation worker)**

We often are involved in educating financial counsellors so that they can pick up [legal issues]. And it's about them recognising they're out of their depth and need to get help. **(Legal practitioner)**

Probably the majority of our civil family law work is from Kununurra. But we have pretty good relationships with the other agencies, such as the financial counselling agencies in Halls Creek and Wyndham. They'll refer matters to us or Consumer Protection often refers matters to us. We do field quite a few calls from people in the communities as well, and we'll assist them where we can with the civil stuff. **(Legal Aid staff)**

I'll advocate for the client if they want me to do it. But otherwise, I will just send them to the lawyer and work from there. If the lawyer wants me to be involved, then they'll get in touch with me and we'll work it from there. But generally, I'll send the client to the lawyer. **(Indigenous community organisation worker)**

There was some discussion amongst stakeholder organisations about who should be taking on what might be categorised as ‘quasi-legal’ work for clients. This might range from more basic form filling, given problems with literacy in Aboriginal communities, to making submissions for a working with children check. There is a significant gap in terms of service delivery around this type of work. As one community organisation has said, they take on some of this type of work as there is no one else to do it.

We tend to pick up a lot of paralegal or form filling stuff because there’s nowhere else for them to go to. **(Indigenous community organisation worker)**

Legal services report that they also will assist clients with this work, out of necessity.

I haven’t worked at Legal Aid or anything else... but I think it probably is much more of a unique service [here], in the way that we do need to deal with our clients to work out what they actually do need. And you do the extra mile, you assist with their non-legal aspects as well, just so you can get things resolved or else our clients won’t have anywhere else to go. **(Indigenous Legal Service staff)**

You do get a lot of people who want you to do things that aren’t really, it’s not really a legal thing but they just don’t know how to do it themselves. So lots of issues to do with where you can possibly go to get some form of advocacy *or* just to do basic things. That is a big issue. **(Indigenous Legal Service staff)**

Stakeholders were asked whether they thought it was best for legal services to take on such work or to engage more effectively with other non-legal organisations that might assist in this regard. A number of legal service providers thought that servicing this type of need *within* a legal practice (but probably by non-legal staff) was ideal.

I think ideally, and perhaps I’m too much of an interested party, but I think, ideally, those services would be internalised within legal services. But what you would have is you’d have people like paralegals. Because what happens is those services eventually – not always, but often times - they end up having a legal aspect to them where they might need some basic advice. Then the rest of it’s just letter writing. So I think, ideally, the best system would be if you internalised those services within a legal service. But even if it wasn’t internalised, yes, there’s a need for services that aren’t strictly legal but might have a legal component to them. Or even if it’s not legal... So if you need to respond to – a very good example is, say, someone’s doing a working with children check and they’ve had a blemish on their record that isn’t sexual in nature or anything like that. Let’s say X had an assault charge 10 years ago. It’s probably not serious enough to warrant them having a negative notification in their working with children check. They need to make submissions. It’s not strictly yet a legal process, because they haven’t really asked – they haven’t made any kind of notification against them. There are very few people, legal services that will be able to do that letter writing for them. In WA, there’s the social inclusion unit at Legal Aid. ALS used to have an advocacy unit that was disbanded because of lack of funding. I don’t think a lot of the other CLCs would do that kind of work. Essentially, because there’s more pressing matters that are legal. But what ends up happening is that person might still be able to get his or her check, but, one, it ends up being really difficult for the people who are doing the checks and, two, it also means that that person might not be able to make the best submissions possible, because of their limited language literacy. **(Indigenous Legal Service staff)**

An example of this type of model is Legal Aid's social inclusion program.

Because the lawyers really have a mandate that they can provide a lot more intensive assistance to people, and not just give them the advice and off you go. But it's advocating on behalf of people. I think Victoria has done something similar now on social inclusion. That really came out of the National Partnership Agreement. Because for us it was about, especially in civil, doing or providing services that were more holistic and aimed at resolving people's problems. For civil, we're always trapped between advice or a grant of aid. The grant of aid service is difficult to come by in civil. So we're trying to fill that gap, in terms of providing a service that's really quite meaningful to people who really need it. **(Legal Aid staff)**

Other legal practices are also providing as holistic a service as possible in this regard. The Geraldton Resource Centre is held up as fairly exemplary in this regard.¹¹²

So we're a holistic legal service, so we've got the legal side and then we do like a lot of client support advocacy stuff. So that could be going to the courthouse with the client, helping them make police statements, helping them access housing, emergency accommodation, food, advocating for them to Centrelink **(Indigenous Legal Service staff)**

So we go one week where it's just the support officers going up, and they'll go up and like run social, emotional and wellbeing programs and just talk to people in agencies and just say "(Named lawyer's) coming next week. Are you going to be in town? Do you have anything you want to talk to her about?" And then the following week the lawyer will go and run like legal appointments and information sessions and give advice. **(Indigenous Legal Service staff)**

The CLC [in Geraldton] has positioned itself in that particular market as a provider of those services. It provides a very broad range of services and it is seen as the go-to place for Aboriginal people in Geraldton on pretty much all matters, except for criminal law.... I know it's a very large centre in Geraldton, and it's quite a good interesting model because it has a multi-faceted other than lawyers it has a lot of other service providers attached to it. **(Legal Aid staff)**

5.7 Other barriers to accessing justice

A lot of young people, they don't want to go into town, they don't want to ask the ALS. They shame too. **(Perth Women's Focus Group Participant)**

Going to a lawyer is a last resort. That's the way I think, that's the way I feel. **(Perth Women's Focus Group Participant)**

Shame. Low literacy levels, of course. Just lack of skills and – yeah, lack of skills and knowledge. **(Indigenous community organisation worker)**

Rigid scheduling of appointments can hinder access to legal help, when for instance a legal service refuses clients service after failure to attend so many appointments. "You know what lawyers are like", states one Indigenous legal service provider. This same organisation states that because of the

¹¹² Visit the GRC website: <http://grc.asn.au/>

problems appointments can create in terms of access, it just has an open door policy at set times of the week.

Transport to and from appointments is also an issue. “If they had a local [legal service]... it would be much easier for us for walking distance”, states a woman in the Perth focus group.

The Aboriginal Family Law Service in Carnarvon would actually give people taxi vouchers to get into the office for appointments. **(Legal Aid staff)**

We have a couple of internal policies that are a bit Perth-centric. We have a policy that we’re not allowed to carry anyone in our vehicles. That’s due to very good reasons. There have been incidents in the past where people have been carried in vehicles - but the difficulty here is with, I don’t know what the statistics are, but the people without licences in our Indigenous client group, the number of people without licences would be enormous. So there’s great difficulties with transport, great difficulties with getting people to the office to keep their appointments. So that is probably another barrier. I don’t know what the answer is. It’s probably not practical for us to spend our time also going out and doing it. But maybe if they were a bit more flexible on things like home visits, if we could do that safely, that might be something. **(Legal Aid staff)**

Phones

Problems relating to use of phones as a method of contact between lawyers and clients apply to metropolitan communities too, but are especially pronounced in the context of regional/rural work.

Not many people use phones. I wouldn’t know how to do it, really, as a service provider. Like, you know, you’ve got the 1800 numbers and people can call this and call that. But until they know about it... **(Indigenous community organisation worker)**

Obviously, to do it by phone if it’s advice for anyone, let alone Aboriginal people... Just today, someone in this office (Perth) was telling me that they’ve had a lot of problems giving advice to an Aboriginal lady - I think it was around Broome - by phone. Contacting people is always - doing the call back is always really hard. It’s just – again, it’s the same for anyone, but we’ve just found, probably, for Aboriginal clients, it’s harder again. I know with that particular case, I think we were – we’d have to ring the community legal centre in Kununurra and they would make contact. It was just really difficult. **(Legal Aid staff)**

Phone contact may work if there is some level of face-to-face or direct contact established. They might, for example, make use of a phone to contact a service if assisted to do so through an organisation they already have a relationship with.

A lot of my clients, they don’t have the phone credit to make the call and to sit there for how long. So if I visit them, I say, “Let’s do it together”. We’ll use my phone. I advocate for them or something like that. But that is a big thing. Also, they don’t really know how to go about it. I think it’s just they feel a bit intimidated and disadvantaged. I’m sure they feel that. I know I let them use my phone here. If it’s going to solve something, I’m happy enough with it. **(Indigenous community organisation worker)**

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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 <input type="checkbox"/>	NO <input type="checkbox"/>
Did you seek victim's compensation?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
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:

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 <input type="checkbox"/>	NO <input type="checkbox"/>
Who provided the help?		
<hr/>		
How did you resolve this problem or dispute?		
<hr/>		

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)		
<hr/>		
Did you seek legal help or advice?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Who provided the help?		
<hr/>		
How did you resolve the problem?		
<hr/>		

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 <input type="checkbox"/> NO <input type="checkbox"/>
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 WA

Interviews completed to date in Western Australia are as follows.

Perth

Aboriginal Legal Service WA

Legal Aid WA

Welfare Rights and Advocacy Service

Women's Law Centre

Derbarl Yerrigan Health Service

Ruah Community Services

Moorditj Yarning, Relationships Australia

Indigenous Coordination Centre

Aboriginal Mediation Service

Equal Opportunity Commission

Department of Commerce

Sussex St Community Legal Centre

Employment Law Centre

Street Law Centre

DayDawn

ACCC

Jacaranda Community Centre

Yorgum Aboriginal Corporation

Tenancy WA

Northern Suburbs CLC

Gosnells CLC

Midlas CLC

Aboriginal Family Law Service

Fremantle CLC

Consumer Credit Legal Service (WA)

Geraldton

Family Relationship Centre

Aboriginal Legal Service WA

Legal Aid WA

Indigenous Coordination Centre

Bundiyarra Aboriginal Community Corporation

Wila Gutharra Community Aboriginal Corporation

Department of Commerce

Chrysalis Support Services

Magistrates and Barndimalgu Courts

Geraldton Resource Centre

Wyndham

Aboriginal Family Law Service (Kununurra)

Kimberley Community Legal Service (Kununurra)

Aboriginal Legal Service (Kununurra)

Legal Aid (Kununurra)

Ord Valley Aboriginal Health Service (Kununurra)

Anglicare Kununurra

Waringarri Aboriginal Corporation (Kununurra)

Ngnowar Aerwah Aboriginal Corporation (Wyndham)

Wyndham Early Learning Activity Centre

Joongari House (Wyndham)

Wyndham Safe House

Frontier Services (Wyndham)

Fitzroy Crossing

Aboriginal Legal Service WA

Money Management, Kimberley Employment Services

Marninwarntikura Women's Resource Centre

Balgo

Aboriginal Legal Service

Kimberley Language Resource Centre (Halls Creek)

Consumer Affairs (Broome)

Yura Yungi Medical Service (Halls Creek)

Laverton

Laverton Shire Council

Aboriginal Family Law Service (Kalgoorlie)

Centrecare (Kalgoorlie)

Aboriginal Legal Service (Kalgoorlie)

Legal Aid (Kalgoorlie)

Goldfields Community Legal Centre (Kalgoorlie)

Goldfields Indigenous Housing Organisation (Kalgoorlie)

Narrogin

Aboriginal Legal Service (Bunbury)

Anglicare Narrogin

Narrogin Financial Counselling Service

A number of other services participated in Narrogin focus groups

Roebourne

Aboriginal Legal Service

Aboriginal Family Law Service (South Hedland)

Legal Aid (South Hedland)

Pilbara CLC

Ngarluma Yindjibarndi Foundation Ltd (NYFL)

Department of Commerce (Karratha)

Other

Tom Cannon, private practitioner (VIC and WA)

APPENDIX C: FOCUS GROUP DATA TABLES

4.1 HOUSING AND TENANCY

Table 4.1 Number and Percentage of Focus Group Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord

	Focus Group Participants					
Housing/Tenancy	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	59	72.8	33	45.8	92	60.1
No	22	27.2	39	54.2	61	39.9
Total	81	100	72	100	153	100

Excludes 3 missing cases; N = 153

Table 4.2 Percentage of Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord by Geographical Location

Location	Housing Issue	
	Yes	No
	%	%
Balgo	100.0	0.0
Fitzroy Crossing	69.6	30.4
Geraldton	66.7	33.3
Laverton	45.8	54.2
Narrogin	52.2	47.8
Perth	41.2	58.8
Roebourne	55.0	45.0
Wyndham	70.0	30.0
Total	60.1	39.9

N = 153

Table 4.3 Reason Identified for Housing/Tenancy Dispute or Problem with Landlord

Type	No.
Repairs & Maintenance	51

Rent	19
Relocation & Transfers	18
Evictions	11
Overcrowding	7
Application for Housing / Access to Housing	5
Discrimination	1
Bond	1
Other	3
Total	116

Table 4.4 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	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	29	52.7	8	30.8	37	45.7
No	26	47.3	18	69.2	44	54.3
Total	55	100	26	100	81	100

Excludes 11 missing cases. N= 81

Table 4.5 Number and Percentage of Focus Group Participants Identifying a Problem or Dispute with Supported Accommodation

	Focus Group Participants					
Supported Accommodation	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	14	17.7	6	8.3	20	13.2
No	65	82.3	66	91.7	131	86.8
Total	79	100	72	100	151	100

Excludes 5 missing cases. N=151

Table 4.6 Reason for Supported Accommodation Dispute or Problem

Type	No
Poor service or standards	7
Issues involving meals	6
Ill-treatment or demeaning treatment	4

Table 4.7 Number and Percentage of Focus Group Participants Identifying Use of Legal Help or Advice for Other Housing Issue

	Focus Group Participants					
Housing	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	4	6.3	4	5.9	8	6.1
No	60	93.8	64	94.1	124	93.9
Total	64	100	68	100	132	100

Excludes 24 missing cases. N=132

4.2 NEIGHBOURS

Table 4.8 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem with Neighbours

	Focus Group Participants					
Neighbour Issue	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	40	48.8	17	23.3	57	36.8
No	42	51.2	56	76.7	98	63.2
Total	82	100	73	100	155	100

Excludes 1 missing case. N=155

Table 4.9 Percentage of Participants Identifying a Dispute or Problem with Neighbours by Geographical Location

Location	Issue with Neighbour	
	Yes	No
	%	%

Balgo	90.9	9.1
Fitzroy Crossing	29.2	70.8
Geraldton	20.0	80.0
Laverton	50.0	50.0
Narrogin	30.4	69.6
Perth	41.2	58.8
Roebourne	10.0	90.0
Wyndham	42.9	57.1
Total	36.8	63.2

Excludes 1 missing case. N=155

Table 4.10 Reason Identified for Dispute or Problem with Neighbours

Type	No.
Animals (Dogs)	25
Noise	20
Fence or Boundaries	11
Anti-social behaviour	7
Drunken people, fighting	6
Children	4
Rubbish	3
Other	3
Total	79

Table 4.11 Number and Percentage of Participants Identifying a Dispute or Problem with Neighbours Who Sought Legal Advice or Help

Legal Advice	Focus Group Participants					
	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	13	35.1	2	12.5	15	28.3
No	24	64.9	14	87.5	38	71.7

Total	37	100	16	100	53	100
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Excludes 4 missing cases; N=53

4.3 DISCRIMINATION

Table 4.12 Number and Percentage of Focus Group Participants Identifying Discrimination as an Issue

	Focus Group Participants					
Discrimination	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	32	39.0	31	43.1	63	40.9
No	50	61.0	41	56.9	91	59.1
Total	82	100	72	100	154	100

Excludes 2 missing cases. N=154

Table 4.13 Percentage of Participants Identifying Discrimination as an Issue by Community

Location	Discrimination	
	Yes	No
	%	%
Balgo	27.3	72.7
Fitzroy Crossing	29.2	70.8
Geraldton	60.0	40.0
Laverton	50.0	50.0
Narrogin	37.5	62.5
Perth	52.9	47.1
Roebourne	47.4	52.6
Wyndham	25.0	75.0
Total	40.9	59.1

Table 4.14 Nature of Discrimination Nominated by Those Who Identified it as an Issue

Location	No.
Shops, shopping centres	16

Hotels	10
Workplace / employment	8
Police	8
Hospital	6
Other government services	6
Racial abuse	5
Real estate services	5
Sporting Clubs	4
Education	3
Other	2
Total	73

Excludes 10 missing cases. N=53. Individuals nominated multiple areas of racial discrimination.

Table 4.15 Number and Percentage of Participants Identifying Discrimination As An Issue Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	6	23.1	2	8.7	8	16.3
No	20	76.9	21	91.3	41	83.7
Total	26	100	23	100	49	100

Excludes 14 missing cases; N=49

4.4 CREDIT AND DEBT

Table 4.16 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	25	32.1	21	29.2	46	30.7
No	53	67.9	51	70.8	104	69.3
Total	78	100	72	100	150	100

Excludes 6 missing cases; N=150

Table 4.17 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	9	12.5	7	10.1	16	11.3
No	63	87.5	62	89.9	125	88.6
Total	72	100	69	100	141	100

Excludes 15 missing cases; N=141

Table 4.18 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
Balgo	-	1	1
Fitzroy Crossing	5	3	8
Geraldton	4	3	7
Laverton	9	-	9
Narrogin	12	2	14
Perth	7	6	13
Roebourne	7	1	8
Wyndham	2	-	2
Total	46	16	62

NB Twenty seven distinct individuals identified issues in *either* (a) or (b) categories above. A further 13 individuals identified issues in *both* (a) and (b) above. Therefore a total of 40 individuals either had problems with debt and/or credit reference rating, bankruptcy or arising as a loan guarantor.

Table 4.19 Reason Identified for Credit/Debt Related Issue

Type	No.
Housing-related debt (including Homeswest)	7

Bill repayment (unspecified)	7
Loan repayment (unspecified)	6
Fines	6
Other debt (unspecified)	5
Banks loans	4
Phone bills	4
Utility bills	4
Credit reference rating	2
Total	45

Table 4.20 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	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	2	8.7	3	20	5	13.2
No	21	91.3	12	80	33	86.8
Total	23	100	15	100	38	100

Excludes 2 missing cases; N=38

4.5 CONSUMER

Table 4.21 Consumer Issues by Community

Location	Financial Institution	Insurance	Commercial Scams	Other Consumer Issues	Total
	No	No	No	No	No
Balgo	5	1	2	-	8
Fitzroy Crossing	2	2	1	-	5
Geraldton	2	1	3	2	8
Laverton	5	-	1	2	8
Narrogin	5	1	3	3	12

Perth	3	1	1	2	7
Roebourne	6	2	2	3	13
Wyndham	4	-	-	-	4
Total	32	8	13	12	65

NB This is the total number of consumer issues identified by community – it is not the total number of individuals identifying consumer issues as some individuals may have identified more than one type of issue.

Table 4.22 Reason Identified for Consumer Problem

Type	No.
Superannuation – Access and Entitlements	11
Motor vehicle sales / repairs	6
Telephone Contract Dispute	4
Insurance Claims	4
Victim of Scams	4
Dispute with Bank (Balance, Fees, Other)	3
Total	32

Table 4.23 Number and Percentage of Focus Group Participants Identifying a Problem Accessing or Finding Superannuation, or a Dispute with Bank or Other Financial Institution

Superannuation or Financial Institution	Focus Group Participants					
	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	14	17.1	18	24.7	32	20.6
No	68	82.9	55	75.3	123	79.4
Total	82	100	73	100	155	100

Excludes 1 missing case; N=155

Table 4.24 Number and Percentage of Focus Group Participants Identifying a Problem with Insurance

Insurance	Focus Group Participants		
	Female	Male	Total

	No.	%	No.	%	No.	%
Yes	0	0.0	8	11.1	8	5.2
No	82	100	64	88.9	146	94.8
Total	82	100	72	100	154	100

Excludes 2 missing cases; N=154

Table 4.25 Number and Percentage of Focus Group Participants Identifying a Problem with ‘Scams’ or Contracts (Funeral Funds, Used Cars, Etc.)

	Focus Group Participants					
Scam	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	5	6.2	8	11.4	13	8.6
No	76	93.8	62	88.6	138	91.4
Total	81	100	70	100	151	100

Excludes 5 missing cases; N=151

Table 4.26 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	2	2.5	10	14.1	12	7.9
No	79	97.5	61	85.9	140	92.1
Total	81	100	71	100	152	100

Excludes 3 missing cases; N=149

4.6 STOLEN GENERATIONS / STOLEN WAGES

Table 4.27 Number and Percentage of Focus Group Participants Identifying as a Member of the Stolen Generations

	Focus Group Participants					
Stolen Generations	Female		Male		Total	
	No.	%	No.	%	No.	%

Yes	22	27.2	11	15.7	33	21.9
No	59	72.8	59	84.3	118	78.1
Total	81	100	70	100	151	100

Excludes 5 missing cases; N=151

Table 4.28 Number and Percentage of Focus Group Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation

	Focus Group Participants					
Aboriginal Trust Fund	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	17	21.5	21	31.8	38	26.2
No	62	78.5	45	68.2	107	73.8
Total	79	100	66	100	145	100

Excludes 11 missing cases; N=145

4.7 CHILD PROTECTION AND FAMILY LAW

Table 4.29 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	1	1.3	5	7.1	6	4
No	78	98.7	65	92.9	143	96
Total	79	100	70	100	149	100

Excludes 7 missing cases; N=149

Table 4.30 Percentage of Participants Identifying Problem or Dispute in Relation To Property, Money or Superannuation Post- Separation or Divorce by Community

Location	Property Issue	
	Yes	No
	%	%
Balgo	0.0	100.0
Fitzroy Crossing	0.0	100.0

Geraldton	0.0	100.0
Laverton	4.2	95.8
Narrogin	0.0	100.0
Perth	25.0	75.0
Roebourne	5.3	94.7
Wyndham	0.0	100.0
Total	4.0	96.0

N=149

Table 4.31 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem in Relation to Children's Residence/Contact and/or Child Support

Residence/Contact and/or Child Support	Focus Group Participants					
	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	11	13.4	11	15.1	22	14.2
No	72	86.6	62	84.9	133	85.8
Total	82	100	73	100	155	100

Excludes 1 missing case; N=155

Table 4.32 Nature of Family Law Issue Relating to Children

Type	No.
Children taken into care by Child Protection	8
Residence/contact/ access issue	7
Foster care issues	3
Child support payments	5
Total	23

Table 4.33 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

Child Removal, Fostering Issue	Focus Group Participants		
	Female	Male	Total

	No.	%	No.	%	No.	%
Yes	10	12.7	5	7	15	10
No	69	87.3	66	93	135	90
Total	79	100	71	100	150	100

Excludes 6 missing cases; N=150

Table 4.34 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	Female	Male	Total	
	No.	No.	No	%
Yes	5	5	10	47.6
No	6	5	11	52.4
Total	11	10	21	100

N=21

Table 4.35 Family law and child protection matters relating to children by location

Location	Child Support/ Residency/Access	Child Removal	Total
Balgo	1	1	2
Fitzroy Crossing	1	-	1
Geraldton	3	2	5
Laverton	2	4	6
Narrogin	8	5	13
Perth	3	2	5
Roebourne	2	-	2
Wyndham	2	1	3
Total	22	15	37

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.

4.8 EDUCATION

Table 4.36 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	40	49.4	28	38.9	68	44.4
No	41	50.6	44	61.1	85	55.6
Total	81	100	72	100	153	100

Excludes 3 missing cases; N=153

Table 4.37 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	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	30	75	14	51.9	44	65.7
No	10	25	13	48.1	23	34.3
Total	40	100	27	100	67	100

Excludes 1 missing case; N=67

Table 4.38 Percentage of Participants Identifying an Education-Related Issue by Community

Location	Education Issue	
	Yes	No
	%	%
Balgo	87.5	12.5
Fitzroy Crossing	22.2	77.8
Geraldton	50.0	50.0
Laverton	60.0	40.0
Narrogin	69.2	30.8

Perth	75.0	25.0
Roebourne	90.0	10.0
Wyndham	50.0	50.0
Total	65.7	34.3

Table 4.39 Nature of Education-Related Issue

Type	No.
Bullying and harassment	31
Suspension and expulsion	5
Racism	4
Fees	3
Total	43

Table 4.40 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	Female	Male	Total	
	No.	No.	No	%
Yes	7	4	11	26.8
No	22	8	30	73.2
Total	29	12	41	100

Excludes 3 missing cases; N=41

4.9 SOCIAL SECURITY AND CENTRELINK

Table 4.41 Number and Percentage of Focus Group Participants Identifying Receipt of Centrelink Allowance

	Focus Group Participants					
Allowance	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	70	84.3	49	67.1	119	76.3
No	13	15.7	24	32.9	37	23.7

Total	83	100	73	100	156	100
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N=156

Table 4.42 Number and Percentage of Focus Group Participants Identifying Centrelink Payments As Being Subject to Income Management

	Focus Group Participants					
Income Management	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	15	22.7	9	19.6	24	21.4
No	51	77.3	37	80.4	88	78.6
Total	66	100	46	100	112	100

Excludes 7 missing cases; N=112

Table 4.43 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem With Centrelink in Relation to Payments

	Focus Group Participants					
Centrelink	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	15	22.1	11	23.4	26	22.6
No	53	77.9	36	76.6	89	77.4
Total	68	100	47	100	115	100

Excludes 4 missing cases; N=115

Table 4.44 Percentage of Participants Identifying Centrelink Problem by Geographical Location

Location	Centrelink Issue	
	Yes	No
	%	%
Balgo	0.0	100.0
Fitzroy Crossing	5.0	95.0
Geraldton	38.5	61.5
Laverton	25.0	75.0
Narrogin	25.0	75.0
Perth	50.0	50.0

Roebourne	27.3	72.7
Wyndham	18.8	81.3
Total	22.6	77.4

Table 4.45 Reason Identified for Dispute or Problem with Centrelink

Type	No.
Centrelink Debt	7
Cut off benefits	6
Overpayment	5
Underpayment	2
Work test related	2
Other: Child payments, sickness benefits, rent assistance issues	3
Total	25

4.10 WILLS AND INTESTACY

Table 4.46 Number and Percentage of Focus Group Participants Who Have Completed Will

Completed Will	Focus Group Participants					
	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	9	10.8	7	9.7	16	10.3
No	74	89.2	65	90.3	139	89.7
Total	83	100	72	100	155	100

Excludes 1 missing case; N=155

Table 4.47 Number of Focus Group Participants Who Received Advice in Completing Will

Advice	Focus Group Participants		
	Female	Male	Total
	No.	No.	No.
Yes	5	2	7
No	4	5	9

Total	9	7	16
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N=16

Table 4.48 Number and Percentage of Focus Group Participants Who Do Not Have a Will and Would Like Legal Advice To Complete A Will

	Focus Group Participants					
Seek Legal Advice	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	39	55.7	35	57.4	74	56.5
No	31	44.3	26	42.6	57	43.5
Total	70	100	61	100	131	100

Excludes 8 missing cases; N=131

Table 4.49 Number and Percentage of Focus Group Participants Identifying Having to Take Charge of Estate After Death

	Focus Group Participants					
Dispute Over Deceased Estate	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	10	12.7	12	17.6	22	15
No	69	87.3	56	82.4	125	85
Total	79	100	68	100	147	100

Excludes 9 missing cases; N=147

Table 4.50 Number and Percentage of Focus Group Participants Identifying a Dispute Over Deceased Estate After Death

	Focus Group Participants					
Take Charge of Estate	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	23	28.8	14	20.9	37	25.2
No	57	71.3	53	79.1	110	74.8
Total	80	100	67	100	147	100

Excludes 9 missing cases; N=147

4.11 EMPLOYMENT

Table 4.51 Number and Percentage of Focus Group Participants Identifying An Employment Dispute or Problem

Employment	Focus Group Participants					
	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	8	10	7	9.6	15	9.8
No	72	90	66	90.4	138	90.2
Total	80	100	73	100	153	100

Excludes 3 missing cases; N=153

Table 4.52 Percentage of Participants Identifying an Employment Dispute or Problem by Community

Location	Employment	
	Yes	No
	%	%
Balgo	0.0	100.0
Fitzroy Crossing	4.2	95.8
Geraldton	0.0	100.0
Laverton	13.0	87.0
Narrogin	13.6	86.4
Perth	17.6	82.4
Roebourne	15.0	85.0
Wyndham	9.5	90.5
Total	9.8	90.2

Excludes 3 missing cases; N=153

Table 4.53 Reason Identified for Employment Dispute or Problem

Type	No.
Wages and Payments	4
Bullying, Harassment	4
Leave	3

Unfair Dismissal	3
Tax and Superannuation	2
Other	4
Total	20

Table 4.54 Number and Percentage of Participants Identifying a Dispute or Problem with Employment Who Sought Legal Advice or Help

	Focus Group Participants			
Legal Advice	Female	Male	Total	
	No.	No.	No.	%
Yes	2	2	4	28.6
No	5	5	10	71.4
Total	7	7	14	1100

Excludes 1 missing case; N=14

4.12 VICTIMS COMPENSATION

Table 4.55 Number and Percentage of Focus Group Participants Identifying as A Victim of Violent Crime

	Focus Group Participants					
Victim of Crime	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	18	22.2	16	21.9	34	22.1
No	63	77.8	57	78.1	120	77.9
Total	81	100	73	100	154	100

Excludes 2 missing cases; N=154

Table 4.56 Percentage of Participants Identifying As A Victim of Violent Crime by Community

Location	Victim of Violent Crime	
	Yes	No
	%	%
Balgo	63.6	36.4
Fitzroy Crossing	4.2	95.8

Geraldton	33.3	66.7
Laverton	30.4	69.6
Narrogin	16.7	83.3
Perth	23.5	76.5
Roebourne	5.0	95.0
Wyndham	25.0	75.0
Total	22.1	77.9

Excludes 2 missing cases; N=154

Table 4.57 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	Female		Male		Total	
	No.	%	No.	%	No	%
Yes	8	44.4	7	50	15	46.9
No	10	55.6	7	50	17	53.1
Total	18	100	14	100	32	100

Excludes 2 missing cases; N=32

Table 4.58 Number of Focus Group Participants Identifying As A Victim of Violent Crime Who Sought Victims Compensation

	Focus Group Participants			
Sought Compensation	Female		Male	
	No.		No.	
Yes	5		4	
No	12		7	
Total	17		11	

Excludes 6 missing cases; N=28

4.13 ACCIDENT AND INJURY

Table 4.59 Number and Percentage of Focus Group Participants Identifying Accident or Injury-Related Issue

	Focus Group Participants
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Accident/Injury	Female		Male		Total	
	No.	%	No.	%	No.	%
Yes	12	14.5	17	23.6	29	18.7
No	71	85.5	55	76.4	126	81.3
Total	83	100	72	100	155	100

Excludes 1 missing case; N=155

Table 4.60 Percentage of Participants Identifying Accident or Injury-Related Issue by Community

Location	Accident/Injury Related Issue	
	Yes	No
	%	%
Balgo	18.2	81.8
Fitzroy Crossing	25.0	75.0
Geraldton	6.7	93.3
Laverton	21.7	78.3
Narrogin	16.7	83.3
Perth	23.5	76.5
Roebourne	5.0	95.0
Wyndham	28.6	71.4
Total	18.7	81.3

N=155

Table 4.61 Nature of Accident/Injury-Related Issue

Type	No.
Motor Vehicle Accident	11
Other injuries not specified	11
Work-Related Injury	3
Total	25

Excludes 4 missing cases; N=25

Table 4.63 Number and Percentage of Participants Identifying Accident/Injury-Related Issue Requiring Medical Treatment for Injuries

	Focus Group Participants			
Medical Treatment	Female	Male	Total	
	No.	No.	No.	%
Yes	10	11	21	77.8
No	2	4	6	22.2
Total	12	15	27	100

Excludes 2 missing cases; N=27

Table 4.64 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	Female	Male	Total	
	No.	No.	No	%
Yes	5	5	10	38.5
No	6	10	16	61.5
Total	11	15	26	100

Excludes 3 missing cases; N=26

4.14 TAX RETURN

Table 4.65 Date of Most Recent Tax Return by Percentage

Date	%
This year	14
Last year	18.2
2-5 years	13.2
5 years or more	13.2
Don't know or can't remember	27.3
Never	14
Total	99.9

Excludes 35 missing cases; N=121

APPENDIX D: WA SERVICE DELIVERY CONTEXT

ILNP COMMUNITIES IN WA

In this section we provide a brief socio-demographic snapshot of the eight communities chosen for research in WA: **Balgo, Fitzroy Crossing, Geraldton, Laverton, Narrogin, Perth, Roebourne and Wyndham**. It includes a very brief overview of each community's location (including its distance from nearby centres from where legal service delivery is provided), its level of accessibility as defined by ARIA+, and a list of legal services it has access to - as well as other demographic data of relevance.

As noted, the level of accessibility for communities in WA varies from very remote to highly accessible. Levels of accessibility inevitably impact upon legal as well as other types of service delivery. Some communities have permanent offices of LAWA, ALSWA, AFLS and CLCs from which they might seek assistance. Other communities are, to varying degrees, reliant upon legal service delivery provided 'from afar', including by way of outreach and through telephone advice. ALSWA provides civil and human rights outreach, for instance, to all areas in which the following eight focus communities are located.

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 and greater degree of overcrowding in Indigenous households; and
- a significant proportion of public housing tenancies and (to a lesser extent) of community-based housing tenancies.

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

1.1 Balgo

Balgo is in the northeast of WA, approximately 300kms from the nearest town of Halls Creek. It has 507 residents (as at 2011), of which 459 are Indigenous (constituting 90.5% of the total local population) (see Table 1.3). Balgo is defined as a *very remote* community, with very little accessibility of goods and services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office (field officer, criminal law) in Halls Creek)
- LAWA (outreach from permanent office in Kununurra)

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

Indigenous status	Male	Female	Total
Indigenous persons	235	224	459
Non-Indigenous persons	28	20	48
Indigenous status not stated	0	0	0
Total	263	244	507

Table 1.4 Balgo: Selected Medians and Averages

Median/Average	Indigenous Persons/ Households with Indigenous Person(s)	Non-Indigenous Persons/ Other Households	Total
Median age of persons	23	48	25
Median total personal income (\$/weekly)	263	924	274
Median total household income (\$/weekly)	1, 158	850	1, 091
Median rent (\$/weekly)	50	0	50
Average number of persons per bedroom	2.1	1.2	1.8
Average household size	6.0	1.4	4.9
Proportion of households that need one or more extra bedrooms (%)	65.1	0.0	51.2

Table 1.5 Balgo: Tenure and Landlord Type for Households with Indigenous Persons¹¹⁴

Tenure/Landlord Type	Total
Owned outright	0

¹¹³ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Balgo*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC50400201?opendocument&navpos=230

¹¹⁴ 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.

Owned with mortgage	0
Rented:	
Real estate agent	0
State or Territory housing authority	54
From parent/other relations or another person	0
Housing cooperative, community or church group	3
Other landlord	4
Landlord type not stated	0
<i>Total rented</i>	<i>61</i>
Other tenure type	0
Tenure Type not stated	0
Total	61

1.2 Fitzroy Crossing

Fitzroy Crossing is located in the northeast of WA, approximately 400kms from Broome. Fitzroy Crossing has 1518 residents (as of 2011), of which 1060 are Indigenous (constituting 69.8% of the total local population) (see Table 1.6). Fitzroy Crossing is defined as a *very remote* community, with very little accessibility of goods and services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office field officer (criminal law) in Fitzroy Crossing)
- LAWA (outreach from permanent office in Broome)

*The Demographic Data for Fitzroy Crossing*¹¹⁵

Table 1.6 Fitzroy Crossing: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	513	547	1060
Non-Indigenous persons	205	199	404
Indigenous status not stated	28	26	54

¹¹⁵ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Fitzroy Crossing*, Canberra, Catalogue No 2002.0; available at: http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/IARE508002?opendocument&navpos=230

Total	746	772	1518
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Table 1.7 Fitzroy Crossing: Selected Medians and Averages

Median/Average	Indigenous Persons/ Households with Indigenous Person(s)	Non-Indigenous Persons/ Other Households	Total
Median age of persons	24	34	28
Median total personal income (\$/weekly)	255	1, 058	353
Median total household income (\$/weekly)	835	1, 730	1, 164
Median rent (\$/weekly)	35	0	35
Average number of persons per bedroom	1.6	1.1	1.4
Average household size	4.2	2.0	3.3
Proportion of households that need one or more extra bedrooms (%)	38.8	5.6	25.5

Table 1.7 Fitzroy Crossing: 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	58
From parent/other relations or another person	0
Housing cooperative, community or church group	123
Other landlord	10
Landlord type not stated	9
<i>Total rented</i>	<i>200</i>
Other tenure type	3
Tenure Type not stated	4
Total	211

1.3 Geraldton

Geraldton is located in the mid-west of WA. It is approximately 430kms from Perth and has 19132 residents (as at 2011), of which 2187 are Indigenous (constituting 11.4% of the total local population) (see Table 1.8). Geraldton is defined as an accessible community, with some restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office (criminal law))
- AFLS
- LAWA (permanent office)
- Geraldton Resource Centre (CLC)

*The Demographic Data for Geraldton*¹¹⁶

Table 1.8 Geraldton: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous	990	1197	2187
Non-Indigenous	7725	8094	15819
Not Stated	560	566	1126
Total	9275	9857	19132

Table 1.9 Geraldton: Selected Medians and Averages

Median/Average	Indigenous Persons/ Households with Indigenous Person(s)	Non-Indigenous Persons/ Other Households	Total
Median age of persons	19	40	38
Median total personal income (\$/weekly)	348	557	538
Median total household income (\$/weekly)	785	986	969
Median rent (\$/weekly)	180	225	220
Average number of persons per bedroom	1.3	1.1	1.3

¹¹⁶ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Geraldton*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/535033522?opendocument&navpos=230

Average household size	3.3	2.2	2.3
Proportion of households that need one or more extra bedrooms (%)	13.3	2.0	3.1

Table 1.10 Geraldton: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	64
Owned with mortgage	131
Rented:	
Real estate agent	141
State or Territory housing authority	235
From parent/other relations or another person	46
Housing cooperative, community or church group	4
Other landlord	29
Landlord type not stated	5
<i>Total rented</i>	<i>460</i>
Other tenure type	0
Tenure Type not stated	49
Total	704

1.4 Laverton

Laverton is located in the southeast of WA, approximately 360kms from Kalgoorlie. Laverton has 1226 residents (as of 2011), of which 352 are Indigenous (constituting 28.7% of the total local population) (see Table 1.11). Laverton is defined as a *very remote* community, with very little accessibility of goods and services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office in Kalgoorlie)
- AFLS (permanent office in Kalgoorlie)
- LAWA (outreach from permanent office in Kalgoorlie)
- Goldfields CLC (permanent office in Kalgoorlie)

Table 1.11 Laverton: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous	178	174	352
Non-Indigenous	574	175	749
Not Stated	94	31	125
Total	846	380	1226

Table 1.12 Laverton: Selected Medians and Averages

Median/Average	Indigenous Persons/ Households with Indigenous Person(s)	Non-Indigenous Persons/ Other Households	Total
Median age of persons	25	40	37
Median total personal income (\$/weekly)	278	1743	1442
Median total household income (\$/weekly)	627	1262	911
Median rent (\$/weekly)	70	40	70
Average number of persons per bedroom	1.5	1.1	1.3
Average household size	3.4	1.8	2.5
Proportion of households that need one or more extra bedrooms (%)	21.3	4.2	11.5

Table 1.13 Laverton: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	3
Owned with mortgage	6

¹¹⁷ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Laverton*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC50600504?opendocument&navpos=230

Rented:	
Real estate agent	0
State or Territory housing authority	6
From parent/other relations or another person	3
Housing cooperative, community or church group	66
Other landlord	4
Landlord type not stated	3
<i>Total rented</i>	82
Other tenure type	0
Tenure Type not stated	0
Total	91

1.5 Narrogin

Narrogin is located in WA, approximately 200kms from Perth. Narrogin has 4732 residents (as of 2011), of which 402 are Indigenous (constituting 8.5% of the total local population) (see Table 1.14). Narrogin is defined as a *moderately accessible* community, with significant restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- ALSWA (outreach from Bunbury (criminal))
- LAWA (outreach from permanent office in Albany)

*The Demographic Data for Narrogin*¹¹⁸

Table 1.14 Narrogin: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous	198	204	402
Non-Indigenous	2031	2115	4146
Not Stated	99	84	183
Total	2328	2403	4731

Table 1.15 Narrogin: Selected Medians and Averages

Median/Average	Indigenous Persons/ Households with Indigenous Person(s)	Non-Indigenous Persons/ Other Households	Total

¹¹⁸ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Narrogin*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/509031249?opendocument&navpos=230

Median age of persons	18	36	37
Median total personal income (\$/weekly)	272	531	505
Median total household income (\$/weekly)	569	1024	983
Median rent (\$/weekly)	140	165	160
Average number of persons per bedroom	1.3	1.1	1.1
Average household size	3.4	2.4	2.4
Proportion of households that need one or more extra bedrooms (%)	11.2	1.3	2.1

Table 1.16 Narrogin: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	4
Owned with mortgage	27
Rented:	
Real estate agent	6
State or Territory housing authority	64
From parent/other relations or another person	5
Housing cooperative, community or church group	7
Other landlord	0
Landlord type not stated	4
<i>Total rented</i>	<i>86</i>
Other tenure type	0
Tenure Type not stated	8
Total	4

1.6 Perth

Perth is the capital of WA and has 164,5371 residents (as of 2011), of which 25,333 are Indigenous (constituting 1.5% of the total local population) (see Table 1.17). Perth is defined as a *highly accessible* community, relatively unrestricted accessibility of goods, services and opportunities for social interaction.

Legal Services

- ALSWA (permanent (head) office)
- AFLS (permanent (head) office)

- LAWa (permanent (head) office)
- CLCs (permanent services, generalist and specialist)
- Daydawn Advocacy Centre

*The Demographic Data for Perth*¹¹⁹

Table 1.17 Perth: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	12684	12849	25333
Non-Indigenous persons	757373	775900	1533273
Indigenous status not stated	44375	39390	86765
Total	814432	828139	1645371

Table 1.18 Perth: 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	36	36
Median total personal income (\$/week)	407	683	680
Median total household income (\$/week)	1172	1486	1481
Median rent (\$/week)	250	325	320
Average persons per bedroom	1.2	1.1	1.1
Average household size	3.3	2.6	2.6
Proportion of dwellings that need one or more extra bedrooms (%)	9.3	2.0	2.1

Table 1.19 Perth: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	836
Owned with mortgage	2998
Rented:	

¹¹⁹ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Perth*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/IREG505?opendocument&navpos=230

Real estate agent	1595
State or Territory housing authority	2368
From parent/other relations or another person	1066
Housing cooperative, community or church group	136
Other landlord	177
Landlord type not stated	79
<i>Total rented</i>	<i>5421</i>
Other tenure type	46
Tenure Type not stated	437
Total	9738

1.7 Roebourne

Roebourne is located in the northwest of WA, approximately 40kms from Karratha and 190kms from South Hedland. Roebourne has 602 residents (as of 2011), of which 338 are Indigenous (constituting 56.1% of the total local population) (see Table 1.20). Roebourne is defined as a *remote* community, with very restricted accessibility of goods, services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office in South Hedland (criminal law) and field officer in Roebourne)
- AFLS (permanent office in South Hedland)
- LAWA (outreach from permanent office in South Hedland)
- Pilbara CLC (permanent office in Roebourne)

The Demographic Data for Roebourne¹²⁰

1.20 Table 1.3 Roebourne: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	178	160	338
Non-Indigenous persons	121	91	212
Indigenous status not stated	30	22	52
Total	329	273	602

Table 1.21 Roebourne: Selected Medians and Averages

Median / Average	Indigenous persons/households with	Non-Indigenous person(s)/other	Total
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¹²⁰ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Roebourne*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC50600504?opendocument&navpos=230

	Indigenous person(s)	households	average
Median age of persons	29	39	33
Median total personal income (\$/week)	385	1097	717
Median total household income (\$/week)	811	2225	1375
Median rent (\$/week)	150	300	175
Average persons per bedroom	1.6	1.4	1.5
Average household size	4.3	2.2	3.4
Proportion of dwellings that need one or more extra bedrooms (%)	26.7	7.7	17.7

Table 1.22 Roebourne: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	9
Owned with mortgage	13
Rented:	
Real estate agent	6
State or Territory housing authority	48
From parent/other relations or another person	0
Housing cooperative, community or church group	0
Other landlord	4
Landlord type not stated	0
<i>Total rented</i>	<i>58</i>
Other tenure type	0
Landlord type not stated	7
Total	87

1.8 Wyndham

Wyndham is located in the northeast of WA, approximately 105kms from Kununurra. Wyndham has 787 residents (as of 2011), of which 410 are Indigenous (constituting 52.1% of the total local population) (see Table 1.23). Wyndham is defined as a *very remote* community, with very little accessibility of goods, services and opportunities for social interaction.

Legal Services

- ALSWA (permanent office in Kununurra (criminal law))

- AFLS (permanent office in Kununurra)
- LAWA (permanent office in Kununurra)
- Kimberley Community Legal Service (permanent office in Kununurra)

*The Demographic Data for Wyndham*¹²¹

Table 1.23 Wyndham: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	185	225	410
Non-Indigenous persons	159	130	289
Indigenous status not stated	47	41	88
Total	391	396	787

Table 1.24 Wyndham: 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	24	37	30
Median total personal income (\$/week)	354	989	582
Median total household income (\$/week)	956	1521	1287
Median rent (\$/week)	116	69	86
Average persons per bedroom	1.5	1.2	1.3
Average household size	3.5	2.3	2.8
Proportion of dwellings that need one or more extra bedrooms (%)	26.6	3.2	14.0

Table 1.25 Wyndham: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	11
Owned with mortgage	12

¹²¹ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Wyndham*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC50400801?opendocument&navpos=230

Rented:	
Real estate agent	3
State or Territory housing authority	55
From parent/other relations or another person	6
Housing cooperative, community or church group	0
Other landlord	8
Landlord type not stated	0
<i>Total rented</i>	<i>72</i>
Other tenure type	0
Landlord type not stated	13
Total	108

Conclusion

The above community-specific data speaks to the lower socio-economic status of Indigenous people and communities across WA, evidenced 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).