



The civil and family law needs of Indigenous people in Queensland

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A report of the Australian Indigenous Legal Needs Project

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

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

LIST OF ACRONYMS

ABS	Australian Bureau of Statistics
ADCQ	Queensland Anti-Discrimination Commission
AFDM	Aboriginal Family Decision Making
AFLS	Aboriginal Family Law Services South Queensland Indigenous Corporation
AHRC	Australian Human Rights Commission
ARC	Australian Research Council
ARIA +	Accessibility/Remoteness Index of Australia Plus
ASIC	Australian Securities and Investment Commission
ATSILS (Qld)	Aboriginal and Torres Strait Islander Legal Services (Queensland)
ATSIWLAS	Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service
ATSIWLSNQ	Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc.
ATSI	Aboriginal and Torres Strait Islander
CALD	Culturally and Linguistically Diverse
CDEP	Community Development Employment Program
CINOP	Children In Need Of Protection
CLAF	Contingency Legal Aid Fund
CLC	Community Legal Centre
CLE	Community Legal Education
COAG	Council of Australian Governments
DATSIP	Department of Aboriginal and Torres Strait Islander Policy
DHS	Department of Human Services
FRC	Family Relationship Centres
FRC	Family Responsibilities Commission
ICAN	Indigenous Consumer Advocacy Network
ICPP	Indigenous Child Placement Principle
ILNP	Indigenous Legal Needs Project
ICHO	Indigenous Community Housing Organisation
JCU	James Cook University

LAQ	Legal Aid Queensland
MOU	Memorandum of Understanding
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
QIFVLS	Queensland Indigenous Family Violence Legal Service
RDM	Roundtable Dispute Management
RE	Recognised Entity
SNAICC	Secretariat of National Aboriginal and Islander Child Care
SPER	State Penalties Enforcement Registry
TELCO	Telecommunication Company

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EXECUTIVE SUMMARY

1. Background

This report presents key findings and recommendations of research conducted in 2011-2014 by the Indigenous Legal Needs Project (ILNP) in Queensland.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 Queensland research is based on focus groups held with Indigenous participants and interviews with legal and related stakeholders in eight communities. The communities selected were **Brisbane, Cairns, Charleville, Mount Isa, Pormpuraaw, Rockhampton, Roma** and **Thursday Island**. These reflect urban, regional and rural communities.

Sixteen focus groups were held with a total of 152 Indigenous community members in these eight communities. Separate women and men's focus groups were conducted in each community. Female participants comprised 53.9% of the total and males 46.1%.

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 also arose in focus group discussions and in stakeholder interviews (see Section 4.14 of the Report).

Over 60 stakeholder organisations servicing or working within the nominated Queensland communities were interviewed to explore the experiences, perspectives and understandings of those providing legal or related services. A full list of stakeholders interviewed in Queensland 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 on *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** (44.1%)
- **Disputes with neighbours** (34.7%)
- **Discrimination** (31.6%)
- **Credit/Debt** (26.0%)
- **Child removal** (25.5%)

For reasons explained below we add a further four areas of priority need: consumer law issues, social security/Centrelink, compensation for victims of crime and wills.

Consumer law issues are prioritised where they interconnect with credit/debt related problems rather than on the basis of consumer law-related responses provided on the ILNP questionnaires– although numbers of reported incidents concerning superannuation and banks (20.3%) and scams and contracts (16.2%) (all consumer law issues) were also relatively high. An example of this interconnection is when Indigenous communities’ lack of financial and consumer literacy around contractual obligations (such as mobile phone contracts) and scams leads to debt. Credit/debt and consumer law issues are difficult to separate where connected in this way.

Some 71.1% of focus group participants stated that they received **Centrelink** payments and a third of those people (33.3%) said that they had experienced problems with payments over the last couple of years. Only two of the 35 individuals who had identified a problem with Centrelink also sought legal assistance or advice. Taking into account the impact of these issues and the fact that few people sought legal assistance, social security/Centrelink is identified as a priority area of need.

Two further priority areas might be categorised as unrecognised or unmet legal need. The first is in relation to **victims’ compensation**. While close to one in five focus group members (18.4%) identified as a victim of violence, only 31% of these participants had applied for victim’s assistance. The second area relates to **wills**. Only 13.3% of focus group participants had made a will and a further 63.7% expressed a desire for assistance to create one.

4. Findings in Relation to Priority Areas

We note that we do not canvass here all the legal issues that were covered in the focus groups and stakeholder interviews. Matters relating to Stolen Generations, employment, education, accident and injury are all discussed in the Report. However, the fact that they are not prioritised does not indicate that they are considered unimportant.

We also note that there were important gender differences in some of the priority areas of legal need. In other words, some issues were much more of a priority for women than men and vice versa. Women were *significantly* more likely than men to identify legal problems in the areas of housing, neighbours, child protection and family law (issues with children). Women were also more likely than men to identify an employment or education related problem and to want help with creating a will. They were also more likely to have some knowledge of assistance available to victims of crime than men. Men were more likely than women to identify legal problems in the areas of Stolen Generations/Wages, discrimination and consumer law (superannuation/banks). Gendered variations

occurred in relation to levels of access to legal help too. Women experiencing problems with discrimination or 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, **44.1%** of all focus group participants identified disputes or problems with landlords. The percentage of Indigenous women identifying such disputes was higher than that of Indigenous men (51.2% of women compared with 35.7% of men). In Cairns (60%) and Pormpuraaw (72.2%), close to or over two thirds of participants had had an issue with their tenancy.

Repairs and maintenance were identified as the principal area of dispute arising in relation to tenancies (in nearly a third of responses). Overcrowding and access to housing, bond and rent also emerged as key issues of concern. There was also a frequent connection between housing and other civil and family law issues (such as discrimination, debt, child protection).

Only just over one in five women and close to one in five men sought legal or other advice in relation to housing issues (**20%** of participants, overall). The research indicated problems of avoidance and delay in seeking assistance because of a lack of knowledge of rights, poor availability of legal help for tenancy matters and low levels of tenant empowerment.

4.2 Neighbours

A high 34.7% of participants identified a problem or dispute with neighbours, with women much more likely than men to do so (40.7% of women compared with 27.5% of men). Noise was the most common area of dispute (in nearly 50% of responses), followed by animals (dogs); drinking and 'fights' with neighbours; fences and boundaries; and children, privacy and prejudice. In some communities, at least half of all participants had had an issue with neighbours.

Complaints appear more likely to be raised *against* Indigenous people than by them. There is a perception that these complaints are often racially motivated and that housing authorities or landlords may also be more likely to take the side of non-Indigenous persons when dealing with complaints.

Neighbourhood disputes were also a distinct example of an unresolved civil law issue escalating to involve police and criminalisation and of the way in which different issues interconnect. Overcrowding in Indigenous households increased the likelihood of disputes, and complaints led to eviction of Indigenous tenants. The proportion of focus group participants who sought legal assistance for such disputes was just over one in ten (**13.5%**), with women and men seeking help at similar rates.

4.3 Discrimination

Nearly a third of all focus group participants (**31.6%**) identified experiences of discrimination over the last couple of years. Indigenous men identified discrimination at a higher rate than Indigenous women (35.7% of men compared with 28.0% of women). The actual incidence of discrimination is likely to be significantly higher than these figures indicate, for a number of reasons. Although discrimination was seen as being pervasive, for example, it was usually only defined as direct, racial discrimination. Additional grounds of discrimination (disability, sex) were only rarely mentioned during focus group discussions and so were not measured statistically in the data collected.

Discrimination in housing and employment were the main areas of complaint, followed by goods and services (shops, government and non-government services, police).

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

Only **15.6%** of those who identified experiencing discrimination sought legal or other help or advice, with women *significantly* less likely to access assistance than men (26.1% of men compared with 4.5% of women). Barriers inhibiting responses included a lack of awareness of rights, resignation due to the frequency with which the issue arises and difficulties identified with the legal complaints process itself.

4.5 Child Protection

Child protection issues were relatively common for ILNP participants, especially for female participants. **Child removal** into the care and protection system was a frequently identified problem, with over a quarter of participants (**25.5%**) identifying a problem in this area. Women were more likely to identify this problem than men (**30.9%** of women compared with **19.1%** of men).

Interviews with stakeholder organisations also clearly identified child removal, in particular, as generating serious levels of distress and anxiety for Indigenous people. It is clear that contact with the child protection system has negative repercussions for individuals, whole families and communities. The magnitude of the problem is also identified by the statistics: an estimated 50 per cent of Indigenous children are known to Child Safety and the rate of Aboriginal and Torres Strait Islander children taken into out-of-home care has more than tripled over the last decade, from 12 children per 1,000 population in care in 2002 to 42 per 1,000 in care in 2012.

A number of particular issues were identified by stakeholders and focus group participants:

- Poor community understanding of the governing legal framework
- Child Safety practices
- Failures of law and policy including problems with the role of recognised entities, the lack of cultural plans, the use of the Indigenous Child Placement Principle and issues of consent.
- A lack of oversight by the Court in ensuring an oversight of departmental decisions and practices.

Of the focus group participants who had identified a child protection or family law issue, 56.1% indicated they sought legal advice or assistance. There was a strong perception among legal practitioners and other organisations that Indigenous clients either did not, or were unable to obtain early legal advice when compelled to take part in child protection processes. For those who did seek assistance, it usually came after substantial intervention by Child Safety has already occurred.

Child protection legal needs also intersected with other areas of legal need including domestic violence and housing.

4.5 Credit/Debt and Consumer

Over one in four (**26.0%**) 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 very similar rates. Some 13% 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 unspecified debt and bill repayment (including phone and utility bills).

Just over one in five (**21.2%**) people who had had legal action threatened in relation to a debt or who had experienced problems with bankruptcy or their Credit Reference Rating had sought legal advice. Women were *much* less likely than men to seek assistance for such matters (30.8% of men compared with 15.0% of women). Failure to respond to these issues may be due, in part, to a sense that there are more urgent issues to address.

Consumer issues also cross over into credit/debt and where this occurs, consumer law is also identified as a priority in terms of need. The main problem areas for consumers were identified as superannuation and banks (**16.6%**) and scams and contracts (**14.1%**), although these statistics may represent an undercount of the actual incidence of consumer-related issues due to what appears to be a very low level of awareness of consumer law and associated rights.

In terms of cross over with credit/debt issues, vulnerability as consumers can lead to debt. Some examples of this include payday lending, book-up and hire/purchase schemes. Indigenous people have less access to credit, in general, and this means they have to rely on these other generally less favourable forms of credit in order to consume/purchase even essential items (food, furniture). This type of credit becomes problematic where individuals are paying very high interest (for example, through pay day lending and book-up) or where a person pays considerably more under a hire/purchase agreement than the goods purchased are worth. ILNP research has uncovered examples of all of the above. It is also clear from ILNP interviews with stakeholders and in focus group discussions that many people do not understand contracts and may be susceptible to high-pressure door-to-door sales, leading to both consumer and debt related problems. Mobile phones/TELCO (telecommunication) contracts provide a good example of the latter.

Only four focus group participants had sought legal assistance or help for a consumer-related problem. One factor inhibiting effective access to justice for Indigenous consumers includes the complexity of the law in this area. There is a call for more strategic intervention to consumer-related issues, including to target unconscionable behaviour on the part of traders or lenders.

4.6 Social Security and Centrelink

Overall, **71.1%** of all participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits 4.6 percentage points higher than that of Indigenous men (73.2% compared to 68.6%). Women were also nearly twice as likely as men to be subject to income management (16.1% compared to 8.9%).

A third (**33.3%**) of participants receiving Centrelink payments identified having experienced a dispute or problem in this area. Only 2 of the 35 focus group participants experiencing an issue in this area had sought legal advice or other assistance. The rest had left the issue unresolved or tried to resolve it directly with Centrelink, and the latter group appeared to be least satisfied with the outcome of the dispute/problem in question.

A number of factors that are more pronounced in Indigenous communities appear to contribute to problems with Centrelink. These include the high proportion of people in the community who are dependent on Centrelink payments and the difficulties those on remote communities in particular (but not exclusively) have with Centrelink's automated, internet-based and streamlined system of communicating with clients.

Overpayments of allowances (leading to debt), being cut off benefits and underpayments constituted in combination the majority of difficulties reported. Centrepay (also of relevance to civil law issues of debt and consumer law) was another area of concern. The Centrepay system was criticised on the basis that without effective oversight, it appears to be facilitating exploitation of vulnerable Indigenous people by traders through high-pressure sales, scams and rip offs. It seems to be too easy for companies to be approved under the scheme, and to then sign Indigenous people up to highly questionable contractual obligations, with deductions then being made through Centrepay to the detriment of Indigenous people rather than for their benefit, contrary to the original intent of the Centrepay scheme.

4.7 Wills

Only **13.3%** of focus group participants had completed a will. However, a majority (**63.7%**) of those without wills said that they would like assistance to complete one. Women were slightly less likely to have completed a will than men and more likely to indicate that they would like assistance (67.7% of women compared with 59.3% of men).

Reasons for not having wills 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 about burial or children and as assisting with access to a deceased person's superannuation, for example.

4.8 Compensation for Victims of Crime

Overall, **18.4%** of participants identified as having been a victim of violent crime within the last two years. Women were marginally more likely to identify as such than men (20.7% of women compared with 15.7% of men). They were also, however, more likely than men to know of Queensland's victim's assistance scheme (56% of women compared with 40% of men). Only close to a third (**30.4%**) of participants identifying as a victim of crime had accessed victim's assistance.

Recent changes to the victim's compensation scheme in Queensland were identified as creating particular barriers for Indigenous people, including the fact that assistance now involves a focus on treatment rather than other financial compensation. This treatment, including counselling, can be difficult for Indigenous victims to access, especially on remote communities. Reasons why formal applications for assistance were not made also included a fear of disclosing the wrongs of a perpetrator and the actual process itself being problematic.

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

There is a complex interplay between civil, family and criminal law problems. There can be a lateral escalation, where an unresolved civil law issue creates further civil law issues, leading to a complex of legal needs that are, at least in part, created through the failure to address initial legal concerns. As an example, 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 neighbourhood disputes, education and discrimination, for example. We note the opposite can also be the case: criminal law issues can give rise to civil law needs. The civil law needs of Indigenous prisoners and family violence provide good examples of the latter.

6. Priority Issues Relating to Service Delivery

Legal need may differ within Indigenous communities according to gender, cultural background (Torres Strait and/or Aboriginal), or particular circumstances (incarceration, homelessness).

There are **significant gaps in legal service delivery** in terms of capacity to meet this need, and this is in large part due to **under-resourcing of the legal assistance sector**. More funding is required, with priority given to Indigenous legal services as primary providers of legal assistance to Indigenous people for further resourcing, including so as to enable ATSILS to expand its current focus on criminal law work to include more emphasis on civil and family law matters. Indigenous people need to have a choice of services, however, and for this and other reasons non-Indigenous services also need more funding so as to better assist Indigenous people with civil/family law issues.

A range of **policy issues are also seen as impacting** on Indigenous access to civil and family law justice, including conflict of interest and means and merits guidelines and testing. Decision-making in relation to these guidelines is reported as sometimes lacking transparency or consistency.

Distance was seen as also creating barriers to access, particularly for more remote and regional communities. Indigenous people living in such areas are identified as being less likely to use phones or Internet to make or to retain contact with legal services located outside their local community. Video-conferencing is seen as having potential to overcome the tyranny of distance quite effectively, particularly where a local person can facilitate contact through this medium.

Outreach may also be used to address geography-related barriers to accessing information and help *and* to reverse poor levels of engagement between services and Indigenous communities that is often evident, even in more central locations. It is noted that outreach to more remote communities needs to be more regular, to include a focus beyond criminal law and criminal court circuit and to be more than tokenistic.

Perhaps more so than criminal law, civil and family law issues demand a certain level of proactivity on the part of those challenging or defending such matters. Presently, there is an under-representation of Indigenous people engaging with the *non*-criminal legal system. This will only be addressed through increased knowledge of rights and of where to access justice or help. **More CLE and promotion of legal and other services able to assist with civil and family law matters is required.**

Levels of community satisfaction with legal services varied. Generally, lawyers acknowledged that whilst outcomes of a particular dispute or problem do have an impact on satisfaction, it was up to lawyers to manage expectations through good communication skills. **The main area of concern or complaint relating to services was the quality of interaction** they had with Indigenous people. Effective communication at each and every point of contact is thus highly valued. Many focus group

participants identified feeling pushed along on a very fast conveyor belt by legal service staff, ‘treated like dirt’ because they are Aboriginal or patronised when a lawyer fails to listen to them.

Particular issues of communication arise due to literacy and language, as well as cultural difference. Indigenous staff, including Field Officers or similar, can assist to overcome these issues and employing such staff should be a priority, as far as possible, for *non*-Indigenous services.

A **range of other barriers** include the following:

- limited access to phones and transport;
- the rigidity of the appointment system used by some legal services
- levels of resignation towards relevant issues, fear and distrust of the legal system and lawyers,
- low prioritisation of civil and family law issues, given the complexity of other legal and social issues arising for many Indigenous people
- the unwieldy nature of legal processes used in responding to or initiating civil or family law actions; and
- failure on the part of courts to work towards ensuring adequate levels of Indigenous access to *non*-criminal law justice.

It was also emphasised that **those with capacity to address civil and family law need in Indigenous communities need to work more collaboratively and/or forge better connections**. This includes communities with services; legal with non-legal services; legal services as a group; and government with non-government services.

PART 1 CONTEXT

1. THE ILNP

1.1 INTRODUCTION AND BACKGROUND

This report presents key findings based upon research conducted in 2011-2014 by the Indigenous Legal Needs Project (the ILNP) in Queensland.² The ILNP is national research into the civil and family law needs of Aboriginal and Torres Strait Islander Australians. It is 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 assessing Indigenous concerns, specifically, 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.

The 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 Queensland, Legal Aid Queensland (LAQ) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS (Qld)) 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 Queensland report is the third report to be published by the ILNP. The ILNP’s NT and Victorian reports were released in 2012⁷ and 2013.⁸ The ILNP is also disseminating research findings more widely to ensure optimal accessibility to the research for the broader community, including through social media.⁹

1.2 QUEENSLAND REPORT STRUCTURE

The Queensland Report seeks to provide:

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

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

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 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 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 service delivery issues in Queensland. 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 Queensland, as well as a range of other civil and family law issues discussed by ILNP participants during fieldwork. It draws upon qualitative material provided in stakeholder interviews and focus group discussions and quantitative data gathered at each of the focus sites in Queensland.

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

1.3 METHODOLOGY

The ILNP Queensland 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 Queensland.

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.¹⁰ 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 2011-2014 the ILNP visited eight Indigenous communities in Queensland in order to gather the data upon which this report is based. The sites in Queensland were selected in consultation with ILNP project partners in Queensland.¹¹ Based on their knowledge of relevant communities in this jurisdiction, partners have assisted in the selection of these sites with reference to specific civil or family law issues or accessibility issues that they were aware were arising for particular communities.

¹⁰ The quantitative data is an important indication of the key concerns of focus group participants located in a variety of different Queensland locations. However, it should be noted that the quantitative data cannot be interpreted simply as a representative sample of *all* Indigenous people in Queensland.

¹¹ 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.

Further, given that issues of practical access to services are important considerations in this research, sites chosen for the ILNP research 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. The eight communities selected in Queensland are representative of *five* different ARIA+ classifications of remoteness (see immediately below), with two communities classified as ‘very remote’ and two as ‘moderately accessible’, and the remaining communities falling into four different categories of remoteness. All Queensland communities have been chosen on the basis of their geographical distribution across the State.

The eight focus communities in Queensland are **Brisbane, Cairns, Charleville, Mount Isa, Pormpuraaw, Rockhampton, Roma and Thursday Island.**

These sites are classified by ARIA + as follows:¹²

Highly Accessible:	Brisbane
Accessible:	Rockhampton
Moderately Accessible:	Cairns and Roma
Remote:	Mount Isa
Very Remote:	Thursday Island, Pormpuraaw and Charleville

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 Queensland are currently able to access justice.

In all Queensland 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.¹³ Numbers of participants in the groups ultimately ranged from seven to twelve (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 ‘Pormpuraaw Women’s Focus Group Participant’).

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

¹² See the following website for ARIA+ classifications: <http://www.spatialonline.com.au/aria/default.aspx>. ‘*Very remote*’ is defined by ARIA+ as ‘locationally disadvantaged with very little accessibility of goods, services and opportunities for social interaction’. ‘*Remote*’ is defined as ‘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 and relatively unrestricted accessibility.

¹³ 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.

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. Coordinators were 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.¹⁴ 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.¹⁵

Table 1.1 indicates that upon completion of fieldwork in Queensland, sixteen (16) focus groups had been held, with a total of 152 Indigenous community members participating (with a target number of participants at 160). The proportion of female participants compared with male participants was 7.8 percentage points higher (53.9 per cent female participants and 46.1 per cent male participants). The greater number of women in the focus groups has only a slight impact on the results when discussing total number and percentages of Indigenous people nominating particular problems.¹⁶

¹⁴ In Mount Isa and Pormpuraaw a non-Indigenous community-based stakeholder organisation with a large local Indigenous clientele and in Thursday Island, Rockhampton and Brisbane an Indigenous community-based organisation coordinated the focus groups.

¹⁵ 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.

¹⁶ We could have weighted the number of males, but given that the influence of the imbalance was slight, and the report is only using descriptive statistics, we preferred to reflect the actual number of participants in the focus groups.

Table 1.1 Location and Gender of Focus Group Participants

Location	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
Brisbane	12	57.1	9	42.9	21	100
Cairns	10	50.0	10	50.0	20	100
Charleville	8	40.0	12	60.0	20	100
Mount Isa	10	50.0	10	50.0	20	100
Pormpuraaw	7	38.9	11	61.1	18	100
Rockhampton	8	44.4	10	55.6	18	100
Roma	8	50.0	8	50.0	16	100
Thursday Island	7	36.8	12	63.2	19	100
Total	70	46.1	82	53.9	152	100

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

Table 1.2 Age Range of Focus Group Participants

Age	Focus Group Participants					
	Male		Female		Total	
	No	%	No	%	No	%
18-24	18	25.7	16	19.5	34	22.4
25-34	10	14.3	14	17.1	24	15.8
35-44	20	28.6	20	24.4	40	26.3
45-54	14	20.0	20	24.4	34	22.4
55+	8	11.4	12	14.6	20	13.2
Total	70	100.0	82	100.0	152	100.0

1.3.3 Focus Groups: Process

The focus groups were semi-structured to provide participants with an opportunity to raise issues they considered important to them and to allow open discussion to explore new themes as they emerged.

Using this approach meant that people were able to answer questions on their own terms, but it still provided structure for comparability across gender and community.¹⁷

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.¹⁸ The focus group questionnaire is attached as **Appendix A**, and responses to it form the basis of the data presented in Parts 2 and 3 of this report.¹⁹ 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 two years, with a brief description of the nature of any issues or problems arising;
- whether legal or other advice or help was sought in response to such issues and if so, from whom; and
- how or whether they had resolved any issues that had arisen.

Though the questions set out in the questionnaire are specific to particular areas of law, comments relating to other legal issues arose during both stakeholder interviews and focus group discussion. Discussion of these other legal issues is provided in Section 4.14.

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

Participants were also invited to take part in a group discussion after completion of the questionnaire. This discussion allowed participants to expand on the legal issues they had experienced and to comment on barriers to accessing legal services and proposed changes to overcome these barriers. The discussion was structured around a range of specific questions to allow comparison and to ensure that

¹⁷ May, T (2001) *Social Research: Issues, Methods and Process*, Open University Press, Buckingham.

¹⁸ 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 (for eg. Stolen Generations/Stolen Wages and income management). Family and domestic violence was treated as a criminal matter rather than as civil law. Other hybrid orders (for 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 criminal law issue of family violence, for instance, and the way in which it interacts with civil/ family law need is referred to throughout this report.

¹⁹ 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.

a focus was maintained on key themes central to the research.²⁰ 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 60 stakeholder organisations servicing or working with the nominated communities. A full list of stakeholders interviewed in Queensland is attached as **Appendix B**. Stakeholder interviews were used to explore the experiences, perspectives and understandings of those providing legal or related services.

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

Stakeholder organisations interviewed included:

- legal service provider staff at ATSILS Qld, Indigenous family violence and/or Indigenous women's legal services,²¹ Community Legal Centres (CLCs) and LAQ (including Indigenous and non-Indigenous staff, family and civil law solicitors, office managers, client service officers, community legal education (CLE) and law/policy reform 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 Queensland Anti-Discrimination Commission (ADCQ) and the Australian Securities and Investments Commission (ASIC)).

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

- the most common types of non-criminal matters that Indigenous people access their organisation or service for;
- the perceived nature and extent of the civil/family law needs of Indigenous people;

²⁰ See Patton, M (1990) *Qualitative Evaluation and Research Methods*, Sage, Newbury Park.

²¹ See **Appendix B: Stakeholder Interviews**. Indigenous family violence or women's legal services included Queensland Indigenous Family Violence Legal Services (QIFVLS), Aboriginal Family Legal Service South Queensland Indigenous Corporation (AFLS) and Aboriginal and Torres Strait Islander Women's Legal Service North Queensland (ATSIWLSNQ). All of these services are CLCs as at 16 June 2014.

- 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 by participating organisations. 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 practitioner***;
- Aboriginal Legal Services' staff (solicitors and support staff), including Queensland Indigenous Family Violence Legal Services (QIFVLS), the Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (ATSIWLAS), Aboriginal Family Legal Service Indigenous Corporation (AFLS), the Aboriginal & Torres Strait Islander Women's Legal Services NQ (ATSIWLSNQ) and ATSILS (Qld), 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 ADCQ 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 ISSUES IN SERVICE DELIVERY

2. CIVIL AND FAMILY LAW NEEDS: THE PRIORITY AREAS

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

We do not canvass here all the legal issues that were covered in the focus groups and stakeholder interviews. These are dealt with fully in Part 3: Section 4. However, for the reasons outlined below, we have prioritised a number of legal issues: housing, neighbours, discrimination, child protection and family law issues relating to children, credit and debt (with associated consumer issues), Centrelink problems, victim's compensation and wills. We in no way suggest that matters relating to Stolen Generations/Wages, employment, education, accident and injury or other civil or family law issues discussed later in the Report are unimportant or do not give rise to significant problems for Indigenous people. However, they have not been prioritised in the following discussion.

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 takes into account that identification of issues by focus groups presupposes recognition that certain events or experiences have a legal dimension - and particularly in relation to civil law this is not always readily the case. As such, there may be areas of *unrecognised and unmet* legal need which are significant both in extent and in the impact that they have in communities.

In addition to the identification of priority areas of legal need, there are a number of dynamics evidenced in the Queensland 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: criminal law issues can give rise to civil law needs. For example, family violence 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 in the discussion following.

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 Queensland

More than 25% of focus group participants indicated that they had experienced a legal issue in the following five areas of law. These particular issues for the most part also elicited a substantial amount of comment in focus groups and/or stakeholder interviews. The extent to which the relevant issues were responded to was also relatively low, particularly for discrimination and neighbourhood disputes (less than one in six participants). We consider these **five areas** of law to be priority areas of need.

- **Housing** (44.1%)
- **Disputes with neighbours** (34.7%)
- **Discrimination** (31.6%)
- **Credit/debt** (26.0%)
- **Child removal** (25.5%)

In some areas of **consumer law**, the proportion of participants identifying an issue was relatively high (16.6% for superannuation and banks), but it is its connection with credit/debt that identifies it as a priority area. It is at the point of crossover of the two areas of law that the level and complexity of need is increased. The interplay between the two occurs, for instance, where Indigenous people have little comprehension as consumers of contractual obligations (including in mobile phone contracts) and this leads to accrual of debt.

In addition, 71.1% of focus group participants stated that they received Centrelink payments of some kind and one third of those people (33.3%) indicated that they had experienced problems with payments over the last couple of years. Taking into account the proportion of persons dependent on social security payments and the impact that problems with payments has (no means of financial support), as well as the fact that a minimal proportion of people who had experienced problems of this nature had sought assistance, **social security/Centrelink** is identified as a priority area of need.

In addition to these eight areas of expressed need, there are two further areas of law that we identify as priority areas of *unrecognised* or *unmet* legal need.

The first is **victim's compensation**. Nearly one in five focus group members (18.4%) identified as having been a victim of violence in the last couple of years, 50% of participants knew of the existence of the victim's assistance scheme, but only close to a third of this group (or 8 persons) had sought compensation.

The second area of unrecognised or silent need is in the area of **wills** as only 13.3% of focus group participants had made a will and a further 63.7% expressed a desire for assistance to create one.

Gender differences

We note that there are important gender differences in terms of extent of legal need, meaning that some issues present as a higher priority for men than for women and vice versa.

Women are significantly more likely than men to identify legal problems in the areas of *housing*, *neighbours*, *child protection and family law* (where issues concern children) and more likely than men to identify an *employment* or *education* related problem. They are also more likely than men to want assistance with drawing up of a *will*.

Men were more likely than women to identify legal problems in the areas of *Stolen Generations/Wages, discrimination* and *consumer law* (superannuation/banks).

Women experiencing problems in relation to discrimination or credit and debt were also 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 **44.1%** of all focus group participants identified disputes or problems with landlords in relation to tenancy. Women were much more likely to identify this issue than men (51.2% of women compared with 35.7% of men). In some communities, nearly three quarters of participants had experienced 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. As just one example of this, an Indigenous legal service provider notes that ‘children are removed (by Child Safety) because dad and mum don’t have housing’. Another Indigenous legal service provider observes that dealing with tenancy-related problems more effectively would mean that a lot of other legal issues might also be better addressed. ‘Sometimes it’s also just about having adequate housing. If there was adequate housing [for Indigenous people], probably about 50 per cent of the problems would be 50 per cent less.’

Failure of landlords to undertake repairs and maintenance at all or in a timely manner was the most common cause for complaint in this area, inevitably meaning that many Indigenous people are (at least) residing in substandard housing, but sometimes the deficiencies identified are sufficiently significant to place tenants in serious harm’s way. A story recounted by an Indigenous mother participating in the Charleville women’s focus group provides a tragic example of this. The events recounted also illustrate how legal issues can easily interconnect and snowball to increase complexity of need; in this instance, a tenancy related legal problem becomes an accident and injury matter (see 4.13: Accident and Injury).

There was a hot water system (in my rental accommodation). I told the real estate... there was water all under the house and it was because of the hot water system. And I said to them that the hot water system was really hot. So when you put the hot water in the sink to wash up you’d have to leave it for a half hour because it was so hot. So I told the real estate agent... And when my little boy... was almost one, I turned the wrong tap on. ... The water, when you don’t use it, it just sits in the pipes so it comes out cold, and then it came out hot. And he wasn’t in there for long, but it burned his whole leg and the skin was like sausage meat around his feet. Like, I went to the real estate agent after that and complained, because a plumber came round and looked at the hot water system and he said, ‘That is so old that I haven’t even seen a hot water system like that’ ... I said, ‘Because it’s so old, could it be faulty and making the water hotter than it should be?’ and he said, ‘Yes’. (**Charleville Women’s Focus Group Participant**)

Rent, and in particular the high cost of renting, was also raised as a major problem. This was especially so in communities where rental price spikes were occurring due to development of local

industry (oil and gas mining in Roma) and/or where properties were in especially limited supply (for instance, on Thursday Island). As discussed further in Section 4.1: Housing, recent changes to government housing policy have also increased the cost of rent in social housing, with the State Government taking some control in relation to how rent is being charged in community-based housing.

My rent went from \$230 to \$600, and they asked us to relocate. That was when the floods were just on. We were asked to relocate so that they could renovate the house, and the rent went from \$230. **(Roma Women's Focus Group Participant)**

Rental arrears were also spoken of, particularly in the context of the ongoing impact that a housing-related debt has on access to housing. The debt in question can sometimes be significant (and in reality, unpayable), with one example provided of a debt of upwards of \$20,000.

My understanding is, too, that people accrue debt from a variety of different housing agents and then there's some kind of system in place where ten years down the track they might apply for a new house. However, because they've got this accrued prior debt, until they pay that off they're not entitled to a place. **(Indigenous legal service staff)**

Eviction from a rental property on the basis of a perceived breach, including non-payment of rent, is likely to lead to homelessness where people are locked out of future tenancies.

In seeing the examples of [people] being evicted, you just wonder how could you do that? These people are effectively homeless once they're evicted.... It just beggars belief **(Indigenous legal service staff)**

A number of participants also had disputes relating to the return of bond monies. They discussed the common practice of many Indigenous tenants of *not* carrying out an initial inspection on entry to a rental property and the problems this inevitably causes for tenants upon exiting the property.

When I moved out of the last place she said, 'There's fly shit up there on the ceiling', and I said, 'That was there when I got there!'... There are just petty little things like that. **(Charleville Women's Focus Group Participant)**

Poor access to affordable tenancies was a fundamental housing issue for many stakeholders and focus group participants. An Indigenous legal service suggests, for example, that 'there's not enough housing in these places. The government talks about funding more houses' but the reality is that 'you don't see it [happening] within a reasonable timeframe'. There are presently *far* too few subsidised rental properties available through community or public housing to meet existing demand and private tenancies may be beyond reach due to the cost of renting privately and/or racial discrimination leading to exclusion. Accessing the private rental market is said to be 'tough. That's unachievable at this point because the rental market is way too high for one person to afford on their own' according to one Indigenous community-based stakeholder.

This places enormous pressure on those assisting the homeless with short - term accommodation, with relevant agencies or services reporting major pressure to take in and to then accommodate longer-term those who have nowhere else to go, including because of wait lists for public housing.

I guess the big thing for us with housing is that the waiting lists are so huge. We were just talking about this the other day. Ours is supposedly short-term accommodation. We can't

really operate on that [basis] because of the waiting lists we have. Basically, it's been clogged up here in terms of exits. And then, there's a departmental process [around allocation]... [for] Housing Commission [properties] that's out of all of our control. (**Indigenous community organisation worker**)

These same agencies or services were heavily criticised by some Indigenous focus group participants as seeming to be heartless in refusing them shelter. 'They may as well say, "Here's an orange, and just keep going" [for all they do for you]', complained one Brisbane men's focus group participant, for instance.

As a related issue, limited access to housing, in part, commonly leads to significant levels of overcrowding in Indigenous households, which then gives rise to broad-ranging social, health and legal problems.

There have been multiple people living in one bedroom or multiple families in one house... I think in remote communities and in the old DOGIT communities that have become Indigenous councils there's not enough houses there and that has an impact on kids not getting to school and getting enough sleep and probably neighbourhood disputes. (**Legal practitioner**)

Overcrowding also occurs where Indigenous people take in, even on a short – term basis, relatives and community members due to cultural and familial obligations. As another example of how housing-related legal issues can escalate into other legal matters, potential problems arising as a result of overcrowding include debt, child removal, eviction and neighbourhood disputes. As discussed further in Section 4.1: Housing, government agencies, including Child Safety and Housing, may fail to take into account an Indigenous tenant's obligations to house family members in assessing overcrowding as a risk to a child or as a breach of a tenancy, for instance.

Then the Department goes to visit and says, 'Why have you got eight adults in the house?' 'Well, uncles from there and aunties from there and they'll go back one day.' The Department says, 'No. If they're not gone then we're...' I've had a few like that, and because people can't say no to their relatives. So, that's something that the white Child Safety officers... It's a judgmental thing. They're saying, 'Well, you just say no. All you need to do is stand up and say 'No, you need to move, this isn't your house, get out of my house.' It's not like that. They can't do that. If they did that, their families would be really angry with them. It would be culturally very bad. The white system doesn't understand that and doesn't make allowances, which is why the kids tend to get taken out of the home rather than 'We'll work with the family and try and fix it up in the home'. (**Legal Aid staff**)

Finally, there are a very substantial number of people experiencing housing-related problems who are *not* addressing them anywhere near as effectively as they might. This is a serious issue, given the frequency with which they arise for Indigenous people *and* the consequences that they may have if left unaddressed (eviction being a good example of this). The overwhelming majority of participants report no satisfactory resolution of the problem or dispute in question.

Only just over a fifth (or **20.6%**) of those who had identified a tenancy-related dispute or problem sought legal advice in response to their problems, with Indigenous women 5.1 percentage points more likely than Indigenous men to seek legal advice (22.5% of women compared with 17.4% of men). Having insufficient knowledge of rights and obligations and not feeling sufficiently empowered means that often Indigenous tenants respond too little too late to housing issues.

Some of those people said to me, ‘No, we don't want to cause problems here.’ I still tell them their rights and what they can do but if they don't want to do something about it because they don't want to make waves then you have to be respectful of that. **(Indigenous legal service staff)**

They don't understand the tenancy laws, their rights... A lot of the families have no idea about their rights. And they become very vulnerable. Some of the landlords just say you have to get out and they do. They don't realise their right is ‘Did you receive [the correct] paperwork [from the landlord]?’ **(Community organisation worker)**

A lot of them come to us when it's too late. Some of them come in from the mission and don't know about us, or whatever, and then they'll get in a situation. They'll be like ‘Go see [named organisation]. They'll help you.’ But by then it's too late.... **(Community organisation worker)**

It is worth stressing that there are serious gaps in Queensland in terms of availability of legal advice and help for tenancy matters. The recent defunding of Queensland's Tenant Advice and Advocacy Service is not likely to help this situation.

They used to have a tenancy advice and advocacy service here, and they just grew and grew, especially since the oil and gas came here, but since the funding cuts last year, I think they finished in June. And they were inundated with people looking for assistance”. **(Roma Women's Focus Group Participant)**

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 **34.7%** of all focus group participants identified neighbourhood disputes as an issue. Need in this area was particularly pronounced for Indigenous women participating in the research, with the percentage of women identifying such disputes at 13.2 percentage points higher than that of Indigenous men (40.7% of women compared with 27.5% of men). Some communities fared worse than others, with over half of participants in Cairns identifying neighbourhood disputes as an issue.

As discussed in greater detail in Section 4.2: Neighbours, noise was the most common area of dispute, followed (in order of more to least problematic) by animals (dogs); drinking and ‘fights’ with neighbours; fences and boundaries; and children, privacy and prejudice. Notably, particularly on remote communities, neighbours may experience *all* of these problems at the same time - and regularly. ‘Everybody has a problem with noise, people coming into your property, dogs getting out’, observed a female participant in Pormpuraaw, for example.

Despite the relative frequency of problems, participants did not usually initiate any kind of formal complaint in response. In general, it appears that they are more likely to be the *subject* of formal complaint rather than complainant – unless perhaps pushed to say something to counter a neighbour's allegations. At times, the complaints raised against them with housing authorities or real estate agents seemed to participants to be nothing more than neighbours taking issue with Indigenous race or

culture. More commonly, Indigenous focus group participants facing a problem in this area may try to resolve disputes directly with neighbours, but this is often difficult and largely unfruitful.

[With housing], probably neighbours play a big part in what happens there, so some of that probably comes from them [having a] lot of family. It comes back to the family being there, [the overcrowding]... and even a lot of children. Some families have six or seven children
(Community organisation worker)

I've had a problem with that... They go into the real estate even and they complain to the real estate. And, I've had to sit down with the real estate and say, 'You know, he's complaining all the time'. You can see it's racial. They just don't like living next to blackfellas.
(Rockhampton Women's Focus Group Participant)

There are three cattle dogs in the yard and they bark from daylight to dark. And because they (the owners) are at work, they don't know about it. If they are let off the chain they fight and they can't be separated. This is what we put up with, the whole street. I never see [the neighbours to talk to them about it]. I've seen their light on at 5 o'clock in the morning. I don't know how they would react anyway.
(Roma Women's Focus Group Participant)

Of note, when complaints were made about participants, their tenancies were often jeopardised; a further example of the interconnection of different civil law issues. Landlords and agents, keen to restore peace, might be too quick to evict an Indigenous tenant on the basis of a non-Indigenous neighbour's account of events, according to some.

And the other thing that comes up when people are in public housing is discrimination by neighbours. You often hear in particularly public housing and maybe some of it is about the quality of the product and how sound proof things are. You hear of neighbours ganging up against one person or one unit. That often seems to happen to Indigenous clients. It may be because they have larger families or kin coming and going so that people perceive them as having too many people there or it's just discrimination because of race sometimes. It's very hard to nail those issues. Providers are not on site all the time. So to get rid of the issue if they've got three neighbours saying someone's a problem they just get rid of them...
(Legal practitioner)

Significantly, only **13.5%** of all participants identifying an issue with neighbours had sought legal or other advice or assistance. Even though women were considerably more likely to identify having had a problem in this area, they were marginally less likely than men to try to address the issue. The vast majority of those who had sought help had not done so through legal practitioners, speaking instead to police, council and landlords.

Further, as an excellent example of the way in which unaddressed civil law problems can morph into criminal law issues, accounts were provided of instances where neighbourhood disputes without satisfactory resolution escalated to become criminal law matters.

[A neighbour's dog] went for me three times when I was trying to mow my lawn.... The Council reckons they can't do nothing about it unless he bites ya. You have to wait until you are dead before they'll do anything, because he is the sort of dog who will bite! My son said to the owner, 'If that dog bites my mother, I'll come over there and bash you and your dog'. So

the dog's been tied up for a while... They know he is serious [trouble]. If he bites me, it'll be bad. **(Roma Women's Focus Group Participant)**

2.4 DISCRIMINATION

Discrimination emerged as a priority area of Indigenous legal need in Queensland. Very close to a third of all focus group participants (**31.6%**) identified experiences of discrimination, with Indigenous men more likely to report such experiences (35.7% of men compared with 28% of women). Some communities also identified discrimination at higher rates than others. In Brisbane, for instance, over half of participants had had a problem in this area.

The discrimination identified by both stakeholders and participants was generally race-based and direct, although criminal record, age and sex discrimination also arose for small numbers of participants. This may be partly a reflection of a lack of awareness within communities of other grounds of discrimination covered by relevant legislation. Sometimes too, what was labelled by participants as, for instance, an education-related matter looked very much like discrimination, though it was not categorised as such in questionnaire responses. This particular pattern emerged in areas ranging from consumer law and housing to neighbours and government policy and is likely to lead to an undercount of the actual incidence of the problem of discrimination in the ILNP quantitative data.

The pervasive nature of racial discrimination over generations and across so many different areas of daily life was discussed at some length in focus groups.

Aboriginal people are still at the bottom of the ladder for services, recognition, identity, anything... I've felt that going into hospital with my eyes... I got a sting from a patient next door to me about Aboriginality. 'How did she fall over, did she fall over herself?' I heard her! And even some of the doctor's stood around and said, 'How did you fall over? Did you do it accidentally or did you deliberately do it?' Bullshit! I'm too old for that sort of stupid nonsense. I've been working in communities right from when I was 16 years of age... and it's still happening for Aboriginal people. **(Charleville Women's Focus Group Participant)**

As discussed in further detail in Section 4.3: Discrimination, the most common areas of racial discrimination were access to housing (accommodation) and employment.

It's a big problem. It's the hardest place to get a private rental. Even if you look a bit brown they won't look at you. **(Mount Isa Men's Focus Group Participant)**

It does happen. You apply for so many jobs and you think, what's going on here? Like they don't want blackfellas? **(Charleville Men's Focus Group Participant)**

Discrimination in goods and services was also raised as a significant problem. Issues arose within government and non-government services (including prisons and healthcare providers), as well as manifesting as sometimes fairly blatant exclusion and racism in shops and in clubs/hotels. What was perceived as racial profiling of Indigenous people by police, supposed to 'serve and protect', caused widespread concern for many.

[Racism] is here. It's not out in your face. But there are things like when you are at a shop and standing at the front, they look past me to the lady or the man behind me. **(Roma Men's Focus Group Participant)**

I've been stopped [by police] at least over 12, 15 times in my whole life and that shouldn't be part of my life, you know what I mean... And a lot of Indigenous people, just because we're seen in an area where there was criminal activity, we're always the ones that are going to be judged because of the colour of our skin. **(Rockhampton Men's Focus Group Participant)**

Yeah. I have a young lad. I met him through Child Safety and the people at school and we'd been meeting for some time and one day he said 'Do you know what upsets me?' And this comes from a teenager. He said 'I hate being pulled up on the street just walking home from school with my buddies and having my bag searched'. And the kid hadn't done a bad thing. He was a black kid was about the only thing and he was, just on his way home. So they're thinking about it and they see it a lot. It just makes [for low] morale. It upsets me. I get bitter at the Police... It's affecting the kids because they're ashamed.... They grow up and they've got to go through their bags in surmising that they've got something hidden in there... [It]'s every black young person... Are they protectors, to serve and protect? **(Indigenous community organisation worker)**

Vilification was also discussed as being fairly common on ILNP communities, particularly coming from neighbours.

What we often (see) are neighbours being very racist. They're blatant around their language. We do have that conversation, in saying that it's not appropriate. That could be taken to the ADCQ. If our client is being verbally being told all this, they have a right to take it on. There's a lot of overt vilification. **(Community organisation worker)**

Discrimination is another area where an unaddressed civil law issue is quite likely to escalate to become a criminal law problem. People targeted in this way can become angry and take matters into their own hands, literally. As a woman in the Charleville women's focus group states, for example, 'How did I resolve the problem? By yelling abuse at them.'

Some people might face discrimination every day of their life. Then suddenly it will just be the tip of the iceberg, like a client who punched someone for calling them a nigger. I think that probably actually wasn't the first time that person had been called a nigger. It was just that it finally all added up. **(Legal practitioner)**

Overall, only just over one in ten (**11.6%**) focus group participants who had identified discrimination as an issue had also sought help or advice for it. Men were significantly more likely to have sought assistance in response to discrimination than women (26.1% compared with 4.5%). Rates of complaint about or formal response to discrimination thus appear to be fairly low. This is probably partly attributable to lack of knowledge about how to go about taking action and difficulties in establishing legal proof, but also to barriers arising within the complaints process itself (a lengthy process, and particularly hard for those with literacy issues) and a perception that the effort expended would not be worth much in the end anyway.

We need to get more [information about] what they can do for us. The civil rights mob, the human rights [mob]. **(Indigenous community organisation worker)**

Also the process [of complaint]... is quite complicated in the sense that you've got to do it in writing and then you've got to wait. It could take 6-12 months, whatever, and then what's the outcome? There's no guarantee there's even going to be an outcome and there might not be one that you're after. **(Statutory Authority staff)**

And because it is so frequent, people seem to have a certain level of resignation (rather than acceptance) towards discrimination. An issue or event has to be fairly substantial to warrant sufficient attention to follow through with a complaint.

Some of those clients, they were so used to being treated badly because of the entire life experience that they'd had... They were just resigned to getting poor or less favourable treatment from service providers or police or government or whoever it might be. So, the number of those clients that are prepared to engage in discrimination complaints is pretty low. It happens and there are lots of issues. For us though, there's not much work in it because people aren't really that keen to progress it. **(Legal practitioner)**

People wait until it's the straw that's broken the camel's back and they'll come in and lodge a complaint. A lot of times, yeah, people will wait until it's quite serious for them before they come in. **(Statutory Authority staff)**

The importance of advocacy and support to discrimination complainants and the difficulty of finding this type of assistance were both identified.

Yeah, I would pursue it. But... it's very hard for me. I'm just reflecting on myself here. It's very hard for me to confront some of those things.... I remember when my wife and I first started dating and going out, there was an occasion where I had to stand up in a restaurant and ask the proprietor of the restaurant to cease his discriminatory language and that was very hard for me at the time to do. I think I was a bit tired or frustrated... And after it [happened], I saw the effect that it had on my wife that I had to do that. It was all very racially motivated of course, but would I do that consciously? I'd find it very difficult unless I knew I had support from somebody. **(Indigenous community organisation worker)**

On a positive note, one of the few participants who had taken action encouraged others to also challenge discrimination through the legal system.

With human rights... jump in and join 'em, every one of you, because that's where the top thing is. You can hit 'em with bad language, derogatory abuse, anything you come up against, because that's what I did (in relation to a shop owner who had made racist comments). And when I come back about 12 months after, he's sold his fruit shop. I told him, 'I've handed you over to human rights', and I went to Brisbane and when I came back I said, 'Where's the fruit shop?' and it was gone. And it's good, keep going, fighting back every inch of the way, it works. **(Charleville Women's Focus Group Participant)**

2.5 CHILD PROTECTION

Family law issues were considered in the ILNP research. This includes both (i) removal of children into the care and protection system and (ii) child support, contact and residency of children. However, it was **child removal** into the care and protection system that was the most frequently identified problem, with over a quarter of participants **(25.5%)** identifying a problem in this area. Women were more likely to identify this problem than men **(30.9%** of women compared with **19.1%** of men).

These statistics indicate that child protection issues were relatively common for ILNP participants, especially for female participants. This provides one basis upon which these issues are prioritised. Further, qualitative data collected by the ILNP also clearly identified child removal, in particular, as generating serious levels of distress and anxiety for Indigenous people. It is clear that contact with the child protection system has negative repercussions for individuals, whole families and communities. The way in which government is perceived to be interacting with families around child protection is causing considerable concern, discussed with some frequency in both focus groups and stakeholder interviews. The magnitude of the problem is also identified by the statistics: an estimated 50 per cent of Indigenous children are known to Child Safety and the rate of Aboriginal and Torres Strait Islander children taken into out-of-home care has more than tripled over the last decade, from 12 children per 1,000 population in care in 2002 to 42 per 1,000 in care in 2012.²³

A number of particular issues were identified by stakeholders and focus group participants, as noted below.

2.5.1 Poor community understanding of the governing legal framework

There is unfamiliarity with the law and its processes, or the importance of legal advice, and particularly at an early stage.

I think often our clients don't have a concept of what their legal rights are in relation to Child Safety and their children, and they're often misinformed by Child Safety about what those rights are. **(Indigenous legal service staff)**

2.5.2 Child Safety practice in care and protection

There was a strong consensus among focus group participants and stakeholders that Child Safety policies and practices worked to the detriment of the children and their families.

With child protection the legislation gives powers to the department to walk in and remove a child. And they do it, most of the time, because for them that's the easiest way to deal with it. **(Indigenous legal service staff)**

A common complaint was that the Department discouraged Indigenous clients from obtaining a lawyer, or advises them that one will not be necessary. And further, Child Safety Officers lacked compliance with their own instructions.

Departmental staff discourage clients to seek legal advice, they much prefer that those families are more vulnerable and therefore will be skewed away from the court system. **(Indigenous community organisation worker)**

There doesn't seem to be any accountability on the Department to follow its own rules and if it's doing what it's suppose to be by legislation. They're a law unto themselves. Seriously, they are. **(Community organisation worker)**

Not surprisingly, there was a sense of disempowerment and injustice evident among focus group participants in their interactions with Child Safety.

²³ Queensland Child Protection Commission of Inquiry (2013) *Taking responsibility: A Roadmap for Queensland Child Protection*, State of Queensland, Brisbane, 4.

They don't even tell parents about their kids. You don't know who has got your kids.
(Pormpuraaw Men's Focus Group Participant)

A lack of cultural awareness and cultural competence was also noted.

And if DOCS [Child Safety] see you with no beds, they think you aren't looking after your kids!
(Rockhampton Women's Focus Group Participant)

2.5.3 Failures of law and policy: recognised entities, cultural plans, the Indigenous Child Placement Principle and consent.

On the face of it the *Child Protection Act 1999* offers particular protections for Aboriginal and Torres Strait Islander children and families. However, many stakeholders were critical of the implementation of the legislation, particularly in relation to recognised entities, the Indigenous child placement principle, cultural care plans and issues of consent to orders.

In relation to the recognised entities (RE), issues related to a lack of independence from Child Safety and their relative under-utilisation in decision-making concerning Indigenous children.

Currently the client for the recognised entities is the department, the department fund the RE, the department are legislated to consult and have the RE participate. The recognised entity is the Aboriginal and Torres Strait Islander organisation that provides cultural advice and assistance around the child protection process for the families, but more often than not are asked to support the decision-making processes that the department has undertaken. More often than not, when they provide advice that is contrary it's not included in court reports or in affidavits. **(Indigenous community organisation worker)**

Since I've been involved here, the recognised entity has always gone with what the Department has wanted to do. **(Indigenous legal service staff)**

The formulation and implementation of cultural plans was seen as inadequate, with very few consequences for the Department for failure to develop anything more than superficial compliances.

Doing up case plans, they just put in, 'this is the child's father, he belongs to the Wakka Wakka clan' or something, that's it. And the child attends NAIDOC day celebrations. A day. Connection with community is far greater than that. **(Indigenous legal service staff)**

In child protection, there's specific parts of the law that talk about decisions being made in a culturally appropriate way, and the legal process, working in a culturally appropriate way, but my experience of working with Indigenous clients is that most of your time is spent trying to get all of the other stakeholders to treat that in a meaningful way. **(Legal aid staff)**

In the national context, Queensland has low compliance with the Indigenous child placement principle. Queensland has the third lowest rate of placement of Indigenous Children with Indigenous Carers in Australia at only 53.7%, which is 15% below the national average. It has the second lowest rate of placing Indigenous children with relatives or kin, at only 21.7%, which is 17% below the national average.²⁴

²⁴ SNAICC (2013) Submission to the Queensland Child Protection Commission of Inquiry, March 2013, p.4

The process that they go through to find suitable kinship carers is not very transparent, we don't know what they do to make efforts or what steps they take to find those people... We're often told, "We tried but no-one's available." Your client will say to you, "I put forward six names and Child Safety don't think any of them are appropriate." There's no conversation or it's not up for negotiation. **(Indigenous legal service staff)**

Practices around obtaining consent orders for removal of children without proper informed consent were seen as problematic.

The only help we get is if there is a court case, but the kids have already been taken away. It's like a stolen generation again. If you don't sign... they make you sign. They push you into a corner. Sign that piece of paper. **(Roma Men's Focus Group Participant)**

We hear of threats and intimidation by departmental staff to families to get them to consent at a much earlier time so that it doesn't have to go to court. **(Indigenous community organisation worker)**

2.5.4 The Role of the Court

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. However, it was widely recognised that the courts were not proactive enough in ensuring an oversight of departmental decisions, nor of seeking cultural advice independent of that provided by the Department. Added to this problem is that many Indigenous family members appear in court unrepresented. Stakeholders were of the view that Indigenous legal services should be notified when Indigenous child protection matters arise, and families should be provided with legal representation.

Of the focus group participants who had identified a child protection or family law issue, 56.1% indicated they sought legal advice or assistance with roughly similar proportions for both men and women. ATSI LS, Legal Aid and QIFVLS were the most common services approached for assistance. There was a strong perception among legal practitioners and other organisations that Indigenous clients either did not, or were unable to obtain early legal advice when compelled to take part in child protection processes. For those who did seek assistance, it usually came after substantial intervention by Child Safety has already occurred.

2.5.5 Other Areas of Legal Need

Another important dynamic noted by stakeholders is the interaction between child protection issues and other areas of legal need including domestic violence and housing.

Family violence is a factor in probably about 95% of the cases. A lot of the cases involve what's safe for the child in the situation where there's been a history of family violence and conflict which often involves extended family members as well. **(Indigenous legal service staff)**

It appears it's very difficult for them to get them back and a lot of that comes back to housing too because they don't have independent housing, so it makes it harder to get the children back in their care. **(Community organisation worker)**

2.6 CREDIT AND DEBT / CONSUMER LAW

Debt is also identified within the ILNP as a priority area of need. The most common issues in this area relate to unpaid debts, bills or loans. Just over a quarter (**26%**) 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 credit and debt problems at similar rates. Debt also led to problems with credit reference ratings or bankruptcy for **11.5%** of all focus group participants. Some communities felt these issues more keenly than others.

When asked to provide specific detail about their credit/debt related problems, the most common issues participants identified were ‘debt’ in general and bill repayment (including phone and utility bills). Loan repayments, fines, a credit reference rating and bankruptcy were also reported.

Problems of this type may occur because people do not always understand their obligations in terms of repayments, have financial or more ‘traditional’ literacy issues (so can’t read bills) and/or simply due to poverty.

Even with Ergon, when the accounts come in and they don't pay them or they pay \$20 a fortnight on Centrepay, which isn't enough to cover their Ergon bills, they end up with these massive bills and they say ‘But I'm paying it.’ Yeah, they need support first to get that [repayment] going and some of them will be really good for three or six months and if they have got a tenancy in winter, maybe [talking to them about] not using much power. Then it comes into summer and they start using heaps more power because it's hot and that's when they can end up, ‘Do I pay the rent or do I pay the power?’ There's a toss-up and then they end up in a mess.... (**Community organisation worker**)

2.6.1 Credit and debt’s connection with consumer law

Consumer law has been identified as a priority so far as it crosses over with credit and debt. More frequent debt-related problems (bills/loans) have a tendency to connect with consumer law, including consumer issues identified as being more problematic (phone contracts, hire purchase agreements), inevitably resulting in an increase in the complexity and level of Indigenous need.

Access to credit

One example of the interconnection of the two areas occurs for Indigenous people as consumers of credit. Indigenous people generally experience low levels of financial inclusion, meaning that they have little capacity to access more ‘mainstream’ forms of credit, such as bank loans. Whilst problems were sometimes raised in the research about bank lending, more commonly, issues identified related to lending arrangements such as payday lending, high interest Cash Converter type loans, hire/purchase agreements and book up. For many Indigenous people, socio-economic disadvantage and having few better alternatives means such arrangements may be the only way they can purchase goods and services, including essential items (beds, food). Probably because of this, there was little negative comment from focus group participants about this type of credit (as it may be seen as an invaluable service), but stakeholder organisations definitely had something to say about its capacity to create difficulties for Indigenous consumers.

Stakeholders discussed, for example, the fact that low levels of consumer and financial literacy leads to a certain vulnerability for Indigenous people entering into these types of arrangements. They may do so without knowing about and/or despite the high interest being charged *or* the actual *total* price

they are agreeing to pay, for example. They may not understand the 'fine print' or might not be aware that as part of book up the shop owner does not have the right to request their PIN number.

Local book up places, where the storeowner's holding their ATM cards, [is an issue]. We've checked that out and the responsibility comes back to the consumer not to hand over their card. But again, if people need to get food and they've already accessed emergency relief... they'll do it' cause it means getting food.... It's rampant here. **(Community organisation worker)**

There's also a rationale that goes with it and that is they [haven't been able to get] housing forever, [they've been] living with relatives and so on. They finally get a property. Sometimes there's a child protection issue too because they've had the kids taken away. So they get the kids back, go into the new house but they've got no furniture and their mum says to them 'Look, you'd better get some furniture or DOCS are going to take the kids again.' So then they go 'Well I've got no money for furniture.' On TV, every commercial station has lots of information about Mr Rental and whatever it is. So then they buy into one of those and it ties them up for four years, maybe \$13,000 worth of furniture. And if they stop the payment too, they lose the items as well. **(Indigenous legal service staff)**

We had a lot of people with contracts with Mr Rental and things like that.... You rent things from them. So you get this house full of furniture and you have to pay this rental every month and the rental is quite high. So you've paid this thing off, it might be a \$300 TV and you might end up paying \$3,000 for it over the time, and then if something goes wrong and you can't meet those payments they're very vicious about foreclosing and just ripping everything out of your house, including your kids' beds. I've had a few of those, and just general consumer disputes where the interest rate was just exorbitant. **(Legal Aid staff)**

Further, the consumer item they are trying to purchase may be faulty or in other ways not what they had paid for. A good example of this is where Indigenous people sign up for car loans where they do not have capacity to pay and where the vehicles in question are also shonky and will fail somewhere not too far down the track, literally. They can take on substantial debt for something that is worth nowhere near the asking price *and* final cost (once the debt is paid off).

Bill payment

Payment of bills was a relatively common area of complaint in relation to debt, with phone and utility bills singled out for particular mention within credit/debt *and* consumer law. Indigenous people may enter into phone contracts with little idea of contractual terms, including the costs of data usage, and debt is likely to be the end result.

And they rack up these massive phone package things. They've gone and signed up for phone packages they could never ever afford. Someone sold it to them at one point.... I think [because of issues around] literacy and numeracy... they don't understand the contract. It's about understanding what you're getting into. **(Community organisation worker)**

A couple of years ago me and my partner went to Telstra and got two phones on a plan for \$170 a month. The first bill was \$280 and now its like \$4000 [I owe]. The contract is finished, but I pay \$120 month off. **(Cairns Men's Focus Group Participant)**

There is a strong suggestion that if TELCOs are not deliberately taking advantage of the vulnerability of some Indigenous consumers, they are at the very least failing to act responsibly in the way they are signing them up to contracts. High-pressure sales in this and in other areas are a major problem on some Indigenous communities. 'Mobile phones... Sign up and please give us six names of family members!' is what one provider was saying to local Indigenous people, claims one community-based stakeholder organisation.

You find that the [TELCOs] have had a client on Newstart. I suppose their capacity to pay wasn't taken into account. When they got the mobile contract... they went back a week later and got another mobile contract for another mobile from the same person, from the same shop in the shopping centre... I don't know whether they want to get their sales, I don't know what it is. (**Indigenous community organisation worker**)

2.6.2 Responses to debt and consumer issues

In terms of **credit/debt**, just over a fifth (**21.2%**) 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. Although men and women had experienced debt-related problems with the same regularity, men were *twice* as likely to have sought help than women (30.8% of men compared with 15% of women). Of those who'd sought assistance, a repayment plan was the usual way an issue was resolved.

Debt is a good example of a legal issue that will often be left to one side until it is at crisis point. This happens because of fear, lack of understanding of the consequences of not responding to it and/or having other seemingly more pressing priorities. Correspondence from a lender can sit unopened forever, until perhaps a day in court looms.

Debt is a big thing. I remember a woman – it was about three years ago now – we were just about to leave [the community] and she asked if we could come and see her, and she said 'Well, I'm really, really scared.' I said, 'Okay. Why are you really, really scared?' She opened up the bottom drawer of her desk - and it was a professional woman who worked in a well-paid job. The drawer was full of unopened envelopes. As we started to go through them, it seems that she had been summoned to an enforcement hearing for a debt - it was an old debt but it was still valid - to go over to Thursday Island to face this enforcement hearing and she was scared. So that's what we mean by it has to get to be important before people will actually take any steps. I think that's what you notice more with Indigenous people than with non-Indigenous that they're like that. It's the sense of immediacy, 'That's not important to me right now so I'm not going to bother.' ... [To this woman, this] was very important that day. 'Yes, do all of this.' 'Alright. Here's an aid application. All you need to do is bring back your health care card and then we can take this and process it.' Two months later, 'Are you going to represent me tomorrow?' 'No. No aid application.' 'Oh' ... It's like out of sight out of mind. That's a problem. I don't know how to change that. Debt is [one of those matters likely to escalate to a crisis point] ... because people get harassed and they're coming to the end of the line. (**Legal Aid staff**)

Only **four individuals** had sought help or had otherwise tried to address **consumer-related** problems, including those connected with debt. Barriers in this area include a lack of knowledge of the law, complicated and bureaucratic processes of complaint (through Department of Fair Trading (Qld), for

instance), and geographic barriers inhibiting access to relevant services and agencies, including traders/agencies/organisations with whom negotiation is required in order to resolve a consumer-related dispute.

I mentioned about the photo[s] and how \$1700 was spent on [them and they] never came. It was an automatic deduction out of accounts. Trying to get on top of that was difficult. They end up letting it go because it just gets too hard. The clients stop fighting 'cause it's just too hard. They try and try and try and because you're so far away, all you can do is phone and email and what have you. They feel they can't get anything done. Same with that [case] with Telstra, she's got a Telstra bill for a couple of thousand. She's been trying to get it paid for months and months and months. She's an old lady. Yeah, she's an old lady on a pension and she's really struggled to do the right thing, and it's gone to a collecting agency. And once again, she's trying but they keep putting up barriers. There's that whole lack of understanding about the geographical area, the lack of resources, infrastructure in the community to meet the needs. **(Community organisation worker)**

There was also a strong suggestion that more strategic approaches to consumer and credit related problems arising within Indigenous communities might be preferable to always expecting vulnerable consumers to challenge these issues on an individual level, given the barriers they face in doing so.

2.7 SOCIAL SECURITY

Problems experienced in interactions with Centrelink have also been identified as constituting an area of priority need. This is largely based on the large proportion of participants identifying being in receipt of benefits (71.1%) *and* reporting a problem with Centrelink (33.3% of all those in receipt of benefits), as well as the low proportion of persons who had sought help with relevant issues. Women were a little more likely than men to be a client of Centrelink (73.2% of women compared with 68.6% of men), and to have experienced Centrelink related problems (34.5% of women compared with 31.9% of men). They were also more likely to be on Income Management.

The most common types of complaints from focus group participants about Centrelink relate to overpayments and underpayments of benefits and being cut off benefits, with these issues arising in a number of different ways. An overpayment, for instance, might be the result of failure to declare income, a change of circumstances (for instance, change in care of kids) or an administrative error on the part of Centrelink. An underpayment can occur where mothers are reluctant to pursue child support from a violent partner, unaware of the exception to the general rule that they must do this as a condition of access to single parent payments. Breaches, which can lead to benefits being stopped, are categorised as particularly problematic for Indigenous clients with mental health or substance abuse issues and/or who are homeless, especially as activity or participation requirements are becoming much more hard line.

A lot of our young people who have mental health issues, especially substance abuse issues, so they go off and get on the grog or whatever and they miss their appointments, and so then they're always on the phone, they get breached so many times. Yeah, and the mental health stuff is really [difficult]. You know, they're sort of trying to do the right thing, but they don't quite know how. **(Community organisation worker)**

Customer service within Centrelink generally is identified as being highly problematic. Poor communication between Centrelink and their clients was often seen as increasing the likelihood that

problems with payments will occur. Some focus group participants, for example, reported having declared income to Centrelink, which the agency then denied knowing anything about, leading to a sometimes substantial Centrelink debt. Concerns were raised about the way mainstream government services such as Centrelink interact with Indigenous people. Communication is, for instance, very automated and Internet-based now, with limited face-to-face customer contact. This may be especially difficult for those on remote communities, as the comments from Pormpuraaw immediately below indicate. This is a significant issue, as where communication breaks down people's access to their (often) sole means of financial support can be jeopardised.

It's alright to make a more streamlined menu to save money around human investment but we're in an outback community where numeracy and literacy is low, where English could be a fourth/fifth language, where languages are up to eighteen per clan, and the infrastructure isn't available. There are not enough phones to service [the] population ... and computers for people to get online don't exist, the training to do all that doesn't exist. To me, that's discrimination as well. If you started to really get into the discrimination side of it, it does sit in the discrimination [area]. **(Community organisation worker)**

Well there is only phone for phoning Centrelink. You get 20 odd people a day and Centrelink take ages to answer. There are no computers to get online and that's a big problem. Not many people have got computers and there is only one at CDEP and the library, which is not always open. Your money gets cut down or you get cut off... You get sick of waiting for the phone. Sometimes Centrelink is not open. You might miss your interview because other people on the phone. You sit on the phone for an hour. Centrelink is sending us letters saying we never attend interviews. There is a breakdown in communication. **(Pormpuraaw Men's Focus Group)**

A particular issue that arose mostly in stakeholder interviews, and which also links in with credit and debt and consumer law issues, is Centrepay. Centrepay is a government scheme supposedly providing Centrelink clients 'with a means to budget and plan for their household and living expenses' and designed to 'to enhance the wellbeing of its Customers by improving their social capacity and encouraging their movements towards financial self management'.²⁵ Problems in terms of the way Centrepay actually operates, however, include the ease with which non-essential service providers and dodgy traders become registered as part of the scheme and are thus able to access clients' benefits. It appears that there is very little oversight of how much money is being taken out of individuals' Centrelink income and by whom, sometimes leaving people with nothing left to pay for food and other essential items – contrary to the Centrepay scheme's objectives.

What the government needs to do is address why Centrepay was created in the first place. And they mention three items: the rent, food and utilities... What we're seeing here on the ground level, is mums, who've got five or six kids, that have got no money because all their pay is going out to these traders, because you can get it back to zero [through Centrepay] and they've got no money to feed the kids. **(Indigenous community organisation worker)**

Of a total of 35 persons with a Centrelink related dispute or problem, only **two persons** had tried to address the problem or dispute arising in this area through legal or other assistance. The majority (15) had talked directly to Centrelink themselves and those choosing this path appeared to be least satisfied. The lack of satisfactory outcomes with respect to Centrelink issues is worth highlighting, as

²⁵ Department of Human Services, (no date) *Centrepay Policy*, p. 3
<http://www.humanservices.gov.au/spw/business/publications/resources/9174/9174-1207en.pdf>

social security represents another area of law where if issues are unresolved there is real potential for frustration to spill over into criminal offences.

We've had walls punched in and stuff like that, in our office by people... We've had quite regular incidents related to decisions being made by Centrelink on the phone and then that person will be pissed off and they'll go downstairs or they'll punch a wall up here or something, put their fist [through it], then we've had to ban them from our service. But then that's affected them because they've come here to get their food, for their stability and extra support. And you sort of think that's occurring here and we're very flexible around that kind of thing, but if that were to occur in Centrelink or in a public phone space or something like that, it would have an impact, it would create issues, it would be criminal. **(Community organisation worker)**

2.8 UNMET OR UNRECOGNISED LEGAL NEED: WILLS AND VICTIM'S COMPENSATION

2.8.1 WILLS AND ESTATES

Only **13.3%** of all focus group participants had completed a will, but **63.7%** 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 wills.²⁶ Women were slightly less likely to have completed a will than men (12.5% compared with 14.3%) and considerably more likely than men to want to put one in place (67.7% compared with 59.3%).

Factors contributing to low numbers of completed wills include a perception that such documents have limited utility unless (for instance) you have property and as they are not likely to reduce disputes about a deceased estate anyway. Further, the preference may be for the deceased's wishes to be passed on verbally, without a written will. A male focus group participant from Mount Isa observed, for example, that 'Traditional way is still strong when cousin, brother, sister, someone from your mob dies'. The process of making a will also raised the spectre of death, which may be taboo to some.

Others felt differently about wills and saw them as valuable tools to avert family disputes about burial and care of the deceased person's children, for instance, and to make sure family can more readily access superannuation upon a relative's death.

I said to mum, when you die, you better write down where you want to be buried because I'm not fighting with anyone about it. **(Charleville Women's Focus Group Participant)**

A lot of Murris don't realise how important wills are... I know Murris, they've worked in a lot of places and they've got supers everywhere... you'd be surprised how much people fight over little things. **(Charleville Women's Focus Group Participant)**

Me and my wife have been talking to someone. We sorted it out with solicitors here. Everything we own goes to the kids. My side of the family were already arguing about where I am going to be buried. I got a will so they can't do anything. My brothers and sisters wanted

²⁶ 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.

everything. So I said everything I have goes to my kids. (**Charleville Men's Focus Group Participant**)

That accessing superannuation was more complex without a will in place was recognised by stakeholders.

A lot of times, you have clients die intestate, how do we get the super out, and you have to go through the process of applying – well, registering the death for a start, because a lot of them haven't done that – then getting the death certificate, then liaising with the superannuation company and then ...if you die intestate, you have to get what they call letters of administration. If you've got a will, you can get a grant of probate. It's effectively the same thing. When I first got here I started to go through the process of getting letters of administration but once again, we don't have a trust account so it costs \$500.00, you can get a dispensation now but it's only down to \$100.00. A lot of our clients don't have that so it just becomes problematic as far as putting it into the Supreme Court to get letters of administration. A lot of the superannuation companies require that, they require it.

(Indigenous legal service staff)

Of note, the majority of those who had completed a will had received help, including legal help (14 out of 16 individuals had had help, 7 of these 14 individuals had had *legal* help). Legal practitioners and others recognised the depth of need in this area (beyond the drawing up of a will) and the need for further outreach into communities to assist people with wills.

Wills branches out into a whole series of areas [including]... advising on, drawing of [wills], and [if] there's a death, then there's a will so we've got to work on that, then everything that comes in the estate. But ... where there's interstices where there's no will, there's a lot of that, and so we've got that, and then associated with this is the other. So wills I would say, is way bigger than just that one word and that one [area] I would say is very big [in terms of need]. (**Indigenous legal service staff**)

What might also assist to meet need, it is suggested, is an increase in awareness so that people can make an *informed* choice about whether having a will is a good thing or not.

Legal service needs to send out more leaflets and that. A lot of Murris think that because they don't own a house or land they don't need to write wills, but they don't realise that members can start fighting about jewellery and all that. I think they actually need to go out and talk to people and let them know how important it is. And let them know that they can do it privately. A lot of Murris don't want to come here, a lot of them would feel ashamed because they don't have a lot to leave behind. It wasn't part of our culture to do wills, and a lot of murris are superstitious, like every documentary or soapie that I watch someone dies and they say, 'but they changed their will 2 weeks ago or a month ago...' (**Charleville Women's Focus Group Participant**)

2.8.2 VICTIM'S COMPENSATION

Overall, nearly **one in five** (or **18.5%**) participants identified themselves as a victim of a violent crime in the last couple of years, with Indigenous women more likely than men to identify as such. In some focus groups, however, participants identified as victims at sometimes double this rate (38.1% in Brisbane, for instance).

Only half of the ILNP participants who had identified as a victim knew of Queensland's victim's assistance scheme, with women much more likely to be aware of the scheme than men (56% compared with 40% of men). Further, only close to one in three of those identifying as a victim (or 8 individuals) had applied for assistance as a victim of crime under the *Victims of Crime Assistance Act 2009* (Qld). Given the relatively high rates of victimisation and low rates engagement with the victim's assistance scheme, victim's compensation has been identified as a priority area of legal need by the ILNP.

Barriers inhibiting access to the scheme include that it is now very much focused on directing people to engage with treatment (including counselling), rather than payment on other types of financial compensation. This presents difficulties for Indigenous people in a number of respects, including at a more practical level if they live on remote communities where access to psychologists or similar is severely restricted. The actual process of lodging an application is also said to be challenging for those without high level literacy and to be too reliant on documentary evidence. Further, the way the system works is that applicants may be out of pocket for treatment until they produce receipts for expenses. 'You've got to incur the expense upfront and then get your money back', states an Indigenous legal service provider.

I don't think Indigenous people either really want to relate to a psychologist. Maybe they'll talk to the Royal Flying Doctor counsellor if they pop into town or something, but not a formal appointment with a psychologist. I think there's still that connotation that, 'I'm not mad, I don't need that. Anyway, it's a white fella so he wouldn't understand.' But again, it's that application of standards across the board, everybody's the same because we're not going to be racist and treat anybody differently, but that takes away from some of the special treatment that you do need to put in sometimes. **(Legal Aid staff)**

The old style of victims' comp... was very attractive for people but now the new style is lots of counselling. Counselling for people in remote areas? I mean really, it's not very responsive to their needs. **(Indigenous legal service staff)**

Some stakeholder organisations noted, however, that when relatively big payouts were possible under the old scheme, legal practitioners sometimes took advantage of Indigenous victim applicants, retaining large amounts of compensation.

There were some really dodgy organisations around that just did victims' comp. And they didn't time bill, they charged \$12,000.00/\$24,000.00, big lumps of money like that. Huge amounts. We've had some clients come to us saying, "I got a claim for \$50,000.00 but \$24,000.00 of that or whatever was taken out in legal fees." Horrendous... That generally happens, taking advantage of our clients. **(Indigenous legal service staff)**

Different explanations were put forward about why more people aren't applying for assistance. These include not knowing they can or how to go about it and fear of 'dobbing in' the perpetrator through the application process.

If they do follow it up, they've got to have a story, which would probably include a perpetrator, and they're not able to disclose any of that. For a whole variety of reasons they don't want to get the other person in trouble, they just don't. **(Indigenous Legal Service Staff)**

I suppose another big thing would be, when they are injured or things like that, it takes so long for everything to happen, and they start losing track of what's going on and things like that. [In one particular case, it has taken] over four years. (**Community organisation worker**)

And the form filling out, the form is just a nightmare. It's ridiculous. It's absolutely outrageous. That excludes our clients. They can't do it. They had internal staff over at the court to assist people doing this. They pretty much ended up – one was a young Murri lass, a really nice lady... She ended up leaving [and not seeing out the compensation process]. I didn't ask her why or anything, but I think it was probably because it was just such a bureaucratic process and it was just so bad for people. (**Indigenous legal service staff**)

3. PRIORITY ISSUES RELATING TO SERVICE DELIVERY

3.1. Diversity of legal need within Indigenous communities

Whilst it is possible to make a range of generalisations about Indigenous legal need and Indigenous access to justice issues, legal need is *not* identical for all Indigenous people and/or communities. It is clear, for instance, that the nature and extent of civil and family law problems experienced may be different for Indigenous men and women. Men and women also do not always access to the same extent and/or engage most effectively in the same way with legal services in relation to such problems. To some extent, Torres Strait Islanders also have particular experiences of civil and family law, different to those of Aboriginal people.

In a blanket sense if the legal system was so serious about how they represent us as Islanders, remember there's two Indigenous people, [there's a] difference between Aboriginal and Torres Strait Islander. One has been stolen. One has been neglected. We don't have the same hatred or same bad feeling about the government of the past, totally different. Another one is a nomad, another one is not a nomad, but they put us into the one bucket. (**Thursday Island Men's Focus Group Participant**)

Indigenous prisoners or homeless persons are another group who may face specific barriers to accessing justice and may have to deal with particular legal issues that arise due to their incarceration.

3.2. Legal assistance sector and Indigenous civil and family law need

A major issue identified as impacting negatively on Indigenous access to civil and family law justice is that of under-resourcing of legal services. Increased funding for these services would go a long way towards enhancing their capacity to meet Indigenous legal need.

Currently, even with the best intentions in the world on the part of legal service staff, under-funding leads to significant gaps in advocacy, CLE, law reform, outreach services, networking between services and other essential components of effective legal service delivery to Indigenous communities.

We struggle. We struggle. It's very stressing to go through the process of trying to get a solicitor, ay? (**Brisbane Women's Focus Group participant**)

I mean service delivery obviously is effective because it's covering things but it's just so thinly spread over such a big area of need. Particularly for ATSILS, I think people are in there for the right reasons. It's just the opportunities for them to [cover it all]. (**Community organisation worker**)

Aboriginal Legal Services are the primary and generally preferred providers of legal assistance to Indigenous people.

We're Indigenous people. We rely on our ATSILS. If we go somewhere else they're going to talk about money. How are we going to afford that? We need ATSILS. ATSILS will always be the first preference to us Indigenous people. (**Cairns Women's Focus Group Participant**)

ATSILS are, however, not able to address *non*-criminal legal need effectively within their communities and will not be able to do so in future without additional funding. A significant portion

of ATSILS' limited resources is currently expended on meeting criminal law need. Whilst their focus on criminal law is criticised by some, continuing high rates of Indigenous overrepresentation in the criminal justice system mean that any increase in funding for civil and family law issues should *not* be achieved through decreasing funding of ATSILS' criminal law work. Whilst IFVPLS have some focus on civil and family law work, they also have specific guidelines within which they need to tailor their work with clients, restricting the sort of matters they can take on.

Most Aboriginal clients access ATSILS.... unless they have a personal preference *not* to engage with that organisation due to relationships or previous experiences or whatever.... ATSILS though has such a limited capacity to provide civil law services. (**Legal practitioner**)

Well, (ATSILS) do get funding to provide some civil and family law assistance.... People are using them, but not so much in [civil] complaints, which is unfortunate. I mean, because they're so busy [and] ...I think they're focused on criminal law. They're more concerned about the criminal law aspects of [say, police profiling of Indigenous people], which I can understand.... They need the resources.... [But] they seem to be just dealing with the same kids, even generationally families, over a long period of time. They've been operating since the early '70s, so it's like 40 years. Yes course they're under resourced and such, but it does need a bit of direction from the Board to identify those [non-criminal law] issues too, to be able to deal with them. The staff, they need to be suggesting other ways than just taking kids back to court all the time, or representing them at court. (**Statutory Authority staff**)

It is also noted that enhancing resources of Aboriginal legal services to meet civil and family law need would make economic sense, as addressing non-criminal legal issues is likely to reduce Indigenous contact with the justice system.

Whilst Indigenous people clearly find it hard to access legal help for civil and family law matters from Aboriginal legal services, engagement between Indigenous communities and *non*-Indigenous legal services with perhaps greater capacity to take on a range of civil and family law work (CLCs and Legal Aid) is also likely to be inadequate. In some communities, for instance, focus group participants did not know there was a Legal Aid office in town. As a participant in the Mount Isa women's focus group also said, 'No one wants to walk in to some...[white legal service]... because it's that government thing. It's frightening.' CLC and Legal Aid staff acknowledged that they could be better engaged with Indigenous people. The private sector too might do more in this regard. The current situation creates significant gaps in Indigenous legal service delivery around civil/family law issues.

It is recognised that optimally, *Indigenous* legal services should be prioritised over non-Indigenous legal services in terms of provision of (any additional) funding designed to meet Indigenous civil and family law need. However, the 'best-case' scenario involves greater involvement of CLCs, Legal Aid and private practitioners, working collaboratively with ATSILS and IFVPLS, within Indigenous communities. Not every Indigenous person will choose an Indigenous service when seeking support and assistance. Non-Indigenous services need to increase their reach so as to 'be there' to a greater extent for Indigenous people when needed.

Yeah, they need to deal with more white people and that's not being racist, just white people that understand them. Because a lot of our clients won't go to the Indigenous organisations because they're worried they'll talk and they need to get that trust up like they have with us...

Well they're just expected to go to the Indigenous ones (services). (**Community organisation worker**)

3.3 Legal service policy as a barrier to accessing justice

There were said to be problems with Legal Aid processes of applying for aid, including that it was too unwieldy and also in relation to merits and means testing. Decision-making as part of merits testing appeared to some to be inconsistently applied and not always sufficiently transparent. This may mean that two people in like circumstances with the same prospects (in a legal sense) will not both be approved for aid, for example. ATSILS staff noted that whilst some restrictions on who may be helped will be necessary as there is only certain capacity to take clients on, Legal Aid appeared to be stricter than ATSILS in this regard. '[Legal Aid will] only act in certain matters, anyway, whereas we'll act for everything... They apply a real merit test, very strict.' Means testing too was deemed to be problematic in some respects. There was some suggestion that those living on remote communities should not be assessed identically, against the same means and merit criteria, as those living more centrally as to do so leads to disadvantage.

So say for instance we also have a financial threshold. So if they were earning over a certain amount ... then we have to refer them to a private practitioner, which is all well and good on the mainland but up there, there are no private practitioners. If you have to pay for a private lawyer to come up to the Torres Strait for court it can be very costly. (**Indigenous legal service staff**)

Legal conflict also arose as an issue for both focus group participants and stakeholders. Those living remotely and women and children were thought by some to be especially impacted by policy in this area. Further, an earlier ATSILS policy to not take on cases where one Indigenous client was pitted against another may no longer exist, but there was some perception in the community that it did, reducing access to help for Indigenous people. Although the policy is not in place anymore, it was still thought important to exercise caution, particularly as an Indigenous legal service provider, in terms of how you work within communities to avoid alienating different families or groups.

3.4 The tyranny of distance: geography as a barrier to accessing justice

Geography has a huge impact on access to justice in Queensland, especially for those living remotely and rurally.

The geography shapes so much of the way services can be delivered here [in Queensland] that I really wasn't aware of.... in Victoria, where you can go from end of the state to the other fairly quickly. So yeah, I think the geography is a huge issue with that kind of stuff. (**Legal practitioner**)

Well, once again I'm showing my sort of political position I guess. It's a little bit like the so-called universal health system out here. It's mostly terrible [but probably] it's okay if you know how to advocate for yourself within the system, with the hospital, with the doctors, with the nurses, with the travel arrangements, etcetera. So I see Legal Aid as the same. Notionally, every Queenslanders has got the same right to Legal Aid, but the tyranny of distance out here is real.... I think that's a factor in terms [of barriers]. (**Indigenous legal service staff**)

Telephones and videoconferencing

One way of trying to overcome distance issues is to use telephones and video conferencing. Phone calls are also the only means that many Indigenous prisoners, isolated in a different sense, have to make contact with legal services.

Yeah, not being able to use a telephone and use the Internet. I mean, a telephone in the way that we would use a telephone. They've got telephones in there but they're on the prisoner telephone system, so they can't call the 1800 and 1300 numbers. And there are time-limited calls to seven minutes for most high security prisons, 20 minutes for the normal prisons.

(Legal practitioner)

Telephone communication with Indigenous persons is seen as having limited utility, including because of restricted access Indigenous clients generally have to mobile phones, public phones and/or landlines. Some of these issues, of course, apply to Indigenous people located more centrally but they are exacerbated for remote and rural populations. Face-to-face contact is seen to be fairly essential when working with Indigenous clients. 'Obviously, you can talk to them over the phone but from my personal experience most Aboriginal people prefer face-to-face interaction,' states one Indigenous legal service provider. For this reason, use of video-conferencing may be preferable to phones and is presently being used to some extent, but this is most likely to work most effectively where a local person can facilitate the video call.

3.5 Outreach service delivery

For those communities without permanent services, quality outreach services are essential. To some degree, legal services are already providing this type of assistance but more is required. Capacity to deliver outreach, however, is highly dependent on and currently restricted by available funding.

[We need more resources for outreach]. Much better to go back a bit more often, once every three months is just not enough. [It's] too long. Out of sight out of mind. **(Legal Aid staff)**

Some problems raised in relation to outreach are that presently the focus of a lot of outreach is still on circuit court, meaning visits are infrequent and that there is an emphasis upon criminal matters. Further, it was observed that not enough is being done to truly engage with a community during outreach visits. It's not sufficient to just 'be there'. More work is required to build relationships. This might be done by establishing effective connections with local individuals (paid as paralegal staff) and/or local services, who can then liaise, inform and refer, as appropriate.

As a general observation I would say that the provision of legal services to remote communities is based around court dates. So you have lawyers flying in on the date that court is sitting in that area, taking instructions on the courtroom steps, which might actually just be on the footy oval or whatever it is nearby... and then they're out of town before the sun sets. It's not really conducive to informing people about their legal rights and providing ongoing support around some of the civil law issues that they have. So I think there are some questions about that kind of service delivery and how you engage with communities to make sure that they're aware of what their civil law rights are and to assist them to realise those rights, however that might happen. **(Legal practitioner)**

When they come up for court, if they knew that every time the solicitors came up for court, there was a civil lawyer there who they could talk to [that would work]. To start off with, he'd

have to spend his time not in an office but just going around talking to people so they'd get to know him, and know that he will be there every month to talk to. I think that would be the only way that would work. **(Community organisation worker)**

Of significance, due to problems of engagement between non-Indigenous legal services and their local Indigenous communities, outreach is also important in more *central* locations, including Brisbane. Here, permanent services are available but are certainly under-utilised by Indigenous people. Outreach in centres might involve running a clinic or otherwise linking in with other services with perhaps higher levels of Indigenous engagement.

Maybe there should be something in place in areas where Indigenous people go so that they can talk to them, [like a lawyer going into Wuchopperen (local Indigenous service) once a week]. **(Cairns Women's Focus Group Participant)**

3.6 Awareness of civil and family law and of legal services

Most Indigenous people are not identifying non-criminal law issues as legal problems for which there may be a legal remedy. As a male participant in Rockhampton said, 'We don't really find out about it until it's too late.' More education about civil and family law rights and how to go about enforcing or defending them is required.

[What we need is for them to be] just sort of out there telling people, 'These are your rights' and 'If you need service or advice, this is where you need to come'.... Because you know they just don't know that they can go and do that and seek legal advice from anybody. **(Mount Isa Women's Focus Group)**

They need to promote themselves more and be out there with the community. No one knows what service they provide and who they are. **(Rockhampton Women's Focus Group Participant)**

Stakeholders agreed that there is some confusion about which legal service is which, and what they all do.

I actually think their knowledge of ATSILS and what we do [is a barrier]. I can go to Hopevale umpteen times but you always find people saying, 'We didn't know you did that now.' For whatever reason the Murri grapevine doesn't seem to work that well in regard to getting the word around.... And even with the Cape circuits and stuff we're in, we're out and when you're in and out all the time, they don't know... who we are. Some people keep calling us 'Black Legal Aid'. Most people wouldn't understand exactly who we are but we're 'Legal Aid', we're 'not the white Legal Aid'. You say you're from the Aboriginal and Torres Strait Islander Legal Service and they go 'Where?' So you then you go 'Aboriginal Legal Aid' and they go 'Oh, okay'. **(Indigenous legal service staff)**

There is a serious under-representation of Indigenous people within the civil and family law systems, in stark comparison with levels of Indigenous contact with the criminal justice system. This is partly because contact with the criminal justice system is often something Indigenous people are drawn into involuntarily compared with what happens with most non-criminal legal issues. Legal services and the legal system in general are therefore much more likely to be associated with criminal law.

The only time they use legal services is when they've committed an offence or something, or they've got to go to court or things like that. [Legal services are] not there for any other

reason at the moment. But they are changing aren't they? That's all our people have meetings with them about, because of criminal offences. That's the only reason they go and seek legal advice. **(Mount Isa Women's Focus Group)**

One of the problems, I suppose, particularly if they're a plaintiff, [is that] it's inherently proactive.... The nature of the whole thing is proactive. So people have to be aware of their rights. **(Indigenous legal service staff)**

Legal services have identified a range of CLE and promotion-type work they are doing around civil and family law and the assistance they are able to offer. Some have suggested that there is saturation in terms of delivery of such information into communities. The majority, however, believed that relevant material may not be reaching Indigenous people to the extent that it should, including because not enough of it is delivered via outreach to remote and within more central communities. Certainly, the overwhelming sense gathered during focus groups is that community members want *more*, not less information. This might be delivered through schools, at an earlier age. Further, it is emphasised by some that the greatest source of information within Indigenous communities comes from those within the community who have some knowledge of the law and of services.

Just making people aware of their rights, whether it's through workshops. Give people that awareness. You see Legal Aid or even the Cairns CLC has information sessions. If our ATSILS could start doing that... Come to a place like this that's in the community. Come and let people know their legal rights. If you have disputes with your ex-partner over children, if you have disputes with neighbours.... There's not that community participation from the legal places here. **(Cairns Women's Focus Group Participant)**

We always see one of the people in the community who knows how to go about things. It's always the backyard people, not the ones who are supposed to be helping us. **(Charleville Men's Focus Group Participant)**

It was asked what will happen when/if increased awareness brings in more clients, as intended, as there is currently limited capacity to take on *more* work, but it was also suggested that increased knowledge might also mean that Indigenous people are more able to deal with issues on their own, without legal help.

3.7 Satisfaction with legal services

Levels of satisfaction within communities in relation to legal services were variable; some good, but mostly not so good. The reasons why people were discontented often related to their interactions with legal services in the criminal law area (feeling forced into pleading guilty), and sometimes to a sense that legal services just weren't there for communities or did not deliver an expected legal outcome. With respect to the latter, legal services and other stakeholders observed that a good lawyer may not always be able to give their client the result they desire, but *should* be able to 'manage' expectations effectively.

We can't often do what people want us to do.... It's just not going to happen, whether they don't have the right to [it], or whatever. I judge by how people feel at the end of the process and how much they understand about the limitations [of the law]. That's what I try to do, just to get people to understand. Taking more time to explain things to clients and they'll come round

when they begin to understand and that takes a fair bit of time as well. (**Indigenous legal service staff**)

And what we think is a good outcome and what the client thinks is a good outcome could be different because we can see sometimes why it goes not their way, not fully their way. (**Community organisation worker**)

3.8 Issues of communication and interaction

Overwhelmingly, however, the greater portion of negative comments made about or concerns raised in relation to legal services involved issues of spoken and unspoken communication and interaction between clients and legal service staff. These were important measures of the quality of legal service delivery to Indigenous participants. It is worth noting that as interpersonal relationships are so important, staff turnover can be a big problem.

You need a solicitor... that can communicate well and respect the culture ... [and knows] the way in which Aboriginal and Torres Strait Islander people respond to certain issues.... People have got to have confidence in going into a service. They've gotta feel [good in] the initial experience, the first experience - particularly for an Aboriginal person, but I'd say for anyone. That first interview is so important. And if they see roadblocks or if they feel uncomfortable, they won't return. In statistics, it shows, 'Hey, we're seeing a lot of Indigenous people', but the statistics mightn't show the success of [the interactions they have]. (**Indigenous community organisation worker**)

Sometimes participants felt that they were treated poorly because of race, but of relevance both Indigenous *and* non-Indigenous services were subject to criticism about how they worked with clients.

I know the blackfellas don't know who to turn to because they get treated like dirt anyway. I shouldn't say it like that but it's that's true what I'm saying. (**Mount Isa Women's Focus Group**)

If you could have an organisation that painted all the colours of our flag that's great, but it's the people inside there that make a difference. Would I go there? If I didn't trust those people inside I wouldn't go there. You get the vibes, hey? Yeah, I think it's that vibe stuff. You walk into a place, yeah. [It's about] interpersonal interactions, their body language... (**Indigenous community organisation worker**)

People complained of contact being way too rushed. 'You get treated too like you're on a conveyer belt. Oh, yeah, zzzz, on you go, zzz, like that... You just feel like you're nothing but something they want to pass you through', said a woman in the Mount Isa group. They also spoke of feeling alienated and frightened in their interactions with legal services, including because lawyers seemed to speak a foreign language. They criticised staff who did not listen to them, and who seemed to talk *at* or *for* them, rather than *to* them.

Lawyers speak lawyer, that's the biggest problem. And you've got to have someone who knows what they're talking about. They're talking up here. The problems are down here.... They're caught up in their own process. Not realising that this person might be just new to the system, whether it's a civil action or... You can be educated, but not have anything to do with the legal side. Once you get into the legal side, it's a totally different thing. For some people

it's very frightening, scary, especially dealing with kids [matters]. (**Cairns Women's Focus Group Participant**)

And [lawyers] knowing when to step in I think, yeah, letting them have their say and not bring them down, but try to say 'What about if you did it this way?' or 'How about we do this, not that?' (**Community organisation worker**)

Skills to respond appropriately to a client's anger and shyness or shame were seen as essential for legal service staff.

Shame – people feel shame sometimes too. I think that things get to a certain level, because we'll often get family members or friends ringing up for people, and people are very shy about what's happened and don't feel comfortable talking about it. So they do need that extra support and that's where you feel [more support] staff would be good too, like local people who probably know families and stuff. (**Indigenous legal service staff**)

Just sometimes they get spoken to like they're stupid. It even annoys me when I sit with them. So that makes them angry [too].... And some of the agencies just don't treat them with respect either and they use us as a go-between because they know we'll get through to the clients before they will. They have an argument with the client, so they ring us and then we have to try to advocate (for) them.... We've been in Child Safety meetings where one of our clients went off her head and I've got back to the office. We've brought her back here for a cup of tea with us. She's come back with us, and they've rang me and said 'You want to watch her, you know. She's going to get nasty towards youse,' but we know she's not like that.... So then you don't really see any of them saying 'Maybe it's us. It's definitely the clients that's got the attitude problem.'..... A lot of them just don't understand how the Aboriginals live, whereas we do. (**Community organisation worker**)

Literacy, language and cultural difference as barriers

Literacy and language can present as specific barriers to accessing justice for Indigenous people. These issues affect communication and interaction with legal services, but also with government agencies such as Centrelink or Housing. They may also be especially problematic in the civil/family law sphere, which is seen as being relatively document-intensive.

They could get breaches [of tenancy notices] and not read them and so when they do read one or they get someone to come in here say 'Can you read this for me?' it's the last one. Probably it really comes back to lack of education. (**Community organisation worker**)

I'd say language issues as well [is one of the main areas where non-Indigenous and Indigenous needs differ]. Like in Yarrabah, we talk about the Yarrabah accents. Sometimes it's difficult for us to understand people and for other people to understand us. (**Indigenous legal service staff**)

Cultural difference can also lead to barriers.

[B]arriers [relating to] cultural communication. I could give you hundreds of examples of that... when there really literally is a breakdown that you haven't picked up and you've gone miles down the track, and yet you're not with them. You're really somewhere else and you haven't noticed. That can happen. (**Indigenous legal service staff**)

Indigenous staffing

Having quality Indigenous staff on board can make a fundamental difference in terms of addressing barriers relating to communication, both within (particularly) non-Indigenous *and* Indigenous organisations. It was suggested that ATSILS' criminal law solicitors will have greater access to Indigenous support staff (Field Officers) than their civil or family law solicitors, to the obvious detriment of Indigenous people needing help with non-criminal legal matters.

When there's Aboriginal people that you're dealing with and they see you as an Aboriginal, they feel more comfortable and because we're more culturally aware too. You go to one organisation and you're standing there talking to them and you feel in yourself that they're not understanding, whereas black people understand black people, you know? (**Indigenous community organisation worker**)

Indigenous staff can be invaluable as interpreters (of language, concepts, jargon) and can ease discomfort that does arise in interactions between lawyers and non-Indigenous staff and Indigenous community members.

I don't speak Creole... We had support staff that could speak Creole and they were locals from the community. So once we had a good working relationship with our support staff then the word sort of spread around the community that we were here to provide the service and we always had our support staff with us who could assist by making sure that the clients understood by explaining it not only in English but also in creole. I guess that was one measure that we used to make sure that justice was being done and by justice I mean adequate legal service. (**Indigenous legal service staff**)

3.9 Other barriers to accessing civil and family law justice

Civil and family law problems are not responded to at all or addressed late in the picture, at crisis point, because they may not be seen as worthy of special attention above all the legal and social issues Indigenous people are likely to be facing at any single point in time (alcohol and drug and other health issues, incarceration, poverty, etc.). Purchase of a faulty fridge, setting up a will or responding to a racially vilifying comment in the street may not be a 'priority in their life. Yeah because I think daily existence sometimes just overtakes everything else,' identifies one stakeholder organisation. This organisation continues.

And all that happens in the context of the family being homeless, they're experiencing poverty, often there are health issues, domestic violence, they're trying to get their kids re-established in school, they don't have access to their own transport. There's a whole myriad of [issues].... Where do you begin in terms of prioritising any legal stuff? Is [a consumer law issue, for example] where the focus goes? Or do we focus on getting the kids into childcare, which frees mum up so she can look for housing? (**Community organisation worker**)

Other factors likely to impede Indigenous access to justice include resignation, fear and distrust. How can one expect Indigenous people to want to interact with a legal system (and lawyers involved in that same system) which has traditionally 'screwed' them 'over'. 'Mum will say "Oh well, I'll just... just take it on the chin,"' states one Indigenous community organisation. Those seeking to assist may become confused with government agencies which have historically only interacted with community in a negative way (Child Safety, Police).

[When we arrived, the neighbourhood] children come out and they said ‘Are you from Children's Services?’.... That is the mindset. The people that come looking half decent, half dressed or in some sort of uniform, they're either from Children's Services or the Police... Being a case manager having to visit homes a lot in my previous life, my disclosure was, ‘Hi, I'm [named person]. I'm not from the Department of Children Safety or the Police.’ I don't wear blue, anything blue.... That may be an indication of the involvement of our families with the justice system. We have families where one person can be involved in that Magistrate's Court, District Court, Murri Court and Child Safety Matters [at the same time], and that's just one person. **(Indigenous community organisation worker)**

Other more practical or logistical barriers have been identified, such as not having transport or enough money to pay to travel to or to call a legal service and having to use what is seen as a rigid appointment system. Some legal services are trying to overcome the latter barrier.

By the way, our rule of thumb here is you don't need to make an appointment. We do not literally turn people away because they don't have an appointment or they've come at the wrong time of day or something like that. Unless it's really, really jammed up. In fact, everyone here, while I've been here, is encouraged to drop what they do, because you turn Murri people away and they're likely not to come back. **(Indigenous legal service staff)**

The cumbersome, sometimes complex nature of the civil and family law legal process itself can act as a deterrent, leading people to either avoid initiating action or to disengage during legal action.

They don't know their rights enough... Well I don't know if people don't know or can't be bothered, it's too overwhelming for people so they don't wanna follow through - particularly so for social security, not getting paid, and Child Safety and the children being removed. They're quite active and they try and negotiate but it's a bit overwhelming for them.

Community Organisation Worker

All or any of these issues, as well as insufficient knowledge about how to go about addressing civil or family law problems, may mean that any action taken in response to problems is too little, too late. This may have serious ramifications where (legal) time limitations are not met.

The same for Stolen Wages, stolen generation, all that sort of stuff, people still come now because they hear there's that thing, and they go ‘Okay’, but they don't understand that there's a timeframe attached to it. ‘No, that can't be right. Somebody told me and they still got their money last week. No, it must be still going.’ **(Indigenous legal service staff)**

Courts too are seen as needing to play a greater part in ensuring adequate access to justice for Indigenous people, beyond the criminal law arena. Indigenous-specific initiatives to support access to justice need to be established. Murri Court should be reinstated, it is suggested, and extended to encompass more civil and family law matters. It is also observed that there should be a legal right to representation beyond criminal law matters so that courts could not hear child protection matters, for instance, unless a respondent had an advocate assisting.

We need something like a *Dietrich*²⁷ for family and civil law. That's why we have huge amounts of money going to criminal law, and it's great a thing, because you need, when your

²⁷ *Dietrich v R* [1992] HCA 57 concerned an unrepresented defendant's right to a fair (criminal) trial, including through adequate legal representation.

liberty's at stake you need representation. But we need an equivalent case for, if you're kids are being taken away. Or if you don't have a home... **(Legal practitioner)**

3.10 Communities and services working together

Some important observations were made about communities finding their *own* solutions to problems and/or in relation to ensuring more effective consultation between legal services and Indigenous communities as a way of enhancing service delivery. Communities have ideas, experiences and knowledge which ought to be sought out and implemented as part of legal service policy development and practice.

The essential work that *non*-legal services are doing around civil and family law was also highlighted in the ILNP research. One example of this is the role of financial counsellors in assisting Indigenous people with debt.

[Some people would] prefer to go through a financial counselling agency than a legal centre. [This is about relationship building] and it is results based because you get a better result outside of court. As you would probably know, that's the only reason why it goes to court ... because both parties don't agree on things. And that's why... we have the court system. But, in these issues here, in nearly all of them, you can deal with these matters outside of court.
(Indigenous community organisation worker)

Non-legal services, particularly Indigenous community-based organisations which are really well connected with communities, can warmly refer Indigenous people for help or can work alongside legal services in different ways to address the needs of their perhaps mutual clients. These different types of services might also collaborate where a legal service, for instance, provides outreach to a community in the non-legal service's physical space. Advocates and/or other support workers also have greater capacity to assist clients where they have effective links with government agencies (such as Housing, Centrelink).

They don't seek the legal advice because they don't know how to, ...[don't know what's] the first step to take and it always boils down to the social workers in the community who either take them there. But they have to be with you to give them their self-confidence. **(Mount Isa Women's Focus Group)**

We would have to have a network system operating here... we would have a solicitor or a lawyer or a legal rep coming in and we, of course, would be briefing them about what the needs are, that process first I think [would be best]. The second step would actually be relaying this information back to the residents, that we have a legal rep coming in now. We set up a day or half a day that the residents can come up freely and speak to them about what is going on with them. That's what I'd like to see, a [legal representative] coming in once a week. If it requires once a week at first to be able to connect with the resident... and after that, consistent follow up too as needed. **(Indigenous community organisation worker)**

Legal services, too, need to be working better together. Services currently do so in some relatively limited ways (such as talking so as ensure duplication of services is avoided), but more needs to be done in this area – including through development of formal referral processes. Focus group participants felt pushed from service to service as no one seemed able to help out.

And if you don't know, and often you might not know that yourself in that organisation, that's just having a bit of an idea of where they can go. **(Rockhampton Women's Focus Group Participant)**

You go with all your paperwork, and they (ATSILS) say no we don't handle it. You spend your day going from this agency to this agency. You come in all prepared and still no one wants to take up your case. **(Cairns Women's Focus Group Participant)**

PART 3 DETAILED ANALYSIS OF LEGAL NEEDS AND SERVICE DELIVERY

Section 4 of the Report provides detailed analysis of Indigenous legal need in Queensland 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.²⁸ Priority areas of need are dealt with first (Sections 4.1-4.9). 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. In general, these priority areas also attracted more comment by both focus group participants and stakeholder organisations, and the level of comment in relation to the different areas has also had some influence on the ordering of discussion in this section.

Sections 4.10-4.14 provide detail about Indigenous legal need in the remaining areas of civil law. Although these areas are not prioritised by the ILNP, this does not imply that they are not important to Indigenous people. Legal needs arise in *all* of these areas to varying degrees and 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. It was also identified as being a very significant issue in the communities in question during stakeholder interviews. We identify it as a priority legal issue in Queensland.

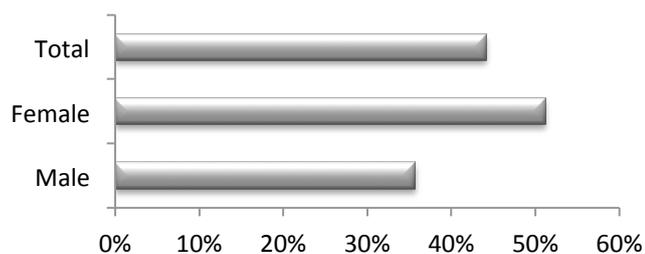
Focus group participants were asked whether in the last couple of years they had experienced a problem or dispute with their landlord over issues such as rent, repairs, evictions, relocations, bond or overcrowding. They were also asked about any conflicts arising in supported accommodation (such as hostels 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 also 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, **44.1%** of all focus group participants identified disputes or problems with landlords. The percentage of Indigenous women identifying such disputes was 15.5 percentage points higher than for Indigenous men (51.2% of women compared with 35.7% of men) (see **Table: 4.1 Appendix C**).

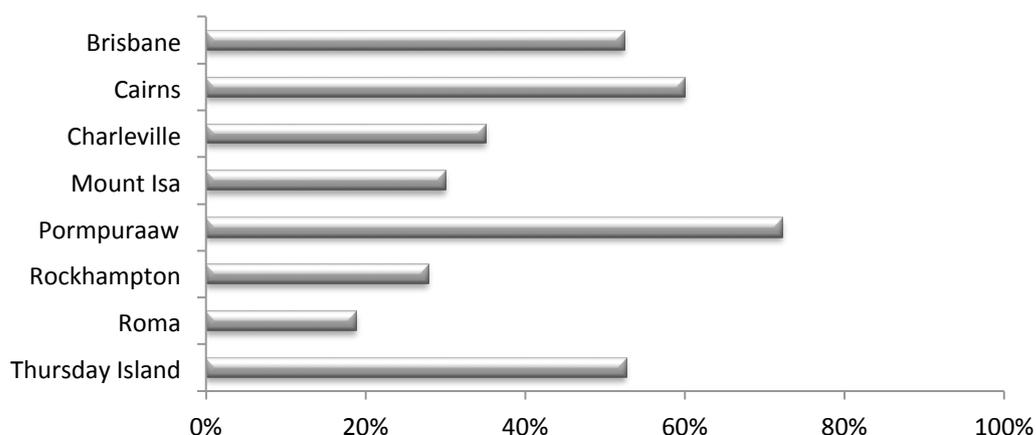
²⁸ We explain the criteria applied in selecting priority areas of need in Part 2: Section 2 of this Report.

Figure 4.1 Participants Identifying Housing Issue or Problem



The level of need is not the same across all communities. As **Figure 4.2** indicates, participants in Pormpuraaw and Cairns were more likely to identify a tenancy-related issue, and those in Roma and Rockhampton were least likely to do so (72.2% of participants in Pormpuraaw, for instance, compared with 18.8% of participants in Roma). (See **Table: 4.2 Appendix C**).

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



In discussion, too, both stakeholders and focus group participants highlighted the significance of this issue in their respective communities. An Indigenous legal service provider noted, for example, ‘Well, number one I think would be ... things that are sticking out to my mind, are housing and tenancy issues’.

Housing is also prioritised because problems with tenancies are intimately connected with many other areas of civil and family law need, a point explored in other parts of this Report. For example, children may be removed from families where ‘dad and mum don’t have housing’, according to one Indigenous legal service provider. As a community-based organisation in Rockhampton states, ‘A lot of the issues come down to housing’. Another community organisation dealing with housing issues claims that their Indigenous clients may have a lot going on but ‘their focus is certainly on housing. They know our housing is temporary. Their focus is always - I need to have somewhere long-term, stable to live before I can address anything else.’

Further, the ABS data set out in **Appendix D** indicates that although Indigenous people do own homes, the majority are renting privately or from a public or community-based housing (social

housing) authority. The type of tenancy Indigenous people have varies, often depending on the community in question, and this is reflected in the quotes provided immediately below. On more remote communities such as Pormpuraaw, for example, social housing will be far more prevalent than a private tenancy.²⁹ Most commonly, however, tenancy disputes or problems identified in ILNP stakeholder interviews and focus groups concerned public or community-based housing rather than private tenancies. However, private tenancies in Queensland may be more common than is thought to be the case and while there may still be problems experienced in these tenancies, these tenants might be less likely to access legal and other help and information for these problems than social housing tenants.

There are a very high percentage of Indigenous renters in Pormpuraaw but the actual numbers of renters on those communities is not that high. But there's obviously quite high numbers of Indigenous private market tenants in suburbs peppered across the State and in Brisbane. Most of our clients are from social housing tenancies, but the vast majority of Indigenous people live in private rental market tenancies, I think.³⁰ Sometimes social housing tenants have easier access to information because there's one provider and they're meant to have (a) social sort of outcome not just a housing outcome. So they might be more inclined to get information about there being support services for tenants than private tenants are. **(Legal practitioner)**

Of course, where the housing provider is an Indigenous organisation, the full range of legal issues still arises.

We've also had similar landlord and tenant type things involving back rent, allegations of damage to the premises, etcetera, where the respondent is an Aboriginal person and the applicant is an Aboriginal organisation. It isn't always the Housing Commission. **(Indigenous legal service staff)**

The most common [tenancy problems we see] are ones where the provider is an Indigenous community-housing provider.... These are often tricky ones to deal with. Sometimes the lessor and the tenant might have the same last names and you're dealing with things like allocations of property and evictions. A lot of repairs are in those community-housing providers. **(Legal practitioner)**

4.1.2 Nature of Tenancy Issues

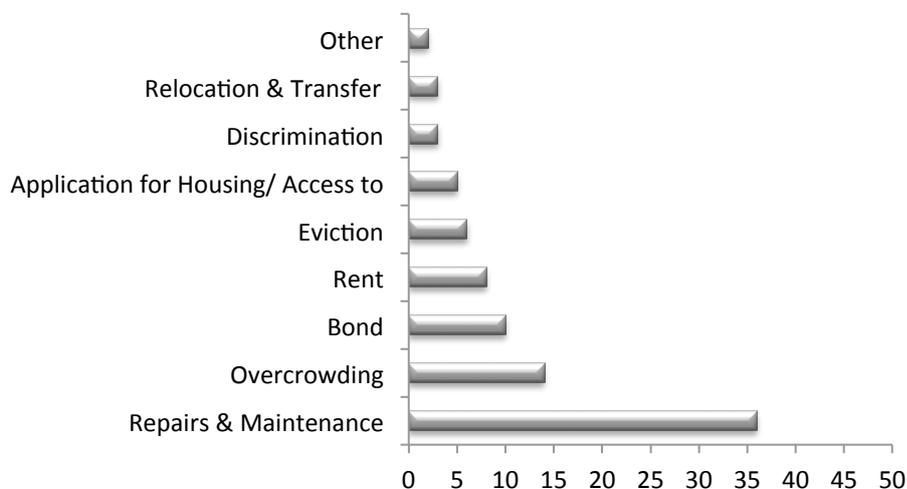
Figure 4.3 indicates that repairs and maintenance were identified in focus groups as the most pressing areas of dispute arising in relation to tenancies. Sixty-three individuals (39 women and 24 men) identified a total of 87 relevant issues in this area. Of these 87 responses, 36 identified repairs and maintenance as the reason for their tenancy dispute. Overcrowding (14 responses) and bond (10 responses) also emerged as issues of some concern. Participants may have identified in their responses

²⁹ A good overview of Indigenous household tenure in Queensland is set out in the Office of Economic and Statistical Research (OESR) (Qld) (2012), *Census 2011: Aboriginal and Torres Strait Islander Population in Queensland*, Department of Treasury and Trade (Qld); <http://www.qgso.qld.gov.au/products/bulletins/atsi-pop-ql-d-c11/atsi-pop-ql-d-c11.pdf>. The proportion of Indigenous households in Queensland in tenancies was almost twice that of other households (63.3% compared with 32%). Only 9.4% owned their own home outright compared with 29.8% of other households and 23.2% were paying a mortgage compared with 34.9% of other households.

³⁰ Ibid, 4. These stats indicate that around 40% of Indigenous Queenslanders reported renting through a landlord other than a state housing authority, housing cooperative or church or community group. Around 23.5% of Indigenous people rented through state or community housing, compared with 3.3% of the general population.

more than one problem or area of dispute (see **Table 4.3 Appendix C**). Legal issues relating to neighbours but identified by participants as a housing issue are dealt with in Section 4.2: Neighbours and discrimination in housing in Section 4.3: Discrimination.

Figure 4.3 Reason Identified for Housing Dispute or Problem



Repairs/Maintenance

The stand out issue in this area is clearly repairs and maintenance, constituting the basis for nearly a third of all problems identified. Focus group participants complained about how difficult it is to ensure that landlords or agents attend to such issues, whether simple or complex in nature.

The nature of the complaints varied. One Indigenous legal service provider states ‘We receive instructions that housing providers are not updating rental houses. This affects the way people live and there are places where people are sleeping in the kitchen because every other room leaks.’ A lady participating in the focus group in Pormpuraaw claimed the ‘rain comes in (my donga) because there’s no proper roof’.

Disrepair likely to lead (or actually leading) to accident and injury were also discussed. Some properties appear to be substandard to the point of being dangerous. A Charleville women’s focus group participant, for example, stated that a woman in her community ‘had a hole in her floor and one fella fell through and almost lost his nut!’ An elderly female participant in Charleville also tripped over a hole inside her rental home. She claimed that the landlord then ‘cleaned it up, covered over it and cemented [it] before I was even out of hospital’. She continues, ‘Granny said ‘You can sue them’, but I told her “You silly fools, the evidence is covered up”... They got onto it very smartly.’ The participant sought legal advice about what to do, but thought, ‘I’m 88 this year. It takes years to get compensation out of anybody, it doesn’t matter who they are... I could be dead... It could be years.’

Participants pointed to the long delay in completion of repairs and maintenance work.

We had a big hole inside the shower, and [person’s name] put a mat over [it] and [a guest stepped onto it and fell through]. They did repair it but it took time, eventually. But you know I had kids living in the house and the pipes were all damaged. You know, no one took that into consideration. So yeah, it was good. Housing sorted it out for me, but it took time. But

you just don't have that time you know like when you've got elderly people and they're sick.
(Charleville Women's Focus Group Participant)

Another woman participating in the same group claimed to have been eventually rehoused when her home was damaged in floods, but it again only after some time. The home in question, she suggests, already had significant issues requiring attention prior to the flood damage, about which nothing had been done. 'Where I lived I had the floods through my house probably on three occasions and the last one was the most damaging. And even though I had floors in my bathroom, my toilet was sinking, my stove wouldn't go, [but] I still lived in the house and I still paid rent.' She waited for housing authorities to come and fix the damage but the Department of Housing ended up buying another house and housing her in it. Other participants commented similarly: 'They eventually do it but they are slow', claims one male participant in Cairns. Another man in the same group suggests, 'They (Housing) get in and evict people quick. They do the repairs *after* they evict people!' In the Roma men's focus someone stated, 'It takes months, years to get repairs done. Since it has gone State housing it's got even worse'.

To explain the last comment, in recent years, Queensland's Indigenous Community Housing Organisations (ICHOs) and other community-based housing providers have been given the option of becoming 'registered (housing) providers' under the *Housing Act 2003* (Qld). These community-housing providers are, as an alternative, able to transfer their assets to the Department of Housing.³¹ Registration is a condition of access to Commonwealth funds available for repairs and maintenance and/or other upgrades on providers' existing housing stock. Once registration occurs, the Queensland Government will fix properties to State housing standards through QBuild. There have been some complaints raised about the quality of QBuild repairs being undertaken.

A lot of people would complain about QBuild and getting QBuild out to more remote communities to fix issues and then when they came out they wouldn't do a very good job. Of course if they're overcrowded, if properties are being used by multiple people they're more likely to have things wear out quicker and repair issues pop up from time to time and people have often raised concerns about the standard of work achieved by QBuild, which is a government arm of public works. **(Legal practitioner)**

These arrangements ultimately give government more control over social housing in general, including rent setting and housing allocation.³² Whether assets are transferred or the ICHO or other provider is registered, rent is now 25% of a household's combined income and applications for housing are processed through the Department, which manages a central registry of tenants (waiting list). There are both benefits and disadvantages of the new system. Rents have gone up, as discussed further below in the context of rental prices. But according to one CLC, community-housing providers have sometimes 'inherited poorly maintained' properties. Many tenants of these substandard properties have not been paying much rent, which creates a 'vicious cycle' as the provider then has

³¹ Where assets are transferred, tenants are required to sign a tenancy agreement with the Department and future repairs and maintenance become the Department's responsibility.

³² For a good summary of policy in this area, see Tenants Union (Qld) (2009) *New Directions for ICHOs: Fact Sheet*: http://www.tuq.org.au/pdfs/sht_special_fact_sheet_-_new_directions_for_ichos.pdf

few financial resources for improvements. The new arrangements are intended to improve the properties, with higher rent also being charged.

Those renting privately appeared at times to fare no better, with their complaints about repairs sometimes ignored.

When I put in complaints [to private real estate agents]... I would write them out on a piece of paper, photocopy 'em and then I'd go and give it to 'em. And then when I'd go back and say, 'Have you done anything about them complaints?' 'Oh we can't find them'. They'd always lose the letters. **(Charleville Women's Focus Group Participant)**

A CLC has also provided an example of a repairs issue that led to loss of tenancy.

The tenant pursued a repair issue with an Indigenous housing provider... in the Brisbane area. We got an order in the Tribunal and the tenant was to move out while the property was being repaired. But then they wouldn't give it back to her... when she went to move back in the property it had been sold. **(Legal practitioner)**

Participants also allege that landlords or agents are inappropriately placing responsibility on tenants for repairs and maintenance issues, which in some cases had been caused by significant flooding in local areas.

They are trying to tell you to clean up. We had the floods going through here and there was mould and everything and they tried to blame us for it! I had to go the health mob. I went to welfare and told them too. **(Roma Men's Focus Group Participant)**

The house before that was full of mould and I kept telling [the estate agent] over and over 'I'm sick of cleaning mould', and the carpet actually had mould stains on 'em. And [the agent] said 'We're ripping all the carpet up and you're paying for new carpet'. And I said, 'But that's general wear and tear!' And the venetian blinds had mould spots on 'em and she said I have to clean them, and I said, 'It's mould!' ... She said, 'You are going to have to pay to replace the blinds in the whole house and get curtains' and I said, 'No I'm not!' **(Charleville Women's Focus Group Participant)**

Tenants in some cases have had to undertake repairs themselves rather than wait for their landlord to complete them, which may actually cause further problems rather than solve them. By way of example, a woman in the Charleville group had a problem with her bond in a private tenancy. This is the same woman who had had her baby injured through a faulty hot water system in a previous tenancy (see section 2.2) – illustrating the point that Indigenous people may be likely to experience multiple legal problems.

We've got a problem with a certain real estate agent here in town. She's a bitch. I lived in a house and it had an above ground pool. When we moved in it was black. I was on at 'em and on at 'em to clean it. I was paying \$320 a week rent, and it was mainly for the pool... I took it because it had a pool for my little fella because he had burns on his legs, for his water therapy. They'd never clean it. The owner would come and look at it and then never do anything and left. The pool liner itself was all frayed. It was the original one put in from previous owners. And in the end we ended up cleaning it ourselves. I got advice from other people... and when the big kids were cleaning it, like they had garbage bags on their legs and everything, they tore the liner because it was all frayed. I went and got advice from the pool

place and they said to patch it up... So we did but it was above the water line. And anyway, the water all leaked out after two weeks. It had little holes in it and we couldn't find it anywhere because the pool liner was rotten. And they kept the majority of my bond when I moved out. **(Charleville Women's Focus Group Participant)**

Rent and Debt

Issues relating to repairs and maintenance are sometimes connected with those concerning payment of rent. Most obviously this occurs where participants pay their rent but repairs or maintenance work is not done. As a male participant in Cairns observed, 'If you ask for repairs, they will leave it and leave it, but if you are one week behind in your rent then BANG!' A legal service provider commented similarly.

When dreadful things happen like the cyclones and what-not, you get people calling up and they can't live in their house for a period of time but ... the housing [provider] will say, 'You can't stop paying your rent because then we can't fix the things.' They're having to live elsewhere with family and stuff, and they're still paying for a place that they can't live in because of the conditions. It's just really tragic. **(Indigenous legal service staff)**

The price of rentals was also raised by a number of participants. The high cost of renting inevitably reduces accessibility of housing, discussed further below. In Roma in particular, it is claimed that rental prices increased after the area flooded and due to oil and gas work in the region. Women in the Roma focus group stated as follows: 'Rents are exorbitant in Roma since the floods, and the oil and gas. Sorry, it was really from the oil and gas'; 'People are just moving on to find affordable housing, they are moving out of Roma. So the ones that are in public housing, they stay [but many private renters can't afford to stay]'; 'Even [public housing] is going up'; 'I think they want to put the [oil and gas] workers in the houses. That's why the rent is going up. They want to get rid of us. We can't afford the houses. That's my opinion'.³³ The high cost of renting was also raised in Thursday Island and Pormpuraaw.

Rent on this Island is a minimum of a \$1000 a week [for a private rental]. Do you think anyone can afford it? We can't even afford \$300 a week. Because of the amount of jobs, there's no opportunity for us to go to work. **(Thursday Island Men's Focus Group Participant)**

Recent housing policy changes, including those relating to QBuild and rent discussed above, have also increased cost of rentals, including on Pormpuraaw.

A big issue is the rent. People are paying \$350 a week on rent. **(Pormpuraaw Men's Focus Group Participant)**

The repairs go to QBuild. The Department (of Housing) owns the houses. QBuild uses its own carpenters. Before QBuild came in, Council used to own the houses and it used to be a flat rent of \$60 a fortnight if you were on CDEP. And now all of a sudden you're getting rents of \$350. You rent a house in Cairns for \$350 and you get a beautiful landscaped garden, but here...! **(Pormpuraaw Men's Focus Group Participant)**

³³ For media comment on the rent increases in Roma, see: Queensland Shelter, Media release 10/07/13: *Unaffordable rental costs still a reality in QLD's mining regions* <http://www.qshelter.asn.au/media/media-release-100713-unaffordable-rental-costs-still-a-reality-in-qld%E2%80%99s-mining-regions> accessed 22 August 2014.

I think rent is quite high as well. Come July 1st of last year (2012) it changed. So it was like \$22.50 per person. It could be up to \$60-120 per person now. (**Community organisation worker**)

This same stakeholder organisation makes the further important point that issues relating to social security (income) and housing 'go hand in hand'. It is suggested that inequity arises for those located on remote communities who receive the same social security benefits as others, regardless of the high cost of living remotely (for instance, the significant cost of food), and who are now required to pay the same rent as other Queenslanders. 'Why impose a generic model of tenancy upon them... when they don't have the same living costs [as others more centrally located]?' (**Community organisation worker**)

Rental arrears also came up as an issue which led to eviction in some cases.

I got behind in my rent and I wasn't aware of it until a couple of months later when I was told that I was a couple of thousand dollars behind in rent. The real estate didn't notify me. I never got any letter to say I was behind... They gave me like a week's notice for eviction. When I did seek legal advice, I went three times, and I never heard from the solicitor. (**Cairns Women's Focus Group Participant**)

On Thursday Island, I've had the odd housing and tenancy matter... [it has] sometimes been an issue that people have had [with]... evictions and problems with non-payment of rent, which means being taken to court. (**Legal Aid staff**)

According to one Indigenous legal service provider, arrears might be more likely to arise due to a change in the financial circumstances of a tenant rather than because they are deliberately avoiding payment of rent. For people on low incomes (including social security) or inconsistent employment, it can be hard to keep on top of everything.

There were a lot of rental arrears [matters]. It wasn't just that they didn't want to pay their bills. It was sometimes you know the family would have to go to another island for a particular reason... It might be for a funeral. It might be for whatever, and they may not be able to afford to pay the rent whilst there... because if they have gone to another island they are staying with relatives in their house and they have to contribute to that household... And with Centrelink benefits there is not a lot left over... Things sort of snowball from there and I guess being in an Indigenous family when a funeral or something significant occurs, everyone in the family is sort of expected to contribute. So when you're in that moment everything else is sort of secondary. But that was usually what would happen. It wasn't just the case of people not wanting to pay their rent... There were also issues [arising]... if somebody had lost their job... and you know fallen behind on things as well. (**Indigenous legal service staff**)

Bond

As noted above, failing to resolve disputes involving repairs and maintenance may lead to problems with bond. Women participating in the Charleville and Roma focus groups in particular claimed that landlords or agents appear reluctant to return bond monies, sometimes for what they see as being quite trivial reasons.

I don't know anyone who's got the full bond back on their house... I never have and we used to make it nice and clean. It happened to Mum down in Brisbane. Everything was done

beautiful and clean and she still didn't get the bond back either. **(Roma Women's Focus Group Participant)**

The last house, I cleaned it all and hosed outside, and because it took them 2 weeks to the inspection, she said the house was dirty. The outside had dust and I had to come back and clean it! **(Charleville Women's Focus Group Participant)**

You move into a house and it's dirty, but when you move out they expect you to clean it. **(Charleville Women's Focus Group Participant)**

This leads to a further point highlighted by a female participant in Cairns. Indigenous tenants may not be aware of the importance of doing an entry inspection when they move into a property, which inevitably causes problems for them when their lease finishes.

If you're renting the premises and when you leave it in what you think is a decent manner, you try to get your bond back. They start bringing up issues about 'Oh, but this wasn't broken, that wasn't broken'. We don't know as Aboriginal and Torres Strait Islander people that when we go into premises you're supposed to look at every little thing in the premises. And that's where they catch you all the time. A \$4 light bulb can cost you something like 2 or 300 dollars cause you haven't looked at it. That's how we always get caught. We go in and say, 'Oh generally that flat looks okay' and then come the time when you pass it back over and you want your bond, that landlord starts bringing this up, 'This wasn't broken'... 'The light in the oven wasn't working.' Well it wasn't working when I got in there! **(Cairns Women's Focus Group Participant)**

Problems of Accessing Housing

According to many, the most serious housing problems for Indigenous people relate to *access* to housing, rather than those that arise *within* or during a tenancy. As a woman in the Pormpuraaw focus group states, 'People are struggling to get a house.' By way of further example, the woman from Charleville who had to be moved to a new house when her home was damaged by floods claimed that this led to serious backlash from within the community, as she was perceived to have skipped too far ahead on the waiting list. The participant expressed resentment about the 'hatred' directed towards her from other Aboriginal people living within the community. 'They talk about racism with whitefellas, but the worst is black on black.' This is also an indication of the extent to which Indigenous tenants feel that they are competing for housing limited by shortages in stock.

Why are problems accessing housing arising? A community-based housing organisation states that, 'poverty is one of the major causal factors of homelessness'. Certainly, social and economic disadvantage have a significant part to play in the issues Indigenous people face in this area. Putting aside issues relating to Indigenous home ownership, Aboriginal and Torres Strait Islanders are often excluded from private tenancies due to discrimination in the private rental market or the cost of renting privately. They are then left to compete for the few places available in social housing. They may be excluded from accessing this type of housing where they have a prior housing-related debt. Eviction may also be more common for Indigenous tenants (for instance, on the basis of complaints by neighbours about them or because of rental arrears).

(i) Shortages of housing and accommodation

On remote communities, it seems that restricted availability of housing (including short-term accommodation and private tenancies) is particularly pronounced. In Pormpuraaw, for instance, one female participant claims, 'There's a woman in the shelter [here] because she has nowhere else to live.' Those facing eviction from a tenancy may have very few options, as the following comment from Thursday Island suggests.

You can appreciate that it is a small island [so] there aren't a lot of houses and accommodation is quite scarce... And a lot of it is social housing... A lot of the people that live on the island in social housing... are on low incomes or are receiving Centrelink benefits. ... I guess the gap there is that if somebody is going to be evicted there is nowhere really for them to go except for the private sector, but there isn't really a private sector on the island... There is no free accommodation... There are a couple of hostels but they're always really, really booked, overbooked.... [and] sometimes people have exhausted those options themselves. They might have had issues with the hostels in the past and it is no longer an option for them. **(Indigenous legal service staff)**

There were comments also made about emergency or short-term accommodation. There was a lot of criticism in the men's focus group in Brisbane, in particular, about crisis or short-term accommodation services not offering sufficient assistance to those in need. It is clear that there is a serious problem of under-resourcing of these services, but the group wanted answers about why they always seemed to be missing out on a bed.

Well, at the moment [named accommodation] is all full up at the moment... Well, they say it's full up. I don't know whether anyone goes there. **(Brisbane Men's Focus Group Participant)**

That's an eight-storey building. They've got all the rooms and everything, facilities, they got everything you know, and yet the homeless are going there and they're knocking them back where they should be taking them straight in. **(Brisbane Men's Focus Group Participant)**

It also seems like they pick and choose who they want in there and who they don't. I've been under the bridge there for five years now, and I've seen people move in there [to named accommodation] within a week, within a week! I go there every day, and I've never been kicked out of there or they have never had a wrong word against me and I'm like 'Well, why haven't I got a place? I'm still under the bridge... (W)hy you aren't you doing anything for me? I'm still under the bridge.' They tell me they're going to come down and give me an application for me ID and everything yesterday. I said, 'I'll see it when I believe it'. Did they come down? No. It's more bullshit I have to put up with. And, I went up and saw [named person], I said 'what's going on? Why haven't you even helped me? Anyone walks in here and bang, you find them somewhere'. And he said, 'I'm sick of it. Go...and get our funding cut or something'. He's sick of people coming and complaining. 'Why can't you just help me once?' Like I've been coming here what, just on ten years now, and not once have they even helped me. Not once. **(Brisbane Men's Focus Group Participant)**

This same group of men raised concerns about why government wasn't doing more to address housing shortages and homelessness issues.

I don't know if you want me to speak freely. They're building a monorail from Southport to Robina and it's costing \$2.8 billion. Then there's spending on Southport Park. It's \$4.8 million just to build the park. So why can't they put a couple of shacks up for \$1 million for the homeless? **(Brisbane Men's Focus Group Participant)**

Similar comments were also made in this group about the lack of beds at diversionary facilities providing shelter for those who are intoxicated, who are either accommodated there voluntarily or brought in by police: 'There're only 14 beds for the whole of Brisbane, for the whole of central Brisbane,' states a Brisbane men's focus group participant. When beds are not available, individuals end up locked up elsewhere, as the following comments suggest.

What I was saying about the diversionary bunch is I reckon that there is not enough bedding, because once that place is full, they obviously can't accept any more people and they just get taken to the watch house and locked up for the night instead... What they need is more bedding. **(Brisbane Men's Focus Group Participant)**

There's a lack there as well for situations like that, for people getting picked up drunk and you know the police prefer to take them somewhere else instead of having to do all the paperwork down at the station, you know, they prefer to take them to a place like diversionary so you know to give them a bed so they can sleep it off. But it's just not enough bedding. **(Brisbane Men's Focus Group Participant)**

(ii) Access to private tenancies

Pressure is placed on public and community-based housing providers to supply accommodation because accessing private tenancies is often difficult for Aboriginal and Torres Strait Islander people. This is partly because racial and/or other discrimination can lead to the disproportionate exclusion from tenancies of prospective Indigenous tenants (see Section 4.3: Discrimination). But other barriers, such as a poor or limited tenancy history and/or cost, often puts these tenancies beyond the reach of many Aboriginal and Torres Strait Islanders. As a result, the percentage of Indigenous people renting through social housing, as opposed to buying a home or renting through other landlords, is much higher than that of non-Indigenous people.³⁴

Some of the families have never even had a tenancy. It's not uncommon at all for a 40-year old mum with three kids to walk in the door and they've never had a tenancy. They've always lived with family. So, you know, the struggle... No one's going to give them a tenancy. **(Community organisation worker)**

[There's no access to private rentals]. It's too expensive. Cairns is very expensive and they're really selective. There's been some research more recently. It might be just general stuff (not Indigenous-specific), but [it says that] those people that could afford higher rents... are paying lower [rent]. So it cuts those people out who can't afford [anything other than a lower rent]. It's not an intentional thing, people don't think about it. You try to pay for the cheapest reasonable housing that you possibly can, but with the unintentional [consequence] that you're probably knocking other people out of that market who can't afford [to pay]... when you can actually afford higher. **(Indigenous legal service staff)**

³⁴ See discussion above. 23.5% of Indigenous people rent through social housing compared with 3.3% of the non-Indigenous population: OESR (2012), *Census 2011: Aboriginal and Torres Strait Islander Population in Queensland*, 4

(iii) Debt in housing

Debt can arise in a housing context when a rented property is damaged or due to rental arrears. It can also be inappropriately passed from one person to another, as the following example relating to relationship breakdown indicates. This example also illustrates that levels of housing-related debt can be very substantial *and* raises the significant point that debt accrued during a tenancy may then inhibit access to public or community-based housing in future.

I think one [issue] would be with the debt, I suppose. One girl that I do know of, she's got like a \$20,000 debt with Housing, so she'll never get a Department of Housing house again unless she starts paying that off. But it's such a big debt. The amount of money she makes, there's not gonna be much of a dent in it.... She was on [a repayment plan] at one stage. I'm not sure if she's cancelled that now, but she was on it at one stage. And it wasn't actually her that had done it, it was her partner who'd [accrued the debt], and because he wasn't on [the lease], I think he was on it but I think they've split up since then so he's not paying anything. So, it's all on her having to pay it off if she wants another place. **(Community organisation worker)**

Once a tenant has a debt with Department of Housing getting back into housing is pretty tricky. Department of Housing has got a pretty much zero tolerance attitude now about any unpaid rent and anything that they see as a breach. An Indigenous woman [called and] she was looking after her grandchild who was in a fairly small amount of rental arrears and has been taken to the Tribunal. Unfortunately when she called for help she had got confused with the dates for hearing [and missed it]. I advised her what to do to get a reopening of the matter. They've really got a zero tolerance attitude about any breach, whether it's real or perceived. **(Legal practitioner)**

Further comments relating to how debt creates problems in accessing emergency and/or other housing are as follows.

The scenario was that they were requiring some emergency housing but because of a previous debt from a substantial period [ago], they were [categorised as] ineligible by the people that were running the housing program. So we referred them to another support agency, which could then try and work with them to find - whether it's a payment plan or whether it's financial counselling - to work out how they might be able to pay off that debt. **Indigenous Legal Service Staff**

One community-based stakeholder suggests, however, that housing providers can be lenient towards those with housing-related debts, accepting sometimes quite minimal repayments by tenants while continuing to offer them housing.

They're normally pretty good. If they turn around and say, 'Look, I can only pay \$10 a fortnight', Housing accepts that. They're pretty good as long as they're getting something back. And also I have found that even if they just pay a percentage off, their application will be approved and things like that. **(Community organisation worker)**

(iv) Eviction from tenancies

There was not a lot of comment in relation to eviction specifically, but this issue relates to that of access to housing. For instance, it can be very hard to get back into a tenancy if you've been evicted.

Problematic and controversial three strikes provisions introduced in other jurisdictions and leading to eviction after three alleged breaches of a tenancy are now in place in Queensland too.³⁵

It only commenced last July but it's pretty similar to the WA model of three strikes and you're out. I haven't had any feedback (about whether it's impacting on Indigenous people)... I advised another worker [about a case]. They were trying to get the male out of the house. There was a family of six kids and a mother and father and they were trying to use three strikes to get the male out but that would have evicted the whole family. The new provisions say something like, if you're the tenant - the wife might be a tenant or might just be an approved occupant - if they want to evict the man as tenant [in this case], then they can evict the whole family. They brought in a whole new bunch of provisions for social housing tenants. They talk about the responsibility of the tenant broadened to include the actions of other people in the property and near the property and how they impact on tenants in adjacent properties. They've extended their responsibilities for visitors and non-tenants like approved occupants. **(Legal practitioner)**

It is also noted by one Indigenous stakeholder organisation that social or health issues of the Indigenous clients they work with - 'very complex needs, the highest category is mental health issues' - makes it hard for them to *maintain* a tenancy, and so they will eventually be evicted. The following comment provides another stark example.

We've got one mother who has a lot of our clients and all her young girls are really quite full-on chromers and sniff a lot of paint and stuff like that, and that house is very volatile. And her ability to maintain any tenancies is really impacted by the behaviour of these young girls. And they will often create neighbourhood issues and there have been issues where people have stood around when these people are going off... and then the neighbours have become involved and stuff like that, which has led to criminal charges... The main issue is the behaviour of the young people... It's not that anyone is being discriminatory against them, it's just that that has meant that she's lost... I've known this family now for six years and I would have said they would have been through 20 to 30 tenancies. And there's sort of eight [kids], the elder four are very volatile, and there's still another four kids behind that. So those children are constantly being placed in homelessness [shelters] or they're in the car or whatever they're doing. Yeah, she's a single mum... [I]t's just the volatility and stuff which is creating a massive impact though on the homelessness and stuff. And I'm looking at the younger kids that are coming through, the younger four, and they're quite good kids, but they are sort of getting involved with a little bit of offending and stuff, not that much, actually they're doing quite well, but it's impacted on them because of this sort of thing, big circular sort of thing. **(Community organisation worker)**

³⁵ The Department of Housing's anti-social behavior management policy was introduced in July 2013. See: <http://www.qld.gov.au/housing/public-community-housing/tenant-behaviour/>. For discussion on the disproportionate impact on Indigenous tenants of a similar policy in WA see, for example, <http://www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316>. The WA Equal Opportunity Commission has also released a report on the WA policy: WA EOC (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

(v) Other issues relating to access to housing

Finally, means testing used to assess eligibility for public housing was also subject to some criticism by women participating in the focus group in Roma, in particular. Being able to access public housing, one of the women claims, 'depends on how much you earn'. 'Because one of my daughters, she's getting married – they're in Housing - and because the old man works he gets more money... They told her, you've got to get out'.

Overcrowding

Problems of access to housing also feed into what appear to be very serious levels of overcrowding in Indigenous households. As one example, one female participant in Pormpuraaw stated 'Overcrowding is a big problem. There are three families in a house generally.' Stakeholders also suggested that significant overcrowding is a major issue, calling overcrowding 'so common that it's normal... It's just a normal part of life, a number of families living in the one house.'

This is directly attributable, in part, to shortages of affordable housing. If, for example, someone faces eviction from a tenancy on a remote community, given the lack of remote housing discussed previously they have little choice but to move in with another household, as the following example relating to Cape community of Aurukun suggests. This inevitably leads to (more) overcrowding.

[A] good example [is] when the alcohol restrictions came in [in Aurukun]... Sale of alcohol [was] funding repairs and maintenance to homes. So if there was a rundown home, there was some money coming in donated from the tavern and the sale of alcohol. So the Council had money to do the infrastructure, and even commission new homes with the aid of government money. We happened to be in Aurukun that day when the alcohol restrictions came in and the money dried up. There were about 60 homes waiting for completion but because the council didn't have that money from the revenue of the alcohol, they couldn't fund it. So they waited for the government to step back in and finish the building. So those houses sit empty for a long time, and the people on the waiting list have to double up because families stay with families again until their houses [are completed]. So that's overcrowding in the homes, and then while you're at home there's a new generation starting and they've got nowhere to go. So you just continue with your parents. **(Legal Aid staff)**

There are strong cultural and family obligations to take community members in and to provide shelter, whether short or longer term.

We've got cultural obligation. And most people involved in housing issues in a non-Indigenous area have got certain obligations to their family, but they don't have the same obligations that we have and that we're dealing with. **(Indigenous legal service staff)**

[Cultural or family obligations can lead] to issues of too many people in the house or not enough rent being paid and all these [legal issues], every single one of them from a civil perspective, I'm very aware that the cause can be cultural. **(Indigenous legal service staff)**

Sometimes households expand when family members come to visit from out of town and end up staying semi-permanently, claims a legal service provider: 'There is a lack of housing everywhere. Here in Cairns too [it's] the same, but the transience feeds into that as well because people come from the Cape to stay for a short time but they stay for a long time.' At other times, Indigenous households

must take others in because they have nowhere else to live. Family violence may lead people to abandon their existing tenancies, for instance. As one Indigenous legal service provider suggests, quite a few of their clients have 'had to leave the house because of domestic violence and then they can't get another house and the partner's trashed the house that they were in. That's a really common one.' The victim of violence, now effectively homeless, moves into an existing tenancy, sometimes for an extended period because they can't get their own housing.

Lots of clients do live in overcrowded houses of family because of DV or because of no housing. They also don't have enough information about how difficult it is to get housing. Instead they get told that they'll be put on a list. Usually 'a list' doesn't actually eventuate to housing for our people! **(Indigenous legal service staff)**

There is some suggestion that while homelessness in Indigenous communities exists, it is to an extent 'invisible', because the community is providing shelter to those who, arguably, should be better provided for by government.³⁶ As an effective solution to the significant problems relating to Indigenous access to housing, this is far from adequate. It creates problems, legal and otherwise, for existing tenants, and does nothing to house the homeless longer term.

Tenancies can easily become stressed through overcrowding, which leads to an increased likelihood of legal problems such as debt, child removal, eviction, and disputes with neighbours. This particular point is worth highlighting, as the (often) direct connection between housing and other legal and/or social problems provides one important basis for prioritising tenancy issues in terms of Indigenous legal need.

The link between overcrowding and other legal issues may be illustrated by a number of examples. Tenancies can be put at risk where the landlord pulls tenants up because there are too many people living or staying with them, even if it is only on a short-term basis. Some participants thought that housing providers generally provided some leeway in such situations; others spoke of a harder line being taken.

But even with other friends or family, especially Murriss that moved in from Woorabinda, you know you're supposed to give them a bit of a chance and they just kick 'em out. I heard of one girl having two extra beds in her home out at Gracemere. She'd just moved from Woorabinda to have a better life for her children and better schooling and they kicked her out because she had too many beds in her house, with Housing Commission. **(Rockhampton Women's Focus Group Participant)**

You're allowed to have visitors for four weeks apparently. So you can have a bed there available for when Nanna comes or when Auntie comes. **(Rockhampton Women's Focus Group Participant)**

³⁶ 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&abname=Summary&prodno=4736.0&issue=2014&num=&view=>

The possibility of debt arising where there are disputes about who pays what in the household is perhaps evident in the following quote.

Sometimes you might have two or three people in a house, one person pays more than the others because they're the main tenant, which would be fine if they had the [most] say in the house, but other people in the house can still bully them, so that even though they're paying more they're not having their say... And that's the other crowded housing stuff too you know, real difficult. **(Community organisation worker)**

Transfer

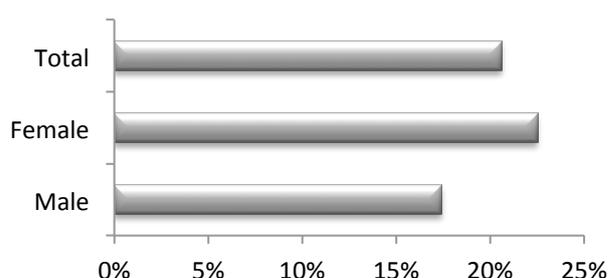
A further issue of relevance to access is that of transfer. Comments were made about the difficulty of getting transferred out of one home and into another, including in situations where safety was an issue in the existing tenancy.

I had a problem with housing. I was living in North Queensland and I applied for a transfer, and the transfer got approved to Rockhampton. But Rockhampton office ... didn't help me or nothing. They just said, 'No houses available', you know, and we needed to get out of that area 'cause it was just getting too violent and that. And kids, my kids were getting bullied, and that's why we got approval from Housing up there. But Rockie ... never even, you know, tried to assist us in getting out, not even short-term accommodation or anything. So I had to leave... and go to the bottom of the list. There should be, you know, a clause in there that says, 'Get out for your safety but we will automatically help you as soon as something...' But they just shove you straight to the end of the list, and that list is like five-year waiting list! ... [I didn't get any help. I] just dealt with them myself, and just got sick of it and just ended up moving, you know into a private dwelling... Yeah, but they never, those two housing things, even though they're here in Queensland together, they never cooperated together to try and help me, assist me, and especially when there was children involved too. They just sent me all the letters and everything but I just kept ringing them, 'Why haven't you got a house available for me? You know, I've got kids'. And, they just kept giving me the run around like that. **(Roma Women's Focus Group Participant)**

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 for a dispute or problem with a landlord. Only just over a fifth (or **20.6%**) of those who had identified a tenancy-related dispute or problem sought legal advice. Indigenous women were 5.1 percentage points more likely than Indigenous men to seek legal advice (22.5% of women compared with 17.4% of men) (see **Table 4.4 Appendix C**).

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



Of the 14 individuals who sought legal advice or help, two nominated ATSIILS, two nominated Legal Aid and two nominated tenancy advice services as the source of the relevant assistance. Other individuals noted seeking advice from family, housing authorities, landlords and police.

Only a minority of those problems addressed at any level were satisfactorily resolved. There were 47 responses to the question relating to how the matter was resolved. Some 17 responses indicated that the matter was still unresolved and ongoing. A further 13 responses indicated that the person accepted the problem and in some cases moved out of the accommodation or lost their bond. Only nine responses out of 47 in total indicated that the matter was resolved to the person's satisfaction.

Difficult to challenge

It is clear from these statistics that more effective responses to tenancy-related problems are required. There are a number of barriers, highlighted in the ILNP research, which are likely to impact on a tenant's capacity to deal as well as they might with such problems. One barrier is the intimidation and sense of disempowerment felt by tenants in a leasing arrangement with landlords, particularly if a dispute needs to go to a court or tribunal.

Power differential. The landlords will lord over them and it's an intimidating place. If you're not used to court, you don't want to go or you don't think you're not worthy or you haven't got a case. You can't sort of narrow it down to one thing because it comes down to education, it comes to down to self-worth. **(Indigenous legal service staff)**

There have been issues though, when I think about [named short-term accommodation] though, there were issues when they were keeping money [of tenants], that sketchy stealing of money, but there was no recourse that people [had]... And we didn't really follow through... [They were] pretending that clients hadn't paid their rent.... saying 'You didn't pay your rent again'.... It gets really, really difficult with our client base though, because if they are inhaling and sniffing paint, really, all over the front of the foyer then when we are asking for assistance ... then it becomes a very hard argument. ... And also, it's like the only place we can house a lot of our young people, so if we, we're a bit trapped in that, if we kick up a bit of a thing, and the kids want to go there because it's the only place they know they can get easy tenancies... **(Community organisation worker)**

Having insufficient knowledge of rights as tenants also impacts on capacity to challenge a landlord. Even where informed, however, there are still difficulties. They may not want to 'rock the boat' for fear of losing their home. Given problems of access to housing discussed above, this is understandable. One legal advocate had given advice to tenants in a situation where their rights were clearly breached, but the reality is that taking action against a housing provider is extremely difficult.

The conditions of the houses are so poor and there are no other houses for them to go to. So basically they were scared if they brought up these issues that these houses will be condemned and they will be asked to leave, and they would have to leave [the community]. So some people didn't want to do anything about it, and even with Queensland Housing, [they] didn't want to do stuff. I told them what they could do, how we could go about it, try to do it in a reasonably sort of nice way to get these things fixed and stuff but they just didn't want to, and their biggest thing was that they wouldn't have anywhere to live. **(Indigenous legal service staff)**

Commonly, tenants will only seek out advice at the last minute, when the situation has escalated to a certain level of seriousness. 'They generally come only when they are in crisis – "I've been kicked out"', claims one community-based organisation.

And that's like a lot of the clients that I know of, they don't go to get legal advice for anything like that. I think that the only time they would get, go and see people would be when they have to, when they have to go to court. **(Community organisation worker)**

Need for increased information and assistance

Increased information about tenancy rights and more available, effective advocacy at *all* stages of the dispute process are required in this area, given the level of need and the significant impact that eviction, homelessness and other housing stressors have on Indigenous families and communities.

There are obvious benefits for Indigenous tenants where advocates are able to step in on their behalf to try to resolve issues, including directly with housing authorities and landlords, well before they become full-blown disputes referable to a court or tribunal, as the following comments suggest. Community-based services have stressed how useful it is for them to work on their clients' behalf with legal advocates such as the Tenants Union.

My role would really be negotiating with the Department of Housing... to see if we can get this family to not be evicted and work with them with a payment plan. [We can] put things in place. [We] can do everything we can do so that they don't get evicted or end up out on the street or anything like that. **(Indigenous legal service staff)**

I've got ... a minor civil dispute about a person down there who fell behind in her rent and didn't turn up at her hearing for one reason or another. There was a warrant for possession issued against her, and I've applied to have that matter re-opened and that judgment set aside. **(Indigenous legal service staff)**

We have used the Tenants Union historically, and they were obviously... a really good service... and they are really useful if we've got queries. **(Community organisation worker)**

Female focus group participants in Rockhampton were asked if they had visited the local Tenants Advice Service before it was closed through de-funding. 'Well I did once', replied one participant. 'It's a good service', said another. There are now major gaps in legal service delivery in the area of housing and tenancy given recent cuts to funding in this area by government, leaving only the Tenants

Union in Brisbane to provide specialist tenancy advice services state-wide. Queensland is now the only state without a dedicated tenants' advice and advocacy service.³⁷

I've lived in a housing commission house for about 12 years now and it takes them months and months to come and fix anything. So, since I started work, they upped the rent, like tripled it and they still hadn't done the maintenance that I been asking them to do for the last six months...on the bathroom, on the toilet. They finally come and did the bathroom. The fence is still just about falling down. You've gotta tie it up with everything. Still waiting for it to be painted, and if you don't pay your rent they kick you out. [FGF: Did you seek assistance] I just ring them all the time. Well, where do you go to? 'Cause they close the tenancy down now here, the tenancy union, hey. So that's all closed down in Rockie.
(Rockhampton Women's Focus Group Participant)

At this stage there is no housing services in town... So, if local people have issues, they have to get onto the 1300 number, and that's a disadvantage because they can't walk in and see someone locally about their problem. **(Roma Women's Focus Group Participant)**

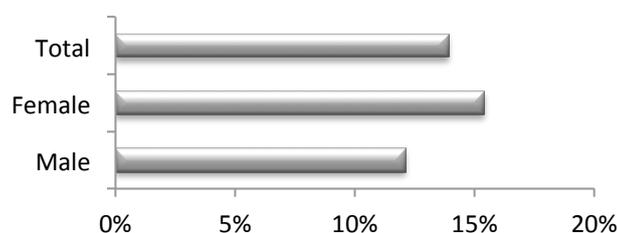
There's a gap. [Tenants advice services] were battling to meet need when there were 20 services around and office in North Queensland. There's no way [they're] going to be able to meet need now [with funding cut]. **(Legal practitioner)**

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, **13.9%** of all participants identified a dispute or problem of this nature, with Indigenous women 3.3 percentage points more likely than Indigenous men to have had an issue arise in this area (15.4% of Indigenous women compared with 12.1% of Indigenous men) (See **Table 4.5 Appendix C**).

Only three of the 20 individuals who indicated a problem with supported accommodation sought legal advice or help. The assistance was sought from ATSILS, Murri Watch and the management of the supported accommodation in question. Thirteen individuals responded to the question of how their problem was resolved. Of these, only three indicated that the matter was resolved satisfactorily.

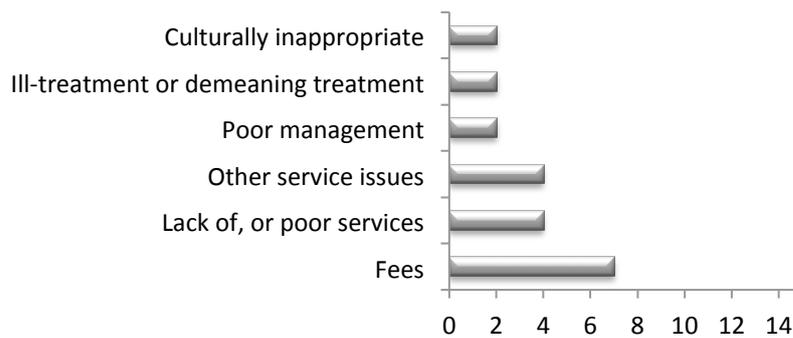
Figure 4.5 Participants Identifying Supported Accommodation Issue or Problem



The predominant issues causing concern in this area were fees, poor service delivery or 'other service issues' (see **Table 4.6 Appendix C**).

³⁷ See discussion by Tenants Union (NSW): <http://tunswblog.blogspot.com.au/2013/12/queensland-tenants-services-close.html>

Figure 4.6 Reason for Supported Accommodation Dispute or Problem



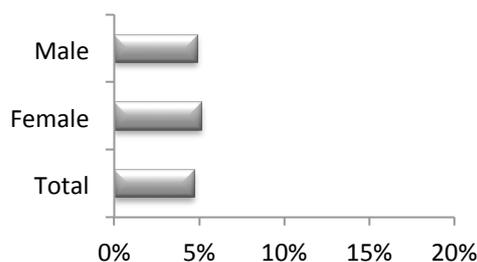
There was not a lot of comment in focus groups relating to problems with supported accommodation. In Pormpuraaw, female participants stated that ‘Just about everybody who’s been to the women’s shelter has had problems with food or staff.’ In Mount Isa, a particular worker at a shelter was thought to be problematic and this was raised with management at the centre.

I went to talk to [named homelessness centre] there. We have this new worker down there. And, she’s not too mean or anything. But, she walks around there like, like really demeaning people... She’s not a young girl but she’s, you know, she’s about 6 foot and she struts around there going, ‘Have you done this, have you done that?’ Hey, we’ve been here longer, you know, we’ve lived in this place longer than you. We know exactly what we’re doing... and I said ‘Listen, this is not fair. She can’t talk to us like that’. You know and she’s like ‘I need this place. I need to work here. It’s my job’. Hang on a minute. This place wasn’t put down for her to have a job. It was put down for homeless people... We’re experiencing lots of hardness. And, those people there are to offer the quality of care to us. (**Mount Isa Women’s Focus Group**)

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 or seeking council approval for building applications). Overall, **4.9%** of all participants identified having sought advice or assistance for other housing issues. Although the numbers are very small, Indigenous women were marginally more likely than Indigenous men to have done so (5.1% of women compared with 4.7% of men) (see **Table 4.7 Appendix C**).

Figure 4.7 Participants Who Sought Legal Advice for Other Housing Issue



In Rockhampton, one woman had had an issue in relation to development of the property adjacent to her home.

Who do you see if you've got ... Where we live, they're putting in a thirty-room motel behind us and that. Who would you see to sort of seek legal action if you needed it? ... We wanna enquire, we've inquired, but the Council, they just sort of told us nothing. They won't even ring back or anything so, yeah, we just wanna find out, but we can't seem to get past this stage. We definitely want to find out what our rights are because will it take the price of our house down or you know will we lose in the end because there's a thirty-room motel getting shoved right beside us? **(Rockhampton Women's Focus Group Participant)**

Another participant suggested that the woman in question should have received a 'survey', 'by rights'. The woman continued.

Well, they didn't give a survey. They sent us a letter, saying this is what's going to happen. Ring this number up if you've got any inquires. We've been ringing and no-one's been answering so we went to the Council and they just, they keep saying, we'll get someone to ring you and no-one's rung. **(Rockhampton Women's Focus Group Participant)**

Another comment was made on Thursday Island in the men's group about home ownership.

The biggest problem we have is that this land does not belong to the Queensland Government. All of us here have connection to the land. It belongs to the Kaurareg Nation... Now, when we say to the Government, how can we pay? Is it all that. 'It's not a freehold... It's... come under this particular Land Act, so you can't pay for it'. I said, 'What the heck?' because I pay \$12,000 a year for rent on my house at Quarantine (a suburb of Thursday Island), my rented home at Quarantine, and if they say to me 'Backdate when you started in 2001', I would have owned that house outright... But they've got those Land Acts that is stopping us. They said they're going to do that. These are freehold. 'On no, this is Government [land]'. **(Thursday Island Men's Focus Group Participant)**

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 **34.7%** of all focus group participants identified neighbourhood disputes as an issue. Indigenous women were more likely than Indigenous men to identify problems in this area. The percentage of women identifying such disputes was 13.2 percentage points higher than that of men (40.7% of women compared with 27.5% of men) (see **Table 4.8 Appendix C**).

Figure 4.8 Participants Who Identified Neighbourhood Dispute

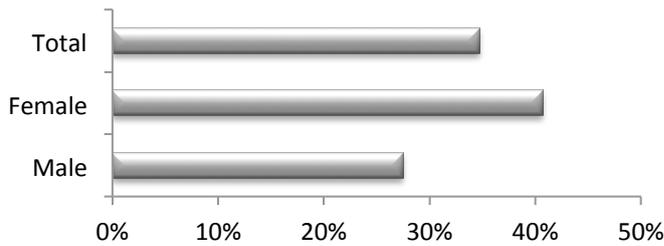


Figure 4.9 shows that participants in Cairns (55.0%) were most likely to identify an issue involving neighbours and those in Rockhampton (17.6%) least likely to do so (see **Table 4.9 Appendix C**).

Figure 4.9 Participants Who Identified Neighbourhood Dispute by Community

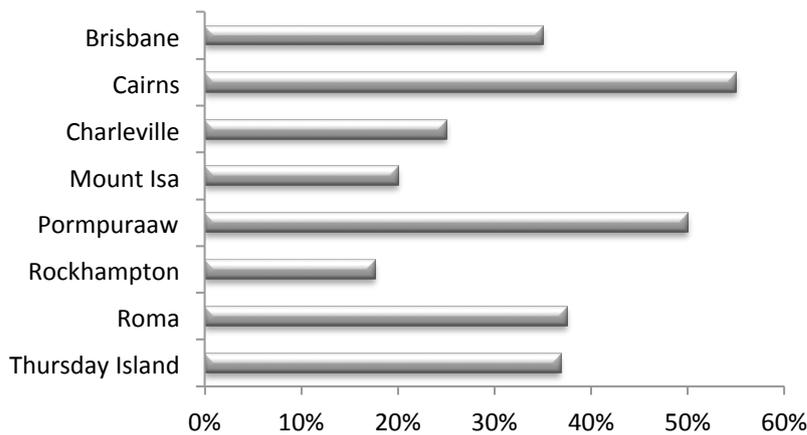
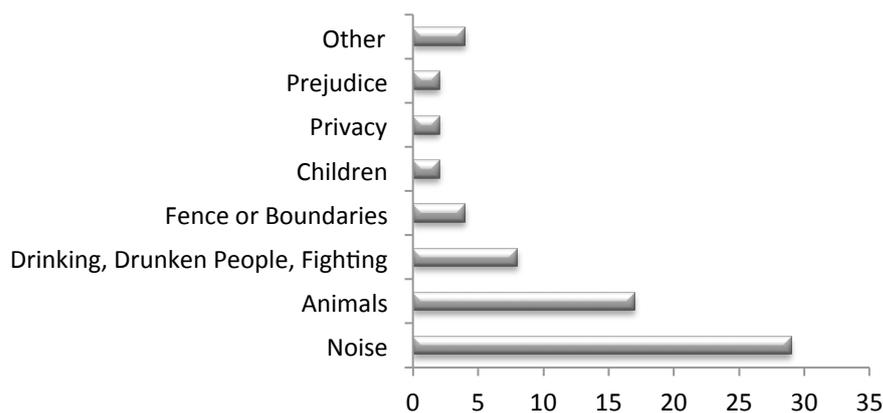


Figure 4.10 provides baseline data for participant responses to the question asking about the nature of the neighbourhood disputes experienced. Fifty-two individuals identified a total of 68 issues relating to disputes or problems with neighbours. Of these 68 issues, noise was most commonly identified as the cause of the dispute or problem (by 29 participants). This was followed by animals (17); drinking, drunken people and fights with neighbours (8 in each category) (6); fences and boundaries (4); and finally children, privacy and ‘prejudice’ (2 in each category) (see also **Table 4.10 Appendix C**).

Figure 4.10 Reasons Identified for Neighbourhood Disputes



Neighbourhood problems appear to arise with some frequency, particularly in some communities. In Cairns, for instance, one legal service provider stated as follows.

They're quite common up here... 'He said this to my wife' or 'I want to do this'.
Neighbourhood disputes are always going to be there, there's not much you can do about it.
(Indigenous legal service staff)

Focus group participants provided examples of neighbourhood disputes or problems arising. Noise was a common subject of complaint. Participants in the Thursday Island women's focus group simply stated, 'Too much noise!' In the women's focus group in Cairns one lady indicated that she'd had to deal with neighbours' complaints about her 'noisy' kids, which prompted her to ask 'How do you keep kids quiet? They're kids!'

Stakeholders also spoke of complaints made by neighbours to housing authorities as a result of noise. Noise might encompass incidents of domestic violence or may relate to overcrowding (see Section 4.1: Housing), as the following comments indicate. The comments illustrate well how neighbourhood and housing issues are related, including where complaints by neighbours jeopardise tenancies.

Some of the housing estates on [Thursday] Island are sort of like in clusters. So a lot of the Islander families all live in the same sort of cluster of Housing Commission houses and you would have a variety of generations and families [together]. It's just a very diverse sort of neighbourhood. There's an elderly pensioner living in the same street as a young family, living in the same street with somebody who [is involved in] domestic violence so all sorts of issues [arise]. They would be making complaints to the Department of Housing and [it] would get so many complaints and then would [have to] act. [It might be about noise], which [doesn't] necessarily mean partying. It could be [about] domestic violence... **(Indigenous legal service staff)**

Well when they come in from the mission, if they get housed in mainstream they don't realise that they can't live in here like they do out there. They can't have thirteen people living there. Their name is on the tenancy, that's it. Just noise, that sort of thing, their behaviour....
(Community organisation worker)

Dogs (or animals) were also raised as an issue within focus group discussion – both in relation to participants' dogs and those of their neighbours. The following comments made about dogs by participants indicate how difficult it often is to resolve issues directly with neighbours, *and* that where issues are not resolved conflict has potential to escalate to offending (assault).

Yep, [the neighbour] rang the RSPCA and took the dogs and all the pups. [They were] only just born. She was registered, you know, like I registered the dog, but he made out that she was a dangerous, dangerous dog. And so because I didn't have \$800 to give 'em I just had to let them take the dog and all the puppies. **(Rockhampton Women's Focus Group Participant)**

[A big problem] is dog control and animals. Dog bites occur and dogs are put down.
(Pormpuraaw Women's Focus Group Participant)

We have two dogs in the yard, the neighbours have two... and if the kids walk up the side they just go ballistic. They have also dug little holes. They have a Colourbond fence so they can't get through but I think to myself 'God, what if they did get through?' ... But it's not

worth saying anything to them because they wouldn't do anything about it. **(Roma Women's Focus Group Participant)**

Householders on some remote communities reported experiencing a whole range of issues in relation to neighbours, including noise and dogs, as above, but also privacy, drinking, fighting, fences and boundaries. In the women's group held in Pormpuraaw, for example, participants spoke of people 'coming in when you are not around and stealing from you' and being 'drunk, making noise, dogs barking, sometimes even attacking people, people playing music late, keeping dogs in, keeping dogs out, people yelling and fighting, and sometimes fights can come into your property because we don't have fences high enough to keep people out'. A stakeholder organisation working in the same community confirms that things can get pretty chaotic.

[Number 2 in terms of priority issues after housing would be] neighbourhood disputes, [and] I think that's around sly grog. There are always legal ramifications for people bringing in sly grog [like dealing with] noise control, after hours drinking. ... Anyone bringing alcohol in, you tend to hear it come in. You hear the cars come in. Within an hour you hear the noise, so noise [begins] anywhere from 8 or 9pm... sly grog [leading] to drinking, family violence, violence that relates to alcohol broadly, theft of cars... So I will have people jumping my fence. We're talking about self-harm, harm of others, theft of motorcars and harm to property... and then [a higher] incidence of domestic violence. We need to contact police. It's legislated that you have to contact the police. [It can be] threats with [weapons]. I've had to remove knives off people and bars off people. **(Community organisation worker)**

Interestingly, one community-based stakeholder suggested that their clients are 'normally central to neighbourhood disputes' but 'not normally the victims'. They are less likely to lodge a complaint than to have to respond to one. To some extent, this comment is borne out by discussion within focus groups and in other stakeholder interviews. It was thought by some that Aboriginal and Torres Strait Islander people might be subject to more frequent complaint because neighbours take issue with certain aspects of their culture.

The kids dance and that. There is noise from the kids, from the drums and the songs that the ladies sing. That takes a few hours because you are training the kids. You're training them in their own culture. The neighbours talk to you the next day. And we say 'We still have our culture, we are practicing our culture'. This can take a couple of months leading up to ceremonial feast. Some of them don't understand what we are doing. They don't understand the significance of our culture. **(Cairns Men's Focus Group Participant)**

Another big issue is fire [in the backyard]. **(Cairns Men's Focus Group Participant)**

Perhaps in a more directly racist sense, neighbours may see Indigenous people as 'undesirable' or as threatening. As noted in Section 4.3: Discrimination, vilification by neighbours is not an uncommon occurrence. A complaint by a neighbour may be used as a weapon to evict Indigenous neighbours from their tenancy and to oust them from the neighbourhood.

I think the neighbours probably complain earlier than they do with a non-Indigenous family... A lot of white people here are scared of the Aboriginals. We know all their drinking spots, but as I've said before, if I didn't know them, I'd probably be scared too. We know them all, so we've got nothing to worry about. But their behaviour can be confronting at times to people that wouldn't know them. **(Community organisation worker)**

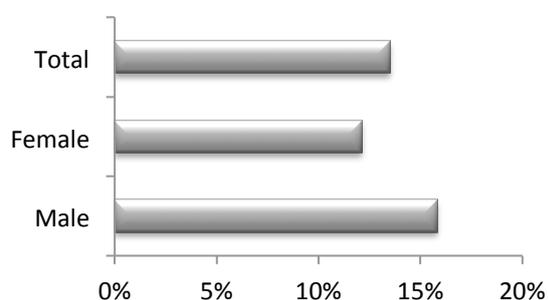
Participants felt that housing authorities or landlords do not always deal with complaints against Indigenous people fairly. They are perceived as being more likely to believe the account of a non-Indigenous neighbour over an Indigenous person, including in instances where the Indigenous person might have their own cause for complaint against their neighbour.

What I find is that landlords and the Department of Housing, they'll take the word of the white neighbour over the black family. So they'll take what the white family says is the truth ... So, [a neighbour] was saying [named person] had seven children in the house. That's [not true].... I was sitting on the front veranda there and I was looking and I see this curtain keep flowing or moving. I looked and I caught him, looked straight at this old fella watching the kids all running around. I went there and said 'You've got a problem?' because I knew he wanted Sandra to get out, and he closed it. I said 'Come on. Open your curtain again, you old pervert'. He was just there... growling about the kids all the time and when their dog had puppies he growled about that. Poor [named person] never had the \$800 to pay the Council to get them registered and all the rest of it and she had to let them go. The pound come and take them.... [He] did all those sort of things to get them out of the house.... [That's] what a lot of them do. They ring the real estates to get black people out if they don't like them living next door to them. They harass the real estates to get them out for noise and that sort of thing.... They want you out. That old mongrel next door, he was just wandering around harassing them. They'd be able to take him up for harassment, hey. They're not doing any harm. The kids were not in [his] yard or things like that. **(Indigenous community organisation worker)**

4.2.2 Neighbourhood Disputes and Obtaining Legal Advice

Despite the fact that over a third of all participants had experienced a neighbourhood dispute or problem, only just over one in ten disputes (13.5%) had been responded to by seeking legal assistance (see **Figure 4.11**). The proportion of Indigenous women seeking legal advice for problems of this type was 3.7 percentage points lower than that of Indigenous men (12.1% of women compared with 15.8% of men) (see **Table 4.11 Appendix C**).

Figure 4.11 Participants who Sought Legal Advice for Neighbourhood Problem



Of the seven individuals who sought legal assistance or help, two people had contacted local council rangers, two had contacted the police and the remainder had sought assistance from ATSIILS, a relevant housing authority and private real estate agents.

Neighbourhood disputes, when unresolved, provide a clear example of how unaddressed civil law issues may escalate to criminal law matters. The following account provided by a female participant in Rockhampton demonstrates, on the other hand, that using the legal system in place of fighting with

neighbours may bring things to a more satisfactory point of resolution. Interestingly, it was really only whilst having to defend her daughter against constant complaint by a racist neighbour that the participant in question took action herself against the neighbour in question. As noted, Indigenous people may be more likely to respond to another's complaint than initiate their own.

My daughter had a neighbour complain all the time and she rang me up crying and I went around there and I ended up calling the police and everything and I pressed charges. [The neighbour] had a camera and he was taking photos of people coming and going. And my grandson, he lives there.... [The neighbour] took photos, and so we called the police... He ended up moving eventually... He was going on 'Because you're black and from Woorabinda and so, you know, you are no good' and all this and that. So we rang the police, and they took the film out of his camera and everything. I said, 'You need to check if he's got other photos there, because for all we know he could be taking photos of others'... I think he got a bit, I don't know, upset that we [did that]... But anyway, he's moved so we don't have to deal with him anymore. Yeah, every time someone goes in the car, he rings the police so we rang Housing. We gave them all the information... we used the police because automatically he thinks just because you're black you're just going to fight and stand and argue. And, I said no, I'll use the legal system. That's what it's there for. So I rang the police and we pressed charges... He was abusive. When I pulled up in the car, my daughter was crying and the little boy was upstairs and he was crying and he was only seven. And, I said, 'You shouldn't have to live like this', so that's what I did. **(Rockhampton Women's Focus Group Participant)**

As a final point, it is worth noting that legal service providers may find it difficult to take these types of matters on, particularly in smaller communities where 'everybody knows everybody else and everybody's related to everybody else', hindering access to advice and support.

You have to be really careful what you say, who you say it to and how you say it because they'll be your client next week, and there's all sorts of aspersions cast by everybody. I had somebody living at [named place] and they're saying that this other person's son, who is disabled, is a paedophile and you have to try and work out how you deal with that.
(Indigenous legal service staff)

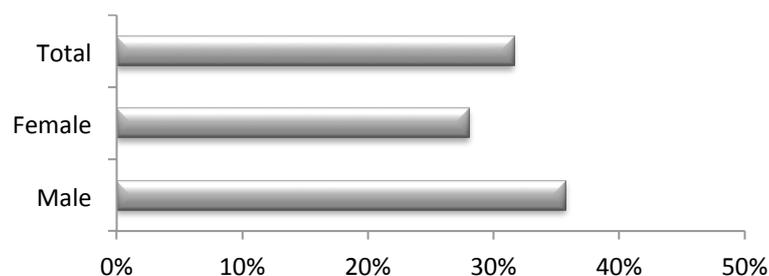
4.3 DISCRIMINATION

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, nearly a third of all focus group participants (**31.6%**) identified experiences of discrimination, with Indigenous men identifying such experiences at 7.7 percentage points higher than Indigenous women (35.7% of men and 28% of women) (see **Table 4.12 Appendix C**).

Figure 4.12 Percentage of Focus Group Participants Identifying Discrimination Issue



Discrimination was identified as a pervasive problem amongst focus group participants. It arises across many different areas of life for Aboriginal and Torres Strait Islander people. ‘Discrimination occurs everywhere, everywhere, everywhere. Australia is the biggest racist country... and our children, our grandchildren have to live with it for the rest of their lives’, claims one female participant located in Brisbane. It appears to underpin or connect with a range of other civil law issues. A woman in Charleville speaks of unequal treatment in housing, health and employment.

Another thing, about the hospital - they got murdering staff up there. They got no time or patience for black people that have got chronic illnesses... When you’re black and you go up there, they don’t want to know you. Same with the housing... [and employment]. I’ve had cousins that have gone up to try and get a job. As soon as they go in or they know your last name, they can’t even get jobs around here, and then you got people running round in this community with two or three jobs. It’s not right. It’s not right. **(Charleville Women’s Focus Group Participant)**

The endemic and enduring nature of institutional and other racism directed against Indigenous people in Australia has been emphasised by other participants.

They make you so wild, the government. We are not even recognised here. Everything was taken from us, everything. **(Brisbane Women’s Focus Group Participant)**

There are so many services available to prevent this sort of stuff and it’s just creating a bigger divide. The wedge is there. The gap is getting wider. We are still being labelled as Indigenous so we are still being categorised, the blackfellas over here and the whitefellas over here. There is still that inequality. **(Roma Women’s Focus Group Participant)**

Some Indigenous participants, however, also identified their resilience in the face of or despite the omnipresence of racial inequality.

Racism will never ever stop while there are black and white people on the face of the earth. I’ve been around for a long time. I go to a lot of seminars, workshops, conferences and what have you, morning teas, afternoons, lunches with white people... but not one of those people will say ‘Come to my house for dinner’. The non-Indigenous people who have invited me into their home in Roma are nix. There has never been one person. We’ll go out here or we’ll go out there, but we don’t go into their homes. But it doesn’t really worry me because I think, ‘There is nobody better than I am. They might be as good, but there is nobody better’. And the people who know me know better, and the people who don’t can get nicked. **(Roma Women’s Focus Group Participant)**

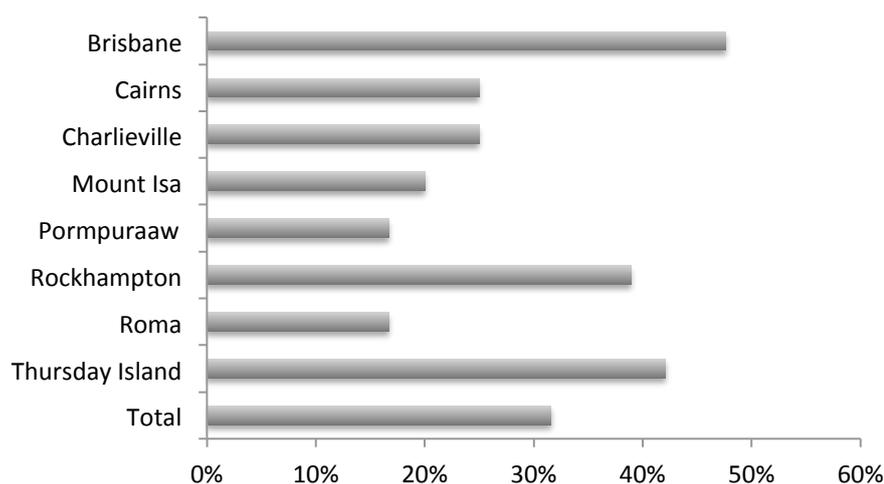
I'm over the lot of them a long time ago me! [Laughs] I'm too old and too proud of who I am and where I've come from. **(Roma Women's Focus Group Participant)**

Certain communities were singled out by focus group participants for special criticism about the extent of racism they faced. A female participant in Roma said 'Over the years when people make Roma their home, it's not unusual for them to say what a racist town this is.' Another female participant in Charleville also stated 'I tell you sis', it's a racist community. Don't come living out here.' In Rockhampton, another woman commented, 'you know, Rockhampton is still a very racist town'. By way of contrast, one legal service provider suggested that race relations in the Torres Strait were fairly healthy - although we note that Thursday Island was one of two communities (along with Brisbane) with the highest number of reports of discrimination by ILNP focus group participants.

I'm speaking very generally. I think that the people that were coming to the Torres Strait to work, contractors, etcetera, acknowledged that they were coming to another community and that they needed to be respectful. That was my general feeling. I mean you're always going to get the one or two ... I think because the Torres Strait Islanders are very in touch with their culture and are very proud of their culture that the minute you arrive up there it is in your face and you just sort of...I don't know how to explain it. It is beautiful to see. It is in the language in the lifestyle... **(Indigenous legal service staff)**

As **Figure 4.13** shows, participants in Brisbane, Rockhampton and Thursday Island were more likely to identify an issue of discrimination and those in Roma, Pormpuraaw and Mount Isa were least likely to do so (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 they had experienced. In most (but not all) instances, the discrimination identified in focus groups was racially based. We note that the discrimination identified by focus group participants and often stakeholders was also, in general, direct rather than indirect in nature. Forty-four of the 48 individuals who had identified discrimination as an issue pinpointed 60 types or instances of discrimination. Of these, only five were not race-based in nature (criminal record (2), age (2), sex (1)). However, grounds of discrimination other than race were sometimes raised as part of accounts provided by focus group participants of their experiences

with other areas of law. An example of this would include descriptions of unfair treatment of children in education (see also Section 4.11: Education).

Stakeholders had more to say about grounds of discrimination other than race. For instance, one legal service provider working on Thursday Island states, 'I did a number of matters and of those matters I don't think any of them were on the basis of race...I think it was matters on the basis of age and impairment, I believe'. Others also observe that although race is the main area of complaint, different issues do come up.

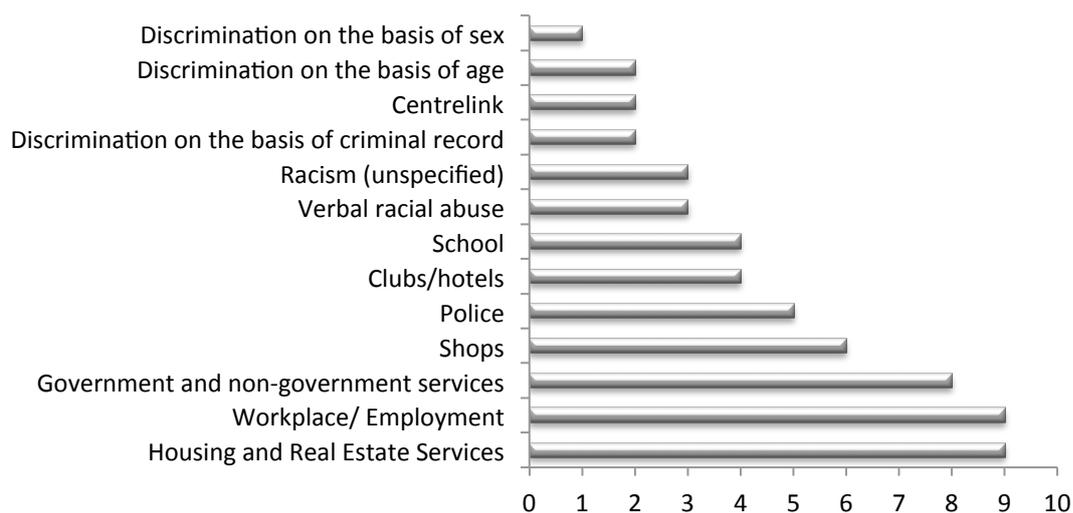
Mostly [we see race-based complaints for Indigenous complainants]... and vilification, racial vilification. Sexual harassment, we do see a few sexual harassment complaints, impairment, family responsibilities, which fits in with all the cultural things, things like that. Goods and services, and work... would be the two highest [areas]. In work, it's more men than women [complaining].... We seem to see more complaints from Aboriginal or Islander men than women in employment. For goods and services, yeah, I think it's pretty well equal. **(Statutory Authority staff)**

And that discrimination field it could be quite massive... You'd come across that all the time... Obviously those people have mental health issues, disability, and they're always quite high functioning so you might not pick up. They're not on the extreme level of people with disabilities or people with extreme mental health issues, just sort of sitting there in this sort of floating area. And there's not, that sort of discrimination [on the basis of impairment] over quite basic things... **(Community organisation worker)**

Narrow definitions of experiences of discrimination is likely to be a reflection of how discrimination is understood by participants. The breadth of available legal protection against discrimination is probably not well known. The fact that the discrimination identified in the research was restricted to particular types or grounds suggests that the rate at which it is reported as occurring is probably an under-representation of its actual incidence within the communities in question.

Figure 4.14 indicates that housing/real estate agents and workplace/employment-related issues were the most common areas in which discrimination arose. Of the 60 discrete responses provided by 44 participants when asked to identify the context in which the discrimination had arisen, 9 participants identified that discrimination had occurred in housing and 9 participants identified it within employment. These areas were closely followed by government and non-government services (8 participants); shops (6); police (5); clubs/hotels and schools (4); and verbal racial abuse and unspecified racism (3 participants in each of these categories). A range of other areas identified included criminal record (2), Centrelink (2), age (2) and sex-based (1) discrimination and a general category of 'Other' (2) (see **Table 4.14 Appendix C**).

Figure 4.14 Nature of Discrimination Nominated by Those Who Identified it as an Issue



Housing and Real Estates

Housing and tenancy (particularly private real estate agency services) was one of the most common sites of discrimination experienced by participants and identified by stakeholders. As discussed in the context of housing-related issues, Aboriginal people may be excluded from private tenancies not only because of the cost of renting private properties, but also on the basis of their race. This feeds into problems around access to housing and overcrowding, as Aboriginal communities are then competing for very limited public or community housing [see Section 4.1: Housing].

As soon as someone called up to say they wanted a house they'd say, 'Come in'. But as soon as they saw they were black, or knew what their last names were, they wouldn't get the house. **(Charleville Women's Focus Group Participant)**

We've got quite a few real estate agencies here, and they would treat people differently. There are a lot of issues with them. **(Roma Women's Focus Group Participant)**

People feel they are being discriminated against because of their status as Aboriginal and Torres Strait Islander (in accessing private tenancies)... But people don't necessarily see themselves as a tenant [needing tenancy legal advice] at that point. **(Legal practitioner)**

A stakeholder organisation confirmed the extent of problems with respect to race-based discrimination in housing.

We did a series of community round tables at the end of last year and a lot came out from the Indigenous attendees about access to housing, affordable and just accessible housing [as well education]. They were two of the big things that they were reporting difficulties with... [You still] get occasions when people have – you know, they suspect it's because of their race and they've got somebody, a relative, a non-Indigenous friend or somebody phone up and [the rental property] is available still. So yeah, those things are still occurring. **(Statutory Authority staff)**

Others also remarked on the racism evident in the way that agents processed Indigenous applications for tenancies.

I was helping my brother-in-law and my son to get a place together. Both were working. Neither were blacklisted under the (tenancy database). They both were okay there. Both were working. Just filled it all out. They had all the points and everything. One thing, they had to put a photocopy of their licence or their ID in. ... So when I went to this place to look [at it] with them, actually a couple of places, and those people were there – white trashy type people living on welfare. These houses weren't posh. These were places just for these blokes just to sleep and I'm thinking 'Well, these two should get this because they're working' They had everything going for them. Anyhow, they didn't get it. A couple of ones they missed out on. Not that one [alone], but heaps, and I'm thinking, 'I wonder if I put a different photo down there or something, whether they'd get it?' ... I don't think you can do that... That's why [Indigenous person named], if she applied for a place and that, she'd send her daughter or her sister, fairer ones to go and meet the landlords. That'd be an issue with landlords, but they see black people and they have all sorts of stereotypes going through their brain. **(Indigenous community organisation worker)**

Training of real estate agents may only make them more careful in how they process prospective tenants' applications.

Then the real estate agencies, because we've had some training with REIQ, Real Estate Institute of Queensland, and they're saying it's the owners who are sort of being specific about who they want in their houses and things like that. So they're becoming a lot more cautious because you have that incident with, what's her name, Pauline Hanson, who wouldn't rent to a Muslim or an Asian. Then the real estate agent pulled out of it. He said 'I'm not going to be involved in a discrimination complaint'. **(Statutory Authority staff)**

Employment

Employment or workplace-related discrimination was reported as being as much of an issue as housing related discrimination. Focus group participants commented on how hard it is for Aboriginal people to find employment. A man participating in the Cairns focus group believed that in 'just about every job I've been for, there's been discrimination'. This sentiment was echoed elsewhere.

It's a big issue in Charleville. We have a lot of regional services and a lot of them have got positions ... I'm talking about mainstream organisations who have funding for [Aboriginal] programs or actual positions. Now the worst thing about Charleville is that they'll get people in there that aren't Murri. They'll get people in there that don't have that connection with the community but they're there to work for the community. And they say 'Why can't blackfellas get on their feet' or 'Why can't blackfellas move forward?' You've got all these organisations like the neighbourhood centre or like health services or employment services that get black funding for positions, because they're there for a purpose - whether it be chronic disease or closing the gap. But ... once they get that black money, they do as they please... And you look at mainstream organisations. Are they accountable to the community? No they are not. **(Charleville Women's Focus Group Participant)**

Sexual harassment in employment arose as an issue too. A woman participating in the Thursday Island focus group stated, 'Just when I was working down in Weipa [I was] bullied by the males... Bullying, lots of bullying, just discrimination of the ladies and that.' When asked if this was sexual harassment-type bullying, the woman replied 'Hmm yeah'. The woman did try to get help in response but ultimately had to leave work because of it. 'Yeah I have actually gone for help and that, but it is a

bit weird because you actually get the support from the worker. Like, you have to go to the supporters they have provided for you...I have actually just left that job’.

Further, the way that Jobsearch providers deal with their Indigenous clients seeking employment was also said by some to be discriminatory. They are seen as keeping Indigenous people ‘down’, only finding them ‘shit jobs’ because they are Aboriginal or Torres Strait Islander.

These Joblink agencies, they're bastards too. They don't do anything for our people. My [son]... he's got his goals. He wants them [Joblink agency] to help him achieve his goals, what he wants to do, but they keep saying ‘Well no. We'll just put that aside,’ and ‘You've got to go and do this.’ ‘You've got to go and work at the recycle plant,’ or at the fricking dump or somewhere, some low, menial type employment. Aren't they there to help people to achieve their goals, to uplift themselves, yeah? And all they want to do is just send people off to shit jobs just so they can tick the box. ‘Yes, we got so and so employed.’ ‘He's a black fella. He likes outdoor work’... That’s what they get. What if they've got no interest in that?

(Indigenous community organisation worker)

Government and non-government services

A third area of frequent complaint involves government and non-government services. On Thursday Island, a female participant indicated that ‘the discrimination is mainly with government departments and agencies and not for profit organisations with the kind of services they should provide.’ A man participating in the Cairns focus group also suggested that there was discrimination within the ‘health department’. Discrimination in health came up for others, including a community-based service operating in Mount Isa.

[They] aren’t taken seriously. You know, they might go up there intoxicated and that. That’s all they (the medical staff) think they are, is just intoxicated, and so they’re not getting the proper medical attention they should be. Not long ago I took a client up to the hospital and she was just told to go home and come back in a couple of hours time, and when we did take her back, the other doctor, she was amazed that she was sent home. She should have been [seen] straight away. There are assumptions [based on] whether someone’s drunk or not, rather than their medical condition. **(Community organisation worker)**

Discrimination was said to have also occurred in care and protection procedure and policy, particularly in relation to the unmet need for interpreters.

Lack of use of interpreters. Pushing people through processes like those care and protection type processes, getting assessed as fostering and kinship carers for example but having no use of interpreters and discrimination via Child Safety sorts of processes and recommendations. We’ve had Legal Aid lawyers say there’s a clear breach of anti-discrimination [law].

(Community organisation worker)

Another comment was made about service provision and lack of interpreters in community-based services.

Our people feel it. They come into even our neighbourhood centre and they can't really be serviced because they're not really understood. So, I have people that come and say that they've signed forms. They don't know what because they can't read but they signed where they're told. **(Indigenous Legal Service Staff)**

A further issue was raised in relation to prison, Corrective Services and recent changes to the *Anti-Discrimination Act 1991 (Qld)*.

People don't come to us for discrimination law as much anymore as they used to because... I don't know if you know about the 2009 changes to the *Anti-Discrimination Act*? [It] made the State Government of Queensland a protected defendant ... So, people used to come to us a lot more for discrimination by the State, but now that the State is a protected defendant they kind of think that they don't have any rights to access discrimination so they just stopped coming to us... We'll give one off advices but we used to do more case work... Once we give one off advice saying that the State is a protected defendant and there are all these barriers. You can still bring a case [but] there's a five-month waiting list. You have to tell Corrective Services and give them five months to fix it up before you can tell the Anti-Discrimination Commission. And once you tell people that they don't wanna follow through. **(Legal practitioner)**³⁸

For prisoner complaints, what it says now is that they have to go through the internal complaint process with Corrective Services first and if they've done that then they can complain to us. **(Statutory Authority staff)**

Shops and Clubs/Hotels

Goods and services also came up as a problematic because of the way that Indigenous people are treated in shops. Discrimination against Indigenous people as consumers is discussed elsewhere (see Section 4.6: Consumer).

When you are in a shop too and they give you that body language! I didn't know nothing about body language before I came here, and then they didn't have to say anything. The look on their face told me they didn't like blacks. I never knew nothing about that before I came here. People said to me, 'Why are you moving there? That's a very racist town!' **(Roma Women's Focus Group Participant)**

I had a problem with them, that's why I pulled away from Radio Rentals. They get you to sign these documents. I told them I wanted to pay it off in a year, year and a half. They said no, three years. They said for Aborigines, they got to pay off over three years and whites can pay it off before. That's why I pulled away. **(Brisbane Women's Focus Group Participant)**

The following comment relates both to over-policing of young Aboriginal people by security guards and to their rights as consumers. The service provider in question claims that most of the young kids banned from shopping centres in Cairns when suspected of or caught committing a crime or nuisance of some description are Indigenous, despite the fact that non-Indigenous kids also commit crime in these centres.

The shopping centres use of those boards, you know those boards... [those] walls of shame When I've gone in there to pick up kids who've been being a bit naughty there'll be these huge walls of shame of all the kids who come to our service normally. They are all banned from... [the local major shopping centres] for like twelve months. There are all these white

³⁸ See discussion of recent changes to legislation requiring aggrieved parties to use internal complaints mechanisms of Corrective Services (Qld) prior to lodging a complaint of discrimination at: http://www.correctiveservices.qld.gov.au/About_Us/Legislation/Legal_practitioners_Nov2008.pdf

kids that steal [but the wall would be largely Aboriginal], nearly all [Aboriginal].... So then it gets really difficult around young people being able to engage in the movies and shopping and all that sorts of stuff because largely lots of them can be [on a] twelve month ban. And Centre Management... can ban for any time, but I know from talking to other people, someone who used to work out in one of the centres was saying that if non-Indigenous kids shoplift or whatever, sometimes they'll ban them, they normally don't. Sometimes they'll ban them but you might get a month or be not allowed back in for two weeks, whereas the kids we work with [it's] twelve months or two years. [My understanding is that] they're Centre Management and they can make these decisions. ... And I understand there's no course of appeal, so I don't know if it's a civil law issue but it's definitely a discrimination issue... It can be a real issue for us, because we couldn't buy the kids movie tickets... The only movies they could go [to] is the one in the city.... We can't take people shopping. We have to ring, cause everyone's banned from the shopping centre. You have to ring up and say, 'Can we bring in this person?' And I have actually noticed that [for] Indigenous people they won't let them in and some of the white kids they will let you bring them shopping for the day.
(Community organisation worker)

This same service continues.

Also bag searching, there's like non-stop bag searching going on so our kids are getting picked up for little things all the time because they're just getting their bags searched. They're always being pulled over, yeah they're way over-policed. **(Community organisation worker)**

Issues were also raised about often quite blatant exclusion from pubs on the basis of race. A man participating in the Roma focus group claimed that at his local hotel, 'A lady told me face to face that she would love see all the blackfellas out of that pub. I went and saw the police and they haven't done nothing. And then I went to the Anti-Discrimination Board... So far nothing has happened'. Another example was given by an Indigenous community worker interviewee about events in Brisbane.

This young fella [was] working in childcare or Centrelink... [He goes] into some bar down in the Valley and he was told to leave. Don't know what they had on him or what, but he reckoned he said 'Well, give me a reason why I've got to leave.' And he said 'Well, you're not appropriately dressed.' He said 'That's all right', he said, 'I'll go and change.' Went home and changed, come back. The manager comes up to him again and he said, 'Give me a reason why I've got to leave again?' He said 'I'm pretty well dressed enough – look at this fella or that fella, the way they're dressed', and [he] couldn't give him an answer then. 'Well, what is the problem?' And he heard that the barman, when the barman asked him, the manager, he said 'I don't want no brawls in here.' He heard them. He got \$10,000 out of it. Yeah, he took him to the civil courts, human rights, yeah, and got \$10,000 out of it. He fought the case. [He] fought for his rights... [It] happened down in the Valley and blackfellas just never, ever went there again.... They're just giving them what they wanted really. **(Indigenous community organisation worker)**

Police

Focus group participants provided numerous examples of instances where they felt unfairly treated by police. As one woman in Roma states, it is still an area where ‘we fight tooth and nail’ (see further, Section 4.14: Other Legal Issues).

I think police here they think that just because you are black they can treat you different. [One] night I went out for dinner and I got home at 8 o’clock and they were searching in my house. And I’ve said, ‘Get the hell out of my house. You have no reason to go in there for’. I said to them ‘My solicitor told me that if [person named is] with me after 8pm, no matter what, it’s right’. And when I said that to him he said, ‘Well, the TV was on’, and he said they was worried about that the TV was on!! What an excuse! ... They were in [person named] sister’s room emptying her bag, going through her bag. Anyway, I had a meeting with the boss about that, so they come back and apologised. But they started something else up again this morning. We are having problems with police harassing kids. They can’t go out and catch a real criminal. [Named person] was out at his uncles... and they [the police] said to him ‘Why don’t you go and get a job?’ and all this, talking to him smart. Then they walked right past him into the house, they didn’t show him a search warrant or nothing. Now, just because they wear the uniform they think that gives them the right to treat you the way that they want to treat you... I went down and I seen that copper... and I said, ‘I’m not very happy with you, because of the way you walked into the house and talked to [named person] this morning’. And he said, ‘I don’t have to hear this’ and I said ‘No, because you don’t want to hear the truth’. I said, ‘You’ll know all about it when I go to the media with this because I’ve had enough of you police. [You] think you can do what you want just because you wear the uniform!’ and I walked away and he kept on singing out to me but I didn’t take any notice. I just kept walking. I had to say what I had to say to him, you know, to let him know that he can’t stand over me. And they need to be checked. They went into one women’s house here and opened the door and cracked the women clear in the chest! Now they won’t do nothing about it here. They’ll just let them get away with it. But I just gotta let them know that they are not going to get away with [it with] me. **(Roma Women’s Focus Group Participant)**

I do still believe though that Aboriginal people in Roma are still viewed at the bottom of the barrel. You know our kids, they get in trouble with the law. The chances of them getting picked up or picked on is greater than if they were Fillipino, if they were another nationality. We are pretty multicultural here, but that’s where I think we still fight tooth and nail for our kids. **(Roma Women’s Focus Group Participant)**

I’ve noticed, when you walk down the mall they [the police] only seem to want to do random checks on black people. I’ve never ever seen them pull up white people. Like even if they pull you up early in the night you never ever see them pulling up any other random people. They only seem to do random checks with black people. And they don’t state our rights. They don’t even state that it’s your right not, it’s your right to refuse, you know, you don’t have to give us your name. They don’t even tell us that. They expect us to ask questions. As a police officer, they should be telling us our rights. They should be saying ‘We’re going to do a random check, you know, just for security - ra, ra, ra - but it’s your right to refuse that’, you know. They don’t tell us that. They just pull you up just randomly. They always do it to black people. Every night you see a black person getting pulled up and you see a group of white people. And they’re always, white fellas are always stinging off their head on drugs, kicking shit, being real nuisances, and they just get told to move on. They don’t get random stops or

anything. It's like they always want to hassle blackfellas just to run our names through the system and see if every blackfella has a warrant ... It's very discriminating, you know, because you want to walk home and they want to stop you. You look like a criminal... 'What's this fella doing?' When you go refuse them they try to create charges against you... Then they say they can arrest you on suspicion, you know... Are we really that suspect?

(Rockhampton Men's Focus Group Participant)

Is it their right to take photos of you? I've seen them take photos of minors. You know what I mean? Are they allowed to do that? Are they allowed to take photos of minors, you know? I don't think they are if their guardian is not there... there was an instance, like a proper incident, like someone had a dispute at their house. And I was just walking home and seen them stop and take photos and everything. They said 'What happened?' and I said 'I don't know. I'm just walking home'. And they said 'It's random, we're checking everyone'. But I was there for a while and they weren't checking no one else who was walking past there. There were a lot of white people standing by watching and they didn't, not one of them walked down there to say, 'We're going to stop you for a random check because you're in the vicinity'. Just because them blackfellas walked past, they had to be pulled up and get their photos taken. I feel that's discriminating. **(Rockhampton Men's Focus Group Participant)**

Services reported police harassment of Indigenous people too.

I think move on powers especially, or the public nuisance provisions under the police powers, a lot of young Aboriginal kids are being pulled up for no reason. It's purely racial, racial profiling, yeah. **(Statutory Authority staff)**

And there's quite bad discrimination. Remember we've had a couple of young people who were thinking about putting in for a discrimination [claim], that one's boyfriend, remember? Just because they're so targeted by the police. Yeah, there's some young people that are just consistently targeted, like all the time. Ridiculously. We've had young people charged with walking through Rusty's (outdoor market in Cairns) when it's closed. And you know all the backpackers walk through there but aren't charged. Kids charged for being in a school-ground, walking across a school-ground in Mareeba, for breach of the *Education Act*, which is not a charge that's normally applied. So we have a whole lot of that silly stuff that goes on all the time. That Rusty's stuff was pretty bad. We have a continual use of move-on powers. At one point, this is a while ago, we had about fifteen kids under fourteen all subject to move-on powers [in the CBD] for 24 or 48 hours. They actually can't ban you from a whole CBD but.... **(Community organisation worker)**

I'd say every arrest in Cunnamulla particularly, you can put down to [racial discrimination by police]... I've had instances of people feeling as though they have been picked on by police here and have told me about it and they've said they're going to make a complaint.... You could fashion an argument that just about every arrest in Cunnamulla is racially based.... Despite the fact that people think there's racial harmony, there's not racial harmony between the police and our Cunnamulla clients. In my mind, having done this for nearly five years down there, no doubt in my mind [it's race-based], even if you accept... [the fact that] our clients are in a race that are much more likely to be in the open, much more likely to be walking around, much more likely to be sitting around in the park, much more likely to be walking around at night for innocent reasons [and are therefore picked on by police].

(Indigenous legal service staff)

[We need to develop] a workshop around prevention, around legal rights as such, for these young fellas. Things like, cops were just driving by and they'd see a couple of kids and they'd pull them up and question them and harass them and just really – like they'd ask them for their name or they'd pull them off to the police station and take their fingerprints, all without a charge and all that sort of stuff. I suppose it still happens. I saw police just talking to black kids just over there the other day and I'm thinking 'And what are the police doing to those children?' What, just because they're black? Are there other kids walking around the street, are they just pulling them up? **(Indigenous community organisation worker)**

Education

Education is dealt with as a separate issue in the ILNP research (see Section 4.11: Education). However in some instances, problems that are reported in relation to education cross over into the area of discrimination, particularly racial discrimination and discrimination on the basis of impairment or disability. Although they are discussed here, participants themselves did not always identify these problems as constituting discrimination.

Issues were raised in relation to Aboriginal and Torres Strait Islander children being disproportionately excluded from school. As one male participant in Charleville claims 'We had a school teacher here, a principal here. He kicked every black kid out.' Similarly, a male participant in Roma claimed that there is a lot of discrimination in school, with 'white kids blaming the black kids and the black kids getting expelled.'

I work at the school up here, and a lot of them heads of departments are not well culturally trained because they don't know how to talk our kids. The first option with a Murri kid if they are playing up is suspension, whereas with a white kid they will take them out of class and follow it up. For most of the Murri kids its suspension straight up. **(Roma Male Focus Group Participant)**

One statutory authority stakeholder felt that access to housing and education were the two key issues in Indigenous communities in terms of discrimination. In terms of access to education, this stakeholder suggests, 'I think they were talking about higher education opportunities mainly, so affordability and access in regional areas.... and suspensions... Anecdotally, Aboriginal kids are more likely to be suspended than non-Aboriginal kids [and this is race-based].'

A number of complaints were also made about transport to and from school, about racism on the local school bus and failure of bus drivers to protect Aboriginal and/or Torres Strait Islander kids from it. The following comment highlights how discrimination can escalate to offending and criminal charges if not addressed in other more effective ways.

But it's not even in the schools. It's like where kids used to catch the bus, and you know they go sit in the back, because you know you get, 'Black dogs, you go get in the back, you're not allowed in the front'. That was what they were told by other kids. Then we approached the bus drivers and the bus drivers said, 'Oh well, there's not much I can do'. I said, 'Well, you're the bus driver! You can protect my kids! Once they get on the bus they should be under your protection'. And I said, 'In the end if it needs to come to it, I'll just have a huge lot of kids waiting at that bus stop, and those kids that are talking to my kids like that', I said, 'I don't care. I'll just let them start punching' because even my little [grandchildren], they're on the bus and there's one little boy who's been picking on them, picking on her, you know and yeah, they're only little. You expect the bus driver to show a bit of, you know, common sense

in protecting them, but it's not [happening] and it's to the point where we're ready to just call their parents up and go for it 'cause... everybody has a right to go to school, but you have the right to safe at school. You shouldn't have to put up with that. This little preppie is getting bullied before she even gets to the school. **(Rockhampton Women's Focus Group)**

A lot of them bus drivers are all them Indians, you know, and they don't know, they don't the culture, the Aboriginal culture... But they should be put through, just like when you go teach... they should be put through cultural awareness or just any awareness that you know, this is just not tolerated. **(Rockhampton Women's Focus Group)**

General Community Attitudes, Vilification and other forms of Discrimination

There was some discussion, too, of community-wide racism and racial discrimination.

I notice it a lot because I have white skin so obviously to look at me you wouldn't know I'm Aboriginal... So they are free to sit there and say, 'This blackfella this and that blackfella that', and you just sit there and take a mental note... They think I'm one of them, but I'm not. **(Roma Women's Focus Group Participant)**

You see it in the letters to the Cairns Post. They don't like it when we get together for sporting events, for ceremonies. **(Cairns Men's Focus Group Participant)**

To be honest, from my personal experience, I think rather than discrimination, vilification is potentially an area where people aren't informed of their potential rights, whether it's really simple things like derogatory names in a public place to more significant harassment on the basis that they're Aboriginal people. I've certainly come across scenarios in this area that relate to that. So it's not really discrimination, it's more vilification. It just looks a little – it's not very obvious but – it's there. **(Indigenous legal service staff)**

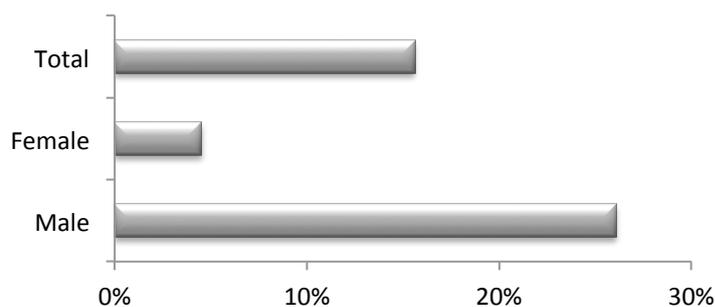
We have... had one [complaint]. There was a client that they threw off the board of the bowls club, I think, ostensibly because he had a criminal charge. **(Indigenous legal service staff)**

4.3.3 Discrimination and Legal Advice

Figure 4.15 shows that **15.6%** of focus group participants who had identified discrimination as an issue had also sought help for or responded formally to it. Although the numbers are small, Indigenous men were much more likely to have sought assistance than women (26.1% of men compared with 4.5% of women) (see **Table 4.15: Appendix C**).

Five of the seven individuals who had sought legal assistance or advice also responded to the question asking them who had provided help. Two individuals used ATSIILS, and one (each) had used Legal aid, approached police or talked with the school principal. Two of the five had the matter resolved to their satisfaction.

Figure 4.15 Participants Identifying Discrimination as an Issue Who Sought Legal Advice



Low level of formal response

These figures indicate that overall, discrimination is not often challenged, despite its relatively high incidence. Both stakeholders and focus group participants confirmed that Indigenous people rarely engaged with the legal system as a means of responding to racism. ‘All Murris don’t take legal action when it comes to racial discrimination. You’d be surprised how many don’t’, said a woman in the Charleville focus group. The ADCQ also stated that the number of race discrimination complaints they receive from Indigenous people, in particular, is very small, which they believe is not reflective of the extent to which this issue actually arises for Aboriginal and/or Torres Strait Islander communities.

I don’t think personally [the low numbers are]... reflective, ‘cause every time we hold a community event that involves Indigenous people we hear stories about daily discrimination. Even from [our Indigenous staff], they still experience it so we know that it’s happening. We know anecdotally that discrimination is out there and it’s not reflected in the stats that we get through our complaints, so [it’s about] trying to find ways to bring that out a bit more.

(Statutory Authority staff)

Lawyers are also saying that they don’t see many discrimination related complaints. ‘We don’t have a lot of discrimination. I think the last one we had was in Thursday Island and that was a couple of years ago’ **(Legal Aid staff)**.

People may be dealing with discrimination without recourse to the law, of course, through talking with others who might be sympathetic or through direct confrontation with the alleged perpetrators, for example.

We did do a small survey where we asked people if they had experienced discrimination and how did they deal with it. A lot of people said ‘I’ve dealt with it myself’. They didn’t actually expand on that, but a lot of time people have said they’ve either talked it out with somebody else or they’ve actually said their piece and walked away from the situation and that’s how they’ve dealt with it. A few said that they’ve brought a complaint to the Australian Human Rights Commission or they’ve gone through their union. It was interesting to see that there are some people who were taking action and using the processes. But most of the time people were saying, ‘It’s not my problem, they’re the problem, with their attitude towards people of colour’. They’ve sort of taken it back that way and not actually engaged in that confrontation. But at the same time they haven’t actually taken the step further to bring the issue to the Commission where it can be dealt with and sorted out that way. **(Statutory Authority staff)**

Discrimination is a very good example of an issue that has potential, if unaddressed, to spill over to become a criminal law problem. Sometimes it happens one too many times and emotions boil over.

As I'm getting older and wiser ... and yarning with more people I'm gaining more confidence in myself. But if I was to look at some of the men that I work with, would they [use the law as a response to discrimination]? No. They're probably more inclined to throw a punch or something.... as opposed to approaching it in a [different] way ... If I can advocate for them and make contact with them with somebody in another service that they begin to trust, things will change. **(Indigenous community organisation worker)**

You're living in a place like Goodna where you constantly get a lot of verbal abuse from people, either down the street, down the shop. Which fight do you pick? It can go on, and on, and on and sometimes people would either walk away from it saying 'I don't have a problem with you, you have a problem with me'. So they wouldn't do anything about it unless it got to the point where someone was physically assaulted, and then that becomes a criminal offence. **(Statutory Authority staff)**

I do agree that there is an escalation. Some discrimination does escalate into people being charged under the criminal law because they've blown up or they've just snapped about something that could have been dealt with through [the complaints] process. I don't know how the Legal Service provides public education for the community about those things... [like] if you've got a situation that rather than get mad you might be able to get assistance. **(Statutory Authority staff)**

Education and lack of awareness

There are a number of reasons why there are relatively low levels of 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.

[With] anti-discrimination, I know myself, before I even [started working at] Legal Aid, if I was discriminated against we'd often pass it off as 'What can you do', but that information wasn't out there. **(Legal Aid staff)**

More education about racial discrimination and how to deal with it when it occurs is needed, and it should start at school, according to a male participant in Rockhampton: 'I don't think we were taught that from school.'

It's education. I didn't learn one thing about racism at school, my whole... 12 years at school.... I did not learn how to deal with it. Did not learn, you know, how it affected me... There's none of that in the education system. It's all about Maths and English and literature and numbers and counting. **(Rockhampton Men's Focus Group Participant)**

Yeah I don't think that when clients were coming to me to say 'Look this has happened' - it was usually in an industrial relations sort of setting - I don't think that they knew that it was discrimination. They just knew that it was something wrong and it was something that was unfair. **(Indigenous legal service staff)**

Dealing with the legal system

At other times, even where people do have adequate knowledge of their rights in this area, including once they have connected with a lawyer, they may chose to not take action, including because they may not have sufficient faith in this path as one that will lead to an effective remedy.

In broad terms, people know there's... an anti-discrimination law and all of that sort of stuff and they sort of know yes, there is somewhere they can go but...it's acting on it [that's the issue], because our mob feel like, 'Oh, they won't do anything about it because we're black anyway'. That's how a lot of our people feel. **(Rockhampton Women's Focus Group Participant)**

People would come and get the advice and I would say, 'Yep you really need to make a complaint or take action' and it sort of never really came to fruition. It was sort of, they wanted the information but then once they got it that was sort of enough for them...Well, I don't know if was enough, sorry I shouldn't say that. I don't know if the issue was perhaps maybe they didn't have faith in the system to take it any further... They just wanted to know that yes, when they felt wrong done by it was actually legally, in my opinion, yes, they had been discriminated against and they need to take action. But they never really took it any further than that ... Well, I'm just making a big assumption ... but perhaps the community didn't have faith in the system. **(Indigenous legal service staff)**

One issue is that conciliated outcomes in this area are confidential. If complainants do have a 'win', no one else gets to hear about it. 'Probably because we think it's pointless and we'll get nowhere. You don't hear many people cases being won', claims a participant in the Rockhampton women's focus group.

If it's a conciliated outcome then it's confidential, but if it goes to the Tribunal then it's public record. [What is useful is] publishing conciliated outcomes that are de-identified. There's so much good work that happens and if nobody knows about it you may think it's a waste. They won't see it as a benefit to come and use the legislation. If [the ADCQ] only uses the outcomes that go to court then that's most likely going to put people off from using the legislation. So if [the ADCQ] can say, 'No, this was a win and it was a win for these good reasons', without having to name names and give out more details than we need, [that's positive]. **(Statutory Authority staff)**

The process of complaint can also be difficult, including because of literacy issues arising within Indigenous communities and/or the months or years a complaint is likely to take to resolve. Moreover, there is no certainty that at the end of it all there will be a positive result.

I think this is one of the drawbacks with our complaints process, that it actually has to be a written complaint. Numeracy and literacy is still a very big [problem for] the Aboriginal and Torres Strait Islander community. We try to sit down with them and say 'Well, okay, that's important. How would you write it, how would you convey that information?' [Then] they're able to write the complaints and get them in and lodge them. **(Statutory Authority staff)**

The agency tasked with administering the relevant legislation in Queensland, the ADCQ, must also deal with complaints of discrimination within the constraints of the law. They provide, for instance, an opportunity for conciliation, without capacity to make and enforce orders. This may lead to a perception that the agency has limited capacity to deal with discrimination. 'Well I think they're just a

big toothless tiger, aren't they?' suggests one Indigenous community-based stakeholder organisation, in this context.

I find [the ADCQ is] okay but all they can do is negotiate some sort of settlement. If it doesn't settle, then it's off to QCAT.... They're very good, they're very helpful, but unless it settles then there's not much they can do. **(Statutory Authority staff)**

Suppose the people get knocked back on their complaint because they haven't provided enough information or it's not really an issue that we can deal with, well that creates a bit of a negative image that the Commission can't help with a lot of things. **(Statutory Authority staff)**

Further, there are significant problems in identifying and proving discrimination, unless overt. This deters people from coming forward to complain, or they may not be able to pursue it as far as they would like to if they do come forward. Complaints might also be framed in a different way in order to increase the likelihood of success.

I haven't had a discrimination type matter... I've had employment matters ... [where] the only little bit of discrimination ... that might have come into that a little bit is that it was a person I acted for that had a higher needs child in a school situation who wasn't getting the proper care that he required. And I was wondering if that may have had something to do with their unfair dismissal, but I'm drawing a bow there. **(Indigenous legal service staff)**

They're always really tricky ones [to prove legally]. They're never ever straightforward... [There are] ones that we know and the client knows are racial, but it's not kind of 'out there' enough. And when you look through the cases, you just think there *must* be, [but] it has to be really obvious [to succeed]. **(Indigenous legal service staff)**

If it's a random act of racism in the street, you've got to know who that person is to complain about them. So you just think, I think to myself sometimes, would *I* bother? If I'm not going to bother, I don't know how many other people would bother. **(Statutory Authority staff)**

People get a bit smart though. If they've got kids they'll lodge complaints about family responsibilities, parental status, because they've got children. If you can't get it, prove that it's because of their race. **(Statutory Authority staff)**

Prioritising discrimination

Indigenous people have had to deal with discrimination frequently, for many years and in so many different ways that there are significant levels of exhaustion associated with it or a certain resignation towards (rather than acceptance of) its occurrence within Indigenous communities.³⁹ Given this and the range of other issues they are often dealing with, taking on racial and other discrimination is not likely to be a high priority for Indigenous people. It may be only the more serious issues or incidents that are raised and then pursued in any formal sense. In Rockhampton, the women's focus group

³⁹ For further discussion of ILNP exploration of issues of access to justice in this area, 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.

generally agreed that when they are the targets of racism by neighbours they ‘just accept it and move on’. Others commented on this point.

You think, is the return on investment worth it in the end? So unless it’s a really significant case, say in your workplace where you’ve lost your job through racism, that might be something that would prompt people but the day to day stuff, I don’t know that it’s worth people’s effort. **(Statutory Authority staff)**

I think it’s a time thing. There’s so much going on in their life they don’t have the energy to be involved in a legal case about being discriminated against. **(Community organisation worker)**

I don’t know whether it’s people don’t want to make a complaint, or they don’t necessarily know – or maybe they’re a little bit desensitised to it in that it’s kind of a daily occurrence. So it’s not one of those epiphany moments when you go ‘Oh my god, I’ve been discriminated against’ because it just happens so frequently.... The ones that really have been discriminated against don’t tend to come in and get advice until it’s too late but the people who do make noise are generally the ones who don’t meet the grade for having been discriminated against. There’s nothing concrete there... ‘You feel bad but that’s not the same as discrimination.’ **(Legal Aid staff)**

Advocacy and support in discrimination matters

The difficulty of challenging racial discrimination (in or outside the legal system) was highlighted by many, as was the need for support (legal or otherwise) in doing so.

The legal process for anyone is ridiculously daunting, let alone someone who already feels disempowered... I think that’s probably a similarity between Indigenous people and anyone else who’s vulnerable. We see it a lot with these complaints, just that the support element and demystifying the whole process and helping them through it is the important part. **(Statutory Authority staff)**

In this context, it is worth noting that there was some comment on how hard it is to find lawyers who have capacity to advise and offer support in discrimination matters. As one Statutory Authority stakeholder notes, ‘There’s not enough advocates there just to sit down with people and discuss the matters and to write the complaints’. It is also suggested that ATSILS lawyers are not picking up on discrimination issues as often as they should in some communities.

Some of the lawyers are really good at putting them through discrimination stuff... the big criminal things when they’ve had Legal Aid representation, where they’ve then followed through with the discrimination... [One] was a African kid, so he had Legal Aid, but he was with a group of Indigenous kids, and he was picked up by a security guard in Raintrees. And then he’s assaulted someone because he’s been rough, you know manhandled a bit too much. So then the Legal Aid representative has put that through as a discrimination thing as well. But that sort of thing would happen all the time to our young people who are being represented by ATSILS, like that, and then that never gets put through. **(Community organisation worker)**

ATSILS don’t necessarily...(help)? Well, they don’t have the time sometimes. They don’t have all the resources. **(Statutory Authority staff)**

There was some discussion in relation to whether non-lawyer advocates could be doing more to assist people with bringing complaints to the ADCQ, including by helping them to write them. This then ‘frees up the legal services to do what they need to do in relation to representing people, either in our jurisdiction or the Tribunal, or even thorough other civil matters, family court’, claims one statutory authority stakeholder. Community Justice Groups might be helpful in this regard.

We see them as a really big part of actually closing those gaps so that they can be the advocates within the community and help people write complaints, be the point of contact to get all the resources. [Some] of them are just really community people who’ve been around for a long time and they get involved because they’ve got a genuine interest in that, but they’re not trained themselves. Under DJAG there’s a justice group coordinator and they do provide quite a bit of training. I attended a session in Cairns.... [DJAG] bought a whole range of people in, over a couple of days brought somebody from the Integrated Indigenous Strategy Unit to talk about victims of crime and how they can help with family law. Just educating them a lot more about – but yeah, that’s a really slow process though, you just hope that they’ll be a lot more skilled in future. **(Statutory Authority staff)**

And yet despite all of these difficulties, it *is* possible to have positive outcomes from formal complaints in relation to discrimination, as the following example illustrates.

Often ... it’s the only legislation, really, that Aboriginal people can turn to sometimes, in terms of just having your own personal peace of mind about some issues. Like the Palm Island complaint, I think that was a very significant complaint and that really strengthened that community, that decision. [There have been a lot of] good complaints that have been resolved through conciliation, and some public ones, the ones that have gone to the Tribunal.... over the years.... I mean, if it wasn’t for the complainants from Palm Island, you lodge a complaint, you know in relation to the under-award wages, that that issue wouldn’t have come to the surface. So that was really brave of those people who... came from an older generation. **(Statutory Authority staff)**

4.4 CHILD PROTECTION AND FAMILY LAW

A major 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. As we note further in this section, residency, contact and child removal are issues that were particularly identified 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 incidents from the last two years reported by focus groups. The importance of child protection is also reflected in the alarming statistics noted previously in this Report.⁴⁰

⁴⁰ See Queensland Child Protection Commission of Inquiry (2013) pp. 349, 4

4.4.1 Characteristics of family law and child protection legal needs for Indigenous people in Queensland

Poor community understanding of the governing legal framework

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

After court proceedings had been initiated then the parents would come and see me, after the children had been taken. **(Indigenous legal service staff)**

Ideally, people would be accessing an advocate as soon as Child Safety are knocking on their doors, not when it's in court because usually, by the time it's in court, Child Safety have already had a long history of interaction with the family and they've got, I suppose, a lot of evidence to base an application on. Whereas, if you had access to advocates at an earlier stage you might be able to prevent that happening. **(Indigenous legal service staff)**

However, the ideal of having early advice or representation was not always achievable.

I spent numerous years as the Court Officer for Child Safety in Logan and would often get into trouble because you would sit with those families and you would explain and encourage them as much as possible to go and seek legal advice because they were just going to be railroaded, and often the services weren't there or legal reps would get that document and then say apply for legal aid, and have legal aid knocked back. 'If I'm not going to get paid then I'm not going to do it'. And those families would be left, and sometimes midway through hearings. Yeah and I don't think there's anything worse than watching a poor family try to take on a legal system without knowing what they're getting into. **(Indigenous community organisation worker)**

Similarly it was noted in relation to family law that:

People could be a lot more informed...when they separate there's very few structured sort of things. Particularly around kinship care arrangements and stuff like that. We're seeing a lot of issues come up later because there were never kinship care arrangements put formally, there's nothing formalised around kinship care arrangements or separations and stuff like that, and custody type issues. **(Community organisation worker)**

These statements reflect a need for greater awareness within the Indigenous community of the importance of legal advice, and particularly at an early stage. As suggested by the stakeholders, this may require more active education on the part of legal service providers.

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

I think often our clients don't have a concept of what their legal rights are in relation to Child Safety and their children, and they're often misinformed by Child Safety about what those rights are. **(Indigenous legal service staff)**

Sometimes those orders have to be made, but there are instances where discussion and some organising support for the families, we might be able to keep the children at home, which is the best thing for the child. **(Indigenous legal service staff)**

We helped one lady to get her child back because the child was taken off her, and we had DOCS [Child Safety] and other people visiting her at the hospital after she had the baby and whatever else. My problem at the time was there wasn't enough consultation between her and the agencies. **(Charleville Women's Focus Group Participant)**

It's easier for the non-Aboriginal clients. They know where to access services and they know how to play the game, especially with Child Safety. They know to say "yes, yes, yes", where the Aboriginal [clients] just want their kids back. They're too honest [and] they have more difficulty accessing agencies that will help them. **(Community organisation worker)**

Connections to family violence

Although we do not explicitly discuss family violence in this section (because it is criminal matter), it is important to identify that family violence is a relevant dynamic in family matters and in child protection matters particularly. Stakeholder organisations confirmed that family violence issues cannot always be easily separated from family law issues.

I would think that most of our clients that we represent in family law, we do something to assist them around domestic violence as well. **(Indigenous legal service staff)**

Domestic violence applications, I'm getting quite a lot of those and they're all inter-related with child protection and family law issues, one can flow on from the other or one can start and the other one could start. I'd say probably my balance would be DV applications, child protection and family law, with family law being the minor partner of those three. **(Indigenous legal service staff)**

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

Really I think one of the issues is that because there's been so much domestic violence and the women are predominantly the care givers to the children, the women are extremely disempowered and as a result of that they're becoming further disempowered I think by the lack of quality legal services for women. They're getting advice from older family members or friends or something and the advice is often wrong or else they're selecting out solicitors and there are some solicitors who they really shouldn't use for family law stuff because they don't know what they're doing...

One major factor is they're quite often the ones that have to leave the home [because of] domestic violence and relocate to another town or into shelters as well. So then it just further disadvantages them as well, or they won't relocate into the shelters. They'll live in those kinds of conditions and in that violence because the alternative of having to go into the shelter. **(Indigenous legal service 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.

There's often extended family who are involved in – a certain number of the cases are for grandparents who are looking after the children or who want to look after the children because parents aren't able to. **(Indigenous legal service staff)**

You do get a lot more of the extended family getting involved in the family court proceedings. So you might have grandparents, aunties, uncles, cousins applying whereas in previous practice working for non-Indigenous legal services, I didn't find that as much. And that's obviously for cultural reasons as well. **(Indigenous legal service staff)**

The need for non-legal support in family law and child protection matters

There is a clear interaction, particularly in issues involving children, between legal needs and the need for ongoing culturally sensitive support for families of a non-legal nature.

There is not enough Indigenous support workers and counsellors or psychologists. I suppose that's a common complaint across the board, but I think there's one Indigenous family support worker with the family court that's covering virtually the eastern half of Australia to the best of my knowledge. She's really excellent. She's under-resourced. **(Indigenous legal service staff)**

There is also a lack of resources that are culturally appropriate. So for example, the Family Relationship Centre is run by Centrecare... There's not much happening there for Aboriginal and Torres Strait Islander women. It's not a very comfortable environment for some of them. **(Indigenous legal service staff)**

Some of our women do need someone to actually be with them to go through the whole process, to be able to have trust in them. I've done a little bit here for the service, some of our women who just can't comprehend or can't understand the legal processes that they're currently going through and then not to mention they've had to relocate, they've got their own children, their children being taken and then returned and it's that extra support to help demystify the legal system that the client support worker is invaluable to them. That's the assistance. **(Indigenous legal service staff)**

Focus group participants expressed frustration at their perception of the attitude of Child Safety whereby there was little consultation, support or follow through.

Two family members of mine did have kids taken into care and my problem with that was there was no follow up with it, like, ok, complaints have come in about you through the school and the community, this is what you need to do to rectify the problems. There was none of that was done, it was just more or less, take the kid without any proper consultation...there's no support. **(Charleville Women's Focus Group Participant)**

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.

The kid's stuff is so raw and so painful, especially if people have experienced being part of the stolen generation. It's something that's so close to the heart of so many Aboriginal people in Queensland. So having your kids taken away can lead to a turning inwards through drug abuse or maybe offending. I think it's hard to separate out the causal factors behind all of this; it's so linked with all of these things. I really believe if you can get rid of a lot of these

underlying issues then you're not going to have the high rates of people in prison. **(Legal practitioners)**

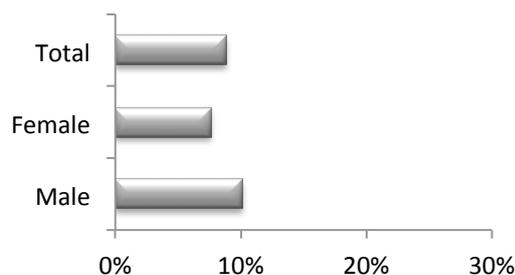
We got to have a look at how many of our current clients have been in the system. I can't remember the figures but they were pretty alarming in that most of our clients, the majority, had been in and out of Child Safety and nearly every single one of our clients that walk through the door their children are either about ready to be taken, have been taken. Both parents had been in care in their lifetime. It's a whole lot. It's drug and alcohol, criminal justice, juvenile justice, kids being taken. So we have been confronted with some appalling statistics, but we see that every day when it comes in here. **(Indigenous community organisation worker)**

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.

Figure 4.16 shows that **8.8%** of focus group participants overall identified a dispute over money, property or superannuation following a separation or divorce (see **Table 4.21 Appendix C**). Men were slightly more likely to identify this as a problem than women (10.1% compared to 7.6%). The focus group where participants were most likely to have experienced such an issue was Mount Isa (25% of participants), whereas 0% of participants in Rockhampton and Roma focus groups identified these as issues (see **Table 4.22 Appendix C**).

Figure 4.16 Participants Identifying Property Dispute Post-Separation or Divorce



Of the 13 people who had identified this type of legal issue, only four (three women and one man) said that they had sought legal advice about it. The four individuals who sought legal assistance accessed Legal Aid (1), the courthouse (1), a women's shelter (1) and a solicitor (unspecified) (1).

While it was recognised that most Indigenous family law matters do not involve property, one Indigenous legal service provider suggests, 'this is likely changing and, as a consequence, gives rise to further legal need. We're increasingly I think educating women about superannuation and rights to property'. The stakeholder provided the following example.

A lady recently had whatever it was, a million dollar house or something between her and her husband. We referred her on. She's really the exception. The overall majority are about children purely and simply. We don't deal with many property things and we don't have the capacity to deal with property things because we just don't have the time or the resources. **(Indigenous legal service staff)**

Similarly it was noted that ‘a lot of Aboriginal and Torres Strait Islander people haven’t used family law as much as the non-indigenous community in the past. I think it’s becoming a lot more prevalent’ (Statutory Authority staff).

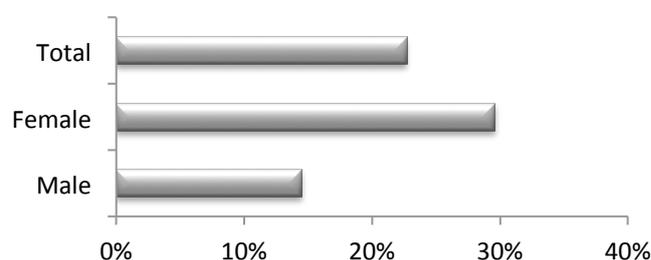
4.4.3 Residence, contact and child support

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.

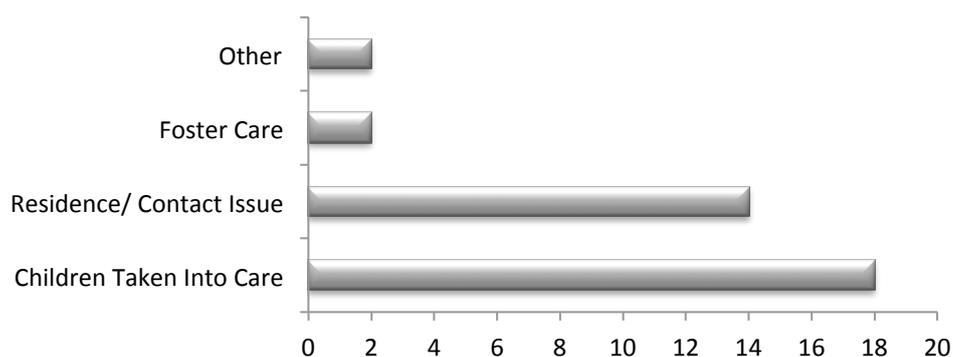
As illustrated in **Figure 4.17**, 22.7% of focus group attendees said that they had experienced an issue with child support, contact or residence. Women were more than twice as likely (29.6%) to identify such an issue than men (14.5%) (see **Table 4.16 Appendix C**).

Figure 4.17 Participants Identifying a Child Support, Contact or Residence Issue



Thirty-six individuals responded to the question asking them to describe the nature of the family law issue. As shown in **Figure 4.18** the most frequent issue related to child removal by Child Safety (18 out of 36), with the remainder focused on residence or contact issues (14/36), foster care (2/36) or ‘other’ issues (2/36) (see **Table 4.18 Appendix C**). Child protection (removal) matters are dealt with below in Section 4.4.4. It is worth noting that grandparents featured in 6 of the 36 issues which were raised: four in relation to access and contact with grandchildren, and one each in relation to fostering and child removal.

Figure 4.18 Type 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: 'Mainly relating to parenting issues so where children live, how often one of the spouse's gets to see them, where they live, telephone arrangements, contact time, those types of things' (**Indigenous legal service staff**).

So if people have separated and they've come to us saying, "I can't work out with the other party who's going to have the children," or "he's trying to take the children" or "he's taken the children", there's all sorts of scenarios. It's basically a dispute about how much time the children spend with either parent, and who they live with primarily. (**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 have a lot of our young women having children and having relationships that break down and they're not aware that until they formally go to court and get a custody order done or a residential order the court says the child is 50/50... A lot of our young people they go through custody things all by themselves. There's no support out there for them. And not only our women, but our men as well. (**Cairns Women's Focus Group Participant**)

The link between eligibility for sole parent payments and proof of non-receipt of child support payments was raised by one focus group participant.

My child's father - he keeps on rejecting the child support. He doesn't want to pay it. He doesn't want to take responsibility. I have to do child support before I can claim the money (from Centrelink). He's not paying the child support. (**Cairns Women's Focus Group Participant**)

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 the length of the proceedings, a factor that led to a lower usage rate of the family law system within the Indigenous community.

It's a very, very long process. It's a very long drawn out process and at times that can be very difficult for clients to fathom. (**Indigenous legal service staff**)

A further problematic characteristic of the family law system was the absence of cultural reports.

The law doesn't provide for cultural reports. The Family Law Court provides for reports, specialist reports, but not for specifically cultural reports. At this point in time there's one report writer, a psychologist, up in the Northern Territory, he's the only Indigenous person or Aboriginal person who provides reports for the family court process, the others are all non-Indigenous. Now those people, the amount of understanding they have or the cultural appropriateness of how they conduct their interviews with families, or left a question. So people have come back and not been happy with how it was done, so we're working within that system. That's one of the difficulties. (**Indigenous legal service staff**)

4.4.4 Child protection

In Queensland Aboriginal and Torres Strait Islander children are over-represented at all stages of the child protection system. They are five times more likely than non-Indigenous children to be the subject of a Child Safety notification, six times more likely to be substantiated for harm and nine times more likely to be in out-of-home care.⁴¹ As we noted previously the rate of Indigenous children in out of home care has more than tripled over the last decade.

Legislation governing child protection includes various provisions specific to Indigenous children. Special principles for the administration of the *Child Protection Act* 1999 (QLD) relate to Aboriginal and Torres Strait Islander children. The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service has summarised these as follows: children should be allowed to develop and maintain a connection with their family, culture, traditions, language and community and that the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account (see Section 5C(a) and (b)).⁴²

These principles are reflected in a number of places in the Act (Sections 6, 7(1)(f), 7(1)(o), 11(3), 11(4), 51D(iv), 51L(2), 83, 88). Section 6 of the Act requires that when the Children's Court is exercising its powers it must, where practicable, consider the views of recognised entities about the child, and about Aboriginal tradition and Island custom related to the child.⁴³ The Department is also required to ensure that a child who is subject to a child protection order has contact with members of their community (Section 88), case planning should be conducted in a manner that is culturally appropriate for Aboriginal and Torres Strait Islander people (Section 51D(iv)) and an Elder can be involved in the case planning process (Section 51L(2)).⁴⁴ It is generally recognised on the basis of international and Australian evidence that Indigenous participation is fundamentally important for positive outcomes in service delivery for Indigenous children and families.⁴⁵

The child protection system in Queensland has been the subject of various reports and inquiries over recent years. The most recent comprehensive report is the Carmody Report.⁴⁶ The report dealt in part with Aboriginal and Torres Strait Islander child protection issues. In relation to the over-representation of Aboriginal and Torres Strait Islander children in the Queensland child protection system, the Inquiry noted that:

System factors in the child protection system also play a role: an over-reliance by the statutory child protection system on high-end (tertiary) responses and a lack of meaningful collaboration between government services on the one hand and Aboriginal and Torres Strait Islander agencies on the other. This lack of meaningful collaboration is of particular concern to the Commission.⁴⁷

⁴¹ Queensland Child Protection Commission of Inquiry (2013) *Taking responsibility: A Roadmap for Queensland Child Protection*, State of Queensland, Brisbane, 349.

⁴² The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012) *First Submission to the Queensland Child Protection Commission of Inquiry*, September 2012. Available at http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0003/176025/Aboriginal_-and-Torres_Strait_Islander_Women_s_Legal_-and-Advocacy_Service.pdf

⁴³ Queensland Child Protection Commission of Inquiry (2013), 365.

⁴⁴ The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012), 9.

⁴⁵ SNAICC (2013) Submission to the Queensland Child Protection Commission of Inquiry, March 2013, 5.

⁴⁶ Queensland Child Protection Commission of Inquiry (2013), Chapter 11.

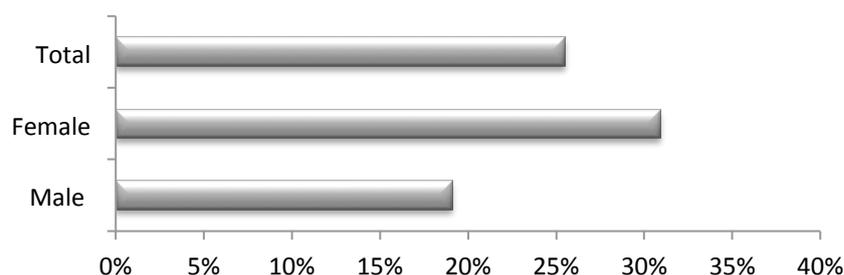
⁴⁷ Queensland Child Protection Commission of Inquiry (2013), 351.

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

Child protection needs a lot of work. You probably have heard these numbers before: 6.5% of all children and young people in Queensland are Indigenous; 37% of children in out of home care are Indigenous, so, compare them. So there is a crying need for services in that area, because we need to work with the department, with families, to keep those numbers down or to eliminate the need for those orders to be made. **(Indigenous legal service staff)**

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 4.19**, which shows that **25.5%** of participants identified an issue of this nature (see **Table 4.17 Appendix C**). Women were more likely to nominate these issues as a problem, with almost a third (30.9%) saying that it was something that had arisen, compared with 19.1% of men.

Figure 4.19 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 express a strong sense of disempowerment.

4.4.5 Concerns around Child Safety practice in care and protection

There's so few ways that you can challenge the Department and the Department will keep doing its own thing and stalling... and unless you've got an extremely persistent advocate on the other side, you're just not going to get anywhere with them and sometimes you can't get anywhere with them anyway because you don't have the legal avenues to do it. **(Indigenous legal service staff)**

Discussion of child protection in focus groups went beyond the grief of child removal itself to a strong consensus that Child Safety policies and practices worked to the detriment of the children and their families.

Some of these mothers that haven't been given the opportunity to try again. You know, they're just taken straight away. One of my clients and she just went to court not long ago, because she assaulted one of her case workers at Child Safety, but it was just that case worker was totally against my client. Was very negative towards her, and kept bringing up her past, and of course the client retaliated and got angry and threw her handbag at her. Her child had

been removed at birth. Even now she still hasn't got that baby back, and she's doing fantastic. She's got her own place. I know with a few of the clients that, they just haven't been given the opportunity. **(Indigenous community organisation worker)**

Even where programs had been introduced to keep children in the community there were complaints about their inadequate use.

One big issue, we have a child safe house here, but kids still getting removed from community instead of putting them in the safe house. Kids get taken and parents can't afford to fly down and see them, so they loose contact with their kids. When their kids do come back for a visit they are a bit shy with their parents. **(Pormpuraaw Men's Focus Group Participant)**

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

[The] Child Safety officer... didn't come to through the channel, like, notification. They just [said] that they were just going to just come in. They were just ringing us, like in the morning and say, 'I'm gonna come in the afternoon to pick your kids up, you know...with no notice. [Facilitator: And they took your children?] Yeah, the grandchildren. **(Thursday Island Men's Focus Group Participant)**

Some of these concerns were reiterated by stakeholders.

I think it's often a very confusing situation because it's obviously very emotional to have your children removed in the first place, and then there's this authority, Child Safety, telling them one thing. They sort of end up in situations where they're not really being heard. They also end up in situations where they haven't realised that they've signed their children over until their children are maybe 18. **(Indigenous legal service staff)**

It was suggested that there was a racial dimension to the level of contact that Indigenous people have in Queensland with the child protection system.

A lot of people don't know that they can go to Legal Aid to get support around their family issues and Child Safety don't tell them either. A young woman in hospital just had a baby, and they come and take her child, she may not know why. A family friend she just had a baby, but because she was black, straight away, but not that she'd done anything wrong, but her mother had been homeless and her father was in jail, but they grabbed her. Not that she'd done anything wrong, nothing, not a criminal record, nothing, but they want to go up there and put her straight under the radar, put her straight under the gaze just because of her family situation. **(Indigenous community organisation worker)**

Another stakeholder commented:

Would they have done that to a young white girl [remove her]? No, because she'd probably know her rights whereas indigenous kids, like you said, they've grown up in that system. They think "White person comes to my house with papers and that. I've got to accept it. I don't go to legal. I don't go to seek help and I don't say "This isn't right." **(Community organisation worker)**

Other stakeholders spoke of the lack of cultural awareness and cultural competence, combined without inadequate services to work against Indigenous people.

A lack of access to services is held against people particularly in communities. [Like] counselling. It's not taken into account that perhaps it's not culturally appropriate for that person to access the one and only service in town. So it gets held against them that they can't do it. Again, it's, "Well, you didn't do it so you don't get your kids back." (**Legal Aid staff**)

Problems in relation to the cultural competence of Child Safety officers was noted in Indigenous submissions to the Carmody Inquiry. The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service noted that all departmental staff should be required to attend regular and ongoing cultural competency training. The Service stated:

We have seen countless examples of the inflexible and culturally homogenous application of the child protection system on assessments of Aboriginal families. Departmental officers, independent assessors and report writers have all failed to demonstrate any understanding of the importance of culture to Aboriginal and Torres Strait Islander peoples. Among other things, this leads to Aboriginal and Torres Strait Islander peoples' parenting techniques being held to be deficient.⁴⁸

Failures in the child protection regime were seen as continuing to cause general mistrust of government agencies and the law. 'Child Safety has always been like the big boogie man for Aboriginal people as far as their children go' (**Indigenous community organisation worker**). This lack of trust, coupled with the power that Child Safety workers have over families, creates poor outcomes for wary, disempowered families.

This theme of lack of trust in and esteem for the responsible government agency pervaded stakeholder comments. There is some suggestion that parents feel that the Department discourages them from obtaining a lawyer, or advises them that one will not be necessary.

We come across a lot of cases when clients have sort of taken legal advice from Child Safety, so they're confusing Child Safety with I suppose an independent representative that's only going to be advocating on their behalf. So you come across a lot of cases where people have either been unrepresented for some time or not really realised that they have a right to a representative of their own. (**Indigenous legal service staff**)

The Department is, in their Act, supposed to tell people to get legal advice but they don't. (**Legal Aid staff**)

For years we've argued and argued consistently that... people need to be told, they need to be told six times that they have rights to legal advice and they have rights to lawyers via the child protection process. So many young people who are losing their babies, or their children when they're older, are not informed during the process by Child Safety that they have a right to access Legal Aid or ATSILS... And here they refused to put the ATSILS and Legal Aid signs in the foyer at one point when we were arguing for it. We've seen so many forums, and FGMs [family group meetings] and negotiations with Child Safety where clients are not informed about their rights to have lawyers... it's just so important. (**Community organisation worker**)

⁴⁸ The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012), 2.

Child Safety won't tell them that they've got a right to seek legal advice or get representation.
(Legal Aid staff)

It was suggested that Child Safety should contact ATSILS when initiating an action against Indigenous parents.

If you want to contrast it with criminal law, there's no equivalent of the Queensland Police signing a memorandum of understanding with us that they will ring us when they've got someone in custody. (Indigenous legal service staff)

Other observations of child protection authorities included a perception that Child Safety Officers lacked compliance with their own instructions for a range of reasons.

Child Safety has a manual which sets out or talks about differences between certain groups and how they should deal with those groups but it's not being followed by Child Safety Officers, because of the high turnover of officers in the department. It's always a case of them learning on the job, or burnout, or not being interested in staying. So in instances like that they're not interested in how we can work with this family to give them support, and let the child remain or let the child come back to mum and dad as soon as possible, it's a case of remove the child and deal with it. (Indigenous legal service staff)

There doesn't seem to be any accountability on the Department to follow its own rules and if it's doing what it's suppose to be by legislation. They're a law unto themselves. Seriously, they are. (Community organisation worker)

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

On the face of it the *Child Protection Act* offers particular protections for Aboriginal and Torres Strait Islander children and families. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) has noted the following:

The Child Protection Act 1999 (QLD) contains arguably the strongest requirements in the country for the participation of Aboriginal and Torres Strait Islander peoples in child protection decisions. It requires participation, though a recognized entity, in all significant decisions made for Aboriginal and Torres Strait Islander children under the Act, and consultation in relation to non-significant decisions (s6). Though consultation itself is a high standard for engagement, requirements for 'participation' suggest a much higher standard for the active engagement of recognized entities in decision-making... the current recognized entity service model does not appear to align with either the formal requirements or the spirit of the legislation to enable participation and promote better outcomes for Aboriginal and Torres Strait Islander children and families.⁴⁹

In our research many stakeholders were critical of the implementation of law and policy changes that were ostensibly introduced to assist Aboriginal and Torres Strait Islander people in child protection matters, particularly in relation to recognised entities (RE) and the Indigenous Child Placement Principle (ICPP) cultural care plans and issues of consent to orders.

⁴⁹ SNAICC (2013), 13.

Certainly some of the support systems in place which are supposed to assist clients like the Child Recognised Entity Program and the Aboriginal Child Placement Principle is rarely, in my opinion, used to benefit Aboriginal and Torres Strait Islander clients. Often, from my experience, recognised entities will actually, without much contact with the client, agree to Child Safety's proposed case management with very little contact with the client, with very little assessment of the client's family or social positioning. I find that particularly concerning because from my perspective, I think the recognised entity should be advocating for the interests of Aboriginal people. **(Indigenous legal service staff)**

A basic problem is that recognised entities are funded by Child Safety.

The recognised entity that's set up to assist and support the children – we've been informed – are contracted to Child Safety. So they basically 'yes' that, and they don't do the cultural care plans. They're deemed as working [for] Department of Child Safety. The client is Child Safety. The client is no longer the children. **(Indigenous legal service staff)**

There is a clear conflict here and a lack of legislative guidance on the role of recognised entities.

There's no definition of consultation, there's no definition of participation, so it's completely up to the discretion of the Child Safety officer or the team leader as to the extent of the involvement. And there have been times where the consultation has been a phone call, 'There was nobody there, I left a message, therefore technically I have consulted, and I now have moved on'. **(Indigenous community organisation worker)**

One stakeholder noted how an RE worker had been disciplined for opposing a Departmental recommendation in relation to a placement.

Yeah, after she found out information from the subpoenaed documents, information the Department should have made available to the RE and the court and hadn't, that there'd been allegations against this potential carer. She said "No, I can't support that place," and then she was disciplined quite heavily, went through a whole lot of employment issues because her employers at the RE actually took action against her for daring to speak out. **(Indigenous legal service staff)**

And further:

But also there was a child protection matter and the parents had an intellectual disability and the RE advised them to get legal advice and she got disciplined for that as well. **(Indigenous legal service staff)**

RE workers were not seen as connected to the clients and the community by some stakeholders.

The RE worker, I don't think generally they access their own people which is our clients and the children, and they constantly sit with Child Safety and they're not properly accessible either for our people to speak on their behalf. **(Indigenous legal service staff)**

The REs were not seen as acting as advocates for Indigenous people.

There is this notion of a recognised entity, which is a recognised Aboriginal child protection organisation who are supposed to be consulted. But they don't act as advocates for the client. The department says, "Do you reckon this is fair enough?" Depending on who it is in that organisation, I haven't found the recognised entity out here to demure from what the Department wanted to do. Never seen one flicker of demurrer. **(Indigenous legal service staff)**

It was also acknowledged that REs were discouraged by the Department from taking a more active role.

The other side of the coin is really having a focus on the rights of the child and I think a big player in that space should be the recognised entities. And more often than not, they're either not invited or discouraged from the department from rocking up to court... probably the biggest one is having an adequate workforce that can present at court in I suppose a professional way, in a way that's going to do a service to the clients that they're representing. So we need to actually do some work on that, the first part is we need to be asked to the table, and the second part is that we need to make sure that we're ready when we get there. **(Indigenous community organisation worker)**

Many of the issues in relation to recognised entities that were raised by stakeholders during the ILNP research have also been identified in submissions to the Carmody Inquiry. SNAICC noted in its submission that recognised entities were restricted in their critique of government because disagreement could threaten continuance or renewal of their funding agreement, and further that:

Their participation is directed by the demands and proprieties of government, rather than the independent priorities of the service to achieve outcomes for Aboriginal and Torres Strait Islander children and families. This is particularly so for recognized entities as their participation in individual cases can only be enabled by request of the Department.⁵⁰

The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service has described the role of recognised entities as "tokenistic": "Other than by paying lip-service to the provisions of the Act, we have never seen evidence that the Department takes the role of the Recognised Entity seriously."⁵¹ The greatest weakness of the recognized entity function is the lack of accountability or review of the use and consideration of cultural advice and support. According to SNAICC this lack of accountability or review, "combined with the absence of any formal authority of input or decisions made by recognized entities, leaves their influence entirely dependent on the willingness of the Department and individual Child Safety Officers to seek, consider and utilize their advice".⁵²

The Carmody Inquiry accepted that there was widespread dissatisfaction with how recognised entities are currently operating.⁵³

Departmental data on the activities of recognised entities suggest that their participation in most aspects of statutory services is indeed fairly limited and skewed toward the intake phase. On average, almost two-thirds of their activities relate to responding to departmental contacts

⁵⁰ SNAICC (2013), 15.

⁵¹ The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012), 8.

⁵² SNAICC (2013), 16.

⁵³ Queensland Child Protection Commission of Inquiry (2013), 61.

and making home-visits. In contrast, participation in family group meetings, identifying kinship carers, case planning and cultural support planning account for less than 20 per cent of all activity.⁵⁴

Cultural Plans

When it comes to doing case plans the Department has a standard format and just at the end of the case plan they have to tick the ATSI box. So the ATSI box means "What mob do you come from?" which is quite insulting to some of the parents, like "Why should we give them that information," and well, we get the foster carer to take the child to NAIDOC day and the cultural content at NAIDOC day, that's not really the point. The child's culture is the child's family and that's just not recognised and the access to family is very restricted. It's [a] reference to culture care plans but it's not put into practice. **(Indigenous legal service staff)**

In practice, stakeholders reported that the formulation and implementation of cultural plans 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.

[ATSILS] put together a submission to the Commission for Children for Cultural Support Plans to be looked at and they, I think, agreed in principle to audit case plans so that the cultural component of it has got to be checked, because that's not happening at the moment with Child Safety... So we're hoping with the auditing, that's going to be established, and a requirement that Child Safety Officers can follow. **(Indigenous legal service staff)**

The lack of consideration of cultural issues was seen as problematic.

There's this huge frustration and despair on the part of Indigenous clients that there is a complete cultural mismatch between, the system that they're interfacing with, Child Safety and the court system who are making decisions about their children not living with them anymore, and there's this complete mismatch between the systems and the clients' understanding of family and community and how these decisions should be made. And it's very sad. **(Legal aid staff)**

The Indigenous Child Placement Principle (ICPP)

As we noted previously in this Report, in the national context, Queensland has low compliance with the Indigenous child placement principle.⁵⁵ Developing the cultural competence of departmental officers is has been argued to be essential to improving adherence to the Indigenous child placement principle.⁵⁶

Stakeholders raised a number of concerns about the implementation of the ICPP.

Certainly we have clients where there is the potential for children to be placed with family or other Aboriginal people however aren't because Child Safety have certain pre-requisites

⁵⁴ Queensland Child Protection Commission of Inquiry (2013), 362.

⁵⁵ See SNAICC (2013), 4.

⁵⁶ The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (no date), *Second Submission to the Queensland Child Protection Commission of Inquiry*, 2.

for vetting potential carers, and their vetting process is quite high because they say that's within the interest of the child, and I can understand that framework but I guess that then excludes a lot of family, other Aboriginal people, that could potentially be making sure that that child has access to kin and cultural understandings... The process that they go through to find suitable kinship carers is not very transparent... (What's the likelihood they will go to a non-Aboriginal carer?) Very high, particularly for this geographic region. **(Indigenous legal service staff)**

Mostly Indigenous children get removed and quite often placed with non-Indigenous families because there aren't enough Indigenous carers to go around. **(Legal Aid staff)**

A somewhat contrasting, but still critical view, was provided by another stakeholder, who thought Child Safety only removed children in their area when they could be placed according to ICCP.

I see that they try to adhere to that as much as they can because they have a requirement that the child is placed with an immediate member of the family, or if not, with someone who's a relative of the family or a very large – someone who's aware, known in the community and is in touch with that child's heritage and culture. So from my involvement with child protection matters, I've seen that aspect pretty well adhered to as much as Child Safety can, they try and place them in that area, yes. [However] I think they tailor the depth of their investigations to whether they can make a placement or not. That's my opinion. They have got no hope in administering an Indigenous placement policy properly – none. **(Indigenous legal service staff)**

One focus group participant supported the way the ICCP was implemented in his area. 'I'm a foster parent. There's not many foster parents in Charleville. They try to place Murri kids with Murri families. They go through family first, kinship care. We're the last resort. We have kids from Cunnamulla and other places' **(Charleville Men's Focus Group Participant)**.

The Carmody Inquiry found that the major factor in limiting the use of the ICCP 'is the sheer number of Aboriginal and Torres Strait Islander children in the child protection system compared to the number of available carers'⁵⁷. However Indigenous organisations raised more systemic problems. According to Aboriginal & Torres Strait Islander Women's Legal Services NQ, Problems with the implementation of the child placement principle include:

- a) Community perceptions that departmental staff demonstrate a poor understanding of cultural issues and often assume knowledge which they do not possess in relation to local communities or Aboriginal / Torres Strait Islander culture generally;
- b) Departmental staff fail to consult or liaise appropriately about community views and options;
- c) Departmental staff do not liaise appropriately with the RE whose staff are connected with community including a failure to consider the views of the RE independently of the wishes of the departmental officer;
- d) Community perceptions are that the department 'reads down' the child placement principle to a token gesture;
- e) Community have been critical of the department's approach to culture which often fails to recognise connection with family as a cultural issue, and has an over-reliance on symbolic gestures

⁵⁷ Queensland Child Protection Commission of Inquiry (2013), 367.

such as NAIDOC day.⁵⁸

Consent

Linked to the failure to implement statutory requirements are suggestions, made by a number of interviewees, of unconscionable practices around obtaining consent orders for removal of children without true informed consent. The ILNP was told both by focus group participants and stakeholders that there were serious questions about whether consent orders are really consensual. There is 'no proper prior consent... there is no discussion. They just come in and take them' **(Thursday Island Women's Focus Group Participant)**.

They also end up in situations where they haven't realised that they've signed their children over until their children are maybe 18. I guess the question is around how consensual these agreements really are. **(Indigenous legal service staff)**

Well, we sometimes get hold of them and work out that the consent wasn't exactly informed or in fact, they were sort of browbeaten into it or thought there was no other choice, etc or the old thing of trading off some older children for some younger children in order to get their signature on some sort of agreement. Child protection still does that. "You don't have a choice, you have to sign this." Whereas, if it came through us, we like to think that we'd be advising the client what it meant really, and what it could lead to: "Is this the first step along something else, is it good or bad". So I think informed consent is a big issue. **(Indigenous legal service staff)**

I've had a lady have her children removed by hand written note written on her door. It was a verbal agreement over the phone that they would come and they came 24 hours early and removed those children... I had a meeting about a client and I'll say things like "Does anybody here have the consent of the client to be talking about the client and the client's issues?" and they look at me like I'm stupid. "We don't need consent." **(Community organisation worker)**

The baby was in hospital, so I have been looking for her, I find her, and I said, 'Bub's in hospital and Child Safety want to speak to you'. So we went to Child Safety and then they're trying to hit her up with, for her to sign the forms then and there, to hand this baby over, and I'm like, 'No, she's not signing no forms. And what's going on with the baby?' And that's when it all just exploded and went off. So I definitely needed legal assistance then. And that's the thing, Child Safety know what they're doing a lot more than we do on the legal side of it. Yeah, and that's pretty well, 'Just sign here and then we'll talk about your baby that's in hospital'. So I said, 'Don't sign anything'. **(Indigenous community organisation worker)**

The quiescence of some families was also seen as an issue, and this was clearly combined with a sense of powerlessness by those affected.

For an example, I went in with one client, she was getting her children taken off her, he explained everything, that they were going to be on a 12 month order and blah, blah and he

⁵⁸ Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc. (2013) *Responses to Queensland Child Protection Commission of Inquiry: Discussion Paper* February 2013,14. See also The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012), 6.

said "Do you understand that?" and she's like "Yeah." I said "Really?" I said "So you're not going to have those children for 12 months?" and that was it, she just lost it. So she would have signed them over without any problems because she didn't understand. **(Community organisation worker)**

The Department – really they've got some quiescent parents there. Whereas, I think your average middle class European family, even out here, the first time child protection comes knocking, you know, the Department is not likely to get a dodgy consent out of them. **(Indigenous legal service staff)**

Child safety officer can walk into to your house and take away a child if they suspect something happening and they put evidence to back themselves. The answer to what Jacob's going through that, yeah, they can walk in. That's a concern for Jacob. But he's powerless. **(Thursday Island Men's Focus Group Participant)**

Part of this acceptance was related to the intergenerational effects of removal.

The other thing is unfortunately there are families out here that have generations of involvement. There's a high proportion of parents out here who were state children under the old Act or were in the dormitories, etc or the equivalent of Palm Island down here, what is Murgon and Cherbourg. **(Indigenous legal service staff)**

The Secretariat of National Aboriginal and Torres Strait Islander Child Care (SNAICC) calls 'the absence of any strong system to enable consent of Aboriginal and Torres Strait Islander peoples to decisions... perhaps the most significant weakness in the current system in enabling participation.'⁵⁹ ILNP stakeholders expressed the view that it should be the duty of the court to ensure that consent orders have been signed with informed consent, and that other legislative requirements have been adhered to (see below 4.4.7).

4.4.7 The role of the court

A central issues that arises when child protection cases come before the courts is that Departmental decision-making receives inadequate judicial scrutiny. The role that the court might take in providing external oversight of departmental decisions was recently considered by SNAICC who stated as follows.

In care and protection applications to the courts there is opportunity for enabling influence of cultural advice through independent consideration of that advice by the court... (This) relies on magistrates being aware of consultation requirements and proactive in holding child protection services accountable... (It) appears that whether magistrates do this is highly variable.⁶⁰

The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service in its submission to the Carmody Inquiry noted that a 'court should have access to expert cultural advice. This could be

⁵⁹ SNAICC (August 2013) *Whose Voice Counts? Aboriginal and Torres Strait Islander participation in child protection decision-making* 36-37.

⁶⁰ SNAICC (August 2013), 34.

achieved by establishing a specialist unit within ‘Children’s Court Clinics’ or by mandating the Recognised Entity to file expert cultural evidences in proceedings’.⁶¹

One area for improvement in court oversight is a greater focus on the extent to which cultural considerations have been taken into account and the role of the RE in providing advice. One Indigenous stakeholder noted that:

There’s no requirement by the magistrates that the recognised entity attends court to provide cultural advice. So if the recognised entity has provided advice that’s contrary to what the department has requested, the department have been known to omit those parts in their affidavit to say, ‘Yes we consulted’, and almost leave it at that, so not go into any depth. The magistrate then is under no obligation to request the recognised entity to attend court and explain what advice they gave or what their position was. The department’s been known to ring the recognised entity and ask if they agree or disagree on taking an order, when that’s not the role of the recognised entity, the recognised entity is there to provide cultural advice and ensure that the process is culturally appropriate, not to agree or disagree. **(Indigenous community organisation worker)**

Concerns were also raised by stakeholders in the ILNP research that where the Department presents consent orders to the court, courts did not generally investigate the nature of consent.

I’ve never come across that myself. Those things are usually by the time we’re in court they’re done and dusted; children are in placement, the consent has been given and those issues have never been – I’ve never come across where they’re being touched on in court, no. **(Indigenous legal service staff)**

Added to this problem is that many Indigenous family members appear in court unrepresented.

So often, families will end up in court, not represented and having to represent themselves against the department who has Crown Law barristers, and a court system for an Aboriginal and Torres Strait Islander person is quite an intimidating process. So to then have to represent yourself... it’s easier to consent to the order than to actually fight the process, and I think that’s a huge disservice to those kids and families. **(Indigenous community organisation worker)**

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 focus group participants that it can be difficult to access information about legal and administrative recourses for family law and child protection issues. A female focus group participant noted:

With Child Safety, like we have a lot of issues with not getting along with the actual case worker, if they’re allowed to change the case worker, which we don’t know. Whether they can put in a complaint against the caseworker, and what that process is, and whether the family can [question] the kinship care as well. **(Rockhampton Women’s Focus Group Participant)**

⁶¹ The Aboriginal and Torres Strait Islander Women’s Legal and Advocacy Service (no date), 6.

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.

There's not enough support for the families that have children in care. They don't know their legal rights and the options are very limited... There's a big void there. They [Child Safety] are just terrible. I don't think we have good enough legal advisors or supporters in this community to help a lot of our women, to really take the fight up for them. **(Community organisation worker)**

This was confirmed in other stakeholder interviews.

The legislation is too loosely worded around getting legal advice for especially Aboriginal and Torres Strait Islander families. Then the Department always say, "We told them to get legal advice," whereas it should be compulsory that they have legal representation. **(Indigenous legal service staff)**

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.

The concerns I've identified are around people not getting legal representation early enough, and it getting to the point where even they've signed something which they didn't understand or getting to the point where the relations between them and Child Safety have deteriorated and they're sort of not understood what was expected of them, and it being used against them in the court proceeding. Whereas, if they'd had earlier advice on what the expectations were and what they needed to do to get their children back earlier, it might not have deteriorated to that extent. **(Indigenous legal service staff)**

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.⁶² This view contrasts sharply with the Departmental view of the role of the RE as essentially working in the interests of the Department.

The lack of awareness of legal rights combines with a lack of support for people in the child protection system in a way that increases the risk of poor outcomes.

You would assume that with the Department of Child Safety that they're aware they're dealing with an Indigenous person, that they need to provide them with all this information. This is where you can go for that, or linking up with a recognised entity, but this young girl didn't even know that. We asked her, "Who is your support worker? Is somebody going to be attending this meeting with you from the recognised entities?", and she said, "No I don't know". So we actually, basically had to get the contact details off her, the name of the person at the Child Safety service centre, contact her to find out if there was going to be somebody there to support her in this meeting...

She would have just been on her own in a very intense and important meeting, and this particular meeting was a decision being made on where her little son was going to. Secondly, I don't think in these meetings that she has a legal advisor with her, which there should be, so

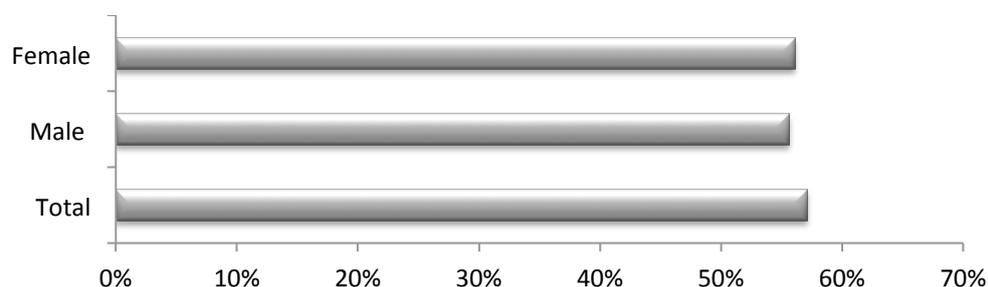
⁶² See SNAICC (2013).

there's a huge gap there, especially when it comes to those recognised entities and for especially our young girls. Our young mums, or even for that matter mums in general, representing them, advising them their rights as a parent and what is this legal stuff going on with child protection. **(Indigenous community organisation worker)**

Level of access to legal services

A total of 41 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, responded to the question relating to whether they sought legal advice or assistance.⁶³ As shown in **Figure 4.20** of the 41 individuals who identified a problem 56.1% 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 roughly the same rate (57.1% men compared with 55.6% of women) (see **Table 4.20 Appendix C**). The legal services used were ATSILS (7), Legal Aid (7), QIFVLS (6), private solicitor (2) and lawyer (unspecified) (1).

Figure 4.20 Participants Who Sought Legal Advice in Relation to Family Law/Child Protection Issue



There were examples among focus group participants of successful outcomes from using Aboriginal and Torres Strait Islander Legal Services and Legal Aid.

I got legal aid for getting custody of my daughter, and they help me out with that. Now I've got custody of her from when she was seven and I have her until she's 18. Because they took me daughter off my missus and she went into foster care so I had to come home from fishing up north and had to get [Aboriginal] legal aid to get custody, to get her out of foster care. Then a judge awarded me custody and I was wrapped. **(Brisbane Men's Focus Group Participant)**

My little grandson, his mother and his father, they separated and he spent more time with me because the mother lived at my house anyway... We went through legal aid and they were pretty good, and we went through the procedures [when] the father was trying to get custody. **(Rockhampton Women's Focus Group Participant)**

Despite the fact that a little of over one in two focus group participants with a family law or child protection issue said that they had sought legal advice, there was a strong 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.

⁶³ The number of participants who sought legal advice in relation a problem or dispute over property, money, or superannuation post-separation or divorce can be found in Table 4.23 Appendix C).

Child protection has the highest priority, unfortunately we don't have the [staff] numbers... to provide representation... Family Law as well. We have a large number of enquiries and we can't assist obviously everybody that comes through the door or all the enquiries that come to us. **(Indigenous legal service staff)**

The quality of legal representation and an understanding of the specific needs of Indigenous clients was seen as important.

By its nature, it's a very emotional jurisdiction and I think it takes more time in terms of the developing relationship with the Indigenous client to do that well and to have a good relationship with your client where they can tell you when they need to know more information that they don't understand. I think that's probably difficult for lawyers who are carrying big caseloads and maybe don't have a lot of experience with Indigenous clients. **(Legal aid staff)**

Another barrier is access to Legal Aid for contested matters.

Certainly if you want to contest an order all the way to a final hearing, if you want sort of ongoing representation, then that's quite difficult to get through Legal Aid. I think they've recently done a bit of an overhaul of their merits testing and the amount of money they give to Child Safety matters, but I'm not quite sure it improved it all that much. **(Indigenous legal service staff)**

Furthermore, accessing legal advice and assistance usually comes after substantial intervention by Child Safety has already occurred.

We have quite a few where the children have been on a two year order, initial consent order, and then the Department are applying for long term orders, and they may have been unrepresented in the first proceedings, agreed to the order for two years, and then Child Safety are applying for the long term order. The other scenario is when there's a first application for a two year order and there have been previous agreements with Child Safety. So there's been what they call an IPA (Intervention with Parental Agreement), which is like a verbal agreement between Child Safety and the parent. So it might be that their concerns are domestic violence, alcohol and housing stability. So they might say, "We want to see in six months that you're in stable housing, we haven't had any reports from the police about domestic violence, and we want to be able to randomly test you for drugs," or something like that. The parent might agree to that verbally, then down the track there might be an allegation by Child Safety that they haven't complied with that agreement, and then they might say, "Now we've got grounds to apply to the court for a custody order," and that's when people will often speak legal advice. **(Indigenous legal service staff)**

A similar view was reiterated by another stakeholder, which was reinforced by the need for legal advocacy.

Because what happens is people get told "you need to do this, this and this" and they sign up for everything under the sun and it's unachievable. So at the end of it, the Department then says, "Well, you didn't make it so we're not giving the child back." So it's important at that point to have somebody there in their corner, whoever that is. It doesn't have to be a lawyer, it just needs to be somebody who knows the process and can stand up. **(Legal Aid staff)**

Strategies for improving access include a greater emphasis on community legal education and earlier support and preventative intervention (although these are also dependant on adequate resourcing).

So the model could be more of an outreach type model. There's the potential to have increased legal education. And that's probably what's seen as preventative early intervention end in the legal sector. But there could be another way of doing things, and that's actually going out and talking to people about what's going on in their lives and highlighting potential legal issues down the track and actually making interventions before the law actually becomes an issue. And that is something that I don't think the legal system does. I don't think ATSILS do it, I don't think Legal Aid do it. And that's probably something that could nip in the bud before it gets to that point. We need to actually make interventions that reduce the reliance on further interventions and that's not really being done. **(Indigenous community organisation worker)**

Community legal education can make a substantial difference.

I was trying to do a lot of preventative stuff and getting the message out there, through word of mouth which was quite effective, through some of my support staff getting the message out there that 'the minute that the Department of Child Safety knock on your door call ATSILS'. Towards the end of my time on Thursday Island people were calling me the minute the Department of Child Safety were knocking on their door. **(Indigenous legal service staff)**

Quality of legal service provision

Remoteness is another factor that impinges on the ability to deliver legal services.

It can be difficult up if people don't have phone reception on some of the islands. They don't have very good mobile phone reception and it's all done on landlines and not many people have landlines. So just in terms of trying to serve documents on people and go about business...it's not just like the mainland when you can just drive to somebody's house. **(Indigenous legal service staff)**

The limited geographic availability of legal services also has a direct impact on the ability to be able to access services.

If ATSILS are saying they've got one and a half solicitors across the state providing legal advice in relation to child protection and family law, well, obviously that's a huge gap. Where are these families going if the Aboriginal Legal Service technically isn't funded to meet that need? There are the occasional, and they seem to be more women's legal services, Aboriginal and Torres Strait Islander women's legal services, but again they appear in pockets, so if there's not one nearby where as an Aboriginal person do you access legal services? You go to Legal Aid and hope that the person sitting across the desk from you is culturally aware or culturally appropriate or culturally sensitive, and doesn't just kinda go, "here's another black face, off we go". **(Indigenous community organisation worker)**

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

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 allow for productive practitioner/client relationships.

There were some recommendations in the Carmody Inquiry report suggesting that Legal Aid should be directing more resources to child protection matters. There's no evidence or no real response from Legal Aid or from their 'government controllers' if I can put it that crudely, that indicate that they will be directing more resources into that space. **(Legal practitioner)**

It was acknowledged that the resourcing of the REs to conduct their work properly is also limited.

I don't necessarily think it's individual workers' problem, I think it's the whole system. Recognised entity workers are very stretched, they have a huge geographic area to cover, the recognised entity based here goes from Cunnamulla through to Toowoomba, so to form any kind of meaningful relationship with the client that they're supposed to be assessing and their social positioning in the Indigenous community is incredibly difficult for them. **(Indigenous legal service staff)**

Part of this resourcing needs to go into basic training for RE workers.

Previously we've been involved in conversations with Legal Aid to look at court training for recognised entities because recognised entities were provided the funding and pretty much left to their own devices. There was no consistency in training, no consistency in roles/responsibilities. It was pretty much, you were driven by the direction of the department because they funded you and they were your client. And so conversations with Legal Aid have been around providing court training for recognised entities, so when they attend court, what's the role while they're there. If they're asked to provide evidence what does that look like, how do they write court reports, all that really basic training hasn't been given, and therefore in some respects they're limited in their own advocacy for the child and family, because they are pulled back whenever they go into that area. **(Indigenous community organisation worker)**

The use of private practitioners by Legal Aid for child protection work was also seen as problematic.

The work isn't done particularly well because it's so chronically underpaid for private practitioners and because the people who are engaged in the child protection service, the parents particularly, have such complex social circumstances that it's really hard work for a private practitioner to do that work funded by Legal Aid. **(Legal practitioner)**

As a result, 'it falls to the safety nets such as they are in civil law areas, ATILS and community legal centres to pick up some of that slack' **(Legal practitioner)**.

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, particularly housing.

There's another area that's tangential but, almost like an enabling one, you may be aware the

vast majority of Aboriginal kids that get taken out of their homes and put into out-of-home care are actually done so because of neglect, and poverty is a driver of that, and housing is a massive issue for Aboriginal people and one of the areas that isn't funded at all is tenancy advice... Tenancy Advisory Services Queensland, so the Queensland government's axed that. So that's really scary, if there's no one there to advise you of your rights as a tenant. You've got situations of overcrowding, or being able to access the private rental market or even the community housing market...

"You've got no set housing, well which school do you enrol your child in?" It snowballs and snowballs and you're constantly providing the department an excuse to have your children removed and then not having the legal services to support you to argue any of that. It's damn hard. **(Indigenous community organisation worker)**

[Our client] got out of jail on the Friday. Had the baby on the Saturday. Lived at a house that probation had approved for her to live in. Got her other four children back. Yep, they were all living in that house. I can still remember the day. I went and picked her and the three eldest children up, took them up to the post office. She was putting money in for her partner that was in jail as well. That afternoon I got a phone call. Child Safety were there and took all the kids off her because it wasn't a suitable address. So that's the case we're dealing with at the moment. She would never ever have went there [to the probation-approved house] if she knew that was going to happen. **(Community organisation worker)**

Stakeholders also noted the connection between child removal and the growth in youth homelessness.

They remove them and then the kids become street kids. Because what they do, they remove them and there are not enough carers around. So they either one, put them in motels, two, put them into those self care places and the kids run away and become street kids... The Department – they create all them street kids. Every single one of them...the stolen generations. All those kids out on the street, you ask them, "Were you in Child Safety?" and they will say "Yes," and once they've become street kids they're like "Hands off..." Then it becomes "See, black fellas can't look after themselves. Look at these kids." **(Community organisation worker)**

Removal and placement with non-Indigenous carers was also seen as contributing to youth offending.

Well there just isn't enough [Indigenous] carers. I'm sure the Department of Child Safety that would certainly be their preference but there just isn't enough [Indigenous] placement. The environment between more traditional Aboriginal household and a non-indigenous household would just be so different as far as behavioural boundaries and the type of discipline. I think that it's where a lot of disconnection starts for children and they act out...

We have a number of young girls and really young boys, they can barely see over the bar table they're so small, but they are acting out. They're setting fire to things. They're breaking into people's houses.. it just strikes me very much as acting out against disconnection from their community. **(Indigenous community organisation worker)**

Stakeholders highlighted the interaction between child protection and the need for better support.

It's a bit of a chicken and egg thing, because health, employment and housing is so inextricably linked. You need to actually provide a whole range of wrap-around supports. If there are drug and alcohol issues for example, we need to look at how do we provide services, probably within the context of the home, you don't want to remove people from that, you actually need to do it within their context. **(Indigenous community organisation worker)**

Malicious complaints can also be detrimental to a family.

Malicious complaints to the department, malicious complaints to Child Safety are probably one of the easiest ways to get a family into trouble because if you beef it up enough the department will come out. And you only need the department to come out a couple of times, and if your living environment and everything else is not spick and span compared to some idealistic thing that doesn't exist, all of a sudden you've gone from no involvement, to running the risk of having your children removed. **(Indigenous community organisation worker)**

4.4.11 Traditional Adoption

Specific legal issues were raised by stakeholders and focus group participants regarding traditional adoption practices by Torres Strait Islander people. Traditional adoption practice involves the permanent transfer of a child from one extended family member to another. As Ban has noted, "The underlying principle of Torres Strait Islander adoption is that giving birth to a child is not necessarily a reason for raising the child. The issue of who rears the child is dependent on a number of social factors, and is a matter of individual consideration by the families involved."⁶⁴

Another big issue up on the islands is traditional Torres Strait Islander adoption. [That] tradition is alive and breathing up there. As a family lawyer I was constantly approached about issues that were implicated by this practice or involving this practice and there was the need to be respectful of the culture. I guess it clashes with our legal system...we just have a long way to go especially in regards to family law matters where you have got issues where children have birth certificates, many birth certificates but they have been traditionally adopted and the whole secrecy around that until the child is old enough to understand or be told by who they need to be told by that they have been traditionally adopted and why. When a family breaks up and there is a traditionally adopted child subject to those proceedings legally where does that adoptive parent stand. What if the birth parent wants that child back where does that stand I mean that is not in line with the custom but in today's modern times that can happen and legally where does the adoptive and the birth parent stand...its very complicated. **(Indigenous legal service staff)**

It's huge. Every Torres Strait Islander family is affected by traditional adoption. M gets heaps of calls from people about traditional adoption and about "what can I do giving babies away, taking babies in". [In the past] it was just verbal; you made an agreement between the families and the child was given to the family and then that was it. A by-product of that was birth certificates, and the child has known and grown up within a certain family but when it was time for either school or applying for their 18+ cards, they were a totally different name. That would then open a whole can of worms for the families who might keep that very secretive. A lot of

⁶⁴ Ban, P. (1993) "Torres Strait Islander Customary Adoption" Australian Institute of Family Studies, <http://www.aifs.gov.au/institute/pubs/fm1/fm35pb.html>

them would say, "Can I apply for and change their names or alter their birth certificates?" because they'd get quite upset that the biological mother still has to be named on the birth certificate. And that is one of the things they don't want because that's the secretive and customary practice of traditional option. **(Legal Aid staff)**

Traditional adoption raises the more general issues of recognition and respect for Indigenous laws and decision-making processes.

Nobody ever starts listening to our tradition, our way of practice. When you talk about Child Safety... we have a structure in place that deals with those issues, Child Safety take that away. When you look at the legal system, the court system we have our elders in place that put our young ones in line, and that had power in those days... The government services and policies, they have the rules in place, they have the support and resources to implement those things. Whereas we have on the other side of our hands we have our own structure, our own traditional practices but its powerless. **(Thursday Island Men's Focus Group Participant)**

Overwhelmingly the people who raised issues in focus groups and the stakeholder meetings were critical of the lack of consideration of the specific cultural needs of Aboriginal and Torres Strait Islander people. The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service made the following comment which sums up the findings of our research in relation to child protection and family law issues.

This model does not constitute meaningful consultation, it does not overcome historic power imbalances, fails to provide indigenous people with capacity to provide input into decisions that affect them and does not ensure that cultural issues are taken into consideration when decisions are made about Aboriginal and Torres Strait Islander children.⁶⁵

4.5 CREDIT/DEBT

Debt also emerged as a priority issue for focus group participants, particularly in relation to unpaid debts, bills or loans.

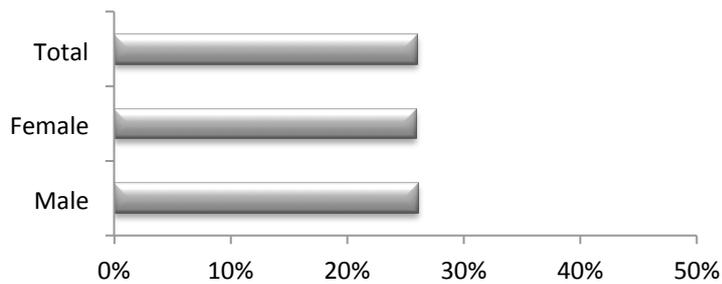
4.5.1 Nature of credit/debt related issues

Figure 4.21 shows that just over a quarter (**26%**) 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. The rate at which men and women identified this type of problem in the last couple of years was similar (25.9% of women and 26.1% of men) (see **Table 4.24 Appendix C**).⁶⁶

⁶⁵ The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service (2012), p.8.

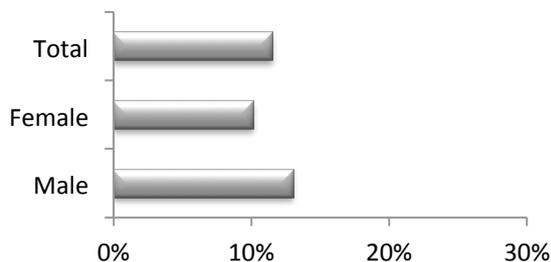
⁶⁶ For further research into unmet need in the area of credit and debt, see Povey, C and Tan, S (VIC) (2011) *Aboriginal Credit and Debt Clinic: Project Report and Evaluation*, Melbourne VIC, http://vals.org.au/static/files/assets/2677ed55/ACDC_Evaluation_Report_-_Final.pdf

Figure 4.21 Participants Identifying a Problem with Paying a Bill or Loan Where Lender Has Threatened Legal Action



As **Figure 4.22** reveals, **11.5%** 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 4.25 Appendix C**).

Figure 4.22 Participants Identifying a Problem Relating to Credit Reference Rating &/or Bankruptcy Problem



Possibly as a reflection of levels of access to credit in different communities (depending on the degree of geographic isolation), Cairns and Charleville participants identified debt related problems most frequently and Pormpuraaw participants least frequently. The range of debt-related issues arising was described as follows.

The bank rang me. The bank sent me a letter but I kept throwing them away. They closed my account because money was coming out of the account. And cash converters said I owed them money and they were the ones that were taking money out of my account. They sent me a threatening letter. **(Brisbane Women’s Focus Group Participant)**

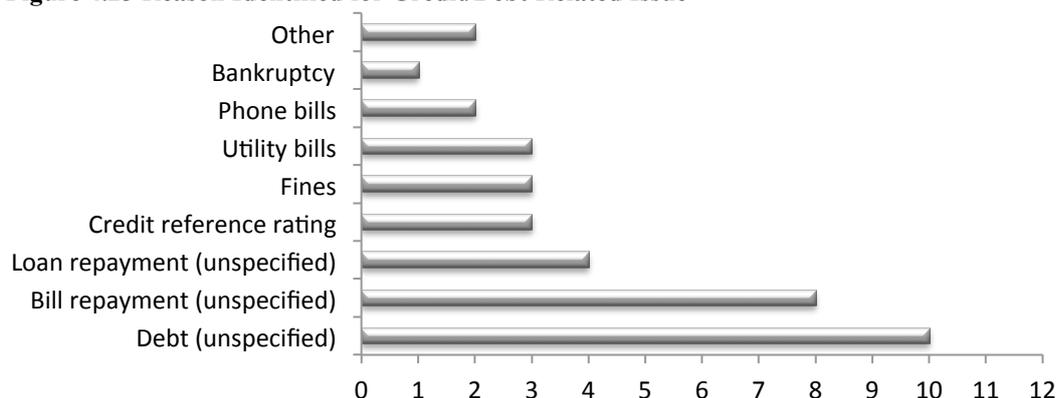
Issues of housing and tenancy, rental issues, you’ve got electricity mostly and telecommunications, these are one of the main matters. And then you get... the car loans, dodgy dealers, and sometimes credit card [debt], but not very often. The majority of the times it’s the electricity and the rental. **(Indigenous community organisation worker)**

I think I did one or two with housing that was in relation to damage to a property... I personally didn’t have any Centrelink debt matters, but I know that they were coming through our office. **(Indigenous legal service staff)**

ILNP data indicates that thirty-four individuals (of the 41 who had identified a problem) specified a total of 36 credit/debt related issues. As **Figure 4.23** shows, the most common issues were debt (unspecified) (10 participants), bill repayment (unspecified) (8 participants) and loan repayment (unspecified) (4 participants). Other problems involved credit reference ratings, fines and utility bills (3 participants in each category); phone bills (2); bankruptcy (1); and a category of ‘other’ (3).

Overall, unspecified debt and bill repayment, including phone and utility bills, were the major categories of complaint in this area.

Figure 4.23 Reason Identified for Credit/Debt Related Issue



Consumer and credit/debt issues – access to credit

Credit and debt often has a close relationship with consumer issues (see also Section 4.6: Consumer). This relationship is apparent where, for instance, Indigenous people are consumers of credit. Some issues were raised in relation to more ‘traditional’ forms of credit such as bank loans.

We had a pretty big one, where a lady, I think it was in Mount Isa, had been refinanced out of her home loan, which was ... low interest, to a really phenomenally high interest home loan. But it was by a mortgage broker company... the type of loan where your property is an investment, it’s not the type of loan for where [you live in] your property. So they were ready to take her to court. She was just paying so much money, she worked and she was paying so much money, and it was really, really difficult to see what kind of options that she had. **(Indigenous community organisation worker)**

The connection between the two areas of law also occurs, however, when Indigenous people access credit in other ways in order to purchase goods.

I helped a person in Roma once who'd bought a stereo and had paid it off and the finance company or the provider of the credit was still getting payments off her. I'd stopped that because she'd paid it and I obtained a refund for her. **(Indigenous legal service staff)**

As consumers of credit, Indigenous people face particular difficulties. They may be more likely to find it difficult to purchase goods outright, even essential items such as beds or food, but they also do not enjoy high levels of financial inclusion. This means that they may engage with less favourable lending arrangements as a means of buying items because this is the only form of credit they are able to access. These arrangements may then cause further financial hardship, including debt. ‘[If they needed credit], yeah I don't think they'd know even how to go do it. If they wanted a loan they'll go to Cash Converters and things like that,’ states one community organisation. Other arrangements may include hire purchase agreements and payday lending, which are problematic for a number of reasons, including where high rates of interest are charged or where there are late fees chargeable. Indigenous people may not see any problem with these types of credit in circumstances where they are dependent

upon them. They may see the ‘lender’ in question as providing a service to them. Probably for this reason, in part, there was little negative comment from ILNP focus group participants in this area. Stakeholders provided the bulk of comment and criticism.

It’s the poverty that really traps them into ... payday lending. I had Aboriginal people say to me that they really think it’s a service. **(Community organisation worker)**

It’s the repayment bit that’s [full on]. Because... they’ll go to the payday place or whatever, it’s the, ‘You don’t pay back, then we’ll take 100%’ or you know, whatever it is. If they don’t pay it in the first week on their second week they can pull out like \$100 as a fee for late payment and stuff. **(Community organisation worker)**

[Debt often relates to] hire purchase companies. We had a run of them targeting really poor communities. So they go door knocking and say ‘Look, here you are. You’ve got an opportunity to save money’. [One client with] high needs, she was convinced to buy a hire purchase bed. Now if she’d borrowed the money or took out a hire purchase plan at one of the local stores she would have paid \$300. But as it turned out, the contract kept her in and she paid at least two and a half to three times more the value. **(Indigenous legal service staff)**

The following comment provides another example of the same sort of issues.

It’s in the past now... but a part of the AMP [alcohol management plan] originally was [about credit and debt]... What was happening was that the whole idea of sly grog and accessing alcohol to sell or turn it into a business was getting out. So people were purchasing vehicles through hire/purchase. [It] actually involved shonky car dealers, but it also involved the Commonwealth Bank, who were taking loans over the phone without checking photo IDs, licences, and all that... Consumers and the community [were] not understanding [that] the hire/purchase model could be up to 30% interest rates. Having automatic deductions from their monies [including] a hire/purchase [payment] for a vehicle... [Vehicles] were breaking down on the road between the point of contact for alcohol and back again. We were having fatal car accidents, in fact we still have had accidents and fatal car accidents within the last 6 months around sly grog.... [A] consumer agency called ICAN picked it up. And of course the Commonwealth Bank decided to cancel on all those loans, cancel out. And now they have a sort of Indigenous component... providing funding for small grants and stuff, which I think came about from all of that as well. **(Community organisation worker)**

Fines and debt

Fines came up as a problem with relative frequency in this area, too, not always within the context of consumer issues.

You know we’ve had other clients with debts of 20,000, I think it was like \$17,000 or something... for jaywalking, drinking in public, public nuisance, you know. Now this guy, he had a mentality of like a six year old so he didn’t understand it. He just kept on getting fined and fined and fined and it was just like thousands and thousands of dollars. He didn’t know any different. **(Community organisation worker)**

I moved and my videos and my DVD’s, they were late and I had late fees. I didn’t know I had late fees because my kids took them back late. Then when I moved to the new address, they

eventually caught up with me and said I owed them \$130 or something like that. It got larger, it grew, from like \$20 to \$130. So then I got a letter sent to me about my late fees and then it was sent to a debt collector so I therefore I had to pay the \$130 for my late DVD fees. And I nearly killed my kids. So there's an example. **(Brisbane Women's Focus Group Participant)**

I was in hospital and my kids borrowed my card and hired out some books and videos and I owed them \$300. **(Brisbane Women's Focus Group Participant)**

SPER are pretty good. They provided the help with payments (a payment plan). **(Roma Men's Focus Group Participant)**

Accumulating debt

Debt may accumulate because people are not reading their mail from lenders, service providers, traders or similar and/or do not understand their ongoing obligations when they access credit. This indicates how issues of financial and/or other literacy can exacerbate debt-related problems. There is definitely a need for more CLE in this area, but what might also assist is further information and education around management of finances.

The credit and debt issues, I guess, [are] also an issue in terms of...how can I put it...when you have got a highly transient sort of community [combined with] the fact that mail is significantly delayed to the island as it comes by boat... Things get lost and then people find that they have a bill that is overdue when they have only just sort of received it. Then things snowball from there and then there is also the usual [thing of] people not realising what they are fully committing to when they do get credit. So there is definitely a need for community legal education in terms of credit and consumerism and those sorts of things. **(Indigenous legal service staff)**

Yeah, we had one young lad. He's 25 I think, come in from Woree, got housed. We worked with him the whole time. He got a power bill but he can't read so he asked me [to help]. He had mail, could I go and read it... He wanted to know who paid [the bill]. He didn't understand that he had to pay for that as well... [We] help them set up their Centrepay and advise them what should come out. Like the lad we got housed on Thursday, he said 'I've rang Ergon. I'm getting \$100 a fortnight taken out.' I said 'That's too much. You'll have no money left.' **(Community organisation worker)**

There may be little understanding of how a debt arose.

Another one would be [this guy who got] his Centrelink payment in cheque and he was always sick. I'm not sure how a taxi driver got his cheque, but she's holding onto it until he pays her... \$200 or something.... I don't know what it's about, yeah 'cause he spoke to me the other day.... But that's a legal issue.... You know that she shouldn't be able to hold onto it. [To deal with it] I'd probably contact the taxi company and find out through them why she has his cheque, and see what they say, 'cause they're probably unaware of it as well. So see what happens there, and if nothing happens through them, well then I'd probably take him to Legal Aid or something. Because I have spoken to Centrelink about it, they are aware of it, but they can't cancel the cheque until it's been returned. So yeah, he's missing out on \$400 because of this other incident. He doesn't remember why, doesn't know why she has the cheque.... **(Community organisation worker)**

Attribution of debt post relationship breakdown also occurs.

You get the odd personal loan type of thing but they were mostly when somebody was in a relationship that had broken down – who bears responsibility for that. It wasn't necessarily a strictly credit and debt situation. It was more a relationship break down. **(Indigenous legal service staff)**

Finally, debt may accrue for prisoners in particular ways (see also Section 4.14: Other Legal Issues).

One of the issues we find for Aboriginal clients [in prison], more so than for non-Aboriginal clients, is shared key cards amongst family members. So when they go to prison they don't know what's happened with that key card, who's got control of the finances, what's happening. And another debt issue is funeral attendance. Because of the tragic higher rates of death in their communities, they've got higher costs of funeral attendance, and especially if they've got obligations, cultural obligations to attend a particular funeral. So they've got to pay for that funeral, and pay for them to be transported, pay for two guards to accompany them home. And sometimes families end up paying for it and then they end up in debt. There are some funds to pay for some prisoners to go but they are pretty limited. **(Legal practitioner)**

The Prisoners Legal Service reports that credit/debt in 2010-2012 was the second most common casework issue for Aboriginal and Torres Strait Islander clients (after parole – related casework).⁶⁷

4.5.2 Accessing help and advice for credit/debt

Only **21.2%** 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 twice as likely to have sought help than women (30.8% compared with 15%) (see **Table 4.28 Appendix C**).

Five of the seven individuals who sought assistance responded to the question relating to where they had sought help. Responses included ATSILS, Australian Securities and Investment Commission (ASIC), local council, a 'credit/debt group' and a 'private company' (the latter two groups may refer to financial advisors). Of significance, except for the ASIC matter, which was described as ongoing, a payment plan was the most common outcome rather than any challenge to the validity of the debt itself.

Lawyers report not seeing a lot of clients in relation to credit and debt matters or generally not until fairly late in the picture, including when judgement has already been entered and there as an enforcement order in place. If it is not presenting as an immediate crisis it often does not take priority.

With debt, like I said, they either try and deal with it or hide it and it'll go away, sort of thing. **(Legal Aid staff)**

People were coming to the lawyer at the last minute after things had gotten quite serious and asking what to do. 'The third and final notice and what do I do? Now it's in court on Monday. Can you help me?' **(Indigenous legal service staff)**

⁶⁷ Statistics provided directly to ILNP on 25 June 2012

Can I just say one thing that I've noticed in terms of unmet [need]? I can remember lots of times in the Cunnamulla Magistrates Court... a Murri client would come in [to court] with what I'd call a judgment summons or an examination order or something. In other words, because they've never been told to come to court on a particular day and haven't responded to the summons, someone's got a default judgment against them. And it's only after the default judgment that we get [to see] them and that's only because there's an examination order and they have to come to court. **(Indigenous legal service staff)**

Our catchment area is court, and it isn't just that we're used to that, the clients are used to that. They don't see that sign out there and seem to connect it with this letter of demand to pay for the smash repairs or something like that, and as you'd probably know, there's not a lot you can do once they've already got judgment except negotiate some sort of payment plan. That might have been what you were going to do anyway, I know that, but some local lawyer has got costs out of them in the meantime. In Cunnamulla in particular, there was a spate of that. **(Indigenous legal service staff)**

[Representation only really comes into it] after judgement's been entered and enforcement of the debt is the main objective of the creditor. [When the bailiff] brings someone in here and they just happen to flag down the solicitor... I will say that the main objective with most of these enforcement hearings is to get someone into some sort of arrangement to start paying back the debt, certainly not to cause undue difficulty in their life and most of the private solicitors that come up here representing the creditors, that's quite often the feedback when they come in to me. [So,] we've entered into an arrangement for repayment etcetera, but they will bring it back on should those arrangements not be honoured. **(Statutory Authority staff)**

4.6 CONSUMER ISSUES

As noted, consumer issues were reported as giving rise to legal needs with relatively high frequency (superannuation/banks and scams/contracts). Consumer-related matters have been prioritised, in particular, where they cross over with credit/debt matters. This cross over is likely to occur in a number of ways (see Section 4.5: Credit/Debt), including for some of the more problematic consumer-related problems (eg contractual obligations like phones, hire purchase).

Focus group participants were asked about types of consumer-related problems experienced in the last couple of years, including problems accessing or finding superannuation; a dispute with bank or other financial institution; a dispute over insurance; problems with contracts, commercial scams; or situations where a person paid for goods or services that they did not receive. The responses can be broken down for each focus group as shown below in **Table 4.1**.

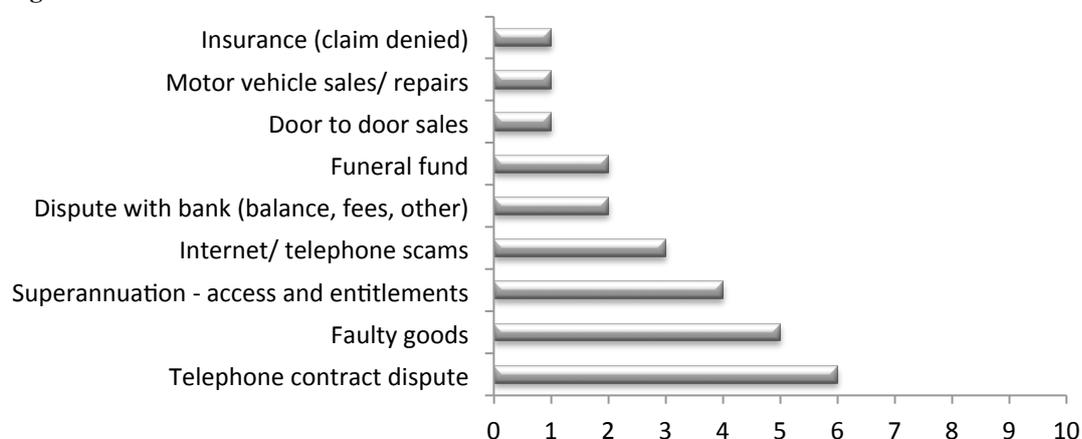
Table 4.1 Consumer Issues by Community

Location	Financial Institution	Insurance	Commercial Scams	Other Consumer Issues	Total
	No	No	No	No	No
Brisbane	8	-	5	9	22
Cairns	3	1	3	2	9
Charleville	-	1	2	2	5
Mount Isa	2	1	4	2	9
Pormpuraaw	6	1	-	-	7
Rockhampton	3	-	4	-	7
Roma	1	-	2	2	5
Thursday Island	2	1	1	-	4
Total	25	6	21	17	69

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.

As shown in **Figure 4.24** twenty-five reasons for consumer-related problems were nominated (see **Table 4.34 Appendix C**). The most common of these reasons related to telephone contracts (6 participants), faulty goods (5 participants), and superannuation (4). These issues were followed by internet/telephone scams (3), disputes with banks or funeral fund-related issues (2 in each category), and door to door sales, motor vehicle repairs/sales and insurance (claim denied) (1 in each category).

Figure 4.24 Reason Identified for Consumer Problem

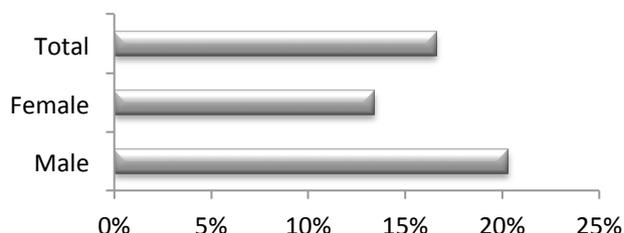


4.6.1 Nature of Consumer Issues

Superannuation and banks

As shown in **Figure 4.25**, some **16.6%** of all focus group participants said that they had experienced a problem accessing or finding superannuation or that they had had a dispute with a bank or other financial institution over the last couple of years. Men (20.3%) were 6.9 percentage points more likely to identify this issue than women (13.4%) (see also **Table 4.29 Appendix C**).

Figure 4.25 Participants Identifying a Problem with Superannuation &/or Financial Institution



Superannuation came up in an employment context for a number of participants, particularly in relation to locating and accessing it.⁶⁸

I think a big one for us, whether you're black, white, whatever, is superannuation and if you've had a few different jobs, trying to find your superannuation, and then particularly understanding what you can access. **(Brisbane Women's Focus Group Participant)**

I've had a few members of the community ask me how to access their superannuation because they have just had a heart attack so they are off work for an amount of time and they heard that they can access some of their superannuation while they are not having any income coming in. **(Brisbane Women's Focus Group Participant)**

Every now and again we get a rash of people who want us to help them accelerate their access to super on the grounds of hardship. It is as if the Aboriginal people around here have just caught up with the idea of what super is, you know what I mean, and they've accumulated a bit here and there. It's as if they didn't really know that it was compulsory from a certain date onwards, and if no-one sent them a piece of paper then it doesn't mean that it wasn't accumulating somewhere. And then when things get a bit tough we do find ourselves... applying on their behalf under the hardship. **(Community organisation worker)**

Superannuation also arose in connection with deceased estates [see Section 4.8: Wills].

[For] superannuation, my brothers...waited until last September. They are saying we have to wait up until seven years because there is nothing registered in the estate. **(Thursday Island Women's Focus Group Participant)**

Usually it's the release of super that people [want help with], but also where somebody has passed away and the partner needs to access the super but mightn't have the right... They're not named in a will or... they don't have probate or something like that. Those kinds of

⁶⁸ 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

matters, they don't come very often anymore, they used to happen a little bit more frequently.
(**Indigenous community organisation worker**)

In terms of banking issues, there were suggestions that Aboriginal people do not always understand the why and how of bank fees, which may start to accumulate before an account holder identifies that they are being deducted and/or works out what they are about.⁶⁹

The big one... [is] somehow the timing of the direct debit [to make payments]. So, [you] try to get the money out on say for example, Tuesday, but the money [isn't] going in 'til the Wednesday, something like that. [This happened to someone I knew]. So then he would cop every time a \$40 fee and then [he] had to actually go and fix it up. But it might take \$200 or \$300 later. (**Indigenous community organisation worker**)

Banks taking their fees [is an issue]. People don't understand enough about [fees]. My uncle, he had \$60 in there and you take him to draw it out - nothing in there. It just baffled him. End up ringing the bank, 'Oh, that's fees.' An older guy, mum's age, about mum's age, he didn't know any of that [stuff about fees] and they took all his money. He was on a pension but that's all he had left. People just don't know. (**Indigenous community organisation worker**)

Examples were also provided of incidents where banks, in error, pay out monies to Indigenous account holders and then try to recoup all the money back from them. There appears to be a lack of clarity about what the legal rights of account holders are in such situations.

Yeah, because one of the young guys, I think something happened with his bank, money was put into his bank account which wasn't his, and he'd taken it all out, and now as soon as his payment goes in there, they take the whole lot out [to cover what he owed]... So he stopped banking with that bank. As far as I knew, you could only take a percentage of it away not all of it. (**Community organisation worker**)

We had another one where a lady had accidentally been given access to about \$4000 in her bank account. And she had actually asked a bank teller, 'Is this my money?' She was from Yarrabah. And the bank teller said, 'Are you expecting some money?' And she was expecting something. I can't remember what it was. And she said, 'It'll be cleared in three days. Come back in three days,' because it was a cheque or something like that. So the lady came back to the very same branch here in Cairns, took out the money, bought furniture for her family and her son. (**Indigenous community organisation worker**)

The same interviewee continues with this story, suggesting that banks don't often show mercy when this type of thing happens and illustrating the importance of having an advocate or support person to liaise with the banking institution in question.

And then the bank called her... back into the branch, threatened her, told her that she had to pay all of the money back by 1pm that day. She had purchased the items from a pawnbroker and she was told by the bank that she had to go and sell her items back to the pawnbroker. When she came to us, she was sitting under the table and she was rocking back and forth. [She was] mentally distraught really, because of the way they had been threatening her and things like that. It was terrible. And the biggest thing for her was that she had purchased a bed

⁶⁹ 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

for her son and he's just little and her and her husband were saying, 'Do we have to give the bed back, my son's never had a bed before?' Anyway, in that instance we went to Legal Aid and said, 'This is what we were thinking of doing, could you let us know if this is okay?' And he helped with the wording of things. And we ended up trying to negotiate it with the bank here in town and it just wasn't working out... [We] tried first with the manager, then we went to the ... top manager for this area and that didn't work so we went to [the] ... Ombudsman. And by that stage, the end result was - and that's why she came to us, because they had taken all of her Centrelink money, and they had put [her down as] negative \$4000. She had a savings account and she had another secondary savings account, and they had applied the negative \$4000 to both accounts so it looked like she actually owed \$8000, and they were withholding her Centrelink money, which you can't do because of the Centrelink code. So, technically, you know, they're only supposed to take the 10% [out of your Centrelink money]. And so we asked for the removal of, you know, obviously she only owes the \$4000. And the outcome of that, after advice from Legal Aid Queensland and from [the Ombudsman] and through discussions with the bank, which was handling it at the Ombudsman level, was that they would eat half of it [and] she would pay half of it, and they could only take that 10% [out of her Centrelink money]... And she didn't have to give back the furniture... [We] really didn't want to see her have to give back the furniture in that instance. [It was the] mistake of one of the tellers... **(Indigenous community organisation worker)**

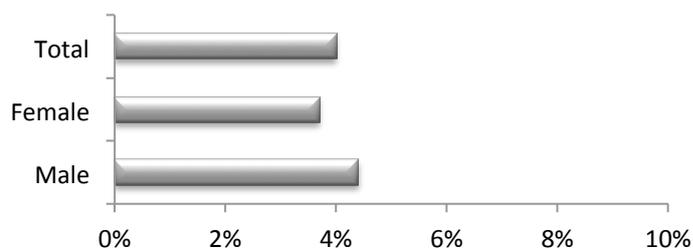
One focus group participant in Brisbane also spoke of the frustratingly bureaucratic nature of his interactions with his bank.

I do have issues with my bank because when I ring up with issues, I've got to tell them my whole history. And they want me to think about the week when I last drew out [money]. I said 'A week ago!' I'm flat out remembering yesterday! I said to them, I'm going to change banks if you keep asking me those questions! **(Brisbane Women's Focus Group Participant)**

Insurance

As shown in **Figure 4.26**, a small percentage of participants (**4%**) said that they had had a problem with insurance, with no significant differences in terms of rate of identification between men and women (See also **Table 4.30 Appendix C**).

Figure 4.26 Participants Identifying a Problem with Insurance



There was only a small amount of comment about insurance. A woman in the Rockhampton focus group had an issue with insurance premiums paid to the Commonwealth Bank.

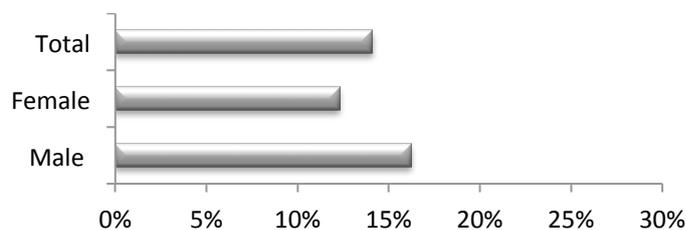
I went in about eight, nine years ago [to the Commonwealth Bank] when I had my first heart attack [to cover] my funeral expenses... [by] paying money in. I started off on 60 something

dollars [as payments], and then it went up to about \$79, and I got a letter then to say that it jumped up to \$200.... I'd already saved about \$14,000 in my funeral fund, for what it was. But then what they did was... I think they sell ... some of their cover to Colonial Mutual, I think it was. And they didn't ... notify me. I was wondering where all these Colonial Mutual letters were coming from and that's what it was. And, anyway, I said I'll stop paying that \$200. I can't live on \$70-80 a fortnight after everything goes out and so I stopped paying it. Then my daughter, she said there's a group of young women lawyers down in Sydney, and I got onto them and they're fighting for me now.... It took a couple of months or so to get all the information back from the Commonwealth Bank. They call it 'CommInsure'. Those young girls... they're handling a lot of cases for elderly people, Indigenous people... whatever, like it's sort of a big rip off. They jumped up these premiums to \$200 so I had to.... And the young fellow down at the bank said, you know 'I'd rather let it go'. I said, 'Oh, let \$14,000 go? [Let] \$14,000 go?' And he said, 'Oh well', and this is from the Bank... 'Oh well, do you have an extra \$200? Bank it, and put that onto your funeral expenses'. I thought, no more dealing with Commonwealth bank. I'm just waiting for my term deposit to mature now and I'm getting out of it next month. ... But all the time when he talked to me, it was [about] a funeral fund and I thought I was paying towards that for that nine years. I never missed a payment. **(Rockhampton Women's Focus Group Participant)**

Scams and Contracts

As shown below in **Figure 4.27**, **14.1%** of focus group respondents reported a problem with scams or contracts in the last couple of years. This was the second highest area of dispute or complaint in relation to consumer issues. A lack of understanding about contracts, in particular, and of their legal effect renders many Indigenous consumers especially vulnerable and leads to problems in relation to debt (see also Section 4.5: Credit/Debt). Men (16.2%) were more likely to report a problem in this area than women (12.3%) (see also **Table 4.31 Appendix C**).

Figure 4.27 Participants Identifying Problem with 'Scams' or Contracts



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. Scams and contractual issues appear to take on various forms for Aboriginal and Torres Strait Islander people in Queensland.

(i) Door-to-door and telephone sales

Focus group participants complained of door-to-door (and telephone) traders, selling items ranging from first aid kits to security systems for homes.

We have those little... men that come to the door, and you tell them to go and they're still standing there! **(Brisbane Women's Focus Group Participant)**

We had a fellow going around here selling air compressors, generators. He had stolen compressors, generators. He was going around signing everyone up. He got my uncle. [He offered] a \$10,000 generator. He said he could get it for \$2000 cash. And he was stupid enough to give the money and then he took off. **(Cairns Men's Focus Group Participant)**

Stakeholder organisations also spoke of scams and contractual issues: 'First aid kits... is a big one. [One particular case] was over \$1000 by the time [it was] paid it off,' claims a community based organisation. The trader in question apparently asked the Indigenous person, as part of their high pressure sales, 'Don't you want to make sure you can be responsive in the event of an accident for your children?'

I've had a few people over the past few months with the Internet scam where 'you've got money in trust in Africa!' That's been interesting. **(Indigenous legal service staff)**

[A client] said the other day she had a towel-set, some sort of towel-set that she was paying \$50 for. It's that phone stuff. I think people are contacting her on the phone. She bought it for her girlfriend for Christmas. I think it was a charity, some sort of 'heart' thing. You know, that phone thing, she's really gullible... she'll just tell 'em the bank account details and she does have a lot of payment things coming through. **(Community organisation worker)**

I guess probably a lot of the things we have dealt with could be consumer. So that could be like some people get sucked into doing family portraits and they never get the portraits and [it costs] 7 or 800 [dollars]. So I've [taken on] advocacy roles trying to get money back for clients. **(Community organisation worker)**

There have also been door-to-door traders that sell whitegoods. There's a really well known case that happened in early 2010 where a whitegoods trader had gone through Yarrabah and just sold washing machines for about \$3000 in rent-to-buy contracts and when ICAN and the Office of Fair Trading were able to overturn the cases it was something like \$3.2 million in contract debt that we were able to wipe with the Office of Fair Trading. That many fridges and washing machines! **(Indigenous community organisation worker)**

There is some question as to whether scams, high-pressure sales and similar activities, including in the area of utilities, deliberately target and thereby discriminate against Indigenous communities. It is clear that some traders *do* target the most vulnerable consumers, which includes Aboriginal consumers, especially those located in remote communities.

The discrimination [is definitely there]. You were talking about the pictures [portraits] they never got. I see that as a discriminatory issue because they're in a remote community. Probably the person knew there wasn't anything they could do about it. So they were able to get away with ripping them off. And those people came in and were trying to sell first aid kits to everybody. People sign up for first aid kits. They can get first aid stuff for free at the clinic but these people come in and give them a spiel and they think it sounds good and so they sign up. They can't afford to buy it and they can get it for free. So people take advantage. **(Community organisation worker)**

A lot of the door-to-door sales, so water coolers, funeral funds, first aid kits. Pixie Photos is a big one. It's \$3000. People are so vulnerable. And, the pressure! - 'Oh don't you care about your kids enough?' **(Community organisation worker)**

There were a lot of regular door-to-door charlatans that come around selling vacuum cleaners to people who lived on dirt floors, and all sorts of shonky stuff like that. And so they were particularly vulnerable to people who were engaged in those sort of rip off kind of things.... I suppose they're sitting ducks out there, and they just come into town and go door-to-door and con everyone into signing up for encyclopaedias or something. So that sort of thing is rife. A lot of consumer stuff. **(Legal Aid staff)**

In the past they've sold home insurance to families living in Queensland housing, public housing... security screens and new additional security systems in Queensland housing. And again they target single mothers - 'Don't you want to be able to protect your daughter?' **(Community organisation worker)**

Being able to say no to high-pressure sales is apparently difficult for many Indigenous consumers, according to the following stakeholders.

Legal Aid has produced stickers for people who knock on the doors like 'Don't knock, just go away' and stuff like that. So I talk to people about that a bit too, and their rights – because as soon as they capture people they'll say 'Yes, yes, yes'. **(Indigenous legal service staff)**

It's a thing about understanding and the ability to say no. One of our tenants that signed up for everything, her strategy ended up being, cause she couldn't say no, she would sign and then ring us. 'I've just signed'... You'd go over there and have a look and usually there's that cooling off period and you can cancel it. We worked hard with her on a strategy, when you get to the front door how are you going to (resist)... She ended up locking her front door, keeping it locked and not opening it. **(Community organisation worker)**

(ii) Mobile phones and phone contracts

Disputes about mobile phone contracts were the most common of all issues raised by participants, as the statistics above indicate. Stakeholders also had something to say about phone contracts. Problems described in this area demonstrate the way that Indigenous consumers enter into contractual arrangements without any comprehensive understanding of their rights and obligations, often causing debt to accumulate. A man in the Charleville focus group spoke of being unable to understand contractual obligations in relation to data download costs, for instance.

Yeah, they disconnected the phone and then I tried to, you know, pay back [money]... But they keep on sort of wanting payment. I wasn't working so I had to take money from friends, brothers and sisters. Yeah, they cut [the service] off... It's their terms [of the contract]. I couldn't read the terms...I didn't get help about it. **Thursday Island Men's Focus Group Participant**

Another thing, you know how they get a phone and they're charged the extra and everything or, they might lose their phone and that and then they're stuck with this big contract, well the clients don't understand their rights. **(Community organisation worker)**

It's not understanding the data as well, I think when they do get explained it's like 'blah, blah, blah, blah blah,'.... and it just goes over their head and I think the fear is asking them, 'Oh sorry, can you please repeat that', and still not getting it. **(Indigenous community organisation worker)**

High-pressure sales, discussed above, may also occur in relation to phones and phone contracts.

We did have a matter, quite a large matter... an organisation where they were selling cheap phones. Basically, a whole number of families had made orders and paid money to this company and then the company basically shut up and sort of left. **(Indigenous legal service staff)**

[The] client was telemarketed and she thought she was just getting an upgrade or something with her own telephone company, and really she was switched over to another phone company. And she kept asking them, 'Are you X company?' and they ended up talking over her and she kept going, 'Aw, no'. She's an elderly lady, an amputee, and she really needed her phone on and it was at that time when ... Cyclone Yasi occurred. They said, 'Oh no, that company's gone down. You have to get onto this company'. That's why she was switched and then she had no phone... And she had no idea that they weren't the main company that she was already with.... [The amount owing was eventually] reduced to nil given the conduct of the telemarketer. She owed [\$300] and they said, 'Oh no, we can drop it to \$100'. I said, 'No, she doesn't owe anything'.... She had no idea what was going on, which is clear when you listen to the recording [of the conversation]. I've sent it to the TIO, which is the Telecommunications Ombudsman and they agreed as well. So they just waived [the amount owing]. It's just the way that telemarketing or telesales [people] come to your door, the way they sell things.... And she was a Torres Strait Islander lady as well, with English as a second language, and [she was] having to just say yes to get them out the door, get them off the phone, you know. **(Indigenous community organisation worker)**

The phone bills that can build up in such situations are at times very substantial.

It's very regular for people to have \$2500, \$5000, up to \$10,000 debts with TELCOs and no network coverage living in remote areas. They've been telemarketed products... where there's no network coverage and so on. **(Indigenous community organisation worker)**

TELCOs are reported to be deliberately signing people up to contracts when they clearly have little capacity to pay for services and/or to understand the contracts in question.

I think in some [cases], it's fairly predatory... I think they should be absolutely refusing a sale to someone that cognitively [has an issue], or ... if you're reeking of spray-paint and you're all slurry and not quite right, then there's no way you're in a fit state to be signing contracts. And this young woman in particular is like that probably 80% of her waking hours, so there'd be no [way they wouldn't see that]... Yeah you can tell. [The level of debt it leads to is] quite big. I thought hers was some sort of \$2000 type contract that she had.... She's on like a \$2400 contract that she's gotta pay out and now she's lost her phone, hasn't got a phone, and can't get it back. How did she end up on this payment [arrangement]? How did she end up here? Cos she didn't understand the repayment details, and generally she's quite good like that isn't she, when you think about it. They haven't been clear at all, because normally she maintains that sort of thing, she's on a disability pension, she can pay a little bit. **(Community organisation worker)**

(iii) Funeral funds

There was quite a significant amount of discussion relating to funeral funds, including from stakeholder organisations. One service provider stated, for instance, ‘Funeral plans are a big one’:

We have in the past [had issues] regarding funeral policies... to do with the actions of the people selling these policies on the ground and our ICAN clients have come in and complained about harassment, stalking, all sorts of things at their homes. **(Indigenous community organisation worker)**

It was noted that there have been scams relating to funeral funds where companies have passed themselves off as Aboriginal in order to attract Indigenous clientele: ‘the ones advertised in the Courier-Mail, they say they're Aboriginal but they're not,’ stated one Indigenous legal service provider.

I guess the lack of consumer protection for some Indigenous communities is something that's come up a few times, and particularly things like funeral plans and that kind of stuff, and the way that people swan into town and sign people up to these kinds of.... The idea of predatory practitioners coming in to communities has been identified in a number of areas. **(Legal practitioner)**

[They're] really bad those funeral plans. When I first saw them cruising around Mates Place, the funeral plan people, they were presenting like they were some sort of charitable organisation, that's how they kind of come across.... Yeah, like all their letterheads are sort of Indigenous, it looked like it was something [Indigenous]... **(Community organisation worker)**

They had all signed up to these life insurance things on TV and the funeral plans that are all over the TV... And when we worked through it, the amount of money that they realised they had to [pay was huge]. I've been contacted by the Red Cross recently ... and they've found a high proportion, particularly of Murri clients, have at least one or two of these funeral plans. **(Indigenous legal service staff)**

[We've also seen the] funeral plans that went through the Indigenous communities a lot getting people to sign up. They have a disclaimer on everything now that says ‘We are not an Aboriginal company. We are not government. We are not blah blah blah’, but they still use the dot art... **(Indigenous community organisation worker)**

A lot of statements were made about funds not meeting expectations or providing the expected financial benefit upon the passing of a relative. Family ended up covering funeral costs regardless of monies paid into the funds, or the money paid out was said to be not sufficient to pay for a decent funeral anyway.

They was up here a couple of years ago, getting people to fill out forms. My uncle, we lost him a couple of years [ago]. He had a lot of money in the funeral fund, but his sister had to pay for his funeral [anyway]. **(Mount Isa Men's Focus Group Participant)**

I had a solicitor ready to sue me, because I enquired about a client who was paying for twenty years [into a funeral fund], paid something like \$40,000 and their son committed suicide and they wouldn't pay out on it because he committed suicide. I said, ‘It wasn't life insurance, they paid for funeral insurance’. You know what the comment is, ‘We spoke to

some people, and we want to deter Aboriginal people from committing suicide, so therefore we don't pay out on suicide'. It makes you vomit. **(Indigenous community organisation worker)**

One issue where there are funeral funds is that it's not enough to cover a funeral. It's a \$4,000 benefit [but with] our local contractor you're looking at \$7,000 for basically what's a pauper's funeral where you get buried in the old part of the cemetery, which is not very attractive, the bottom line casket, etcetera, no flowers, no this, no that sort of thing. It's become quite apparent to me that people are taking out these funds but there's not enough to actually [cover a decent funeral]... a lot of people wouldn't realise how much it costs to get buried out here. **(Statutory Authority staff)**

[What] are you getting for your funeral? I think you're paying a lot and the funeral you get is about \$2500. I think you can probably get a better funeral from state funeral, [it] will probably give you about the same. **(Community organisation worker)**

Indigenous consumers may, again, not understand relevant contractual arrangements, including having to make regular and ongoing payments.⁷⁰

There is the Aboriginal Community Funeral Fund or something like that. I think a lot of Aboriginal people don't understand the ongoing onus on them to keep up the contributions into those funds. One of my main roles as Clerk of the Court is to receive applications for funerals assistance and do the face-to-face interview with people... There might have been a sweep coming through, maybe the company or whatever going through a community ... to sign people up on the plans, but not understanding that you've got to keep contributing to them. **(Statutory Authority staff)**

Criticisms also concerned not being able to draw benefit from funds where even a few payments were missed. Rockhampton participants spoke of feeling ripped off when after years of contributions funerals ultimately had to be paid for by families.

I know that through the Aboriginal Funeral Fund...my uncle missed three payments. He was paying for nearly seven years, six years because I helped him sign up to it. He missed three payments and he couldn't get nothing when he passed. They never paid nothing out. **(Rockhampton Women's Focus Group Participant)**

Can they legally do that? Keep that money? ...We never fought for it. We didn't know, we just took their word, 'Oh no, you missed three payments, you can't access none of that money to help bury him.' **(Rockhampton Women's Focus Group Participant)**

But there's a few funeral funds like that, like if you miss a couple of payments you don't get nothing back. **(Rockhampton Women's Focus Group Participant)**

I've only recently just had a look at the website and whatever for the Aboriginal fund again and they've got on there - miss four payments you don't get nothing back. **(Rockhampton Women's Focus Group Participant)**

⁷⁰ For a discussion on problems with funeral finds see also Vines, P (2013) 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Culturally Appropriate Wills' 16(2) *Australian Indigenous Law Review*, 23-24.

My mum, she couldn't afford that. She went off it. She paid for years and years and then just when they moved in she got a bit sicker. She couldn't afford \$200 too and so she just went off it. When she did pass away, we just paid it ourselves, but she was on it for years and years. And you couldn't access anything from it or anything. So those funeral funds, you really need to [have a close] look at them. **(Rockhampton Women's Focus Group Participant)**

A female focus group participant in Rockhampton claimed that she had paid into a fund for her kids for a long time, but that when they turned 18 years of age the fund indicated that the kids needed to set up their own fund. She claims that all of the money she had paid to date for her kids then seemed to have been lost.

And that Aboriginal funeral fund, that's a lot of people have missed a few payments and never got nothing... The money that you pay in for your children, like I started paying in for my eldest children and I said 'Well what happens to that money?', because I was paying for five kids. And now they're, one of them turned eighteen. Then you can't pay for them anymore. So what happens to the money, that part of that money that you were paying for that child? They're saying that my oldest kids, they have to make their own [fund] now. I said, 'Why can't they still be covered under me?' I was paying into that funeral fund for all of my children. As soon as they turn eighteen what happens to that amount of money that I paid for that individual child? Shouldn't that be transferred over if they want them kids to carry on that funeral fund? That part of that money I've already paid for? **(Rockhampton Women's Focus Group Participant)**

Another participant in this group then asked, 'What if the kid doesn't want [to set up a fund]? What happens to the money paid?' Another stated 'You can still have your kids on there, but you have to pay a little extra'. 'Yeah, well I was willing to do that', claims the mother. A stakeholder organisation commented on this issue too.

And so people signed up way back in the early 90's and they've been rolled over into the newer plans and they're signing up the babies, they're signing up the children under funeral plans. They're effectively telling parents, 'Sign your babies up for funeral plans', instead of putting money towards an education fund or [something else]... I think they've [played on] fear mostly in there as well... And so what happens is that by the time the children turn 18 the company comes right back and makes sure that your eighteen year old signs up under their own plan. **(Indigenous community organisation worker)**

People, in short, don't understand what they are getting into and do not always have the capacity to pay.

In Palm Island... we do the no interest loans and in our assessment processes we need to look at stuff like income statements (from Centrelink), with the consent of client. And there's a lady in Palm Island who's currently paying \$93 a fortnight to a funeral plan for her and her five children out of a single parent pension, which is an entire fifth of her pay... We had one client up in Wujal Wujal, an older lady who could only sign her name with an X. She had come to us because she didn't even know that she had signed up but there was suddenly a lot of money missing from her Centrelink payments. And she didn't know [what it was] from the Centrelink income statement because it doesn't identify it, just says it is a Centrepay deduction or something like that. And she'd signed the contract with an X, and she had no idea that she'd signed up. **(Indigenous community organisation worker)**

(iv) Motor vehicles

Similar issues arise in relation to motor vehicle sales and repairs. Again, people are being signed up to car loans where they have little capacity to make payments, where they do not understand their rights in relation to warranties and/or are being blatantly ripped off by car salesmen. 'The area on cars is a major problem', claims one stakeholder organisation.

Lots of used car salesmen selling them bombs that were not roadworthy and they'd done all sorts of shonky stuff to sell the car to them. **(Legal Aid staff)**

In Cairns there's been some contract issues with some car yards. The car yards – there's definitely those sorts of car contracts, that sort of stuff. Extended warranties that come along with them [are a problem]. Somebody's car's broken down and they've tried to use the extended warranty and they can't because of some sort of thing. It could be that they tried to take it to a mechanic and get it fixed somewhere else and it wasn't that preferred mechanic or that sort of thing... Outside the Cape, there are a certain amount of kilometres you can probably take it out. Some of them take it up to Kowanyama and then it's out of warranty, the statutory warranty and stuff. [And] not understanding the written contract itself, [not knowing that they'd void a warranty, for instance]. **(Indigenous community organisation worker)**

(v) Other contracts

Yeah, gym memberships! I've had it happen to me twice. Like you sign for a six-month contract and then it extends after, you know, but you've only signed for six months, and then you find out you owe them a \$1000 because your payment didn't stop, you know what I mean. That's a dodgy contract. I didn't know how to go about that. I asked them, 'I thought my contract was for six months', and they said, 'It continues'. 'You didn't tell me that'. They are things they leave in the fine print. I thought I signed a contract for six months.

(Rockhampton Men's Focus Group Participant)

Scams/Contractual Issues: Link with Credit and Debt

As noted, problems that arise for Indigenous people as consumers are often very closely linked to other civil and family law issues, including credit and debt. This increases the complexity of need. Book up and, to a lesser extent, payday lending, as well as rent-to-buy schemes, illustrate this link (see also Section 4.5: Credit/Debt).

(i) Book up and pay day lending

As part of their interactions with traders, Indigenous consumers may have little option but to use book up or payday lending due to poverty and their difficulty in accessing alternative forms of credit.⁷¹ There was little criticism raised by Indigenous focus group participants in relation to these forms of credit, and it was recognised by some stakeholders that Indigenous people like or need to be able to access them. However, stakeholders also felt that they were potentially problematic for Indigenous people, including because of the sometimes 'massive' interest being charged.

⁷¹ See discussion, McDonnell S (2003), *Money Talks: Overcoming the financial exclusion problems faced by Indigenous Australians*, paper for Australian Social Policy Conference 2003, UNSW.

There's a shop over here where they do that, keep your ATM card. Yeah, book-up. And people love that but I s'pose it's the only way to get your [goods]. Well, it's also based on those reciprocal, it's just that sharing, giving money back, not realising that it might have interest [payable on] it. Culturally it fits. The interest doesn't, but the ongoing process of the money going around works really well. All of the [clients] in here, they're probably lucky if their pay lasts a day because they're sharing it amongst all of them. So one's shouting one day, one's shouting the next... The core group that come here know whose payday is on what day and they're all quite happy to share it... People are quite tolerant about, 'Oh, I did get paid but I can't pay you back the 50 bucks, because I paid that person, I'll pay it back the following week'. [Book up is] like... we're on the last day [of having money], so you leave [your card] down there at Lucky Supermarket and that sorts out [that]... I think between people it's very different [though]. Once you've got someone in there making interest money off it, it becomes totally [dodgy]. [They're charging] masses of interest. **(Community organisation worker)**

Book up is a tricky thing. The community benefit from it and if they cut it, well then some are going to [lose out]. So it's really up to the community. [Following contact with the legal service and ASIC], the storekeeper realised she was doing the wrong thing. [The people were leaving pin numbers and their cards]. They were being charged interest on credit... Ultimately it was up to the community if they wanted ASIC to pursue the shop or to try and self manage [the issue]. Book up is the surface of the problems. There's a lot of underlying issues underneath that. **(Indigenous legal service staff)**

Payday lenders don't always doing the right thing by their customers, including in relation to the charging of interest. 'A lot of the changes that have come through [in legislation], it's not necessarily having a positive impact in terms of payday lenders', claims a community-based organisation. And again, borrowers may not be fully aware of their legal rights in this area.

Lots of our families who come through our microfinance programs are signed up to all sorts of contracts. They walk into cash converters and payday lenders and sign contracts.... People willingly walk into those places, but I don't think there's any explanation of the fine print. People would struggle to make sense of whether they're being charged 98% interest or 48% interest... I know there's been some changes made with the consumer credit code and responsible lending and caps on interest but I don't know that its filtered down at the local level. I think some people may be aware of their rights and responsibilities in consumer law, but I don't know that they feel that they have a choice sometimes either. They may be aware that they're breaching some code, but they will still enter into that contract anyway. They often are looking for a quick fix to pay their rent, to pay their electricity or put food on their table. We're talking about cash converters and pay day lenders. **(Community organisation worker)**

We've had clients who've had ... all those payday loan type things. We just find it does tend to target people with obvious sorts of dual diagnosis mental health and drug and alcohol problems. **(Community organisation worker)**⁷²

⁷² See First Nations Foundation (2011) *Enhancing Indigenous Financial Capability Programs*, for Indigenous Financial Services Network, http://www.fnf.org.au/uploads/6/3/1/1/6311851/ra_indig_financial_capability_web_1.pdf.

(ii) Rent-to-buy Schemes

Another very significant problem area is identified as that of 'rent-to-buy' schemes, including in relation to whitegoods. These schemes are in a sense serving as a form of credit. Indigenous consumers may not have financial capacity to purchase goods up front, and so will enter into this type of contractual arrangement - at times to their significant detriment.

[Here you] get people whose education levels aren't that good - they can't read or they can't read well. Maybe people don't want to hear it, like when you go, 'No Radio Rentals isn't that great' they don't really take it on board, because they don't want to hear it. They still want their fridge... So I think there [should be] a bit of education around that. **(Indigenous legal service staff)**

I worry that some of our vulnerable young people that attend here have been subject to repayment schemes. And I know... it used to happen with those silly Mr Radio, Mr Rentals. **(Community organisation worker)**

All of them get in trouble there with the furniture because as soon as they get a house they just want everything and can't wait... **(Community organisation worker)**

There is some suggestion that Indigenous communities are vulnerable to or deliberately targeted by whitegoods rent-to-buy schemes. 'There's one rental company here in Cairns which is really shoddy. They target a lot of Aboriginal people up at Kuranda and different places', states one Indigenous legal service provider. Even where there is no direct targeting, there is a level of acceptance within communities of such schemes but without sufficient awareness of their ramifications. One problem in the context of rent-to-buy schemes is that consumers may not understand the 'real' cost associated with hire/purchase of goods through such arrangements. Low levels of consumer and financial literacy apparently thus cause a myriad of problems in this area.

In their community, the word of mouth stuff about how great Mr Rental is, is quite high. So it's not based on targeted advertising... And even when you explain to them, 'You buy this for this and can you see all those payments, they add up to \$2500?' And the rent to buy [scheme]... is ridiculous, like you're paying \$2500 for an \$800 thing. **(Community organisation worker)**

[If you miss a payment] they'll go and take the goods back or whatever. [And] you know how the goods have a certain life for renting or for use? Well, they do it well beyond that. And sometimes people actually believe that they're renting them to buy them but they're not and they're not always given paperwork up front or the paperwork is just too full on for them to read. It's just ridiculous. **(Indigenous legal service staff)**

A particular issue concerned the ongoing deductions being made by these traders well beyond appropriate timeframes and/or where the goods are not needed anymore or are stolen. These deductions often are being made directly through Centrelink benefits, with consumers generally

unaware that this is happening. Concerns relating to Centrepay's deductions from Centrelink benefits in this context are further discussed in Section 4.7: Social Security.⁷³

A woman bought... a sound system and a fridge and washing machine back in 2004 under a rental agreement.... She shifted a couple of times and then they got stolen. Forgot about it. She's been on Centrelink the whole time, and they've been deducting money from her Centrelink since 2002. So it comes to about \$22,000, \$23,000, \$24,000, something like that, they've taken out. **(Indigenous legal service staff)**

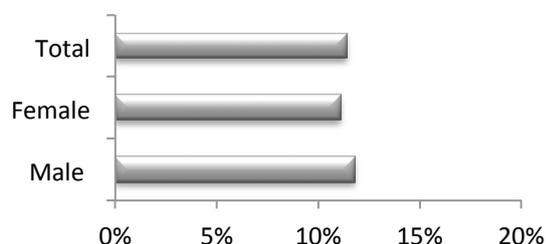
If they get furniture from Radio Rentals and things like that, and then they end up losing their house, so they don't need the furniture anymore and they've gotta continue paying it off, 'cause they might have a 24 month contract or something like that. That can be a bit of a problem. **(Community organisation worker)**

There's some fella around that rents out furniture to the Murris and they end up in trouble with that all the time... I had one girl come in from Woorabinda, took her to Centrelink. We ended up getting \$3,500 back that he just kept taking out of her payment even when she'd finished paying. She couldn't understand where all the money was going. So I took her over to Centrelink. It took me a couple of days to work on it with her and that's where it was going. He just kept taking the payments out. [It was] for a house full of furniture not for one or two items. They might go to him wanting one or two items, but by the time they finish talking to the guy they could end up with a house full of furniture, which they can't afford.... And she couldn't understand because she bought a flat screen TV and it got smashed and he's like 'No worries. I'll replace it.' She thought for free... **(Community organisation worker)**

Goods/Services Paid For

Figure 4.28 shows that **11.4%** of participants reported a problem with not getting goods or services they had paid for. Women and men reported such problems at roughly the same rate (11.8% of men and 11.1% of women) (See also **Table 4.32 Appendix C**).

Table 4.28 Number and Percentage of Focus Group Participants Identifying Other Problem Where Participants Didn't Get What They Paid For



One issue that came up in this area was payment for training on a number of Indigenous communities, apparently not provided.

But we recently had something going on in Yarrabah and Palm Island as well where a training organisation had been signing people up via Centrepay for training that they'd never received,

⁷³ See Buduls (2013) *Report of the Independent Review of Centrepay, Report to the Secretary of the Department of Human Services, Australian Government*, <http://www.humanservices.gov.au/spw/corporate/government-initiatives/centrepay-review/resources/report-of-the-independent-review-of-centrepay.pdf>

for payment for training. So there was a 70 year old lady who'd been signed up to computer training by Centrepay and she'd paid, I think, three payments of \$60 a fortnight out of her aged pension. And she... didn't know what it was or what she was paying for. And so I think, in that instance, Centrelink referred it to our financial counsellors and money management workers in Yarrabah, and they were able to find out that it was actually a training organisation.... Local people are hired to sign people up to local training, but they didn't end up getting the training... So I think that one's still in action because it's actually happening on Palm Island and Yarrabah. [It's not clear whether it is a scam or whether training is to be provided.] Well at this stage there's been a few complaints from Palm Island that they haven't received training either, so... it's still being looked at. (**Indigenous community organisation worker**)

Another issues relates to the poor access of remote communities to affordable, quality produce, which one community organisation sees as discriminatory.⁷⁴

I mean Fresh Produce is a high-end elite product... I paid \$10 for a lettuce. And last week ... what came in was all rotten, the lettuce and tomatoes were all rotten... But you don't have a choice. There were only three packets left... One head of broccoli and one head of cauli the size of our palm, is 10 bucks... I would say that this is an act of discrimination. The issues that I've raised with government are that it's a government-controlled store and that the government puts billions into mental health [and] chronic disease. They certainly don't put enough into the community stores that they own and manage. And they don't actually take advice from locals who may want gluten free flatbreads and things like that. They don't do that because it's all ordered from Brisbane. So it's all set up and the store manager can't change what they decide... There are gaps in food available for growing children. So it's quite a predicament... I go there the day after delivery... I would love to go with a shopping trolley, but I can barely fill a plastic basket, because it's all gone... You can't buy a cucumber because it's already rotting on the ends. And zucchini is already soft and... the grapes are all brown and... capsicums are already shrivelling like my skin. It's a sad story, that's what. It's a tragic story. So it's quite a discriminatory story. (**Community organisation worker**)

Utilities and the cost of power and gas also came up for participants.

Even power is going up. People are getting it turned off because they can't afford to pay it. And that's wrong. They're not thinking about the poor people. (**Rockhampton Women's Focus Group Participant**)

4.6.1 Responses to consumer issues

Only 4 individuals (1 woman and 3 men) indicated they had sought legal help or assistance for their consumer-related problem. Advice was sought from ATSILS, a solicitor (unspecified), a healing centre, and a local alcohol and other drugs service provider. Three individuals indicated that the problem remained unresolved.

⁷⁴ See discussion in Aboriginal and Torres Strait Islander Affairs Committee (Cth) (2009) *Everybody's Business: Remote Aboriginal and Torres Strait Community Stores*, House of Representatives, Commonwealth, Canberra;
<http://www.aph.gov.au/binaries/house/committee/atsia/communitystores/report/everybody's%20business%20report.pdf>

An important first point is that Indigenous people are not likely to have a high level of awareness of consumer law. 'There's lots of complexity to it, even for myself. And I've got some knowledge'... It could be very different if you were aware', claims one community-based advocacy agency.

Consumer law is also one area where legal *and* non-legal service providers, including government agencies such as the Department of Fair Trading (Qld), might take on complaints and provide advocacy and support. However, the complaints process involved might prove to be a significant barrier for Indigenous people.

ICAN, yeah they're very good, yeah they're excellent. So we might contact ICAN about that, but... we have some good relationships with people in ATSILS, we might contact them [to ask what] should we do in this situation. [We] might run something past lawyers we have contact with. **(Community organisation worker)**

We haven't had to take things to the Fair Trading office (Department of Fair Trading) and stuff like that... That's quite a long process. So when I have looked at it, it sort of puts people off, especially a lot of our clients. They can't be bothered doing things that much. We had one recently with some seafood that was coming down from the Torres Strait and when it came down it was all defrosted. The fridge broke down. So that would have been a Fair Trading one, and I think in the end we got compensation off the company. Generally our clients wouldn't want to push things too far, they don't want to create too much of a [big deal]. **(Community organisation worker)**

Barriers that Indigenous people from remote communities face in tackling consumer problems include lack of access to services, legal or otherwise. The following account of a woman living in the remote community of Kowanyama and involved in a consumer dispute relating to motor vehicle repairs suggests that support and/or legal advice has an important part to play in resolving such disputes.

A lady had taken her car into a car yard to be fixed. And [the yard] was quite well known in the Kowanyama community, and I don't think that car dealer's around anymore. She ended up getting a \$2500 bill and the car was still broken, it still wasn't fixed. So she brought it to another car yard, and she got taken to small claims for this \$2500. So we got Cairns Community Legal Centre to help, because she wouldn't have defended herself and we can't write legal documents of that nature...so that was great, and she was gonna participate in the mediation via phone-link-up from Kowanyama but we couldn't be in on it. And what ended up happening was instead of the person who had filed the claim against her he was suddenly sick and his wife who does all the administration for that car yard came in. The [mediation] ended so terribly... Because of that gratuitous concurrence thing, she was forced to pay ... all of her CDEP, which was all of her \$400 a fortnight CDEP. So we had to go back to the Cairns Community Legal Centre on that matter, but that's, to me, a huge failure of a system that's set up supposedly to help people. You are not allowed to bring somebody in to that mediation, but she completely got railroaded. We gave her dot points on a piece of paper and said these are some things [to remember], got it approved by the lawyer and everything, these are some key issues here. Cause there was something in the bill from the car yard that was like \$1500 for paint and panel, and her car had never been damaged and it wasn't painted. So she wouldn't have had any panel work, no paint, no nothing. So why would there be \$1500 charge in there? It was just mind blowing... I felt really sorry for her. She was very far away so it was hard for us to be able to always assist because it was always by phone. And the legal centre, they did what they could for her in preparing the appropriate legal documents, but at

that stage of the mediation, I thought it was very, very distressing for that lady. (**Indigenous community organisation worker**)

A further crucial 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 reactive responses to each individual dispute, there should be more resources for primary prevention, including through greater policing of unconscionable behaviour by traders and lenders. The onus should not be on vulnerable consumers, including Indigenous consumers, to always be the ones to come forward with and to pursue a complaint it is suggested.

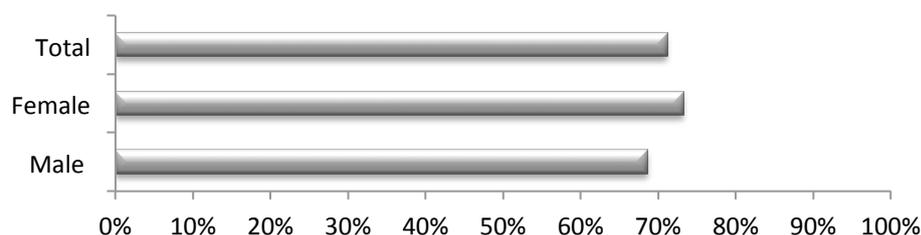
There's an early intervention approach and then there's [another approach]... You come in after the fact with the support of financial counsellors and solicitors. But I think if you were going to really try and stem the flow, then I would see that it would be a greater investment to actually try and really tackle the likes of your door to door salespeople and payday lenders in the first instance and hold them accountable. People have such a need and little choice because they're excluded from all these other options for lots of various reasons, mainly their income... They can't go and get a bank loan and they can't... When people don't have a choice they're always going to go that way and they're less likely to actually pursue their own consumer rights when they still have a need for that person the next week. We've had that before when it's been really blatant... They've issued loans where there's no capacity to repay and people just say I don't want to go there because when it all hits the fan they're the people I can turn to. So we need to create other safer options but in the meantime if we're looking to protect the consumer rights of vulnerable people in the community then just providing people with enough information about their rights I don't know if it's really going to make much of a difference... The law needs to be tighter around irresponsible lending. (**Community organisation worker**)

4.7 SOCIAL SECURITY AND CENTRELINK

Problems relating to Centrelink payments emerged as a priority legal issue in Queensland. 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.

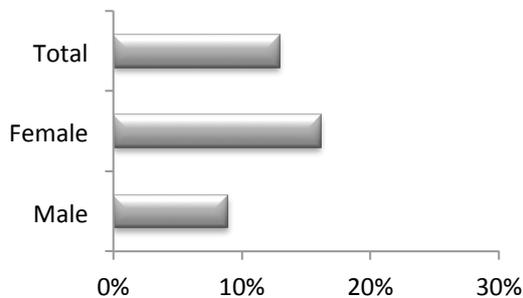
Figure 4.29 shows that overall, **71.1%** of all participants identified being in receipt of a Centrelink allowance, with the proportion of Indigenous women receiving benefits slightly higher than Indigenous men (73.2% of women compared with 68.6% of men) (see **Table 4.35 Appendix C**).

Figure 4.29 Participants Identifying Receipt of Centrelink Allowance



Of the 108 focus group participants who were in receipt of a Centrelink allowance, 101 responded to the question as to whether their income was subject to Income Management. Nine females and four males indicated their payments were subject to income management. **Figure 4.30** shows that overall, **12.9%** of all participants in receipt of benefits were subject to Income Management. Although the numbers were small, the proportion of Indigenous women subject to Income Management was 7.2 percentage points higher than that of Indigenous men (16.1% of women compared with 8.9% of men) (see **Table 4.36 Appendix C**).

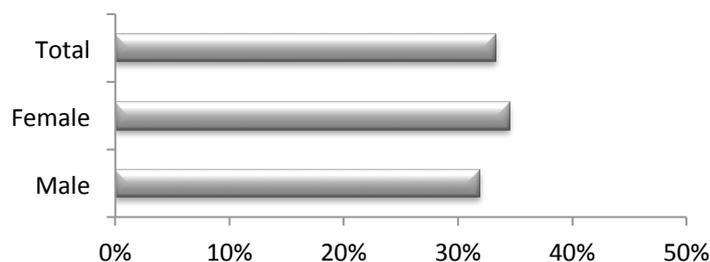
Figure 4.30 Participants Identifying Centrelink Payments Being Subject to Income Management



5.7.1 Extent and Nature of Centrelink and Social Security-Related Issues

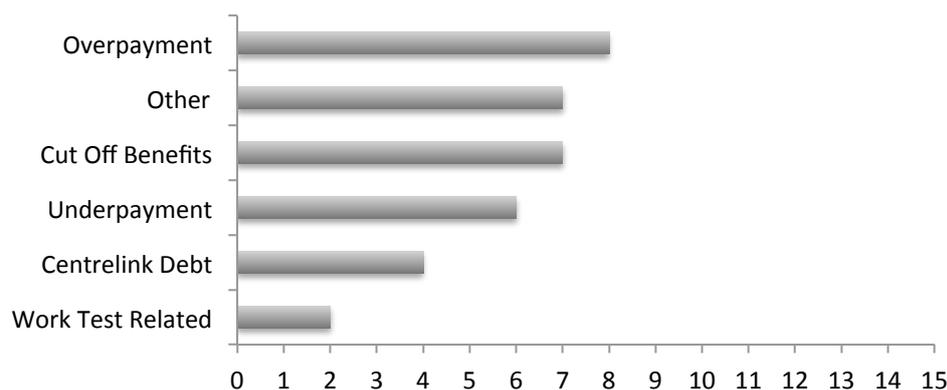
Figure 4.31 shows participant responses to the question asking whether they had experienced a dispute or problem in relation to Centrelink. This graph shows that **33.3%** of all participants receiving Centrelink payments identified having experienced a dispute or problem in this area, with a slightly higher proportion of Indigenous women experiencing problems in this area (34.5% of women compared with 31.9% of men) (see **Table 4.37 Appendix C**).

Figure 4.31 Participants Identifying a Problem With Centrelink



Thirty-two of the 35 individuals who had identified an issue with Centrelink responded to the question asking them to describe the problem. They identified a total of 34 separate issues. **Figure 4.32** 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 overpayments (8), being cut off benefits (7) and underpayments (6). The ‘Other’ category covered a range of single issues (see **Table 4.39 Appendix C**).

Figure 4.32 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. As an Indigenous female focus group participant in Pormpuraaw noted, ‘There’s one phone for everyone in the community [to contact Centrelink] and one little tiny area and it’s only open half a day.’ Another participant in the same group observed that, ‘It’s because its so automated, not people-friendly like it used to be... the wait on the phone is sometimes two or three hours’. Men in this community also identified similar problems.

Well there is only phone in the community for phoning Centrelink. You get 20 odd people a day and Centrelink take ages to answer. There are no computers to get online and that’s a big problem. Not many people have got computers and there is only one at CDEP and the library which is not always open. Your money gets cut down or you get cut off. **(Pormpuraaw Men’s Focus Group)**

You get sick waiting for the phone. Sometime Centrelink is not open. You might miss your interview because other people on the phone. You sit on the phone for an hour. **(Pormpuraaw Men’s Focus Group)**

A stakeholder noted that effects of remoteness and cultural difference were not considered.

There’s that whole lack of understanding about the geographical area, the lack of resources, infrastructure in the community to meet the needs... Centrelink closes at 1. They’ve had one phone. It’s supposed to close at 1, it normally closes at 12, and it often opens late too... It’s really random.

It’s now an online service. The difficulty there is that people aren’t computer literate. People are used to getting print mail... Now that’s out, so you’ve just got an online or telephone service, they get their PINs and all of that. That’s wonderful, if there was the infrastructure available, if they had the budget to buy that prepaid phone to use the telephone to get online to do their Centrelink. ...If there was training to get online and use the computer...

It’s alright to make a more streamlined menu to save money around human investment, but we’re in an outback community where numeracy and literacy is low, where English could be a fourth/ fifth language, where languages are up to eighteen per clan, and the infrastructure isn’t available. There are not enough phones to service [the] population... and computers for people to get online don’t exist, the training to do all that doesn’t exist. To me, that’s discrimination as

well. If you started to really get into the discrimination side of it, it does sit in the discrimination. **(Community organisation worker)**

Another focus group participant on Thursday Island noted as follows.

The services have changed, there are a couple of phones, you just have to go and ring...when there are workers there. I was there the other day and I waited for an hour, I didn't do the thing on the computer because I can't see properly so I had to do it on the phone. I just sat with that music and I was just sitting there but they made me a cup of tea. I was waiting for them to answer. That call was picked up in Darwin. **(Thursday Island Women's Focus Group Participant)**

A focus group participant in Rockhampton stated:

They have no telephone box at the community for them to ring Centrelink so they've still gotta go into town and ring Centrelink anyhow, unless they go to the hospital but as you said, a few of the Government agencies that have their offices on the community um they won't let them um use the phone because you're on the phone for a long time waiting for Centrelink. Some of them can't read and write you know. So, it's really a big issue out in the remote communities. **(Rockhampton Women's Focus Group Participant)**

The lack of confidentiality was also seen as a problem.

The other thing with that service is that there is no confidentiality...like you are talking with them and then there is another one sitting next to you. There are no offices, just cubicles and desks. **(Thursday Island Women's Focus Group Participant)**

The issue of customer service was also raised.

Well one of my things that I'd said to this lady was that it would have been nice for someone to just come over and say, look I'm sorry it's been a bit of a wait, but we've only got two people that look after this... They must make appointments for fifty people and so they're all going to be late. But the thing is they don't just out of good customer service go over and say you know, 'There is this wait. Sorry to keep you waiting but you know this is how it is.' It comes back to often the person behind the counter and just how they deliver their service and their assumptions. Because that day, we'd come from a funeral, so we did have things to do. She's lucky I didn't punch her [laughs!]. **(Rockhampton Women's Focus Group Participant)**

I went in with my son. It was taking forever so I went in to see what was happening and the person behind the counter was just very rude. He'd been waiting for two hours. Well, then he got up and they go through the whole process and then you have to watch a 10-minute DVD type thing, which tells them exactly the same thing that they [said]. So, he was getting a little impatient and he said, 'Do I have to watch this you know because you just told me everything', and she said, 'Oh well you've got nothing better to do so yeah you do have to watch it and if you don't watch it you're not going to get your [basics] card'. She said, 'It's only ten minutes'. And I said, 'Well he's actually been here for two hours', waited with you patiently for the last twenty-five minutes and then he's got to watch a ten minute DVD, which is all good. That's ok because I agree that he's got to be patient too, but it's just the way it all comes across you know like... I'm an old social security Centrelink employee and I was right

there so, no, you just don't do that. You just don't say those things to people and I was actually going to do a complaint type thing. Anyway, but see the lucky thing is see if there's someone like myself or any of these other ladies with these young people, that's fine, but when they try to go in there themselves. **(Rockhampton Women's Focus Group Participant)**

The amount of time 'wasted' with Centrelink was often commented upon.

They feel like they can waste your time. Like I had to apply for Centrelink and it took me over two months, just to get an interview... And, I didn't even get back pay and I had no job. I tried to get in there and get employment straight away after I was fired from my job. And, it took me two months and I was eight weeks without pay and they didn't back pay me... I asked them about it and they just said, 'no'. They just beat around the bush and talk all this bullshit to you. **(Rockhampton Men's Focus Group Participant)**

Access to a competent, Indigenous specific 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.

They've got the Aboriginal worker there. She's good. **(Rockhampton Men's Focus Group Participant)**

Others expressed a preference to see Aboriginal workers.

Yeah, there was a situation when I was working but I was only casual like I was, but not fulltime so they were still paying me... which I always do every fortnight. But because I didn't put in that one pay claim in I had to pay \$4,000. They want to make me suffer... I asked for an Aboriginal worker, but she wasn't there, and I said, 'I want you to text her'. **(Brisbane Women's Focus Group Participant)**

Although we also note that an Indigenous worker is not always seen as helpful. 'Centrelink are good. We've got an Indigenous worker, but she always sour or rude. A lot of the other ladies in the office run around and do things for you' **(Charleville Men's Focus Group Participant)**.

Income Management

Income Management was introduced into the NT during 2007. It was seen by the Commonwealth Government as a way of controlling how welfare recipients spend their money (and was directed towards preventing child abuse and neglect, in part). The income management scheme included introduction of the *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth)*, which provided for the quarantining of a proportion of government allowances payable to welfare recipients initially located on 73 Indigenous communities. The quarantined portion of benefits could only be expended upon priority items such as electricity bills, food and health. From 2008, recipients were able to use a Basics Card (similar to an EFTPOS card, but without capacity to make cash withdrawals) to spend part of this quarantined portion at specified stores.⁷⁵

Income management exists outside of the NT in declared areas in various parts of 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

⁷⁵ For further discussion, see for instance Sutton (2008); Commonwealth Ombudsman (2012); and Buckmaster, Ey & Klapdor (2012).

of a trial in Victoria, South Australia, Queensland and NSW. The five trial sites include Logan and Rockhampton in Queensland. Income management in the trial sites applies to the following groups of people:

- people referred for income management by Victorian child protection practitioners where they assess that a child is at risk of neglect. The child protection practitioner will discuss participation in income management with the client as part of the case plan, and obtain their informed consent prior to making a referral;
- those assessed by Centrelink social workers as being vulnerable to financial crisis; or
- people who volunteer for income management.

Voluntary Centrelink-referred individuals will have 50 per cent of their income support and family assistance payments income managed to spend on essential items. People referred by child protection practitioners will have up to 70 per cent of their income support and family assistance payments income managed (Department of Social Services 2012).

Income management also applies in Queensland in the predominantly Indigenous communities of Mossman Gorge, Aurukun, Coen and Hopevale. Individuals are referred for income management by the Family Responsibilities Commission (FRC).⁷⁶ Income management had only recently been introduced in Logan and Rockhampton at the time of stakeholder interviews. One stakeholder organisation (ATSLIS Brisbane) noted the increased demand for assistance.

Stakeholders and focus group participants expected problems, including legal problems, to increase once income management became more entrenched. 'People are already calling us to ring us to see what we'll be doing community legal education-wise... It does involve education, the children in the school as well. So it's got State and Federal issues' ATSLIS Brisbane. 'I just reckon it's going to make Rocky a real bad place. I reckon the crime rate will skyrocket. That's what, that's what will happen' **(Rockhampton Men's Focus Group Participant)**.

Restrictions on access to money were noted by focus group participants. One woman spoke of her son's attempt to buy a birthday present.

Well, this might seem petty but it was actually his girlfriend's birthday and he wanted to buy her something. The place he was going to go and get this thing wasn't on the list, so he couldn't use the card there... So I just think it's good that they don't have the alcohol and all that sort of stuff but maybe they just need to think. That was something that for him you know. He's like you know, 'I counted on this money, but I can't use this card so I'm up the creek'. **(Rockhampton Women's Focus Group Participant)**

There was concern about income management in remote communities. One focus group participant noted:

It certainly doesn't work in the communities... Woolies in the nearest town, you're looking at 200, 300kms but they don't have the money to pay someone to run them in to do the shopping and then run them back out. Or if they get a card that's been expired accidentally then they go without for a whole fortnight until they get another one re-issued. **(Rockhampton Women's Focus Group Participant)**

⁷⁶ See Family Responsibilities Commission <http://www.frcq.org.au/>

Debts, Overpayments, Underpayments and Being Cut Off Benefits

Issues around communication between Centrelink and welfare recipients referred to above may lead to some of the legal issues that arise when individuals incur debts without understanding the debt in question and how it arose. A male focus group participant observed that, 'Overpayment. I'm paying them back. They just told I was paid \$400 more than I should be. It was like the same pay every time so I don't know where they went wrong or I went wrong' (**Cairns Women's Focus Group Participant**)

Some of the issues simply suggest poor administration, with sometimes serious consequences for social security recipients. Focus group participants noted such errors.

When [named person] was working, she told Centrelink. They didn't adjust her money. Then down the track they said 'you didn't tell us' and they took all this money from her. But she did tell them... maybe if there'd been some legal advice [she might have challenged it].... She ended up giving up work because it was too hard. (**Pormpuraaw Women's Focus Group**)

Stakeholder organisations identified a number of issues leading to debt, including people having casual work for short periods and failing to contact Centrelink about it, or issues arising when family members come to stay for a period of time, or children are removed or leave a family member's care.

That comes around by people not fully understanding what their obligations are in terms of receiving a Centrelink benefit and working on the side... because Centrelink is not a lucrative sort of way to get money so people were doing other things like fishing and other sort of work that you can get up on the island and then when your doing your taxes sort of not realising the implications. (**Indigenous legal service staff**)

[Overpayment] - that's probably the main legal issue actually, that people don't know that they have to [notify] Centrelink if the kids leave their care or something like that. So, the kids might have been taken by the Department and then sometime down the track you find out they're still getting Centrelink benefits. They don't realise the implications of that. (**Indigenous legal service staff**)

Being cut off benefits can have particularly dire consequences in remote communities. 'When you miss out on that money you cannot go anywhere else. There is no other agency for emergency relief. The only other emergency relief is from [care agency named]. [They provide] food, food vouchers...but not in the right sense of giving the money' (**Thursday Island Women's Focus Group Participant**).

The change from parenting payments to the Newstart allowance for single parents with children over the age of seven was also seen to have the potential to create debt, particularly for grandparents.

A lot of our elders care for the children and they unfortunately will be affected by some of those changes to Centrelink with children obtaining age and then you have to go out and seek work. They haven't worked any of their lives. Some of them haven't even been to a high school or English is a second language, so it's going to affect them as well. (**Indigenous legal service staff**)

Concern was expressed about family allowances being classed as income by Qld Housing. A focus group participant stated:

And they [Qld Housing] even included the family allowance as income. I don't know how can the Housing Commission class family income as any income. It's for those children and them children only. Queensland Housing charges you also on your family allowances, what you have for your children who you have in your care. Should be only based on my income. But nup... So that's how my rent has tripled. **(Rockhampton Women's Focus Group Participant)**

Underpayment of entitlements was also an issue raised by stakeholders. Underpayment may be related to situations of domestic violence.

It's often DV-related. Where people are often not getting their full entitlements is around the family tax benefit. You need to have lodged your paperwork with child support. There's a whole intersection between child support and the family tax benefit. There's reluctance by some women obviously to actually follow that path and pursue child support. They may not know that they can circumvent that by going to a social worker and get an exemption because of the DV. So it's about their awareness of their rights. Centrelink relies on the mother to seek child support but if they are in fear, they are willing to forgo income to not have to take that action. **(Community organisation worker)**

*Centrepay*⁷⁷

The operation of Centrepay was raised as an issue in both focus groups and by stakeholders, and in relation to both consumer and credit and debt-related issues *and* to Centrelink-related problems (see also Section 4.6: Consumer). At a broader level, there was considerable disquiet among stakeholders concerning the failure of Centrelink to meet its own objectives. The objective of the Centrepay scheme as stated in Section 3 of the *Centrepay Policy* document is 'to enhance the wellbeing of its Customers by improving their social capacity and encouraging their movements towards financial self management'⁷⁸. The Centrepay Scheme achieves this through, *inter alia*, 'providing Customers with a means to budget and plan for their household and living expenses'.⁷⁹

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.⁸⁰

Stakeholders noted that the purposes for which Centrepay were established are important, but that they do not appear to be adhered to.

You are allowing a trade of dodgy people to access [Indigenous people] and create havoc. And the Centrepay system is an engine for that... I don't even think they've even looked at the actual policy under the Centrepay, which is on their website. If they did that, then you wouldn't have a problem in telling the government, 'Well, you're actually diverting well away from what Centrepay was all about'. **(Indigenous community organisation worker)**

⁷⁷ See Buduls (2013).

⁷⁸ Department of Human Services, no date: 3.

⁷⁹ Ibid.

⁸⁰ Ibid.

Stakeholders provided examples of the exploitation of Indigenous people through Centrepay.

We had an example that came through Yarrabah, about a guy who was registered as a landlord with Centrepay for collecting rent, but was giving out loans to people and collecting them through Centrepay... Centrepay's response is, 'Yes, but you told us and we stopped him'. I said, 'Look, you stopped him, but he got \$180,000 off people in a very short period of time. And the only reason why you stopped him is because of us'. (**Indigenous community organisation worker**)

Another issue is that Centrepay is seen as a 'conveyor belt'.

These hire-purchase companies people have gone through Centrelink. Centrelink is just like a conveying belt, pushing through all these payments and payments and not viewing what people are actually – if they've got three or four debts and they're not viewing it. (**Indigenous legal service staff**)

The criterion of Centrepay relating to essential services appears to be widely abused.

Every day we see the detriment, we deal with the detriment of things like the household goods rental companies, where the Centrepay system is used. It's always used because they're considered essential household items, but really that's maybe fridges and washing machines and beds, but you can also buy all the other things and so on. So those things are seen as essential household items and so they won't be removed from the Centrepay system.

They give you an outline of what they accept as essential [in their policy guidelines], and they give you a category. But any type of trader can access Centrepay as an essential because they come under headings. So this thing about, 'We only do the essential part of expenditure for Centrelink participants,' is a whole lot of crap. Anyone, any business person can access Centrepay if they had the nous to look at where they can come in under [the essential category]. (**Indigenous community organisation worker**)

Changes to Centrelink payments for single parents moving to the Newstart allowance also created problems in relation to Centrepay deductions.

The changes to the children turning six and then parents had to go onto Newstart, so they lost the single parenting pension and there was issues there with Centrepay that bills would still be coming out through Centrepay even though they weren't getting quite the [same] Centrelink benefit. (**Indigenous legal service staff**)

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. One stakeholder recommended that at least 40% of a Centrelink payment be quarantined from Centrepay.

Activity/ Participation Requirements

A common complaint among focus group participants and stakeholders was associated with meeting appointments and satisfying activity requirements relating to work and training. 'If you miss an appointment you're in big trouble. Appointments are the worst' (**Mount Isa Men's Focus Group Participant**). 'Centrelink is sending us letters saying we never attend interviews. There is a breakdown in communication', observed a male participant in Pormpuraaw.

An organisation working with vulnerable youth, noted that:

Social security, and the pensions and allowances stuff, I think that that'll be emergent because of the changes in participation, the changes in participation requirements and activity requirements has meant that there will be a lot more people breached and unable to be on payments... what we'll end up with is a whole lot of people without capacity to engage in the forms and appointments and twenty hours compliance, who drop out. (**Community organisation worker**)

These problems can be particularly exacerbated for Indigenous people who are homeless and/or have mental illness or substance abuse problems. 'Especially the homelessness, the transient people don't have clocks, and get up at certain times, and know what time it is, do you know what I mean?', states a community-based organisation. Another organisation working with homeless Indigenous people noted, that 'Their mail might be sent to the [hostel], sometimes the letters arrive late, so then they're cancelled off Centrelink cos a letter has arrived late or something and they've missed an appointment, so then they've got cancelled. So that's very difficult for our clients'.

For those that do satisfy the activity requirements there is often a sense of purposelessness.

There is no incentive. You do a three months course. There is nothing at the end of it. There is no job at the end of it. So why do these things? We do courses, and there is no money. We are just doing that course. We wait around and then there is another course coming on and we got to do that course. By jingo, they want us to do every course in the land. (**Pormpuraaw Women's Focus Group**)

4.7.2 Centrelink and legal advice

Only two of the 35 individuals who had identified a problem with Centrelink also indicated they sought legal assistance or advice (one male and one female). Twenty-nine individuals responded to the question of how they resolved the problem with Centrelink. The majority (15) said that they talked to Centrelink themselves, a couple of whom specifically mentioned speaking to the Aboriginal liaison worker at Centrelink. Four individuals said the problem was unresolved.

Those individuals who attempted to deal with the situation themselves appeared to have the least satisfactory outcomes. One male focus group participant in Charleville noted, 'I've got a Centrelink debt. The dispute has been going since October 2010. I haven't thought that far ahead of going to legal aid.' Another focus group participant stated the following.

A couple of years ago I got an overpayment letter telling me that I was overpaid from like two years before or something in regards to estimated income and tax and all that sort of stuff. But it took that long to tell me or send me a letter to tell me it was overpaid, but I mean you can appeal against all of that. [Facilitator: and did you?] I did, but it didn't make any difference at the time. [Facilitator: did you do it yourself or did you get assistance with the appeal?] Oh, I did it myself. I probably could have got someone to help me but yeah. (**Rockhampton Women's Focus Group Participant**)

One of the focus group participants who did use legal assistance related the following story.

I had an incident, I used to live in Cooktown and in Cooktown you get remote area allowance, and for two years they were paying that and then all of a sudden I got a letter saying I owed \$3000 'cause I didn't let them know or something. And, I said, no, I lets you know because I had letters. I'm one of those people, I keep everything... And, at the time I couldn't find that

letter, so I had to pay the \$3000 back. And they said, your money will be ceased, your family payments will be ceased until your money gets paid back. I said, that's fine. We were alright. We lived in the bush so it didn't worry us, so it finally got paid back and then about a week after, I found that letter, and I rang up Centrelink and I said, 'I don't wanna talk to you, I want to talk to management, a big boss', I said 'I want to talk to him now'. So, I spoke to him and I showed him the letter, and they finally found that letter through their own system apparently. And I said, before Friday, I want my \$3000 back. I said, I want a written apology from the manager, and I said, I want it before Friday, otherwise I'll take legal action. But I notice, like when you come from remote areas, a lot of the old folks, they get sent letters and they'll just agree to them, which annoys me because they just don't have any fight in them. So I think that's a lot of things. Our old folks, they need to know to go to someone...because a lot of letters that go there and they just say, yeah we'll pay this, and you know it's not right at times. [Facilitator: 'Did you get your money back?'] I got my money back. We rang – what you call them – Ombudsman and plus we had in Cooktown we have legal aid through the Indigenous mob, and they were ready and waiting to go. **(Rockhampton Women's Focus Group Participant)**

4.8 WILLS AND ESTATES

Participants were asked if they had completed a will and if so, whether they had received legal advice to do so and who had provided any advice received. Participants who had not completed a will were asked if they would like legal advice to do so, and if so, who they would prefer to approach for 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 if they had ever been involved in any disputes over a deceased estate.

Stakeholder interviews emphasised that issues around wills can intersect with other areas of law, creating additional complications, as illustrated by this case study involving the absence of a birth certificate and homelessness.

I've got a kid in Western Australia who's homeless in Perth because he's waiting on the will for his father. He went over there for his father's funeral and he, things were working out but then it's broken down with the family up in some community up there. So now he's got himself down to Perth but won't come back and I think is literally homeless because they can't get hold of a birth certificate... and his mum's in rehab over here, it's all quite messy. **(Community organisation worker)**

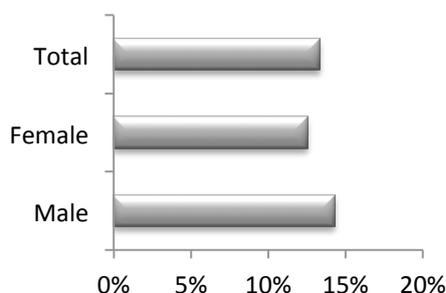
There were also intersections noted with child protection.

The will stuff, especially because when people pass away, who do the children go to, there's never any set-up around that. And we've seen some real unfortunate things happen to kids and stuff because they've just been passed around, passed around because people have passed away, especially because there's so many kids being raised by their grandparents, and then when the grandparents [aren't available and] their parents obviously can't look after them, those kids it can take a while for Child Safety to pick up or whatever, there's some kids being quite badly treated. **(Community organisation worker)**

4.8.1 Completion of Wills

As the following data indicates, few participants had completed wills. **Figure 4.33** shows participant responses to the question asking whether participants had completed a will. This graph shows that overall, only **13.3%** of all focus group participants (20 participants in total) had completed a will. Indigenous women were slightly less likely than Indigenous men to have completed a will (12.5% of women compared with 14.3% of men) (see **Table 4.40 Appendix C**).

Figure 4.33 Participants Who Have Completed a Will



A number of factors may come into play for people who have chosen not to make a will. Some may not know much about them. ‘I don’t think I’m educated about wills. Like you only hear it on the TV. That’s the first time I heard about a will’ (**Rockhampton Men’s Focus Group Participant**). Some believed that wills were only useful in circumstances where a deceased was a person of means. ‘We can’t see any point [in wills]. I’ve got nothing’ (**Cairns Men’s Focus Group Participant**).

People may feel that, ‘It is kind of like they were jinxing themselves if they did put a will in place’, states an Indigenous legal service provider. This was reiterated by some focus group participants, who said, ‘I wouldn’t want to do one... I don’t think for myself...I wouldn’t want to because I am putting a curse on myself’ (**Thursday Island Women’s Focus Group Participant**).

In addition to the fact that it may be ‘kind of taboo to talk about preparing for that’, an Indigenous legal service provider added that there is ‘a lot of shame to come talk to a lawyer about what to put in place’. This reluctance may be in talking about family disputes or other personal matters, or it may be shame related to having few assets to bequeath.

Focus group participants suggested that they did not think that wills necessarily prevented fighting after a death. ‘When people die we have lots of fighting, even though that person writes a will it does not fix that because people still fight’ (**Thursday Island Women’s Focus Group Participant**).

There was also a sense among some participants that there was a mismatch between the legal practice of creating a will and Aboriginal or Torres Strait Islander tradition. ‘[It’s] not customary, it’s not a tradition, it’s not a culture of the Torres Strait and I think Aboriginal people have the same problem, we don’t like a will...[rather] it’s an oral thing’ (**Thursday Island Women’s Focus Group Participant**).

This was explained further by one participant in the Torres Strait.

[In-laws] must pass the news when someone dies in the community. All those laws are in place. When someone dies down here and we talk about the will and all that and organise the death, we have a traditional person in place that look after the body until they bury that body

and we have a payment system. Twelve months later when the tomb stone opening is unveiled, that's the payment to the in-law who took care of that.... It's in place. Our structure. But nobody ever- the people that write the policies live in Townsville or Canberra and everybody that said, 'Ok, this must be what's happening in the Torres Strait'. None of them have even been past Cairns! So how can they make decisions for us when they don't even know what we do? **(Thursday Island Men's Focus Group Participant)**

Other participants from these focus groups were pragmatic about the need for a will in any event. 'We have to prepare our self because of that other system...because we do not have our system in place' **(Thursday Island Women's Focus Group Participant)**. 'People think about getting a western will as well as traditional, blackfella way' **(Mount Isa Men's Focus Group)**.

There were varying levels of knowledge among focus group participants about the range of issues for which having a will in place is useful. In the Pormpuraaw women's focus group, where no one had a will in place, participants observed some of the issues that can occur when family members die intestate.

When someone's passed and they have family in Aurukun we've had [fights] about where to bury people and it's gone to [court]. So it's important then that you might say, if you are from Aurukun... and your family might want to take you back, but you've lived all your life here and you might wish to... be buried here. **(Pormpuraaw Women's Focus Group)**

When money's still in a deceased person's bank account, family fight about who gets that money. **(Pormpuraaw Women's Focus Group)**

This was echoed in other focus groups.

It's good to have something in place, especially for the younger generation. **(Roma Men's Focus Group Participant)**

If you have money banked up in your super, when you pass away you want it to go to whomever. I've got mine going to my two sons when I pass away. It goes to my sons. **(Mount Isa Men's Focus Group)**

There was a sense among some participants that a lack of assets obviated the need for a will altogether, whereas others noted the value of having a will in place for issues such as a burial wishes, placement of children and distribution of accumulated superannuation. Disputes around burial in particular arose in focus groups as an issue in relation to which wills could be useful.

[Burial] can be a big issue with families. **(Cairns Men's Focus Group Participant)**

It's common the family thing arguing about burial. **(Charleville Men's Focus Group Participant)**

A lot of people do dispute about burials. **(Charleville Women's Focus Group Participant)**

One Indigenous legal service practitioner gave an example of the types of uses wills can have, even where there are no major assets to be dealt with.

A lot of the wills I've done have been personal property they're leaving to their children, sometimes – I've had one matter there, it was conditional upon one of the beneficiaries I think obtaining the age of 21 and having secure employment and things like that. A lot of what is

being left to people on the wills that I've done has been personal property. **(Indigenous legal service staff)**

Access to superannuation of deceased family members and the issues that attend this process was raised by stakeholders as a significant area for Indigenous clients that can also prove difficult in practice.

Because they all die intestate – so it's always a nightmare to try and get the superannuation out. **(Indigenous legal service staff)**

One [client] had \$350,000.00 in super. That was fine because you send them off to another solicitor here in Cairns, and they can deal with it and they'll take the administration costs and the application costs out on the back end – but I've got another one yesterday I got from Lucy, at Yarrabah, where there's \$300.00 in his superannuation account, and they want letters of administration as well as death certificates. All the money would be gone before you even got it. Bank accounts aren't quite so problematic but once again they sometimes at least require the death certificate and they at least – well, it was the Commonwealth we're dealing with – they want the death certificate, they want the birth certificate, they want to know who the beneficiaries are, and then they'll divvy up the funds between all the beneficiaries themselves. So a lot of the guys come in – people come into me and they've got no idea what to do. So my job's in between law and being a counsellor and a form filler-outer.
(Indigenous legal service staff)

The use of legal practitioners in drawing up wills

The majority of participants who had completed a will had done so with external assistance. Of the 20 participants who had completed a will, 14 participants (6 women and 8 men) had received advice to do so (see **Table 4.41 Appendix C**). Seven people indicated that they received assistance from a lawyer. Of these seven lawyers, two were at Legal Aid, two were at a local CLC and the other three appeared to be private solicitors. The remaining five individuals received advice from friends and family, an arts centre and an Aboriginal Funeral Fund.

Recognising the level of need in this area, legal services had specific strategies that they were putting in place to develop this area of practice.

I've done a lawyers guide and it's a large lawyers guide and we've put out community information on wills and power of attorney, this also includes body disputes and that's specific to civil. **(Indigenous legal service staff)**

We're looking at doing community legal education sessions where we talk to people about wills and the importance of wills more so in regard to burial so there's less future disputes amongst families, and then just kind of churning some wills out either that day or the following day, and giving them to the people and just having them signed off and everything and there with people. **(Indigenous legal service staff)**

While others seemed less sure about how to service this need.

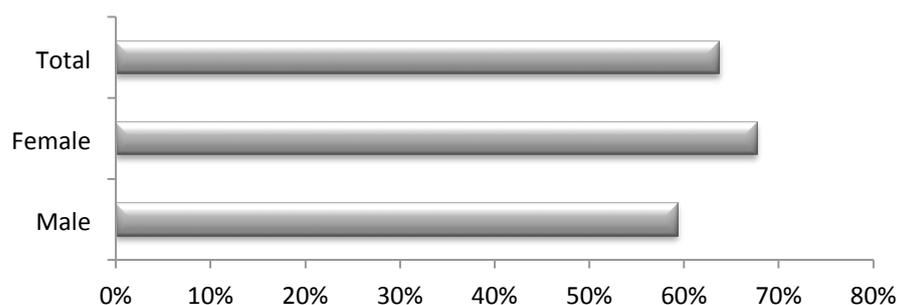
Maybe that's something we could educate on a bit more about, making a will? I don't know how we'd go about it, but I think that would be something for Indigenous people would be – make them a bit more aware of it. They are slowly becoming more aware of it but that's a growing area since I started here. **(Indigenous legal service staff)**

Focus group participants had their own ideas about how community legal education around wills could be effectively achieved.

They should send their field officers out to people's homes to talk about it... Send out their fieldies (Field Officers) and send them out face to face to explain the importance because Murriss don't realise. **(Charleville Women's Focus Group Participant)**

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 4.34** indicates, **63.7%** of participants who had *not* completed a will would like legal advice to do so (67.7% of Indigenous women and 59.3% of Indigenous men) (see **Table 4.42 Appendix C**).

Figure 4.34 Participants Who Would Like Legal Advice to Complete a Will



There may be limitations on the legal assistance that can be provided for people looking to make a will. As this Indigenous legal service provider explained:

Can I just say, we're entitled to reject applications for will drafting on the basis of the person's income... So the higher the income of an indigenous person, perhaps the more likely it is for them to feel the need for a will, if they happen to come to us. Whereas in crime, it's a pretty rubbery concept. You've got a shearer who might be earning \$2,000 this week but you know that his annual income would be flat out being \$50,000. So that's a sort of systemic break to us, to be able to sit here and say 'all the Murriss here have got wills because we did it' but if we were to do that, we'd have to offend our funding agreement probably. **(Indigenous legal service staff)**

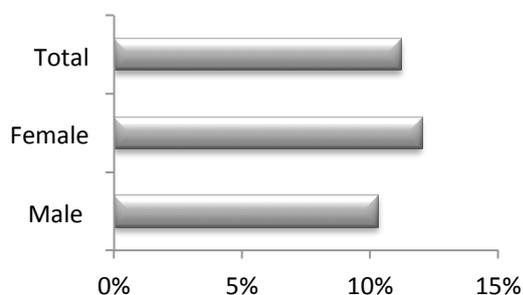
Others commented that they are doing this kind of work anyway. 'Yes. I'm doing it. I'm not supposed to', states one Indigenous legal service provider. Another legal service provider believes that there are practical as well as funding limitations in providing assistance with wills. 'A lot of the problem we have here is you can't keep the wills on file... we had too many files basically stored'. This was reiterated by another stakeholder.

The problem we have is effectively, ATSILS is a criminal organisation, that's where its bread and butter is, and they sort of tacked civil on afterwards but we don't have a trust fund so we really can't undertake any litigation. We don't have the capacity to – in any normal law firm you'd be able to keep wills or you'd be able to do that. So we're sort of an 'in-between-y' sort of thing. **(Indigenous legal service staff)**

Deceased Estates

Figure 4.35 provides baseline data for responses to whether participants had had to take charge of a deceased estate. This graph shows that overall, **11.2%** of all focus group participants had been required to take on this role. Indigenous women and women were roughly similar in terms of whether they were likely to have to have taken charge of a deceased estate (12% of women compared with 10.3% of men) (see **Table 4.43 Appendix C**).

Figure 4.35 Participants Identifying Having to Take Charge of Estate After a Death



Overall, **10.7%** of focus group participants identified a dispute over a deceased estate after death. Indigenous men were slightly more likely than Indigenous women to identify such a dispute (9.2% of women compared with 11.9% of men) (see **Table 4.44 Appendix C**). One Indigenous legal service practitioner commented that in many of those disputes, individuals may choose not to approach a lawyer for advice. ‘Unless there’s a big superannuation policy or an insurance policy or a life policy for our clients, they’re not likely to come in the door.’

The subjects of dispute after death range from burial to entitlements to property.

We’ve had one big one, just before my time, where there was a dispute between the mother of the deceased and the ex-partner of the deceased as to who should have possession of the body. It went to the Supreme Court. **(Indigenous legal service staff)**

There’re complaints over where they want to be buried...and how they should be buried, whether they should be cremated. **(Indigenous legal service staff)**

When my brother died, he had 3 boys, and my sister, he thought she was the sensible one, but she’s not. And he left the will to her - he spoke to me about it, that’s how come I knew - and he said, ‘I’m leaving the will to her, and she has got to pay for my funeral and divide up the rest’. And I said to him, ‘are you sure you want to leave it to her, she can’t be trusted with 20c!’ And anyway, when he passed on, she just went and kept her sons in drugs. And her daughter didn’t want to give the [other] boys nothing...When I got onto a solicitor to sort all this out, they got their money. Anyway, that’s all I was concerned about. **(Roma Women’s Focus Group Participant)**

Disputes after death may be between family members or with the authorities, as this comment from a community support service shows.

I’ve actually got somebody at the moment who’s been trying just to get the death certificate. And it’s just been going on and on, you know. She sends off paperwork, they send it back and

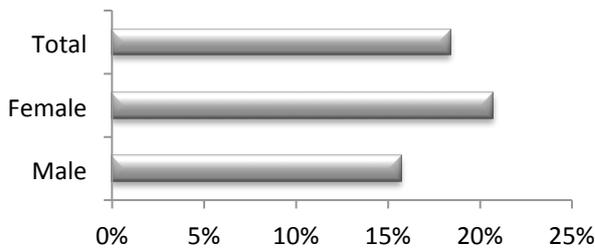
say, ‘We need this’, so she does that and sends it off and send back, ‘Oh no, we need this’, it’s just been going on and on. So that can be difficult... There’s a few men that’ve tried to get monies back from their deceased male family members. And there’s been a lot of to-ing and fro-ing. And a one contact number, that goes to voicemail all the time and it’s very difficult, in a remote area like this, it’s just really, really difficult. **(Community organisation worker)**

When my dad died... he died at work and there is a Workcover claim. And I had to run around and freeze bank accounts, get all the assets together, all that stuff where[as] he did it through state trust, they should have asked him there and then, ‘What do you own, how much livestock’ and all that stuff... they are so lazy, they said to me ‘Have you got his superannuation card?’ and all this paperwork that they can access because they’re State Trust. I said to them, ‘Can’t you just go into the super system and see what super he actually has and if he has any others?’ and they said, ‘Can’t you just do it because it would be easier’. And they get a big cut out of it! It’s shocking. **(Charleville Women’s Focus Group Participant)**

4.9 VICTIMS COMPENSATION

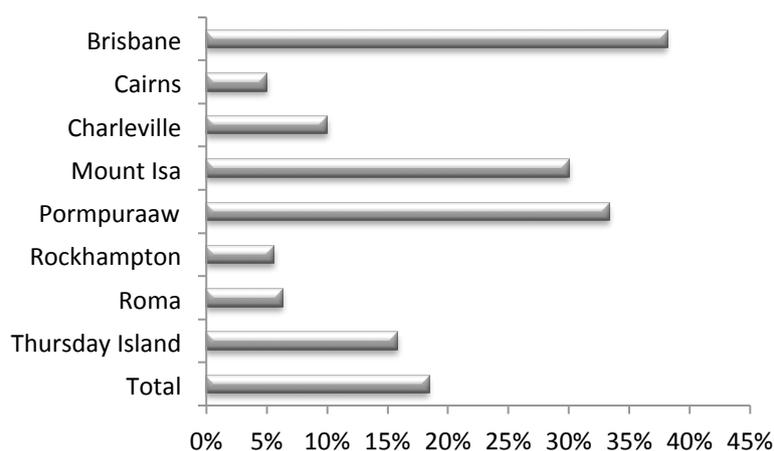
Focus group participants were asked whether they had been the victim of a violent crime over the last couple of years. As **Figure 4.36** shows, **18.4%** of participants reported having been victimised in this way. The proportion of women victimised (20.7%) was higher than men (15.7%) (see **Table 4.45 Appendix C**).

Figure 4.36 Participants Identifying as a Victim of Violent Crime



As **Figure 4.37** shows, the levels of reported victimisation did differ significantly from location to location. In Cairns, Roma and Rockhampton, focus groups reported approximately a 5% rate of victimisation, whereas 38.1% of Brisbane participants, and around 30% of participants in both Mount Isa and Pormpuraaw identified as a victim of violent crime (see **Table 4.46 Appendix C**).

Figure 4.37 Participants Identifying as a Victim of Violent Crime by Community



The current scheme for the compensation of or assistance for Queensland's victims of violent crimes is established through the *Victims of Crime Assistance Act 2009*, replacing the previous criminal injury compensation schemes under the *Criminal Offence Victims Act 1995* (COVA) and the *Criminal Code 1889* (the Code). The revised framework or scheme requires application to a statutory body, Victims Assist. Some stakeholders were critical of the scheme for not catering to the realities of Indigenous people, particularly those living in more remote locations. There was a feeling that these perceived shortcomings in the scheme may prevent Indigenous people from pursuing a right to compensation.

The idea is that it's supposed to provide more immediate assistance to victims and be targeted for particular areas, so targeted for say, counselling and direct assistance with medical issues. My experience is quite the opposite. I find that the application form itself is very complicated and most of our clients have trouble comprehending that to start with. I find that even if they get through the application form on their own, dealing with Victim Assist itself is quite a nightmare because they will often request a whole lot of documentation that our clients may not have kept or may not know how to access. Then at the end of all that, if you get an approved amount of funding, it's then receipt based. So they might say... 'We've approved you for seven counselling sessions. You need to go to that session first, pay the counsellor and then come back to us with the receipt and we'll give you the money for it'...[And then there is] the logistical problem of clients who live out in remote areas who need to travel and pay for fuel and car expenses and things to get to these places, where qualified persons generally practice. **(Indigenous Legal Service Staff)**

One of the things in civil that was a big, I guess, shock to the community was the victims of crime compensation. It really threw a spanner in the works amongst people...all you could do was say, 'You now apply under this new Act, but you won't be getting the money that you used to get.' One of the things is, 'We'll give you money to see a psychologist or counselling.' ...They'll pay for your appointments but you've got to pay for your fare to come down to Cairns, your accommodation, your taxis and things like that. So a lot of them just won't go or don't even bother to put in their claim anymore. **(Legal Aid staff)**

However, other stakeholders noted that the new framework had removed opportunities for corrupt practices preying on Indigenous communities. Three separate organisations noted unconscionable conduct under the old scheme.

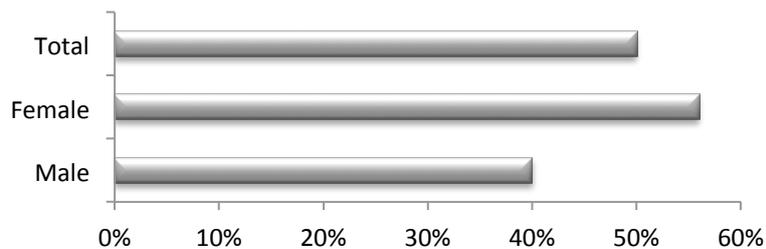
[Under the old regime], predatory practices by solicitors in victim's compensation matters really disadvantaged the people who had been a victim of a crime, and improvements to the victim's system have been really useful. (**Legal practitioner**)

There was at least one firm but I think there might have been maybe two or three, who were, I suppose exploiting this issue in those communities, and they would fly in with these psychologists and take statements from a whole swag of women and then get reports done, and then that was in the days when you could get up to \$75,000 compensation and they would do the application, get the award, and then take like \$50,000 off it and then give the women 25. (**Legal Aid staff**)

Years ago people were getting massive payments and stuff, but I noticed there was that service, Indigenous Legal Service, which I don't know if they were dodgy or not dodgy...she would contact people about victim compensation, and then she would take a percentage but I think everyone takes a percentage don't they? It was quite a lot, which concerned me. But that's all slowed down since, there's not so much. (**Community organisation worker**)

Exactly half of participants who had identified as a recent victim of violent crime had heard of the victims' compensation scheme. Women were more likely to know about the scheme than men (56% compared with 40% of men (see **Table 4.47 Appendix C**).

Figure 4.38 Participants Identifying as Victim of Violent Crime Who Knew About the Victim's Compensation Scheme



Some focus group members spoke negatively about the degree of information afforded to them by police about their entitlements under the Victims Assist scheme. This was echoed by one Indigenous legal service provider, who commented as follows: 'I'm not sure how proactive police are here...I've never had a referral from police, I don't think'.

Stakeholders also expressed the view that knowledge of the existence of the scheme will not necessarily translate to an application under it. This may be due to a lack of know-how or because of reticence on the part of the victim to disclose the wrongs of the perpetrator.

If people generally think that they might be entitled to something, they'll have an idea that they may be entitled to compensation but they just don't generally have a great idea of how to go about it. **Indigenous Legal Service Staff**

It may also be that people are not in a position either to initiate the process or to follow it to its end.

Most people seem to know about that... But not everybody's taken it up. And you know the numeracy and literacy for people is difficult. Cause some people may get letters to say, 'You could apply for victims' compensation', but if they can't read, then they're not gonna read that letter. I've actually helped people, cause in the first instance they've just come to me to ask me to read the letter out to them. **(Community organisation worker)**

People will come and speak with you about victims' compensation and then think that that's the end of the process, when in fact, there's a lot more to it than just coming and speaking with a solicitor. ... Generally if someone's in a position where they're applying for victims' compensation, they're obviously a victim of some type of trauma so they're not in the best headspace to begin with... So you do find a bit of getting that initial advice and then disappearing happen. **(Indigenous Legal Service Staff)**

This latter organisation stressed the need to have dedicated people going into communities with the specific brief of working with victims to apply for compensation.

Of the 28 people who reported being recent victims, 31% (four male and four female) had sought victim's compensation. Although the numbers were smaller, men were likely than women to seek compensation.

Table 4.2 Number and Percentage of Focus Group Participants Identifying As A Victim of Violent Crime Who Sought Victims Compensation

Sought Compensation	Focus Group Participants			
	Male	Female	Total	
	No.	No.	No.	%
Yes	4	4	8	31
No	6	12	18	69
Total	10	16	26	100

Excludes 2 missing cases; N=26

Some focus group participants were involved in making an application for compensation but had little understanding of the process they were engaged with.

Can you explain a bit about this Victim of Crime Compensation? 'Cause I lost my son a few months ago, and it's going though that now. We haven't heard. Well, we ring them but I think they can't get anything together until they get the case or whatever. There's this bloke um so what's happened there? **(Rockhampton Women's Focus Group Participant)**

As noted above, there is recognition among service providers working with Indigenous communities of the need to provide better support for Indigenous people who are eligible to apply for compensation.

It's not a system that lends itself particularly well to legal representation and support. So, we're thinking about ways in which we can better educate and support communities, not just

Indigenous communities, about the way that the Victims Assist scheme operates or can operate or how they can access support from those schemes. **(Legal practitioner)**

4.10 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) and if so, what the nature of the problem had been. Participants were also asked whether they had sought legal help in relation to an employment issue.

Figure 4.39 shows that overall, **22%** of all participants identified having experienced a dispute or problem of this type, with Indigenous women more likely than Indigenous men having experienced problems in this area (25.9% of women and 17.4% of men) (see **Table 4.49 Appendix C**).

Figure 4.39 Participants Identifying an Employment Dispute

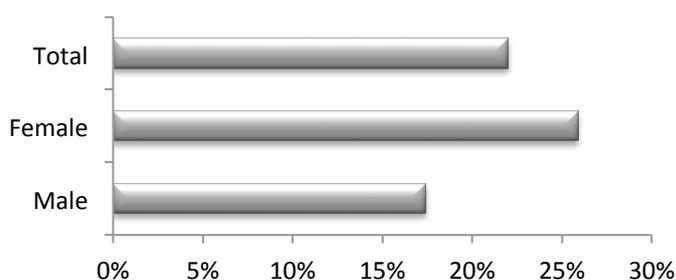
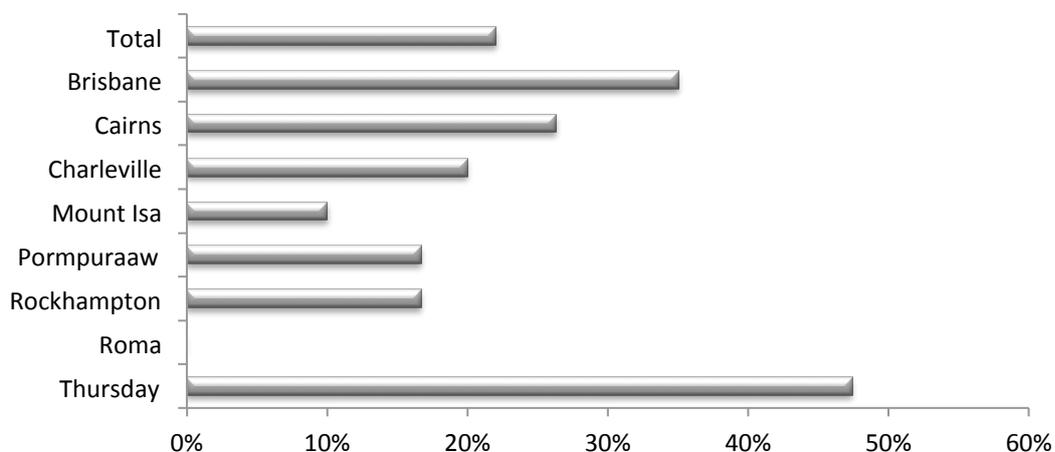


Figure 4.40 shows that Indigenous focus group participants in Thursday Island and Brisbane were most likely to identify an employment-related dispute (around 48% and 26% of focus group participants respectively in these communities). Communities least likely to identify employment-related disputes were Roma and Mount Isa (see also **Table 4.50 Appendix C**).

Figure 4.40 Participants Identifying Employment Dispute by Community



An Indigenous legal service provider in Brisbane commented that there had been a growing number of clients with employment law needs.

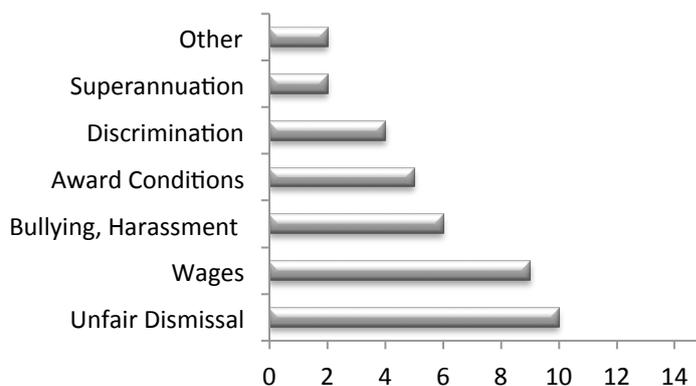
Employment issues are up, definitely up, and we're getting more and more of that. And I'm dealing with more and more, and the collateral issues that go with employment for example, the workers' comp claims and then QComp reviews. **(Indigenous legal service staff)**

Similarly in Charleville, an Indigenous legal service provider noted, ‘I’ve done a fair bit of employment law too, unfair dismissal matters, people being dismissed from various jobs for varying reasons’.

4.10.1 Nature of employment issues

Figure 4.41 shows participant responses identifying the nature of their employment-related issue. Some 28 individuals identified 38 reasons for employment disputes or problems, of which wages (10) and unfair dismissal (9) were most frequently cited (see **Table 4.51**).

Figure 4.41 Reason Identified for Employment Dispute



Focus group participants identified significant issues both in getting into a job in the first place, and then in dealing with troubles that may arise along the way. In the words of one woman in Brisbane, ‘I could tell you a lot about that. I would need more papers to write it all!’ (**Brisbane Women’s Focus Group Participant**)

Focus group comments relating to difficulties obtaining employment were as follows.

It’s not real good for employment. A lot of places around here are family oriented. It’s hard to get a job here. (**Charleville Men’s Focus Group Participant**)

Look at the local council... every woman in that office got a husband who’s a foreman, got a son who’s doing a traineeship or something. Even the godsons and the nephews are working there. And that’s the saddest thing see? If you are connected to anyone in that office, you got a job there in the council. And not one black person working there... No black people work in local government here. But you can imagine all the black funding they get! (**Charleville Women’s Focus Group Participant**)

I think once you get a job it’s ok. But it’s the employment services themselves that don’t help you or support you enough to get a job. I mean, I had this job and I was required to get an RGS (Responsible Gambling Service) and RSA (Responsible Service of Alcohol) and I got my RSA and I kept hassling them about getting an RGS because the job was hassling me about getting it and they were hassling but they didn’t help me and I ended up losing the job. You know, and I don’t have the money to go out and get an RSA and I don’t know how to do it. They’re the ones that are supposed to provide me with the support to help them- to help me further my employment. I could of. I would have had a stable job but, you know. (**Rockhampton Men’s Focus Group Participant**)

I can't go to the school to do cultural activity because I don't have Blue card. (**Mount Isa Men's Focus Group**)

The range of issues experienced once in the workforce are exemplified by these comments:

I worked at a company. I didn't have my super paid into my account. They didn't pay me properly for my hours. They went bankrupt. (**Cairns Women's Focus Group Participant**)

I broke my hand up there at Dunbar Station. They paid me for 3 weeks. They said I was OK for light duties and they expected to go back there and mow lawns. (**Cairns Men's Focus Group Participant**)

My daughter is going through bullying in the workplace. That's why I'm here, to see if I can take some information back to her. (**Charleville Women's Focus Group Participant**)

I worked for Lifeline in an Aboriginal identified position. And because I had a run in with the principal (of the school) about my son and I had to work with the school in my position, he put in complaints about me and got me sacked.... I got compensation but not much. Lifeline, they didn't support me on it, yet they were there saying 'she was good at her job', 'She did what she was supposed to do', they praised me up but at the same time they didn't support me on it because of this dick over here'. (**Charleville Women's Focus Group Participant**)

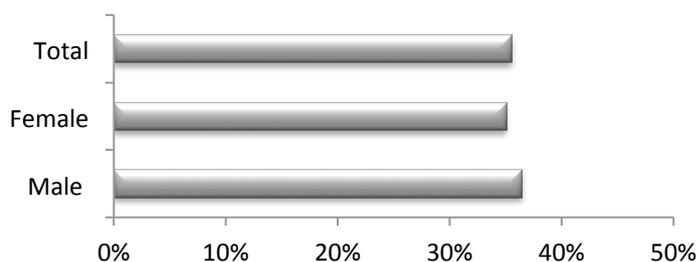
Legal service providers identified the nature of the employment disputes that they assisted with as including.

[Going to] to the arbitration commission for a fellow who was on the local council, he lost his job, where he'd taken time off for sick leave and family reasons... People who have had difficulties in the workplace with bullying and things like that, or illness or personal issues that have impinged upon their ability to work. (**Indigenous legal service staff**)

4.10.2 Legal advice for employment law issues

Figure 4.42 shows that **35.5%** of all participants identifying an employment-related dispute or problem had sought legal advice or assistance (see **Table 4.52 Appendix C**). Of the 11 individuals who sought legal assistance, ten indicated who provided the assistance. For three individuals it was ATSILS, for another three it was the relevant trade union, in a further two it was Legal Aid, and the remainder included the workplace itself and family members. Outcomes from consulting these bodies for assistance included compensation, mediation, back pay and improved conditions.

Figure 4.42 Participants Who Sought Legal Advice Regarding Employment Dispute



It may be that people who have poor experiences in employment prefer to leave the episode behind them than pursue their rights.

We see our change program where we get them employment, they will stay with that employment for a period of time and then they will just leave, for whatever the reason, a myriad of reasons. It'd be interesting to ask those guys about had they actually received pay for what work that they had done... They would leave on terms that they just don't want to go back. **(Indigenous community organisation worker)**

One legal service provider spoke of the need for 'bicultural competence' among Indigenous clients in order for them to come forward to seek advice about employment issues. This relates to the degree of knowledge they have of civil law remedies, their rights in employment and their level of comfort in approaching legal professionals.

People who just have the odd casual job working out of the charcoal place or ring barking or something, and if they are given the arse by the boss, they're not likely to come and see us about it. But if someone works for Queensland Rail or for the Quilpie Shire Council or the Shire Council, they are likely to. **(Indigenous legal service staff)**

There is a certain proportion of our clients who work in the pastoral industry, what's left of it out here, shearers and shed hands and they're almost treated like independent contractors, you know they don't think of themselves as having permanent employment... If they get unfairly or wrongly kicked out of the shed, we're not actually likely to see them, no. I suppose a lot of the times, they're grateful for whatever work they can get. **(Indigenous legal service staff)**

In locations where there is no civil law solicitor within ATSIILS, community members can feel even further constrained from getting the assistance they need:

I asked for legal help. They wouldn't even help me, my own people. I had to go to white man... It didn't (get resolved). It didn't achieve what I wanted from when I was working. **(Brisbane Women's Focus Group Participant)**

4.11 EDUCATION

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.

Table 4.3 shows that **44.1%** of participants identified attending or being responsible for someone attending an educational institution. Indigenous women were 28.7 percentage points more likely than Indigenous men to be responsible for someone attending (or themselves attending) an educational institution (57.3 % of women compared with 28.6% of men).

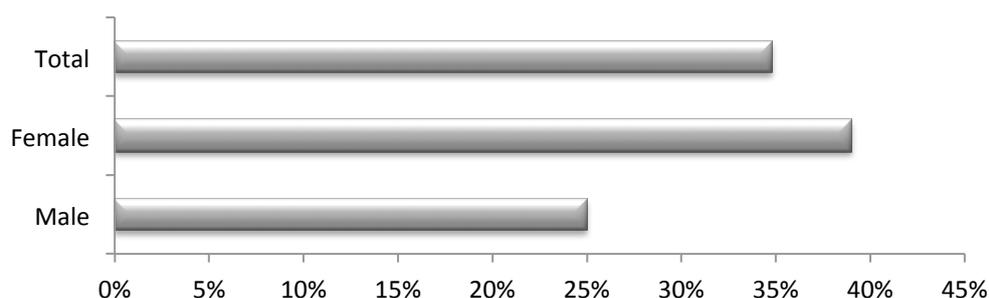
Table 4.3 Number and Percentage of Focus Group Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Having Attended Themselves

Participation in Education	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	20	28.6	47	57.3	67	44.1
No	50	71.4	35	42.7	85	55.9
Total	70	100.0	82	100.0	152	100.0

N=152

Figure 4.43 provides baseline data for participant responses to the question asking whether they had experienced an education-related dispute or problem. It shows that overall, **34.8%** of all participants with someone in the education system also reported having experienced an education-related dispute. Indigenous women were 14.1 percentage points more likely than Indigenous men to have experienced an education-related issue (see **Table 4.54 Appendix C**).

Figure 4.43 Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Attending Themselves Who Encountered Problems with Issues Such As Suspension, Bullying or Fees



Issues experienced in the education context were thus very widespread. One focus group participant identified the issues associated with the schools as prompting her to action. ‘I ended up getting a job in the schools and working the schools and making sure that everyone was doing the right thing’ (**Rockhampton Women’s Focus Group Participant**).

Focus group participants suggested that Indigenous children succeed despite their school experiences, not because of them. School works against development of healthy self-image and the sense that the student can achieve.

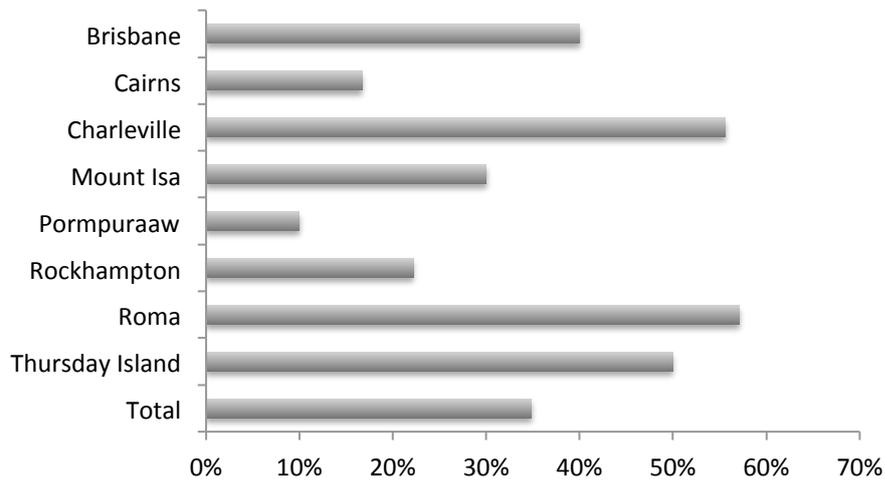
[I tell them], just because you are at school, it’s not the be all and end all. Unfortunately we all have to go because it’s the law, but they are just brilliant in what they can do these kids, it’s just not in a way that [the school system allows for]... It’s heartbreaking to see our kids

just sad and hurt and confused. Here I go. I get really emotional about this. **(Roma Women’s Focus Group Participant)**

They get people in to work in a supportive role for our kids... but they can get swayed by the system... its not for the faint hearted. **(Roma Women’s Focus Group Participant)**

Figure 4.44 shows that participants in Roma, Charleville and Thursday Island were most likely to identify an education-related issue. An issue of this type was identified by 57.1%, 55.6% and 50% by participants in these three communities, respectively. The community least likely to identify an education-related issue was Pormpuraaw (see **Table 4.55 Appendix C**)

Figure 4.44 Participants Identifying an Education-Related Issue by Community



It is likely that Indigenous young people who are suffering trauma inside their family, or who have complex needs, require these to be accommodated within the education system. However, school are not, for the most part, well equipped to deal with these types of issues.

Sometimes I get a letter. My daughter, she likes staying home [laughs]. She don’t stay home because she wants to wag, she stays, she’s just dealing with a lot of issues like she lost her grandmother, we’ve lost a nephew, we’ve lost a grandfather, all in the space of six months. And she’s struggling with it. And all I get from the school is ‘Why is she absent?’ I finish explaining to one person and then I still get a letter saying you still need to come to the school again. And I don’t want to discuss it with the school. Yesterday, her father just said, ‘No, you’re coming fishing, you’re not going to school’ and I would probably get another letter for that, but that’s how we deal with it. Sometimes I think the schools need to be aware of situations that, you know, some kids do have problems. But I find the education system sucks at the moment. **(Rockhampton Women’s Focus Group Participant)**

This sentiment was echoed by focus group participants in other communities.

I do not believe it is a fair system and I do not think that it caters for indigenous families. **(Roma Women’s Focus Group Participant)**

It’s usually their name that precedes them and then they treat that kids the same as the others who are already in that school. **(Roma Women’s Focus Group Participant)**

Sometimes I think that teachers are inadequately trained to deal with Aboriginal kids... instead of treating everyone the same, black is black and white is white. **(Roma Women's Focus Group Participant)**

One focus group member in Charleville was a single mother of nine children, one with mental illness and one with Asperger's Syndrome. The latter child had many difficulties at school, which his mother felt were dealt with poorly by the principal.

I wrote many, many letters to Education Queensland making complaints about teachers and about the treatment of my son... There was more than 20 incidents reported against him at one school, most of them were suspensions. My son was, I think, the most suspended kid from school in the whole year, but in the last year he got suspended once – something that I agreed to because what he did was naughty, because he threatened another kid. He was only in grade 3... I said to them you've lost control of the school! How can you not control a kid that young? **(Charleville Women's Focus Group Participant)**

Other focus group members described how Indigenous children 'fall through the gaps' with poor educational outcomes.

We have a number of grade eight kids at the school who can't even read and write and one of them is my son. Then they talk about getting all this money over here at the school. We had one white woman go up and say, 'I'm sick of all the black kids getting all the money and we never get it'... So I end up jamming her and saying, 'What have you got that these black kids up the line haven't got? They don't own their own house! Your kids have probably got laptops in every room in your house!' She's worrying about black funding that's going to the school for them kids, and it's not even getting to them kids because they're spreading it for everyone. Including kids that come from overseas that have got a high IQ, they just can't understand English. **(Charleville Women's Focus Group Participant)**

They even put on a teacher's aide to help those kids, one on one! Yet there are black kids sitting in the classroom who can't read or write, and they're just pushed to the back of the class. **(Charleville Women's Focus Group Participant)**

Now the high school have got their arms in the air because - you can't ask them to do that maths because they've got to be able to read the book! They can't do the sum because they can't read the book! Now they're shitting themselves... Once you get that funding, you gotta be accountable at the end of the day. **(Charleville Women's Focus Group Participant)**

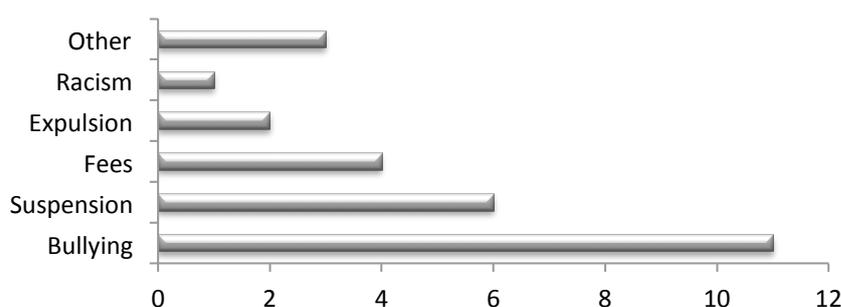
It is important to acknowledge that unaddressed problems at school relating to bullying can easily escalate to become matters that fall within the criminal law.

A child has been sent home from school and barred or banned...and the reason, the person has threatened violence. But they'd threatened violence because they'd been putting up with bullying, discriminatory bullying for a long period of that time, and they eventually get fed up and say, 'I'm gonna do this or that to you'. So they get expelled, so that means the child has missed out on education... Some of it comes out of what, you know, happens in neighbourhood disputes and some of it is again, just trans-generational trauma. I mean it's really around children living, seeing, learned behaviour. It's about what they see around them, and then acting out, maybe they're bullied, maybe they're quite fearful at home as well and

you know, they become the aggressor. It's the only way they know how to respond when people bully them. (**Community organisation worker**)

Participants were asked about the nature of the education-related problem or dispute experienced. The 23 individuals who identified problems went on to nominate 27 different issues. While it was clear from the context that the majority of these were related to school education, in one case TAFE was referred in the context of bullying, and HECS was referred to in the context of fees. Among the identified issues, student disabilities and medical conditions (such as autism and PTSD) were also part of the context. **Figure 4.45** shows that bullying was identified as the most common basis of the problem or dispute (see **Table 4.56, Appendix C**).

Figure 4.45 Type of Education Issue Identified



Discrimination was a thread common to many focus group and stakeholder reflections on problems in education (see also Section 4.3: Discrimination). Discrimination may be a factor, in addition to problems directly attributed by focus group participants to racism, in issues falling under expulsion, suspension and bullying. In the words of one focus group participant, 'The racism, you know, racism from the students and school, and the teachers you know. It's always ongoing' (**Rockhampton Women's Focus Group Participant**).

Focus group participants in Roma provided an example of racist bullying which led to poor outcomes for the victim.

I have a friend who had a kid come into her care and he started at the school and some kid said to him, 'You're just a little black kid', and he says, 'Yes, I'm black, but you're fat, aren't ya?' [laughs]. Do you know he got put off (suspended) for a week for saying that to him? I thought it was a brilliant comeback! (**Roma Women's Focus Group Participant**)

When asked whether the other child had also been suspended for his part in the altercation, she said that he had not. Another participant illustrated with this story:

[A group of kids] left school because the teacher used to get up alongside them and said, 'Hey you, you black bastard, if I've got anything to do with it you won't go anywhere'. And you can't prove it because the teachers walking right up beside him and telling him this. If I was him, I would have swung round and dropped him. (**Roma Women's Focus Group Participant**)

In some cases, there was said to be discrimination grounds other than race, such as because of the existence of a criminal record.

Some of those private schools - they just won't, if you've come in with a YJ (youth justice) history or something like that, they won't let you [in], so it's probably discrimination... [It] becomes really difficult the enrolment, it puts them off... They're stigmatising the certain young person they don't want in their school. We've got a whole lot of young people that might not have progressed through past primary school, we haven't been able to get them into high school and when we have taken them to schools, that criminal record stuff creates barriers... There was one school that a lot of Aboriginal and Torres Strait Islander people wanted to go to, and you just couldn't get them in if they had too much of a criminal record. **(Community organisation worker)**

Unaddressed issues in school make it much more likely that Indigenous students fail to attain higher levels of education, in addition to increasing the risk of contact with the criminal justice system.

I dropped out of school in 2009. I was in grade 9. Because I just couldn't handle the bullying. I got letters all the time. I just couldn't do it. Yeah [I got letters from the school], for not going to school because I got picked on all the time. And they didn't, they never took it up with anything. Police were always involved. **(Rockhampton Women's Focus Group Participant)**

Seven of the 23 participants (**30.4%**) who had identified an issue in this area sought legal advice or help (see **Table 4.57 Appendix C**). Four of the seven identified from whom they had received assistance. Only one person who sought legal advice or help appeared to have accessed a solicitor (ATSILS). The matter was in relation to an eight year old child who had post-traumatic stress disorder (PTSD) and was suspended from school. The others sought assistance through the education system. 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 terms. This was expressed by a participant in the Rockhampton women's focus group.

So with the, just say the different things for education, you know the processes are, you go through the education department system, you know, to put any complaints or whatever through there. So, if that's not working, yeah, who do you... Do you go to legal aid and say ok, well this is what's going on? We've gone through those processes. And, the funny thing is, I'd say nearly all of us in this room, you know, we're not too frightened to say what we think. We look and we know to ask questions and find things, but um, so we still have issues with education. I mean I've worked in there as well and you know I still find it hard sometimes with the schooling and the education system and I'm like, shit you know, what else can you do? Because you're sort of told to go through that process of the education department, and then you get nowhere so tough luck. **(Rockhampton Women's Focus Group Participant)**

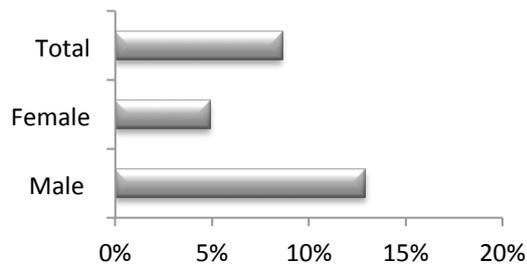
4.12 STOLEN GENERATIONS AND STOLEN WAGES

4.12.2 Stolen Generations

Focus group participants were asked if they were a member of the Stolen Generations.

Figure 4.46 shows that overall, **8.6%** of all participants (or 13 individuals) identified as members of the stolen generations. More men identified as members than Indigenous women (12.5% of men compared with 4.9% of women) (see **Table 4.58 Appendix C**).

Figure 4.46 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 are respectfully reproduced below.

We got taken away from my family. Me and my brothers and sister got taken away from family at a very young age. I think I was about 2 or 3 years old then. We got put into a white Christian home. And I've just got a big issue with that, taking Aboriginal children in putting them in white Christian homes. If they are gonna take Aboriginal children off their parents, they should be putting them in an Aboriginal family, another Aboriginal environment. Because I grew up not knowing my family. My family were the devil. Aboriginal people were the devil. That's what they told us you know. We weren't allowed to know any of our relations, or anything like that. **(Brisbane Men's Focus Group Participant)**

Yeah like I'm only 31 years of age. But you know it still affects me you know obviously. You know. Just the fact that I wasn't allowed to know my mob, my culture, my people. Yeah, it still affects me. As soon as I broke out there I actually as a kid, I forget what age, I was I think I was 17, 18. I actually went to child services and complained that they're not letting us see our relatives, not letting us see our culture. And they were shocked, you know, 'what? What do you mean?' I said well we're not allowed to see our relatives you know. I got to that age where I started realising that this was wrong. These Christian people, foster parents, aren't letting us see our family, aren't letting us know our culture. So I went and dobbed them in and that's when it all fell apart for them. And we all got sent to...myself and my twin brother actually got sent to an Aboriginal foster care. We were getting to that age anyway where we were going out on our own anyway. But you know it was too little too late. **(Brisbane Men's Focus Group Participant)**

Twelve of them just had a dormitory. They never had any cupboards or anything. They just had boxes to put their clothes in. **(Brisbane Men's Focus Group Participant)**

We weren't supposed to speak our language. **(Brisbane Men's Focus Group Participant)**

It's because the white man he deemed us...if we spoke our language they said we was devil people. They said your people are the devil people. **(Brisbane Men's Focus Group Participant)**

You're not allowed to know your people, your (culture, your race) relatives. Go to church for fourteen years, had the religion drummed into me. The same happened to all of us on the mission. **(Brisbane Men's Focus Group Participant)**

Soon I as I broke out I started living out on the streets and just getting to know Aboriginal people, my people. Just doing it rough with them, you know. **(Brisbane Men's Focus Group Participant)**

Some participants who were removed into institutional care said that they did not consider themselves members of the Stolen Generations despite being taken from their families. It is not clear why these Brisbane men differentiated their experiences from those of the Stolen Generation.

Yeah it was very similar to the stolen generation. I don't consider myself as a part of the Stolen Generation. But there's very similar, similar things there. They just you know got put into a white Christian home, you know. **(Brisbane Men's Focus Group Participant)**

And also there was a payment, apparently there was a payment, for people like myself about five years ago or something. There was some sort of payment apparently, for people that were in my situation, people who were taken away. It's kind of like the Stolen Generation. **(Brisbane Men's Focus Group Participant)**

There was a feeling voiced strongly in some focus groups not only that the compensation offered following child removal was tokenistic, but that there was not always informed consent given to waive rights to future claims.

The pittance that they got for their suffering – racism is alive and kicking. **(Charleville Women's Focus Group Participant)**

A few of us got compensation but that was it. Just a little bit. That was all we got. A pittance. There was no advice in the first place. No advice, no one explained anything to any of us. That's all they just said was that all we had to do was go to the city and fill a form out. We took what they gave to us. That's what they threw at you: it was one form, you send it away and that's what they gave you. No proper process, or anything. We should have got more. But by rights the first compensation was supposed to be \$40,000. It got knocked on the bloody head, the \$40,000 became \$7,000. **(Brisbane Men's Focus Group Participant)**

We went to a workshop... this was ages and ages ago, and they told people this is what you need to do. But it was only \$2000 or \$4000 and then you had to sign something saying you wouldn't make any more claims. **(Roma Women's Focus Group Participant)**

My direct brothers and sisters, we've, yeah, paid off the token \$7000 but, first they put it all out into community to put your hand up for the \$7000 if you were in foster homes, homes and all of that and if you were wards of the state. Then you went through the process of them giving you a letter back after they've checked the records that you've been a ward of the state or part of the stolen generation and all that stuff, then you got a \$7000 tax free in your account, which was token bullshit money to me. And, then how we got the \$7000 first was

that we have to go to a nominated solicitor in our area. They wrote to us to go and sign a form for the \$7,000. Now, I didn't even understand what the hell I was signing, and what that was, was that I was never to go back and ask the Government ever to compensate me and my brothers and sisters. And, that's token money. And for us who didn't understand the legal process at the time and what the hell we were reading, that redress scheme did not give us blackfellas any support to understand what the hell we were signing. So, I'm so pissed off at myself after finding out later. **(Brisbane Women's Focus Group Participant)**

Like what she said, we didn't know what we're signing. **(Brisbane Women's Focus Group Participant)**

But you know it's like Black fella ay. It's money. We just go and sign for it. **(Brisbane Women's Focus Group Participant)**

Because we don't understand. **(Brisbane Women's Focus Group Participant)**

See when I went to the legal advice for the, ah Stolen Wages, they had a solicitor there, ay... They had a solicitor there but he never sort of sat down and really explained it. All he just said to me, my understanding is: you sign this you can never ever get any more money. **(Brisbane Women's Focus Group Participant)**

If we knew now what we knew then it would have been a different story. Yes. **(Brisbane Women's Focus Group Participant)**

I didn't put in for it myself, because I found out too late. But my twin brother did... and he wasn't eligible for it. And he didn't know why, it wasn't explained to him why he wasn't eligible for it... He's pretty good literally with writing and reading and everything... but he just got a flat out you're not entitled to it, you not getting it. **(Brisbane Women's Focus Group Participant)**

And all in all, it's still a white man law. **(Brisbane Women's Focus Group Participant)**

Focus group participants spoke of the high levels of *current* removal of Indigenous children from their parents as akin to the Stolen Generations. These comments from the Brisbane men's focus group are telling.

There's still white man taking our children. They're still giving them to non-indigenous foster carers. **(Brisbane Men's Focus Group Participant)**

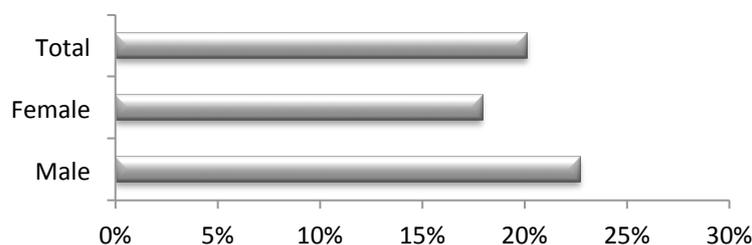
They're making a lot of money today –foster carers. There's one woman, for example, she took on about 12. 12 Aboriginal kids. And she was raking it in. She would have had about 2 houses, boat, cars, whatever... **(Brisbane Men's Focus Group Participant)**

The forcible removal of children is actually still happening today. They just put frills on it made it look pretty. And they're even going harder now because it's their legislation. The only changes to come about is we have to change the legislation... All this bullshit it's their fucking legislation mate. Sit here, we can utter words til the cows come home, it's actually in there. The changes can only take place in there, in what's written and what they're governed by. And then the impact will come then to us. **(Brisbane Men's Focus Group Participant)**

4.12.2 Stolen Wages

Figure 4.47 shows that **20.1%** of respondents (or 29 individuals) believed that they were entitled to money held in Aboriginal Trust Funds or as Stolen Wages (see **Table 4.59 Appendix C**).

Figure 4.47 Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation



A range of experiences were canvassed, such as this one from the Charleville women's focus group.

When my dad finished work I tracked his bank account number to Mitchell, and it was in the name of a policeman. We got nothing – they said they paid him in the 1940s or 50s. Like all the old people, his money went into an account of the government.

There was deep grief expressed about the injustice of Stolen Wages.

I get really upset about this – the Stolen Wages. We've got our ladies here now and our elders who are still alive today and say they got paid \$11 a fortnight out of Cherbourg, and what about the rest of the family members where my mother and my uncles and aunties busted their holes out there too. So- I'm getting upset. I'm sorry. [Another participant: but there was no money. They worked for rations...]. That's right. Rations that came first and then the chief protector held onto their money and they were only given their little pocket money per week. They're what I believe is, is that the family should be compensated for those who have passed now because my mother and everything's gone. In particular for their headstones, and to get all- for me it's about collecting all that information that I don't have on my family and paying someone, a student, whoever, to get that we- If you got compensated, you could pay for these things to make sure my kids know where the heck they're coming from, and their people.
(Brisbane Women's Focus Group Participant)

4.12.3 Access to legal advice for Stolen Generations or Stolen Wages

Of those who said that they had been a member of the Stolen Generations or had missing Stolen Wages and Trust Funds, ten individuals indicated they had received advice about making a claim. Responses as to who provided the assistance varied, including ATSILS, Queensland Government (DATSIP), solicitors (unspecified), family and through publicly available information. Seven individuals had either received compensation or were pursuing a claim.

In relation to current levels of child removal, focus group participants expressed frustration at a perceived lack of action, or even complicity, among legal service providers:

[Legal Aid] Need to get off their fucking arses and do something, instead of sitting back.
(Brisbane Men's Focus Group Participant)

They just sitting back and they're giving the orders. **(Brisbane Men's Focus Group Participant)**

If we were more educated in the legal system at the time of the redress scheme all of our people could have, nationwide, come together and not signed nothing, and taken the Government for exactly what our people deserve in terms of compensation for the different circumstance. However, it was just a quick fix at the time because we were going through that period of sorry from Kevin Rudd and all those sorts of things. That's ok to move for reconciliation, however it didn't really address this problem that is continuing. **(Brisbane Women's Focus Group Participant)**

They [Legal Aid] need support basic support workers and things to get actually get paper, a paper trail, paper evidence, for 'em. Persons to sit with them and work them and work with the Child Safety Act, getting these people to turn up so there's a picture painted for the courts... Because the courts don't know who they are, they're all just waltzing in, and you've got all this other side, all this evidence and bullshit. And there's nothing there to shoot it down. There's no substance, foundation or anything to this... All you need is like support workers to work with the families, evidence to prove to the magistrates, they are attending relationship counselling, they are attending bloody substance abuse counselling, anything, whatever the issues may be. That's what they need to get ready to go into court. **(Brisbane Men's Focus Group Participant)**

And then to let them have the understanding of the process of the court system, you know, the judicial system, how it's applying to them now through the Child Safety Act. Sit down and go through it with them so they're aware of what they're turning up to. So walking in like you've got a fucking pumpkin on your head. So you're going to look like an idiot and not get nothing. So deep down and that's what's got to happen if you want a change to that system. **(Brisbane Men's Focus Group Participant)**

One legal service provider raised a related issue of 'stolen compensation' in the Indigenous community.

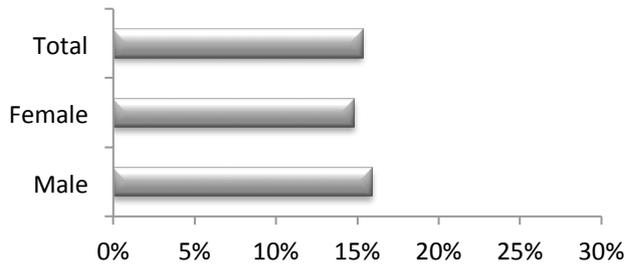
There's a whole other issue that isn't even on the agenda that I'm aware of, which isn't Stolen Wages, but the stolen compensation, stolen insurance... I've run a case where a woman as an adult has come and said, you know, 'It was wrong because, my dad died, I had insurance, it was at work'. We went back, she should have received 110 pound, as a child, that money was never given but it was the same trail, a signed cheque, wrong name, wrong signature etc. etc. That one I took on, I took that and settled that matter myself, but that's not stolen wage, but it's a collateral to the stolen wage issue. How many thousands of Aboriginal children's parents, especially men, doing work for farmers, died, were entitled to workers' comp., but nobody ever got that workers' comp.? **(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 4.48 shows that overall, **15.3%** of all participants identified a recent experience with accident or injury, with no significant difference between men and women’s experience (see **Table 3.60 Appendix C**).

Figure 4.48 Participants Identifying Accident or Injury-Related Issue

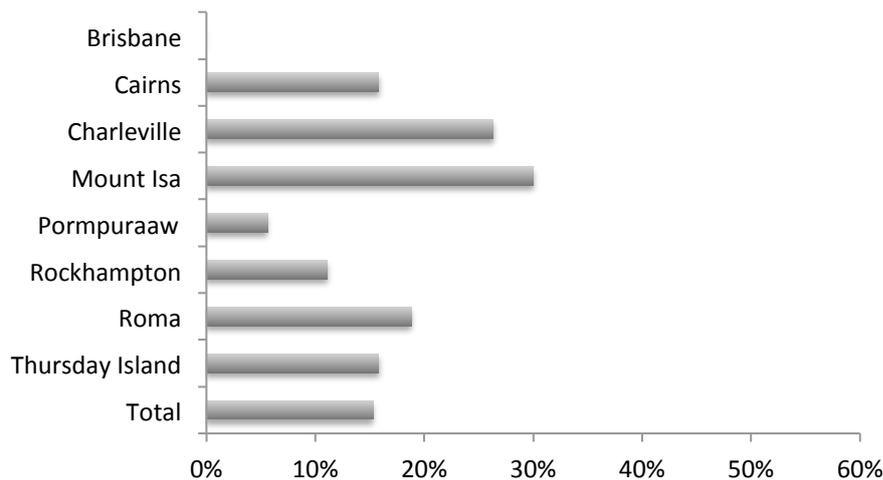


Although these responses do not place accident and injury among the most commonly experienced legal needs, some service providers spoke of a high level of need in this area.

You’re often hearing about, there has been stuff occurring, babies and things like that...you go to a funeral and somebody fell over in a hospital and cracked their head open and died. There’s quite a lot of that sort of stuff occurring. (**Community organisation worker**)

Figure 4.49 shows that Indigenous focus group participants in Charleville and Mount Isa were more likely to identify having experienced an accident or injury-related issue. An issue of this type was identified by 26.3% and 30% of participants in these two communities respectively (see also **Table 4.61 Appendix C**).

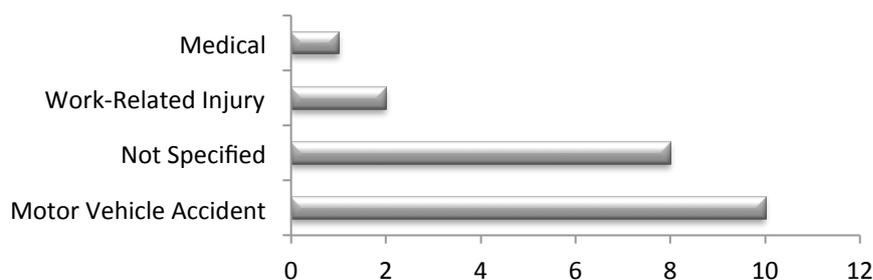
Figure 4.49 Participants Identifying Accident or Injury-Related Issue by Community



4.13.1 Nature and Seriousness of Accident and Injury-Related Issues

Twenty-one of the 23 individuals who reported an accident or injury also identified the nature of the accident or injury. **Figure 4.50** shows that the most commonly identified issues related to motor vehicle accidents (10) and other unspecified injuries (8) (see **Table 4.62 Appendix C**).

Figure 4.50 Type of Accident/Injury-Related Issue



Some **64%** of all participants who had an accident or injury-related issue also identified having to seek medical treatment (see **Table 4.63 Appendix C** for a gendered breakdown).

Level of legal assistance sought for accidents and injury

Over half (**52%**) of those who had identified an issue of this type had sought legal advice or help. Although the numbers were small, Indigenous women were only half as likely to seek assistance (33% of women compared to 73% of men) (see **Table 4.4** below). It may not be a priority for the person who experienced the injury. ‘I just got bumped by a work car...but I didn’t do anything’ (**Thursday Island Men’s Focus Group Participant**). At times, a person may be discouraged from seeking legal advice on the understanding that they had waived their rights to redress.

I had a gallbladder operation so it’s a day surgery. The next day I was in hospital. I went to Emergency.... When I went to the Emergency section, the triage nurse and the nurse on duty said my body temperature was that high... I was that sick and ended up with a staph infection and was in hospital for 10 days. But that’s the little thing you sign when you go into hospital so I thought I couldn’t complain about it, I didn’t know where to complain about it. ... I’ve been put onto a cardiac machine because my temperature was that high. 10 days on an intravenous drip!... I’m pretty educated but I thought I couldn’t complain ‘cause I signed that form. Cause when I got out of the operation, the surgeon said to me that ‘that was the most infected gallbladder I’ve ever seen in my life.’ (**Cairns Women’s Focus Group Participant**)

Table 4.4 Number and Percentage of Participants Identifying Accident/Injury-Related Issue Who Sought Legal Advice or Help in Relation to Compensation and/or Insurance

Legal Advice	Focus Group Participants			
	Male		Female	
	No.	%	No.	%
Yes	8	73	4	33
No	3	27	8	67
Total	11	100	12	100

N=23

Twelve individuals responded to the question of ‘who provided the help?’ Two people used ATSIILS, and one used Legal Aid. Two used a private solicitor, another two Workcover, and one an insurance

company for assistance. The others were unspecified, although one person mentioned the lack of assistance was the 'cause of prison'.

This service provider indicated that clients may not connect the problem experienced with a legal remedy.

I had an insurance claim where a lady had no insurance and she got bumped into by another, an elderly lady, and she did not pay... That lady didn't know whether she wanted to take it into her own hands. I said, 'No, you are best off taking it to a legal service'. **(Indigenous community organisation worker)**

Or, as suggested by this Cairns female focus group participant, the individual might want to seek redress but may not know how to go about it. 'With motor vehicle accidents, my people are not aware of where to get help, with motor vehicle accidents or personal injuries, how to go about claiming insurance'.

In this final example, a participant looking proactively for legal help for a horrific injury to her child followed by questionable care at a hospital, could not find adequate assistance. This woman is the same participant who had earlier recounted a tenancy-related problem (faulty hot water system), which led to the scalding of her baby (see Section 2.2: Housing). This clearly illustrates how one legal issue can multiply into many different legal problems, with level and complexity of need also increasing in seriousness.

I went to see a solicitor. Nobody wanted to touch it! It was a negligence case against the hospital up here... And the real estate wouldn't take any responsibility because it was a house that was built before such and such a time, it didn't have to have the regulators on the hot water systems.

With the accident and injury, you can't get help. I tried so many solicitors... and if you get a solicitor, you have to have a lot of money. You know, I contacted a whole lot of the no win no fee ones, and I did find one, but I ended up stopping the process because it was just so long, and I had to do everything myself anyway. And you know, going back and forth to the doctors... it was just too much stress, and the other stuff, with the father hassling me, I just couldn't do it. I was just a mess. I can still make a claim until [my son] is 18, but you've got to find someone who can do it. **(Charleville Women's Focus Group Participant)**

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 13 major areas - the same areas commonly used in legal needs analyses with some additional areas added, including stolen generations and Stolen Wages. The list is not comprehensive. Additional civil law issues were raised by stakeholders and in focus group discussions. These included matters relating to the non-criminal legal needs of prisoners, the Public Trustee, guardianship, mental health, identification, forfeiture of motor vehicles, police complaints, environmental law and health care complaints. The matters that were raised more frequently are discussed below.

4.14.1 Non-Criminal Legal Needs of Prisoners

The importance of prisoner legal issues was mentioned in a number of stakeholder interviews. These were recognised as being particularly significant for Aboriginal and Torres Strait Islander people given that they are over-represented in prison. One aspect of this legal need is administrative law.

Obviously prison admin law as it relates to prisoners is a big area, particularly for the Aboriginal Legal Service. That's probably not identified in your list, but otherwise they align pretty closely I'd say. It's such a huge issue given 30% of the people who are in prison are Aboriginals or Torres Strait Islanders in Queensland and many of them don't have the expertise or experience or skills to engage in asserting their legal rights while they're being detained. **(Legal practitioner)**

Access to parole is a major issue for Indigenous prisoners.⁸¹

Within parole there's illiteracy issues but there's also I think difficulties for Aboriginal people to obtain parole and the lower rates of parole for Aboriginal people as compared to non-Aboriginal people... We'll help them to actually write their parole application. The only way to apply for parole in Queensland is to make a written application. And so for a lot of the fellows, particularly up north who might have English as a second or third language, for them to write a parole application, firstly to actually physically write it, but then also to know what to, to understand what to put in there, what's the relevant information. Just to put all your life story on a form that you give to a nameless officer and you don't know where it's going to go can be a, it's a really full on process. **(Legal practitioner)**

Prisoner legal issues particularly relate to other legal issues such as debt, housing, care and protection and family law and access to justice more generally.

I'd add prison law in there as being civil, because people forget about, I think people see people in prison as criminals, so therefore criminal law applies. Instead of as people who are very disadvantaged, so you've usually got a cross section of criminal law, child protection law, family law, credit and debt issues, all of these legal problems that have all usually stuffed up in order for that person's life to be so off the track that they've ended up in prison. **(Legal practitioner)**

The specific legal needs of Indigenous prisoners can include such matters as compensation.

Well at the moment I'm working with a client. He was abused at Boys Town, so he's seeking compensation. So I've been working with him on that and I go out to the prison and see him, email and speak to his lawyer. **(Community organisation worker)**

Debts are also problematic, in some cases leading to incarceration.

Housing debts, SPER debts, so we've done quite a few cases on SPER debts and incarceration for SPER debts. An Indigenous woman was incarcerated for being unable to pay her SPER debt even though she had six children and she was seven months pregnant with her seventh one when they put her in prison. And incarceration for SPER debt you don't need to go to a

⁸¹ The Prisoners Legal service has provided the ILNP with statistics relating to advice and casework. This data indicates that the most common civil/family law advice and casework issues (2010-2012) were parole, prison complaints and issues (placement, assault by prison officers) and credit and debt (including SPER debt).

court, so you just go straight to prison, it's automatic if you don't pay your fines after a certain point, then they just send you to prison. So she was in the situation, she had to give birth in prison and she was shackled to the bed when she gave birth and her little one was in prison with her and her other six kids were, luckily she had a partner on the outside because otherwise they would have gone into care. Incarceration for SPUR debt, and SPUR debt in general even if you are not incarcerated for that, prisoners seem to have quite high rates of SPUR debt just hanging over their head. **(Legal practitioner)**

The civil and family law needs of prisoners are largely unmet, and particularly so for incarcerated Aboriginal and Torres Strait Islander women from more remote communities.

I think by far, the most unmet legal need I've seen ever is the Aboriginal women in Townsville [prison]. They are women who are often from Cape communities, Mount Isa, because there's only Townsville women's and Brisbane women's, so they're so far away from their home. Huge amounts of child protection stuff going on up there, huge amounts of credit and debt. All these family law stuff and where are the kids, 'I've been put in prison where are my kids?' It's just so stressful, unbelievably stressful for them to be sitting in there going, 'I don't know where are'. **(Legal practitioner)**

4.14.2 The Public Trustee

One of the main issues that arose in relation to the Public Trustee was the need for a better understanding of the needs for Indigenous people living in remote communities. These include issues such as the cost of living in those communities.

A lot of the times too people will call us up because their Centrelink money is managed by the Public Trustee and they don't feel like they're getting enough money to, they want a little bit more freedom. It's not something that we can totally advocate for, but we have in the past, and been successful in getting their payments increased a little bit more. **(Indigenous community organisation worker)**

People only get a limit on what they can spend. You know for fridges or washing machines If you wanted to buy a fridge from Retrovision in Cairns, and then your got your freight to get it up here. It means you go short on food for the fortnight. It's their money but they want to buy something like a fridge and the money is there but they don't release it. **(Pormpuraaw Men's Focus Group)**

There were also specific problems affecting people in remote communities such as the need to get three quotations for some purchases.

She'd ring them up all the time to get assistance with her money and basically to buy anything, she would have to fly from up in the Cape down to Cairns or drive and then get three quotes for the items to buy, so driving around or whatever, hire a car and then go back to them with quotes to get the funds. So she'd spend an absolute fortune having to do all of this, and it was just ridiculous. She would get aggressive with them on the phone and they would selectively charge her extra money, which would be money taken out of her funds. It was dreadful. I haven't had very many good dealings with the Public Trustee. **(Indigenous legal service staff)**

It's sometimes very difficult for people to be able to purchase items because they can't go and get the quotes that the Public Trustee sometimes needs if somebody wants to purchase a bed or something like that. So they'll often come to us and we can be a liaison point for them with the Public Trustee. **(Indigenous community organisation worker)**

Problems of maladministration were also identified.

I've seen some horrendous issues in regard to the Public Trustee... They didn't do his tax return for three years, incurred a tax bill of \$5,000 or \$7,000 or something like that, and that was their fault for just not doing it and ran the properties into debt. Just dreadful stuff, just dreadful. **(Indigenous legal service staff)**

Overall there was a perception that the Public Trustee did not have a good relationship with Indigenous people.

I don't think they like our clients because our clients don't get on with that whole bureaucratic structure of 'we'll call you at this time and that appointment'. Because they're very bureaucratic, our clients tend not to understand the process too well... Actually, they're paternalistic, they don't like being questioned... certainly by our clients. That's the other thing, we don't get ones that are happy with the Public Trustee, we only get the ones that are pissed off at them. But also seeing the attitude and the bureaucratic process, it doesn't suit our clients' needs, I don't feel. It's very judgement based. **(Indigenous legal service staff)**

4.14.3 Police Complaints

Police maltreatment or targeting of Indigenous people is also discussed in Section 4.3: Discrimination. Focus group participants raised on several occasions the difficulty and futility of complaints against the police. For example:

You know, if someone's getting harassed by a cop ... These young fellas I know they got ripped by [police] dogs and that. And, you know, my aunty tried to make a case of it and put it to them and all this and that but it just got nowhere... That's why a lot of us just think it's pointless to stand up and fight... That should be dealt with, like [you should be able to] trust government to go to them and do something about things like that. **(Rockhampton Women's Focus Group Participant)**

He [police officer] just started giving me lip and then tackled me, and I wrote all this in my report and the police officer- I even wrote his name, his last name in it, and there was nothing [come] of it... If you can write a complaint, and say that you were like physically, brutally forced by the police and nothing happens of it, what are we supposed to do? If we can't tell the solicitor, and the solicitor tells the judge and the judge doesn't give a fuck about it. **(Rockhampton Men's Focus Group Participant)**

The Aboriginal and Torres Strait Islander Legal Service also referred to the legal actions they were taking against Queensland Police Service in relation to unlawful detention and arrest.

The unlawful detainment and arrest of clients as well. We've got a few clients there and we're seeking compensation for them from the Queensland Police Service. They're really interesting cases and they come up that often but we've got at least three I've written them letters for so far and another person I have to chase up, and if you sat in court enough you would see a lot more. People don't pursue them. [There are] deficiencies in their procedures,

because that's the reason why some of these people are being locked up and they shouldn't be. That's what we're really wanting to change. We want to get these people compensation but we want to make a change to these so it doesn't continue happening to people. Potentially one of those – it's that other situation that leads into where you realise it's really clear that police are stopping people because of their colour – potentially with one of them, a discrimination action as well. **(Indigenous legal service staff)**

4.14.4 Identification

Problems with Indigenous people obtaining and keeping identification were noted by a stakeholder working with homeless Indigenous people.

Well they'll get some ID and then they'll lose it and we've got to start from scratch again. We do try and keep it in the office, we offer to leave, especially their birth certificates and things like that, in the office so that way it's safe. I think the hardest thing is when they're known by one name all through their birth but that's not actually their birth name, and that's been difficult before to try and get the right ID for that person, if they're known by Tom Jones and his birth name was something else before, we've had to change it, so that was a difficult thing. **(Community organisation worker)**

A Registrar noted some of the problems with identification requirements by Births, Deaths and Marriages (Department of Justice and Attorney-General).

We have a lot of issues with identity as well, like as far as birth certificates and that sort of thing go. The identification requirements now through Births, Deaths and Marriages are quite onerous for Aboriginal people, however we do have – I have a veto as Registrar. I tend to say that I'm satisfied that the person is who they are, but they quite often go to ATSILS or whatever to get a letter off them to confirm that they are who they are and whatnot. **(Statutory Authority staff)**

The cost of a birth certificate was also seen as problematic.

It's \$37 for a Birth Certificate now, so that's quite an onerous amount to someone who doesn't have a lot of income. **(Statutory Authority staff)**

4.14.5 Mental Health Advocacy

One stakeholder in particular identified the importance of advocacy in relation to the Mental Health Review Tribunal.

I think the mental health field, definitely, that there would be some issues around that and about how that's administered and how that person has rights regardless of who they are or their age. There was a lot of advocacy work done in that area that made a big difference to the final outcome. A lot of families again were going to mental health tribunals unprepared, unrepresented and it did nothing but perpetuate the same scenario, but we found that when we advocated for them as clinicians and brought some advice and guidance along and supported their families, that that would actually be taken off their orders. It wasn't rocket science. It was just ensuring that they had that legal guidance and authority. **(Indigenous community organisation worker)**

4.14.6 Forfeiture of Vehicles

The forfeiture of vehicles was also seen as a legal issue, arising both from legislation in relation to alcohol management as well as unlicensed driving.

Probably another area I should mention too that's really come to the forefront is forfeiture of vehicles particularly in the discrete communities and those where the alcohol management plans are in place and even more so with the changes to the Police Powers and Responsibilities Act. [Individuals are] facing forfeiture of his vehicle now because of the number of times he's been caught driving without a licence... with changes to legislation now under the Transport Road Use Management Act. There's quite a large body of Aboriginal people, their issue with the law is that they drive without a licence, they drive when they've been disqualified by the court and drive with grog on board. **(Statutory Authority staff)**

5. OBSERVATIONS ON SERVICE DELIVERY

5.1 Diversity of legal need within Indigenous communities

An Indigenous legal service provider has identified certain factors that set Indigenous civil and family law need apart.

What is special about Indigenous civil and family law need is the type [of problems that comes up], the way to solve [them] and the reasons for [them] occurring in the first place. If they are culturally based, then that's what sets it apart.... **(Indigenous legal service staff)**

It is important to also identify that diverse legal issues and needs and distinct access to justice issues arise for different groups within Indigenous communities. Torres Strait Islanders' experiences are, for example, not the same as those of Aboriginal Australians. Indigenous women too may in some respects see effective legal service delivery as being differently constituted (when compared with Indigenous men). Indigenous women may prefer access to *female* lawyers, by way of example.

I'm sure you've been doing some work with some of the family violence legal services... Sometimes the different perspectives that men and women bring to some of the policy issues can have an impact on access to services. So, things like use of alcohol in communities, the way that violence happens in communities... Sometimes the perspectives that women have [on what an] appropriate service response looks like too are very different to the approach that men have in those communities.... **(Legal practitioner)**

There should be more equality for our people, our families and communities in legal services. They deserve the options and the ability to be able to choose. I think that as women we are... passionate for our children, our families and our homes and [female solicitors]... carry a lot of passion in assisting [clients] whereas a woman, especially an Aboriginal woman, going to a male solicitor... I've heard that they don't feel quite as comfortable or confident that they will be as competent as a woman providing assistance. **(Indigenous legal service staff)**

Further it is clear from the existing ILNP research that the civil and family law needs of Indigenous prisoners are also not the same as those of others in number of ways. Firstly, they have specific civil issues arising because or as a result of their incarceration, such as parole, prison discipline related issues, or assaults by correctional officers. They also face higher barriers to accessing services or agencies dealing with and/or information connected with civil and family law problems, including as very few legal services with expertise and/or focus on non-criminal legal issues visit prisons (see also Section 4.14: Other Legal Issues). Further research is needed into the specific civil and family law needs of Indigenous prisoners.

The thing with people in prison is that they can't access anything. You can imagine that in the community you can go to a drop in centre, you can go to a community neighbourhood centre, you can go to government, to a Centrelink office. You can call someone on the telephone, you can look at the Internet, you can get a brochure sent to you. In prison you can't call a 1800 number or a 13 number, which is almost all of the government services and a lot of the community services. You can't do all of those physical drop-ins. They don't have access at all [to the Internet], nothing. And so much service delivery and information is being provided on the Internet these days. So a lot of what we do, we print off stuff from the Internet and send it to them cause... they don't receive it otherwise. **(Legal practitioner)**

Basically the further north you get, the more gaps [in legal service], the ‘blacker’ the prison population. Like up north it’s 75-80% [Indigenous inmate population] in Lotus Glen and Townsville as well, and it’s just, who is servicing Lotus Glen apart from ATSILS and Legal Aid doing criminal law? (**Legal practitioner**)⁸²

It was suggested that ATSILS and Legal Aid are generally seen by Indigenous prisoners as undertaking criminal law advocacy and are likely to have represented these prisoners in relation to relevant criminal charges prior to or leading to incarceration. “You know, rightly or wrongly when you don’t really understand the criminal justice system you blame your lawyer” (**Legal practitioner**). For this and other reasons there is a place for a separate, specialised service dealing only with prison law issues.

I don’t think there’s another model of [a prisoners] community legal service. Victoria had one a couple of years ago and [it] got defunded, but that was only a pilot project. And they’ve got some similar thing called Inside Access through one of the community legal centres down there, working with people with disabilities. And I think some of the community legal centres in Victoria will service the prisons that are in their local area but nothing that targets prison law (specifically, other than the Prisoners Legal Service (PLS)).... I think [the PLS is] a really vital service that should be [replicated elsewhere] (**Legal practitioner**)

Those Indigenous persons who are homeless, too, have special needs and particular barriers to accessing justice and may be more likely to experience particular legal issues.⁸³ Homeless persons in general are more likely to experience multiple legal problems, simultaneously, and less likely to access legal help in response, with Indigenous status adding another layer of complexity to this picture.⁸⁴ The story recounted immediately below demonstrates that Indigenous homeless persons may see their civil law problems as important but have limited capacity to address them, given their living situation.

That’s not to say though that (other issues are) not of concern to them, equally... (A co-worker who used to work with) people who were living in the parks who had been chronically homeless for a really long time [said] that despite that being their living situation they still after a period of time would come up with a plastic bag full of all these old contracts and bits and pieces. That says a lot. It worries them and they want to deal with it at some point but they don’t have capacity living in the park. (**Community organisation worker**)

Well, you can also imagine, [named person] was sitting here, living under the [bridge]. You imagine how difficult it is for these guys to access services. A lot of them don’t have

⁸² According to Prisoner Legal Service (Qld) statistics provided to the ILNP, as at June 2011 the highest Indigenous prison populations are in Townsville (225), Capricornia (near Rockhampton) (118) and Lotus Glen (near Cairns) (111).

⁸³ The Homeless Persons Legal Clinic (HPLC) in Queensland (operated by QPILCH (Queensland Public Interest Law Clearing House)), for example, provided statistics to the ILNP, which indicate that in 2011-2012, Indigenous clients numbered 51 (10% of their overall client numbers). Fifteen of these clients identified criminal law-related issues and the remainder (36) identified problems with civil/family law. The predominant non-criminal law issues were tenancy, ‘other’ civil, injuries compensation, credit/debt and SPER fines and family law.

⁸⁴ See discussion in QPILCH (2013), *Sharing the Menu: Perspectives and Data from the Legal Health Check, Homeless Persons’ Legal Clinic*, Brisbane QLD, available at:

<http://www.qpilch.org.au/download.asp?resourceID=1866>

identification.... And how do you address those sorts of things and their [need for] legal assistance? **(Indigenous community organisation worker)**

5.2 Legal assistance sector and Indigenous civil and family law need

Under-resourcing as a significant issue

Whilst it may well be unlikely to occur in the current political climate, increased funding is an obvious and essential component of any strategy designed to improve levels of Indigenous access to civil and family law justice.

Presently, the most significant issue relating to Indigenous civil and family law need is under-servicing. The serious gaps in civil or family law service delivery to Indigenous communities are primarily seen as being due to under-resourcing. As an Indigenous legal service provider notes, “There are gaps all over the place but I think most of them come down to resources.” Other stakeholder organisations commented similarly, stating that under-resourcing creates deficiencies in the quality of services delivered and leads to limitations in terms of the type and extent of work legal services can take on. Lawyers are not able to effectively meet *existing* client’s needs, let alone reach out to others in the community not yet engaging with legal services.

What we do is look at our capacity. So each lawyer will take on the number [of clients] that they can deal with. You can’t do more than that. We’ve said we want more staff. That’s the more important thing, yes. **(Indigenous legal service staff)**

Well since starting in this job I think the one thing that’s stood out for me most is that there’s not enough advocates within communities to deal with [civil] issues and to access information so that they can make an informed decision [about responding to civil problems]. We may get people come to us and say ‘This is what’s happened, where can I go to?’... Particularly for civil law, there are not enough advocates that could help people. **(Statutory Authority staff)**

To me [as a family lawyer], the gap is the resources, the funding. We should have more [family law solicitors] but how many more, because the need is much higher than what we have in here to deal with. And that’s identical for civil. We have two lawyers here but we could have more. And of course there should be more lawyers to deal with child protection matters. **(Indigenous legal service staff)**

It’s more the resourcing and I still think, too, the access to legal service centres. We have some great... solicitors, they’re very good in advocacy work but they’re way understaffed. So it’s nothing to do with the actual expertise, it’s the quantity that they’re seeing. That then has an impact. [After] Cyclone Yasi [there was] a lady still waiting two years after a complaint [was lodged] and the communication between her and the legal centre is not satisfactory at all... This one was Queensland Legal Aid. Well, I know the solicitor, who’s very capable, but he’s inundated with clientele.... Particularly when a disaster happens the clientele skyrockets and the quality diminishes because of it and it’s nothing to do with the expertise of the solicitor. **(Indigenous community organisation worker)**

In the ILNP focus communities, Indigenous focus group participants also spoke about how hard it is to find a lawyer to help with relevant problems. They also identified high levels of need.

I don’t know what staff they have but they seem to be stretched. **(Roma Women’s Focus Group Participant)**

Do they still service the area? There always seems to me to be too many people out there that need help and not enough [services]. If they've got to service from here to Timbuktu, they just haven't got the manpower to do that. Has that changed at all? (**Roma Women's Focus Group Participant**)

Despite the levels of need and the need for more resources, it is important to note that legal services are reportedly already being cut rather than expanded.⁸⁵ "The services are starting to get scaled back. So (the local solicitor's) job could be in jeopardy and then we will be a town without a legal service", claimed a woman in the Roma focus group, for example. Of particular concern, given the ILNP findings for Queensland and in other jurisdictions finalised to date, in 2013 the Commonwealth Government announced substantial cuts to funding to the legal assistance sector, including to ATSILS and IFVPLS, from 2015.⁸⁶ This will only inevitably exacerbate levels of legal need and further hinder access to justice for Indigenous Australians, which will also then compound levels of social exclusion experienced. Access to legal assistance is an essential component of effective access to justice.⁸⁷

ATSILS service delivery: civil, family and criminal law

There is a widespread perception that legal services in general are not taking on enough civil and family law work. That this is probably so for ATSILS is particularly problematic, given that they are likely to be the principal point of access to justice (through legal services) for Indigenous people. Indigenous legal services, both ATSILS and IFVPLS, are commonly seen as the primary provider of legal assistance to Indigenous communities.

I think that (ATSILS) is the first place [they go]. Then if they get knocked back there because of the family or whatever reason, the next place is Legal Aid.... (**Rockhampton Women's Focus Group Participant**)

Many commented on ATSILS' continuing focus on criminal law and its under-capacity to respond to civil and family law problems, which are identified by Indigenous people and others as also urgently requiring ATSILS' attention. Indigenous family violence legal services do take on a certain range of civil and family law matters where connected with family violence, but the requirement that an issue be linked to family violence to access their help also restricts the type of non-criminal matters dealt with.

I went to the legal service, the Aboriginal and Torres Strait Islander Service, but when I spoke to them [about a Centrelink problem] because that matter was civil they didn't help with that. (**Thursday Island Women's Focus Group Participant**)

You've only got one person (lawyer) to do your civil case, but three or four to do criminal. That's why we're back in time and can't get our stuff fixed. Is there any chance to get an extra (solicitor) through? You've asked us to do this survey and I've done this sort of thing before. (**Cairns Women's Focus Group Participant**)

⁸⁵ See for instance discussion in Section 4.1: Housing in relation to tenancy advice services in Queensland.

⁸⁶ See media release from National Aboriginal and Torres Strait Islander Legal Service (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> and Indigenous Family Violence Legal Services media release (December 2013):

http://www.nationalfvpls.org/images/files/MR_18122013_National_FVPLS_Forum_Funding_Cuts.pdf

⁸⁷ See discussion in ILNP (2013) *Submission to Productivity Commission's Access to Justice Arrangements,*

http://www.jcu.edu.au/ilnp/public/groups/everyone/documents/journal_article/jcu_132183.pdf

I think what they can do up here... is to have a Legal Aid service... because [ATSILS] can't pick up that component of civil and family law. (**Thursday Island Women's Focus Group Participant**)

[Civil law work for Indigenous people] is just chronically underdone [by] the legal assistance sector, including ATSILS. ATSILS do great work. They just don't have the resources to be assisting people [enough], particularly with civil law stuff. I think ATSILS pick up a large proportion of the demand for family law services but I just don't think they're going anywhere near touching the sides of civil law need. (**Legal practitioner**)

The civil and family law sections within ATSILS appear to some to be 'added on' to what is the core business of criminal law work. Participants advocated for a shift towards developing a more strategic approach to meeting need, rather than one that seems to them to be primarily about crisis intervention.

We need more of me. Well, not particularly me but more people to deal with [civil]. Even if you had a court support officer or something [in civil], it would be helpful but... I come back to the fact that the civil section seems to be tacked onto the criminal section without management. (**Indigenous legal service staff**)

[The] other issue is resourcing. [We] have got a background in criminal law. ... I've worked in Indigenous organisations for about 20 odd years and I just feel there's too much emphasis placed on 'after-the-fact' criminal law. It's an important area, but not enough resources are going into intervention and ... education and support work [in other areas]. I've always promoted [the idea] that you need a bigger pool of funds to support, to break that cycle in terms of early intervention. It's just a revolving door and there's so much money being wasted and spent on that end [criminal] rather than focusing on intervention. We're always coming [in when there's a] crisis because they don't have the resources at an earlier [point], or education about the legal systems and that at an earlier age, especially [for Indigenous] women. It's all about crisis [intervention]. They don't know where to go. They don't know who to see. (**Indigenous legal service staff**)

Importantly, it was thought that ATSILS were under-resourced to meet existing *criminal* law need, which inevitably impacts on the quality of service delivery in this area.

"Plead guilty, it'll go better for you." I'll tell you what. I've had a gut full of the situation. Not me, but someone in my family pleaded guilty and had the book thrown at them. So they're just not effective... I think it's the workload as well. The amount of stuff that they have to do too affects how they take on cases as well. I sat in one of the solicitor's offices one time and there were just files everywhere and I'm like 'Wow,' because one of the legal secretaries ... were helping out to file things and have things ready and that solicitor was just completely burnt out. (**Indigenous community organisation worker**)

The fact that ATSILS is nowhere near sufficiently funded to effectively meet Indigenous civil/family law *or* criminal law need should not be in dispute.⁸⁸ For this reason, and given the high levels of Indigenous over-representation within the criminal justice system, it is certainly not suggested by the ILNP that in order to better resource non-criminal legal service provision ATSILS should reallocate

⁸⁸ Schwartz, M and Cunneen, C 'Working Cheaper, Working Harder: Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services' (2009) 7(1) *Indigenous Law Bulletin* 19.

resources currently committed to undertake criminal law work. Rather, it is clear that additional funding is required to assist ATSILS to address *all* aspects of Indigenous legal need.

Escalation to offending

As a related issue, numerous stakeholder and focus group participants spoke about the direct link between unaddressed Indigenous civil and family law need and criminalisation of and offending by Indigenous people. “When you don’t know your rights, straight away you’re going to get frustrated, straight away you’re going to start getting angry” (**Charleville Women’s Focus Group Participant**). This anger may lead to commission of criminal offences, including assault, and criminal charges. This is a crucial point that has been raised in other parts of this report, including in discussion of discrimination, neighbourhood disputes and Centrelink problems.⁸⁹ More assistance with non-criminal legal matters is likely to help to de-escalate situations before they reach this level. In this way, increasing funding for legal services to better assist with Indigenous civil and family law problems as one means of reducing criminalisation is likely to save governments money.

[A civil law matter] may lead to a criminal matter. If they have no housing, they might have to go out and to do a little something to eat that night or whatever.... I see the connection between civil and crime quite dramatically really. Yeah, you can see that connection because you’ve got debts and people who can’t [afford stuff], so [getting] money is a motivator there. [Also for disputes over estates]... I think, that if we were able to get statistics that showed how much we saved the state [in resolving civil and family law matters], it would be really dramatic. (**Indigenous legal service staff**)

[Dealing with certain issues reduces offending]. And it’s not only for people in the community, but prisoners. I was having a conversation with a prisoner this morning. Now I’m hoping [what occurred]... won’t escalate into a further charge today. It may do, but without anyone to contact this morning it would have. I’m 99.9% or 100% sure by now that he would have been locked up again this afternoon. So I think the connection is [there].... We’ve got some really good practical stories about how one little thing will lead to [another], and it’s a total disaster. [L]ack of communication can cost the state, cost the community etcetera..... (**Indigenous legal service staff**)

The legal assistance sector

Legal services that are not Indigenous-specific have some capacity to respond to non-criminal legal issues, including both CLCs and Legal Aid. However, (with some exceptions) they do not have anywhere near⁹⁰ the same levels of engagement with Indigenous communities that ATSILS and IFVPLS have. In Mount Isa, for instance, none of the focus group participants had visited Legal Aid. In fact, most didn’t even know there was a Legal Aid office in town. As a man in this group said, “I’ve never seen no blackfella walk in there”. Another stated, “I might just go in there one day to find out for myself”. These services may be seen as ‘government’ agencies and/or as culturally unresponsive. Legal services also commented on this point, as follows.

⁸⁹ See further discussion in Schwartz, M and Cunneen, C (2009) ‘From crisis to crime: the escalation of civil and family law issues to criminal matters in Aboriginal communities in NSW’.

⁹⁰ The exceptions include, for example, the Prisoners Legal Service, a Qld CLC with 30% of clients identifying as Aboriginal and/or Torres Strait Islander. This is probably due, in significant part, to the fact that their focus on inmates brings them into direct contact with the disproportionately large Indigenous prison population.

With the other legal service, they are actually non-Indigenous people but our clients would more than likely not use them because they don't have a presence within their general social life. So there's no familiarity or trust, I guess. **(Indigenous Legal Service Staff)**

Legal Aid tries to promote itself as a culturally appropriate place by putting pictures of Aboriginal women [up. But it's the] same face on the walls. **(Indigenous legal service staff)**

Sometimes they would come into CLCs as well, but ordinarily it seemed that clients' preferences would be to engage with ATSILS and many of them already had an existing relationship with ATSILS due to their family or criminal law problems, which might have crossed over with their civil law issues or might be quite independent. **(Legal practitioner)**

The CLC sector may be “not as engaged” with Indigenous communities “as it needs to be”, suggested a CLC worker. This is partly attributable to the fact that they are not sufficiently resourced to undertake the groundwork in communities required to increase engagement.

CLCs have moved away in some ways from their traditional community development and community engagement approach that was part of the foundation of the movement, to where now we are measured on the number of widgets that we produce. It's more time intensive to build the types of relationships with Aboriginal organisations and Aboriginal communities than to just open the doors and just help the people who walk through the doors. So it really is those CLCs that thoughtfully engage with those organisations and make the time commitment and the resource commitment to do that that are able to best support the most vulnerable groups in their communities, which can include Aboriginal and Torres Strait Islanders. **(Legal practitioner)**

If Queensland CLCs were to develop an Indigenous advisory group, it is suggested, and/or to increase numbers of Aboriginal and Torres Strait Islander liaison staff in CLCs, engagement may be enhanced. In this regard, other jurisdictions may be “a long way advanced from where we're at” in Queensland, according to one legal practitioner working in the community legal sector. Some stakeholders also believed that CLCs (amongst other agencies or services) are often limited in the type of legal casework they can take on, particularly around court work.

[CLC in] family law matters, they don't generally do court representation. They might help with the paperwork.... [For civil and family]... it's representation in court that's difficult to get. We can get people referred for advice and support and there's all sorts of possibilities, Ombudsman, all different things on our referral list but...[with representation it's difficult]. **(Indigenous legal service staff)**

With [our local] Community Legal Centre... their funding and things change and they seem to be able to do a fair bit as far as advice and assistance but when it gets to whether many clients of ours would go to them, I don't know. **(Indigenous legal service staff)**

Some staff in Legal Aid felt that in some respects they were meeting targets in terms of numbers of Indigenous clients assisted, although geography inevitably had some impact on this.

We have a target for Indigenous clients and I think the targets are sort of roughly based on the population, the Indigenous population in a particular area. My understanding is that we generally exceed it across the State, but may not exceed it in North Queensland where the population is that much more concentrated. But they also, probably more frequently, go to the

ATSILS or maybe don't access services at all. Because that's the whole thing that comes out of these legal needs studies, that people actually have legal needs but don't go to the right places for help. **(Legal Aid staff)**

Others in Legal Aid, however, had a strong sense that *many* were missing out, including where funding guidelines excluded what look like minor matters, but which still potentially have a significant negative impact. "Look, [the legal assistance sector does] its best, I think. It's a constant catch-up game though,": stated one Legal Aid staff member. **(Legal Aid staff)**

It's the smaller matters [we can't take on], the things that fall outside [our guidelines] like the minor debt. We don't have a grant of aid for that. And the traffic [matters], we don't do that. That's got a big impact on people.... There are applications that you can make to court to get your licence back, even if you've been disqualified absolutely. People need help with that but there's nothing [we can do].... We give them a self-help book, but if your literacy is poor it's not going to help you. **(Legal Aid staff)**

In the advice service downstairs we don't see a lot [of Indigenous people] coming in the door and what we do see might be males with traffic matters and some crime, but not a lot. I couldn't even say one a week. It's probably even less than that. And any female that I've spoken to in the immediate past, they're quite well educated and they've come in for civil matters, but you don't see a lot at all. And very few children come in the front door for advice. They're [probably] either going to ATSILS or not going anywhere at all. Someone's picking them up in the court system. But I couldn't count on one hand how many I've seen, very rare. **(Legal Aid staff)**

The private sector, too, is apparently limited in assisting Aboriginal and Torres Strait Islander communities with civil and family law problems. For the overwhelming majority of Indigenous people there is no way they can afford to pay private practitioners. As one man in Roma said, "I don't think I've had the money to use [private lawyers]". It was identified that more pro-bono assistance should be provided to Indigenous people in non-criminal areas of law.

One of the things we don't have in civil areas, there is... very little or no pro-bono assistance in family law matters, and I think that is an area where we should be looking for pro-bono assistance. But none of these firms these top tier firms, they don't want to be involved in family matters. Family is not on. **(Indigenous legal service staff)**

Indigenous and non-Indigenous legal services

It is generally thought that *Indigenous* legal services should be prioritised over non-Indigenous legal services in terms of provision of funding to meet Aboriginal and Torres Strait Islander civil and family law need. It is said that Aboriginal and Torres Strait Islander people need Indigenous-specific services to assist them. As one Indigenous legal service provider stated, "Aboriginal legal services are vital for Indigenous communities. We see people who don't understand culture at all, don't even notice it, they can't smell it, they can't pick it up at all, whereas we can and that makes a big difference." Another Indigenous legal service provider raised serious concerns about private practitioners dealing with Indigenous people, including at a cultural level.

Yes, huge, huge [issues] - very inappropriate. Inappropriate bias, even sexual advances against some clients, just really inappropriate stuff and even the so-called educated

independent children's lawyers, I don't think fully quite get it the cultural aspects, particularly separate representatives or independent children's lawyers and family court. Whereas [we] have done training in that area as well. Especially around deaths and mourning and sorry business and things like that as well. And it's a very racist town. And [in an] underlying way, it always has been, certainly. **(Indigenous legal service staff)**

An Indigenous community-based organisation also spoke of the necessity of funding Indigenous services (in general) over non-Indigenous services to work with Aboriginal and Torres Strait Islander communities.

I think at the end of the day too, black fellas need to fix up black fellas' problems. We don't need to keep going to white people... Really at the end of the day it should be our right to have funds to do this. We shouldn't have to grovel to government. They took our land, they are the [cause] of our despair and we should be recompensed for that through a Bill of Rights or something like that. Every year we're nervous, biting our nails, 'Are we going to get money?' 'Are we going to get by?' **(Indigenous community organisation worker)**

In this context, CLCs have identified their role in addressing existing need as being to support Indigenous legal services (both ATSILS and IFVPLS) to increase their capacity in relevant areas, rather than as stepping in to fill existing gaps.

[To] what extent is it appropriate for Community Legal Centres to be providing civil law services to Aboriginal clients versus supporting an Aboriginal Legal Service to do that work? There's a tension there. Many CLCs would say 'We support ATSILS to provide these services.' ATSILS doesn't necessarily have a huge capacity in civil law services and so that's created a bit of a gap. [CLCs are] working out how in partnership we can better deliver those services because we wouldn't want to be seen to be moving into working with Aboriginal clients without the support of the leading Aboriginal legal service provider in the state. **(Legal practitioner)**

I think the cultural competency or cultural awareness is really important there and I think that's best done by Aboriginal controlled organisations. If we were seeing in Queensland that there were extra resources to go into delivering civil law services for Aboriginal clients, it shouldn't be CLCs that have expertise in civil law expanding. For me, it's ATSILS, which has the experience with the client group, which should be expanding. **(Legal practitioner)**

However, this is not to say that non-Indigenous legal services cannot do more than to assist Indigenous people with civil and family law issues.

Particularly in regards to Indigenous clients, I still think there's a lot of room of improvement, The legal centres here and Legal Aid, they need a lot more work in regards to working with Indigenous clients. **(Indigenous community organisation worker)**

Indigenous people will not in *every* instance choose an Indigenous service over a non-Indigenous service, for a variety of reasons. "I would never go with black legal aid, never", states a woman in the Brisbane focus group. "A lot of the Aboriginal agencies are run by one family." "Aborigines they haven't helped me, they'd never help me. I've gotta go private", claimed a man participating in the Brisbane men's focus group. A community-based stakeholder also suggested, "There's a lot of family members and if our client doesn't like that family they won't go to their office." For some, confidentiality is also a serious concern.

When you go to the Aboriginal legal service here there is no confidentiality whatsoever... I heard people talking to their friends, 'Oh, guess who came in today because of this, this and this'. Oh yeah, there's no confidentiality, nothing at all. That turns me off. I'd rather go to them white fella legal aid, legal service. **(Mount Isa Women's Focus Group)**

And the main reason they come to us is because they don't want Murri organisations involved because they think they'll talk. **(Community organisation worker)**

In other words, Indigenous people need to be able to make a choice in terms of which services they access. There should be as wide a 'diversity of people working' in civil and family law related areas as possible, as one CLC identifies below, so as to provide for effective choice.

For me choice is important and ... like we can't force them to do things. [They need to make an] informed choice about it because I can see if somebody has a choice to go to an Indigenous counselling service or a non-Indigenous counselling service, I think in some cases some non-Indigenous counselling services are very good and probably better than Indigenous ones. But they may do some things really well and some things not so well... I know there are some families in some circumstances who won't come to us because [of]... their own shame or their own guilt or something. If choice gives them the opportunity to go somewhere else and resolve whatever it is, I think that's okay. **(Indigenous community organisation worker)**

I think it's just good to have a diversity of people working. [The PLS has] an MOU with ATSILS to be clear that [its] not doing work that they are doing, so [there's no] doubling up, [they're] providing separate services. [The PLS] recognises that they're the state-wide experts in delivering criminal law services to Aboriginal people, and the MOU states that they recognise that [the PLS is] the state-wide experts in delivering prison law services. ... I think it's good because it allows [the PLS] to specialise. **(Legal practitioner)**

5.3 Legal service policy as a barrier to accessing justice

Legal Aid policy

Criticism was made about Legal Aid policy in a number of areas. The problems were raised during discussion of potential barriers for Indigenous people in accessing legal help in response to civil and/or family law problems. They were generally identified by legal services rather than focus group participants or other stakeholders, including those trying to access Legal Aid assistance on their clients' behalf. Decision-making in relation to applications for grants of aid for counsel and for disbursements and the process of application for assistance itself (particularly given literacy issues: see also discussion below relating to literacy) raised some concerns.

And where child protection or family law matters are concerned, ... when it gets to the last stage, ... there is a provision in [Legal Aid] guidelines ... for a grant for counsel but... it's being increasingly knocked back. So we haven't had any success in the recent past with Legal Aid [in this regard]. Although there is an understanding there, we've had very little Legal Aid funding. **(Indigenous legal service staff)**

And in civil we have a relationship with Legal Aid on quasi-criminal matters. There are opportunities to try and get money for civil outlays through Legal Aid, but it's very difficult and it's very time consuming, and they're generally for outlays in relation to medical experts,

and there's a lack of cultural competence there anyway. But quasi-criminal matters too, that reach, usually they're at a bigger case level, but we need senior counsel. I'm counsel myself so we never have to ask them for counsel fees when I'm doing the representation, but there are quasi-criminal matters that I run that I must have senior counsel because the Attorney General has senior counsel, or perhaps two senior counsel. Legal Aid will, on those higher, more important matters, that have got value, that they see the value, they will come on board and they do pay counsel fees, minimum though, and we have to have senior counsel that are prepared to do it at those rates. **(Indigenous legal service staff)**

Similarly, another example was a woman who needed a report. There's no way that Legal Aid would provide that. So we paid for that out of our client disbursements, but she needed it to get past this obstacle to get her baby.... But to be fair, we do get some funding to cover that for client disbursements, so it's part of our budget, but it's a fairly small part of our budget. **(Indigenous legal service staff)**

I think that's why everyone uses ATSILS rather than Legal Aid because their forms are so hard. You don't have to have any forms to go to ATSILS, which is great, but Legal Aid... Oh yeah, I think that's quite a big barrier, because the forms are quite big. You have to fill these massive forms in, whereas you can just ring ATSILS and cruise along there. I think that's why people use ATSILS so much. **(Community organisation worker)**

And just the application process itself! It's [a 16 page] application form for Legal Aid. **(Indigenous Legal Service Staff)**

Merits and means testing

Means and merits testing by both Legal Aid and ATSILS were discussed, but again it was Legal Aid policy in this area that attracted greater criticism.

The application process for Legal Aid is much more stringent I think than at ATSILS. [It has] intensive means testing and merit testing. **(Indigenous Legal Service Staff)**

Merits testing

Legal Aid decision-making in relation to eligibility for aid based on merit was seen to be inconsistent and at times unreasonable, including by those working within Legal Aid itself. It sometimes led to problems 'on the ground' for Legal Aid staff, including as decisions to refuse assistance had potential to create negative perceptions in communities of the service. Greater transparency was also called for in the decision-making process itself.

I remember there was one very recently where I don't know why this got refused... There was a cross-application for a domestic violence order. It was two women. They were cousins and one had been granted an order, a temporary order, and that was going to hearing because the other one was contesting it. The other one had applied for a cross-order and had been refused [the order] on the grounds that she didn't meet the family relationship test. ...[How] can one meet it and the other doesn't? Now, they were different Magistrates. I submitted an aid application on [the lady's] behalf, which got refused on the grounds that the court had said that she didn't have a [valid] application. It was maddening because that's the same argument.... How can you say that this person doesn't meet the grade there, when that [other woman] did? And there's still this one going [to hearing], she's still got this [application]

against her that she's now having to defend it herself, unrepresented. I wanted to climb into a hole when that got refused. It was awful. So, it makes it hard for us because then we're the people on the ground when they look at us and go, 'We don't get it. You say you're here to help. Why are you not?' **(Legal Aid staff)**

I think there's an inconsistency in the way the grants of aid are done because for one person who's got the same kind of merit as another person you get a different grant of aid. So for one, I get stopped at the initial, 'Just give them some advice and send them on their way', and then for another one who's pretty much equal as far as I can see in everything, all other respects, he gets the grant of aid for only the family group meeting but the next one [gets it] for the court order conference. I don't get why one person gets stopped at this early phase and the other one gets representation all the way through. It's frustrating to me that I can't just get it in one lump. I've tried doing that, I've tried asking for everything all at once, at least up to family group meeting stage, but that gets knocked back too. So that's policy and I think that creates an inconsistency out there and I think that erodes the confidence that people have in being able to come here. Because quite often, they're returned clients and there's a family connection web and people talk a lot. So if you get one person saying 'Don't bother. Don't go to Legal Aid because all they did for me was talk at me and then that's it', that leads to the 'Well I won't bother getting any legal advice and ATSI/S is the same so who cares, I'll just do it myself'. And then it's never a good outcome. I'd like to see some more consistency and some more transparency in the way grants of aid are given. I think it's quite a closed shop. I don't think it's anyone's fault, I don't think it's a personality thing either. I think it's just that's the way the system runs, there are tick boxes and there's no room for people to be outside those tick boxes. But having said that, if there are tick boxes then use them all and use them the same every time. **(Legal Aid staff)**

Sometimes, too, it was thought that criteria uniformly applied across all applications *also* led to unfairness, including as part of the merits testing of applicants living in remote communities, who have less access to (alternative) legal help than others more centrally located.

[With] merit testing, again it's that standards thing, because a case in Bamaga will be different to a case here where there are alternatives that people can use to get themselves some help. Up there, they haven't got anything. It's us, or nothing. So it really is – I think the bar for – we were told that the bar would be lowered for remote [communities] but the reality is it's not, it's the same. So I get refusals all the time for aid applications that I send through, which drives me mad. Because then I'm left saying, 'Well, what can I do to help this person because I don't want to just leave them out in the cold with nothing?' **(Legal Aid staff)**

Other legal services commented on Legal Aid's merits testing.

Just to give you an example, I had a client [in] a parental abduction case. [There were] two little babies [and the partner was] threatening with guns, the whole bit. The court didn't consider it as particularly urgent, so they gave us a date eight weeks down the track even though a barrister actually stood up in court and said 'This is totally inappropriate. It should come up sooner.' However, that's what happened. Because of the nature of the matter and [the partner] having access to legal representation, it was one of those rare cases where we said 'Okay, we're doing a recovery order, but we're going to get a barrister.... and we're going to brief counsel for it.' So we did. Normally we'd do it ourselves. Legal Aid decided that we didn't have sufficient merit and we could have done it ourselves. And maybe we could have.

It was just that it was such an extreme case that we didn't want to take any chances in case he turned up with counsel or something like that. He had access to funds from mining companies and stuff like that. As it turned out, it probably wasn't absolutely necessary. But the thing is they weren't willing to fund us. We don't ask for it. We don't get any benefits from Legal Aid except if they provide a mediator forum [for] family dispute resolution or ... money for counsel. So the funds that we draw on from Legal Aid are really, really minimal, but they wouldn't provide that to us [on this occasion]. **(Indigenous legal service staff)**

ATSILS staff members note that determining whether and what to take on is always a fine balance, including with respect to merits testing. Some limits have to be placed on the work lawyers commit to, as there simply isn't enough resourcing to meet existing need. However, ATSILS staff may interpret policy as generously as possible so as not to exclude people from assistance.

We probably will follow our funding guidelines because that's what we have to fall back on. And they say, for instance, funding in divorce matters to assist a person where it's complex or where they're unable to conduct their matter, or in family law matters try mediation first, etcetera. That's the usual thing. Then in child protection matters ... look at the merits of the case. But even in family law matters, [it's about] merit. It is all dependant on merit, but I think they're not looking at the higher needs of these people. The policy really should be looking at the need and what needs to be done. I guess we're also looking at numbers - how many lawyers are there to attend to these matters if we were to take on all the matters that come through the door. So yes they're restricting it to merit, but if you did a merit test on everything... The policy's very brief on the representation or assistance for child protection matters. In family law matters they're a bit more.... But it is restrictive especially in relation to child protection. Because, I think, Legal Aid Queensland says you can represent or provide assistance from the moment papers are filed in court in child protection matters, but we don't have that. We're just told: merit, that's the funder policy. But we are more open and we would provide assistance even before or after, even before the matter goes to court, because the need is there and our goal is reducing the numbers in care. **(Indigenous legal service staff)**

Prospects are everything generally. For us assistance is everything, and if the assistance requires us, if we're completely cut off, we can't get the type of assistance, the legal representation because the prospects are so low, that doesn't mean we don't go back to the person or take interest in the question. We still try to assist because as far as we're concerned, and I'm sure it would be the same for family and civil, that if we can see glowing embers, which often you can, and if we're saying there's no prospects and you haven't got a hope in hell of winning that case so don't ring again, or 'thank you we're shutting that', there's potential for those embers to catch light on a whole lot of other issues. So that's where we have to assist we have to have as soft landing as possible for all of our enquiries, it's the same in family. Even when there's no representation it's the same. Advocate, write letters, make phone call.... negotiation, all of that. **(Indigenous legal service staff)**

Means testing

Both ATSILS and Legal Aid policy relating to means testing were discussed. There was some criticism of both, but again ATSILS staff indicated that they used their discretion to interpret this restrictive policy in such a way as to not cause undue difficulty to potential clients (at least, in

criminal law). It was also suggested that Legal Aid policy was harsher as it was income and asset-based, not just income-based (compared with ATSILS).

If you earn over \$46,000 a year, we can't help you. If I was looking for a lawyer, I couldn't afford one. I couldn't afford to pay \$250 or \$350 an hour for some lawyer to do some work for me. **(Indigenous legal service staff)**

Legal Aid is income and asset, we're income only.... [It's]... just a different proposition altogether. Plus, we just look at income, they look at income and there are certain allowable deductions. It's more like your tax return, you know what I mean [is], there's a formula. **(Indigenous legal service staff)**

I think the income test hasn't changed for a long time. It's still at \$46,000 or something or you've got to be on Centrelink. There are a lot of people on Centrelink who get more than \$46,000. So if you're part of the working poor... you could just be sneaking over \$46,000 and technically not [be eligible]. Now, to tell you the truth, in crime we turn a bit of a blind eye or we find a way to err on the side of giving people legal help, but I think it does impact.... I've got a client in Roma who is a chef, it's taken her years to get her qualifications and she's working ... out on one of these camps. Not only doesn't she qualify for us financially, [but] she doesn't qualify for Legal Aid financially either. She's charged with an indictable offence, which mandatorily has to go to a judge and jury and which she says she's not guilty of and she'll be contributing some big swag of her own money [to pay for representation]. But she's not earning \$100,000 a year, she's earning something like maybe \$1,000 a week. So I think the income [test] is a bit out-dated. **(Indigenous legal service staff)**

And I think with Legal Aid there's a set criteria as well for accessing [it] and I don't know what the criteria is, but I know that in some cases when somebody has tried to get Legal Aid it's been denied for whatever reason. So it's not everybody [that] is entitled to Legal Aid, as well. No because for example our work, tax threshold, your salary of course determines whether you're accepted for legal aid assistance or not. **(Indigenous community organisation worker)**

Again, uniform application of means testing was seen to be unfair for those living in remote communities, with the same wages but higher costs of living than others.

Yes, and one of the variances, the income up [in the Cape] is different to here. The same amounts, like if you're working for the hospital or something and you're on the same wages but the expense up there is astronomical. Housing up there, you pay \$500, \$600 a week. A flat up there is equal to a house in Kewarra Beach (in Cairns) or something, and you don't even get [good] quality. It's so expensive and then the food and that, and then even to travel out.... the airfares are just through the roof and petrol, everything. If you take that into account, the amount of money people get up there they'll equate to being refused here. **(Legal Aid staff)**

[They were] earning too much or maybe just over... Well I guess everything is on a case by case basis... I mean it wasn't a lot of people, because there is a high incidence of low income earners up there. So it wasn't a lot [of people], but when it happened they sort of fell between the cracks. **(Indigenous legal service staff)**

Legal conflict

Conflict excluding persons from accessing help was seen as a significant problem, both by those in the community *and* stakeholder organisations, including legal services. Comments from focus group participants were as follows. “They only take one party”, claims a man in the Brisbane group.

We had no legal representatives [with our foster care case] because they’re representing the other party. **(Brisbane Women’s Focus Group Participant)**

Sometimes you can’t use [ATSILS] because of a conflict of interest, so sometimes you are better off going to see the white legal aid service. **(Roma Men’s Focus Group Participant)**

It was also suggested that conflict might have particularly negative ramifications for women, especially in smaller communities, although one ATSILS staff member thought that women and children were to be given precedence over men.

[Some] of the men who are more persistently violent will go and conflict women out of every service in town. It's pretty easy to do in a small town. So you just need to go and get advice from this service and that service and a couple of others, and she can't go anywhere, but she can come here usually. **(Indigenous legal service staff)**

Generally [the policy is] first in at the time – so, [for example], mum’s through the door first. And then we have a policy, I think our policy or funding guidelines say women and children where possible rather than the men because at one time this was known as a men’s service. It could be whoever [missing out]. If dad’s already come to us for criminal assistance and depending on the level of conflict or how we identify it, we might have to ask/refer around. **(Indigenous legal service staff)**

Conflict is also likely to be more problematic for those living remotely.

In terms of gaps, there was a real gap up [in the Cape] if, for instance, for whatever reason we could not take on a particular matter - whether it was because they did not meet our criteria or if we had a conflict. If we have taken on one party, we obviously cannot take on another party because we have a ‘first in-best dressed’ sort of policy.... If somebody comes to us, we act for them and if the other party comes to us, we have to refer them to Legal Aid Queensland or a private practitioner, most of which are in Cairns... Somebody is disadvantaged because they don’t have a face to face lawyer. **(Indigenous legal service staff)**

Indigenous legal service staff members recognise the problem and indicate that there is a need to think a bit creatively so as to optimise levels of service provision to *all* in Indigenous communities.

I think it’s the national solicitors’ rules now, they say how these things should be dealt with, but as a service provider, a specialised service provider to Indigenous communities, we need to sort something out about conflicts of interest that arise. We’re looking at a policy where we.... [establish] information barriers, but we’d need support from the law societies for that as well. **(Indigenous legal service staff)**

You have conflicts all over the place. Cairns is a small place and everybody knows everybody and everybody is related to everybody. So I've had matters where earlier I've been acting for somebody and then you act for the other side. But you can't exclude somebody [automatically]... It depends on the [type of] conflict. It can't be the same matter, obviously,

but if they're somewhat related but further down the track you have to judge it. [We have] talked about Chinese walls [here]... You have to because otherwise you would be excluding people that you would normally deal with, and you can't say no to people like that.
(Indigenous legal service staff)

'Black on black'

Indigenous legal service policy to not represent or assist one Indigenous person against another was still perceived to be a problem.

The problem is that when you're trying to get help from ATSILS, the majority of the time we're having an issue with our own people and they won't do black on black,' **(Brisbane Women's Focus Group Participant)**.

Apparently legal aid, well Aboriginal legal aid anyway, apparently they don't do Black on Black. I don't know what for,' **(Brisbane Men's Focus Group Participant)**

ATSILS will not do black on black cases. So if you've got young mum and grandmother fighting over son, well they're not going to do black on black. **(Indigenous community organisation worker)**

ATSILS staff confirmed that this policy no longer existed, but that at times (including in relation to neighbourhood disputes), caution was sometimes required to avoid problems arising in future in the work that they do with local communities.

You'd tread carefully [with neighbourhood disputes].... You get people in Yarrabah and everybody in Yarrabah knows everybody else, and there are what, three or four families over there? If you're in one family, they dislike the other family and the other family dislikes them. I've had to say to people 'I can't do that'. They wanted me to send a letter to some other family saying 'Stop doing this to our family because....' I can't remember what it was but I just said no. Because you have to act for those people down the track and you don't want to alienate them. You come back to being a mediator, I guess, trying to mediate the situation.
(Indigenous legal service staff)

No longer, no, that used to be 'black on black', was some years ago, but not... Some people still think so. But there are occasions when it just so happens, that the reason why we're not taking the matter appears to be 'black on black', but it's not, it would be some other reason.
(Indigenous legal service staff)

Other policy issues

Legal service policy relating to filing fees also arose as an issue; that is, whether clients were required to cover these fees and to what extent.

And in civil we don't outlay to bring the claim. You've gotta find the money to file. We don't have outlays. We do pay for filing, only the initial filing, the small fee, \$60. Family does, and we will always see if that's something that we should do, that we can try to find money for, but we simply cannot have that as a definite because we won't have any money at all left if we do. **(Indigenous legal service staff)**

In the past there wasn't a filing fee involved, we got an exemption from the filing fee if people were on Centrelink payments but now there is a \$60 fee. It's gone, you can reduce the fee, the fees are \$400 or \$500 that kind of thing but you get a reduced fee if you are on a Centrelink payment, so that's \$60. So if we say to people, 'We won't be paying, you got to find the money'. That filing may not happen for a while. That's spurning this problem even further, and then with consent orders, if we do a mediation, people agree on something, a parenting plan that can be made into court orders, because it's much better to have court orders. You have to file and get a court order, \$80 fee applies, that's mandatory. So what we do is try to share, partly share it, \$40 each, so who pays the \$40. And if you don't pay that, that doesn't happen. So very basic stuff, but that's to do with financial... **(Indigenous legal service staff)**

Access to justice is about money at one level, for Indigenous people, [it] can be about money. For instance, somebody says, I'm not happy with the recommendation of the family report writer, I want to go to trial, my mother will pay for a barrister to conduct the case, or my aunty or somebody, yes, then they're okay but not everybody has the luxury of doing that. **(Indigenous legal service staff)**

5.4 The tyranny of distance: geography as a barrier to accessing justice

The tyranny of distance

For those living remotely or regionally in Queensland, geography impacts on legal need and capacity to access justice, whether that manifests as attending at the local courthouse or seeking legal or other forms of advocacy and assistance.

I think access to legal services across the board is somewhat sporadic in this area because it is geographically isolated. **(Indigenous Legal Service Staff)**

It's remote here when you just step outside Cairns. I heard the other day that workers at the Atherton Child Safety office (95 kms from Cairns) get a remote allowance. I think once you step outside Cairns the needs just change across the board. **(Legal Aid staff)**

The only thing I would stress is that the geographic parameters of South Western Queensland I think often exacerbates [issues of] access for Aboriginal and Torres Strait Islander people here, like ...the Family Court being based in Brisbane and other services being based in South East Queensland. It makes it quite difficult for families out here... So in a family law matter, for example, they get heard in Brisbane. You can file them only in Brisbane or sometimes get them heard in Toowoomba. So... where someone... lives in Cunnamulla, it's not a case where... [an] application on an interim basis [can]... be done by phone. So you have someone who has to travel 14 hours to Brisbane. **(Indigenous legal service staff)**

Indigenous people living outside centres looking for assistance and subsequently referred to their 'nearest' service - located some distance away from home and/or only accessible online - are probably less likely to access that service than non-Indigenous people in the same circumstances.

My gut feeling about ...the biggest problem here with Legal Aid is the tyranny of distance, generally. If you said to a Murri client here, 'You can always apply to Legal Aid in Toowoomba or you can apply online to Legal Aid', you may as well say, 'We'll give you a

\$10 discount to get into Disneyland. Here it is.' It's not local enough. (**Indigenous legal service staff**)

Technology: telephones and videoconferencing

Services may try to address barriers arising due to distance by using telephones or videoconferencing to contact clients, and vice versa. This is seen as having limited utility when working with Indigenous clients. For a start, access to phones, including having sufficient credit to make a call, may be restricted. Using public phones, where they are available, also provides little privacy. There are potential difficulties too in using mobile phones to access 'free call' or call centre services. Sometimes paperwork also needs to change hands when information or advice is given, which complicates the situation.

So they would obviously have to arrange telephone appointments, which is hard when you have got a client on a northern island who doesn't have very good mobile phone service. (**Indigenous legal service staff**)

Access... to phones is very difficult. So there's a burden of responsibility back on services, especially this one, for people who need to access [help for] all of these civil law issues you've identified. Because there's... two [public phones on the community], ... if they're working, and then it's about the money again. So it's really, really difficult. There are a few mobile phones... [They] come and go. It's about budget management. It's expensive, budgeting for prepaid. It's also about not smashing it on the ground when something goes wrong. (**Indigenous community organisation worker**)

You can't make free calls to call centres with a mobile phone. So it becomes a problem for people calling in to us and waiting in a queue to get someone to hear what their problem is and to talk it through. I know that other organisations like Lifeline are worried about it as well, and they're making approaches to the Commonwealth government about how to get them to fund services so that people aren't paying on their mobiles. That could be a bit of an obstacle because most Aboriginal clients are not going to have landlines, is my guess. You can probably do it from a payphone. But where are they? I haven't seen one in a long time [and there are also] privacy issues [with payphones]. I think that's going to be an ongoing problem for us and it probably bites in this particular sector of the community because they're the most disadvantaged. (**Legal Aid staff**)

One of the things we have at Legal Aid as well is we have the telephone advice system in place where... we've got mainstream telephone advice for all sorts of matters. We do have a traffic advice clinic happening, but the thing is that you can call in or book people in but then the paperwork has to change hands between us – between them to us to Brisbane sort of thing. And that's one of the things our clients are reluctant to do sometimes, is to pass all the paperwork. (**Legal Aid staff**)

All prisoners face particular barriers in this regard, as they have especially restricted access to communication technology. And yet phone and Internet would be their main or sole source of contact with the outside world.

[We are] fairly easy [to access by phone] but... our unmet client need is quite high. Our Telstra records used to, but they just stopped, indicate how many people try and call us when we're on the phone to somebody else. And it's around 6000 calls per month we miss because

we're all engaged to other services. So people, it means that, if we service about 4 or 5000 people a year, about 6000 people a month we're missing, which means that people calling are about maybe 10 times before they get through. ... We're still doing all those [cases at] quite high numbers, [but]... that's something that can put people off significantly, you know, you try to call a service 10 times and can't get through. **(Legal practitioner)**

A further significant point is that Indigenous people are likely to be more comfortable with, and to derive greater benefit from face-to-face contact with lawyers.

When we saw our client in Bamaga it started off as one matter. It ended up that they had another three. [They] start talking to you and you're thinking - oh my God, you should be getting advice for that matter too.... [That] face-to-face [stuff] is invaluable. [We] can see the body language, we can see the facial expressions, whether they're understanding what we're saying or just drifting.... It's taking that time out to talk to them because, like I said, it might start as one matter but then it just grows and there are other things. **(Legal Aid staff)**

Many Indigenous people, probably not all, said that they'd prefer face-to-face advice. They don't really like using the telephone for communication. They might be okay with it for a follow up but for first contact they are not that interested. **(Legal practitioner)**

There are people quite often from Brisbane [taking the phone calls] who are not familiar with Indigenous issues or even Indigenous accents, because English isn't their first language a lot of the time. So there's a barrier there, and there is that tendency for people to say, 'Yes, I understand' when they don't. When that's on the phone, you can't check back.... to see body language, to see facial expressions to say 'I really don't think you are understanding. I might try and explain that in a different way.' **(Legal Aid staff)**

Video-conferencing may be a good alternative to telephones for Indigenous people. 'So if I've got a phone thing, I always try and do something, even if I get them on the video at the health centre, so that we can still be face to face', comments one Legal Aid staff member. When using videoconferencing, it is almost essential to have a local person facilitating the contact being made.

[Distrust with the legal system generally means] having the support worker [on the community is] the key to getting a client into those video facilities. It's so important if you can build trust through a trusted person in the community. It's an important relationship to have. **(Legal Aid staff)**

In the past we've had a network of video-conferencing sites in Western Queensland but the funding for that ran out, and then it was who was going to actually physically maintain them and all that sort of thing. They were used quite successfully for Indigenous people, provided they had a support person with them. They didn't sort of self-select to do it, but if they had a support person help them to access the service, then they were quite comfortable with it. They were in neighbourhood centres and health centres and different places out in the west. ...Some of them are still functioning... The health services use them so I think Aboriginal people in remote communities are probably pretty used to communicating by videoconference. And I think the ATSILS might use them as well. **(Legal Aid staff)**

5.5 Outreach Service Delivery

Outreach is an important way of ensuring that communities isolated geographically have greater access to relevant services. However, it is also essential for increasing engagement between communities and local services even where geography is not an issue, including Indigenous communities located in centres such as Brisbane.

[You] need to be out in the towns in the communities for an extended period of time, working closely with community groups. And you just can't do that in a town that's 500kms from anywhere else. **(Legal practitioner)**

For services with little or no access to permanent services, one strategy with potential to enhance access to justice is the provision of quality outreach services. To some extent, this strategy is already being utilised, including by legal services, but limitations arise due to initiatives being resource intensive.

We could do a lot more in trying to outreach and service Indigenous clients but right now unless we got specific funding it's impossible. **(Legal practitioner)**

A common point raised is that often legal service outreach is timed to coincide with the travelling court circuit, which is of course predominantly focused on criminal cases. This creates a number of issues impacting on Indigenous access justice. Firstly, the visits may be (but are not always) regular, but they are not frequent and/or long enough (and this is probably likely to be about resources rather than just because of the timing of court circuit). Secondly, lawyers are there to respond to criminal charges so may have little time for legal education or providing assistance with non-criminal law matters. Further, just turning up to a community will achieve little. You need to work more extensively with that community as part of a visit in order to be most effective.

ATSILS go up every court circuit, but ... their time is totally focussed on whoever's coming to court, and their field officers just don't have time to go out and network... No, they're waiting for people to come in and see them but not the other way around.... Whereas, when we go out to do outreach our [focus] is to network with everybody, to let them know we're there, what we can help them with and things like that. **(Legal Aid staff)**

[Legal Aid]... were coming up.... I don't know if it was once every couple of months. They were coming up with the court circuit... So that would mean that if somebody had been referred to Legal Aid they wouldn't get to see that person until they come in a few months time... **(Indigenous legal service staff)**

Quality outreach should aim to establish something positive and to build relationships, longer-term, so that when or if a legal issue arises in future, community members know where to go for help. This is important, as often Aboriginal and Torres Strait Islander people will only seek assistance for civil or family law issues when they've reached a crisis, which won't necessarily coincide with a legal service visit to their community. They will, for example, be more likely to make a phone call for assistance if they already have established some sort of connection with a relevant service. Cultural difference means that setting up those connections takes time and requires commitment and consistency on the part of services.

I mean, if you put together what we've said about the fact that potentially if they seek help it's only for a crisis, if most of these outreach services are three month, or four month, or six month visits [that's not going to work]. **(Legal Aid staff)**

Certainly there are challenges in building a relationship of trust that's really vital in a good solicitor and client relationship, particularly when you're not well engaged with the community. [If] you're turning up to the same soup kitchen every week, then people start to build a relationship and a rapport with you and you can start to cut through some of the legal issues and some of the social stuff that's contributing to those legal issues. If I come back to the geography again, if you're only in town every second month on court day, then it makes the depth of those relationships harder and my sense is that cultural differences can contribute to that hugely. **(Legal practitioner)**

[We do a range of outreach work in the Cape]. People are aware of us coming but it's like at the time if their issue isn't pressing it's put on the backburner. [But] if it becomes something that they need to take care of they can contact us. I think they're just happy to know that we're there, and they also contact us by phone if they don't see us face-to-face when we're out on Outreach. **(Legal Aid staff)**

One Indigenous community-based advocacy agency suggests that where a service cannot be in a community (or at least not with sufficient regularity), effective networking with local, more permanent services engaged with the community in question is a really positive way of working. These local services can refer clients and/or otherwise work in partnership with an external service, including legal services.

Outreach, well it's a cost factor isn't it? Cause these services are funded by government, there's only so much in the pot. So it's always best to be within the community but the reality is, they aren't. So being in the community will always outweigh outreach. But [how you do] outreach, I think that can be reviewed. We outreach the Cassowary Coast and we do it quite successfully. Why we do it successfully is because we network and we work in with agencies, we don't do it separately. We work with the services within that area and we strike up a very effective partnership, and we treat them very seriously. You get the person (service) coming in, 'Oh my name is [such and such], this and that', but it's all blah, blah, blah - and there's a lot of blah, blah, blah in outreach programs. [We get referrals from these agencies working in the communities, some] directly related to legal matters. **(Indigenous community organisation worker)**

Another way of working with a remote or regional community is to employ local residents to work with legal services. Legal Aid has in the past successfully engaged local community liaison officers in northern Queensland in this way.

Legal Aid only has one (liaison officer) in Cairns now, but they were going out to the regions to remote communities and actually providing services there and the target was really civil law and children more than crime because [LAC already] services big time on crime, but ...probably less so on some of the other things. And it hasn't been continued, not because it was a failure but because of the cost, the number of people you'd see accessing it, and it was a large expense... [LAC] trialled different models [such as] having part-time Indigenous workers who actually lived in the community working a few hours.... but it's been very difficult [to keep it going]. **(Legal Aid staff)**

[We were] trying to get a peer [initiative happening]... You'd work with a person in that remote community who could be a bit of a linking point give them a bit of basic information and information about referrals... That was not that long ago. It went well but maintaining contact in the local community [was difficult]. **(Legal practitioner)**

As noted, outreach can and should be undertaken in more central locations too by non-Indigenous legal services, although lack of engagement and distrust are likely to be more of a barrier than distance where the locations in question have permanent services available to community members. Outreach in centres means stepping outside the office and spending time in a local space where Indigenous people are likely to be comfortable, including within organisations that they are already engaged with.

Some of the things we've talked about lately is having a greater presence in the community, so maybe going and having a regular spot at a Community Justice Centre where people know that on the last Friday of every month, we will be there. So they can talk to us, rather than coming into this huge building in the middle of the city and trying to find someone who can help them.... So really looking at new and innovative ways of connecting with the community. **(Statutory Authority staff)**

[Because homeless persons are so isolated from services], I think we've got to make sure that services get out there.... It takes a while to get to know the people and for them to know you and build up all that trust and everything. So, once they start getting the trust, then you can start going back to the office more often I think. Whereas if people are just sitting in their office they won't get the trust because they won't go and meet the people and that's why we do a lot of outreach, because we wanted to get known by the clients more. **(Community organisation worker)**

5.6 Awareness of civil and family law and of legal services

Lack of awareness of civil and family law and legal services

Indigenous people continue to be seriously under-represented in and to have very little experience of the civil or family law system. When, for instance, participants in the Rockhampton men's group were asked if they had ever commenced any civil or family law action, one man said, "Like sued someone else for something? No."

Participants reported feeling like they did not know enough and needed more information about civil or family law; that is, how to deal with relevant disputes or problems and where to go for help when they arose. Not having this information is likely to present as a serious barrier to Indigenous access to civil and family law justice as people are usually not even aware that what they are dealing with is a legal issue for which they can get legal help.

I think people are not [thinking] 'I've got a credit problem or a family law problem'. They don't know about that. [With] child protection, you're in it whether you want it or not, [but with] family law, no one told me I could go to Family Dispute Resolution. I've got these orders against me. I don't see my kids or I see them very rarely.... **(Indigenous legal service staff)**

They don't know that they've got rights and they don't know that there are services that can help them deliver those rights. If they do know they've got rights, they don't know how to access those rights 'cause they can't get information about it. **(Legal practitioner)**

In terms of lack of knowledge of civil and family law, a woman in the Mount Isa group said "There used to be more education out there about it, more promotion I suppose." Male participants in Rockhampton also had something to say about this. "One lad could king hit me or something, you know, yeah [I want to know how to] take him to court." "Yeah, to get compensation... How do we know about these things? Even like, what about verbal abuse. There's a thing about that too."

There were a number of comments relating to the need for legal services to make themselves better known to community members. In Rockhampton, for example, most of the women agreed that they need more "awareness that [legal services are] there and what they do". "We need to know where to go, who to see." Other group participants agreed.

They need to let the community know that yes we are here, we can help out with this, we can help out with that or what we can't help out with, you know. **(Rockhampton Women's Focus Group Participant)**

If that name or service is ATSILS, Aboriginal and Torres Strait Islander Legal Service, they need to go out and promote it but they don't. **(Thursday Island Women's Focus Group Participant)**

Stakeholders, including legal services, agreed that there is not sufficient understanding within Indigenous communities of what legal services can do, including with respect to civil or family law problems - especially when compared with non-Indigenous communities.

They don't know who to turn to [for help]. Whereas... [it's] different with non-Indigenous [people]. The majority of the times [for non-Indigenous people] it's not, 'Who do I turn to, What would it cost me?' and things like that. **(Indigenous community organisation worker)**

I don't think the gap is necessarily an area of law. It's in the clients' [understanding] that they can access legal services and the practicalities of that rather than in a particular area of law. **(Legal Aid staff)**

Limited engagement with civil or family law (when compared with criminal law)

For Indigenous people, there is clearly much greater contact with and awareness of the legal system, including lawyers, when people are dealing with police and criminal matters than with respect to civil or family law problems. There is generally very little understanding that ATSILS and/or other legal services can take on non-criminal legal work and, overall, minimal Indigenous engagement with these same services for civil or family law problems.

I don't have much to do with [the legal services]. It's not terribly transparent to community what they do and I'm part of the community. If I'm saying that and at least I'm a bit more informed about things, then people who aren't [so informed], just your average person out in the suburbs, somebody in an Aboriginal family out in Woodridge or Inala or Logan, one of those areas, or Goodna where they're really high needs areas, they learn about it when they're in trouble with the police or something. **(Statutory Authority staff)**

I don't even know what an Aboriginal legal service is to be honest.... I don't think there's any indication for Indigenous people about that kind of stuff. That all just comes back to education. There's nothing out there telling us where to go for these things. The only time you find out about it is if you go to court and you get legal help from [ATSILS]. There should be a lot more help. That way we can find out our rights and all that before we have to go to court and get fined for something... We have no way of knowing what are our rights and all that.

(Rockhampton Men's Focus Group Participant)

Like this lady says, the only time a black lad has anything to do with a legal service is when they're criminals. We don't know what other services they provide to us. **(Mount Isa Women's Focus Group)**

A significant difference between criminal and non-criminal law is that criminal law is much more likely to push Indigenous people to engage with the legal system. There is a greater sense of urgency felt in relation to criminal law problems. With civil or family law issues, on the other hand, people may be able to or may need to make a choice about how and whether they respond to the problem. This makes it all the more important that people are informed of their options and civil/family law rights and obligations so that the choice which is made is an appropriate one.

Unless there's a jail sentence looming things don't seem important to them. It's really hard to say to someone, 'Look, it's a debt. You're going to get sued. You don't own anything so you're judgment-proof, but you need to...' But some of them will say, 'Am I going to jail?' I say 'No'. So it's as if they've lost interest, 'I'm okay'. 'No jail, no crisis, I'm okay'. Even with family law or domestic violence, ... if it was the respondent and we were giving advice about things and you're trying to explain about child protection and family law. 'Am I going to jail?' 'No, but if you breach the order you can.' They didn't want to hear what happened after that... So a lot of it was trying to get them to understand there's a flow-on. **(Legal Aid staff)**

When our unit first started I was part of the Indigenous Unit, and we went and did a survey over in the Cape about what people thought was a matter that they could bring into a solicitor. The only thing that they really focused on was criminal. Child protection, yeah, that was a different thing but domestic violence, anything else, no. They would just deal with it. We were telling them that that's something that you can get legal advice on and even get assistance for. It was like 'Oh yeah'.... [With] criminal [it was different] because it was like a circuit and they were always there and everybody knew that if you did something wrong the police would get you and you'd go into court. But for debt, child protection, anti-discrimination, anything that wasn't a crime, they didn't think that was something that they could bring to a solicitor. That was 12 years ago. If you were in trouble with the police, and the police gave you a letter that you had to go to court, that was it. They could see a solicitor or talk to a solicitor on the day in court. But anything else... Gradually, over the years, like I said this about 12/11 years ago, the information is out there. Still, unless there's someone in the family that would push them to come and get some advice... **(Legal Aid staff)**

Increasing awareness within communities

It is suggested by some that there is actually sufficient legal information and information about legal services out in communities, but that Indigenous people are just not interested in knowing about civil

and family law, including as the law may only have real meaning when it manifests as a real life legal problem (as criminal law usually does).

I think it's an awareness thing. I don't know how to fix this ignorance around civil rights. I've talked to people and said, 'Do you want to speak to somebody?' and most people say, 'No'. I think they see it as something really boring, talking about legal stuff. **(Community organisation worker)**

There's just so much information around that maybe it is an overload. Most Aboriginal kids they have access to it, even if it's through the library and internet, they're on Facebook a lot so they know how to use the internet, even younger kids. It's just that people don't have a conscious awareness of it until something happens and then they need either Legal Aid or they need to lodge a complaint... You only know about the service... once you're caught up in the process. **(Statutory Authority staff)**

Legal services have indicated that they are already doing some CLE and promotion-type work, ranging from education sessions in conjunction with Community Justice Groups or speaking and/or running advertisements on Murri Radio, for example. The overwhelming sense in ILNP communities, however, is that more work and perhaps more innovative work is required to address existing gaps in community knowledge and to ensure that the information in question is reaching its target audience.

We're also concerned about how people are accessing [publications and community legal education]. We can have all that on the web, but who's really accessing that information? There isn't a whole lot of research out there, but I've recently seen something done by health services. And they've found that while there is really widespread use of digital technology and mobile phones, there are pockets of particularly the most disadvantaged who aren't really getting into that space or if they do, particularly with mobile phones, they have very limited service arrangements so they don't go on the web with them. **(Legal Aid staff)**

Legal services are called upon to increase awareness by connecting more directly with communities, including through outreach. Services need to "be out more and tell people about it – get out and tell people", claims a participant in the Rockhampton women's group.

I think that's the biggest thing yeah, people not knowing their rights. I suppose [they might be too shame to go] into offices to find out what their rights are. Yeah they don't feel comfortable so, if more people can come out, there's always different things happening here in Mount Isa so if people could come out and have a bit of a chat and talk to the clients yeah, even in their own environment. **(Community organisation worker)**

More education [is needed]. And I think where it needs to be put is in all the Aboriginal organisations, in the hospitals and the dentist, you know, where Aboriginal people go, Centrelink, Housing, wherever Aboriginal people go, in the prisons. It needs to be all put out there, so our people know what they can get legal help with. **(Mount Isa Women's Focus Group)**

More outreach, sending someone out to talk to them, letting them know what they (the legal service) do.... letting them know what civil involves. **(Charleville Women's Focus Group Participant)**

Just sitting here in Brisbane is not helping to us to promote ourselves to Indigenous communities. **(Legal practitioner)**

Legal education could or should start in schools.

It starts in school... They've got to learn before they get out of school, because they come out and they're fresh on the scene you know and they just want to party, but they've got to understand the laws. There's not much about learning laws in school, you know, your rights and support [available]. **(Rockhampton Men's Focus Group Participant)**

We never learnt any of this in school. These are all everyday problems... We are not taught to deal with these. **(Rockhampton Men's Focus Group Participant)**

They should do that through the school system. I think they should teach us things like this you know. Like when you go out of school there are support services to help you with these kinds of crises. If you've got housing [problems]... There's no education about any of this. **(Rockhampton Men's Focus Group Participant)**

It is also worth noting that presently, community members with some knowledge of law are already assisting people to find help or to address relevant problems. Word of mouth, in this sense, is one of the more effective forms of 'direct-to-community' service promotion or CLE.

You only need one person in the community to know where to go and what to do... They'll come and ask them for help. Working in the legal service you have locks on your door on the weekend for people asking you where to go and what to do. If you have one person informed it will filter through. 'Oh yeah, I don't know anything about it sis, but if you go and see so and so they know'.... So the black grapevine is really good. A lot of people aren't aware of their rights.' **(Cairns Women's Focus Group Participant)**

Sometimes it comes down to word of mouth. Like if someone's had problems, they suggest 'Go to that one there. She'll help you,' and that's how it is. **(Indigenous community organisation worker)**

Results of increased awareness

Some felt that greater awareness of legal rights in these areas of law might well empower Indigenous people to tackle their problems directly and without the help of an advocate. Others thought that even with enhanced knowledge, access to legal (and other) support would always also be crucial to assist Indigenous people to overcome barriers other than those relating to lack of awareness of services or the law.

[If we weren't there to support our clients] they wouldn't get very far at all. People would be just completely confused. They just wouldn't be bothered following through... People couldn't be bothered. **(Community organisation worker)**

And a lot of time lawyers don't realise that. They're in their little orbit and people living [with so many] everyday pressures on them, coming to seek advice or help... But I think if you looked at getting people to know their rights... most people can take on things themselves. **(Cairns Women's Focus Group Participant)**

There's a whole lot of other complex things that can go on even if you know your rights, and you know if you have a right, if you know how to exercise it, there's still a whole lot of barriers there in [actually] exercising it. **(Legal practitioner)**

Of course, as you increase awareness of civil and family law and promote legal services you also create more demand for services, which are likely to be already struggling to meet recognised need. This raises the issue, again, of the need for increased resourcing of the legal assistance sector.

I guess it comes back to what they can actually put into the service delivery so they're not overstressing themselves. So how much promotion do you do, enough to keep yourself busy, or enough to bog your staff down? It's a bit of a Catch-22. **(Statutory Authority staff)**

You can't give people the service that they need when you just don't have the time. I don't go looking for work. If you were out there promoting the service, you could have thousands of clients but I studiously avoid looking for work ... I find I still get the thing, 'Oh, we didn't know you looked at this or you did that or you did that' I still get that. So people are gradually finding out. Each year you get busier. **(Indigenous legal service staff)**

[After delivering CLE] we have been having more phone calls from people saying, 'Can you help?' Then we have the problem of who's going to do it. **(Indigenous legal service staff)**

5.7 Satisfaction with Legal Services

Levels of satisfaction with legal services

Focus group participants and stakeholders were asked whether they were satisfied with civil and family law service delivery. A degree of positive feedback was received in response. ATSILS, for example, were said by a man in the Roma focus group to be "alright. They seemed to be alright." Another man in this group also said "White legal aid is OK. I've used them." Other comments are as follows.

(ATSILS) do as much as they can, but Legal Aid, one of the fellas over there, he's fantastic with us and with the clients. He gets on good with them... Yeah, he does a really good job **(Community organisation worker)**

But if we do have an issue we just go straight over [to ATSILS] and they jump in straight away.... We never have a problem like that, or they'll always get back to us by phone if they're out of town. Really good they are. **(Community organisation worker)**

More often than not, however, community participants reported being dissatisfied. In the Mount Isa women's focus group, for instance, multiple participants stated that they were unhappy with ATSILS. "They were better twenty years ago. Yeah, just the people, they have [changed]." "Most of the problem is you can ask for help but nobody helps you." Some stakeholder organisations also remarked on local communities' disappointment with legal services.

I think out there generally there's a lack of faith in the ability of a white legal service, or any legal service, to actually be effective... I think across the board there's a lot of dissatisfaction in the amount of help that's there. **(Legal Aid staff)**

It is not always easy to distinguish whether relevant comments related to civil/family law *or* criminal law service provision. There was certainly a fair amount of discontent in communities in relation to

criminal law services but for most Indigenous people this was the most common area of law in which any contact had been made with legal services. There was, for example, a perception that people were encouraged to plead guilty by lawyers who had little time or inclination to defend them properly in court, as the following comments from the Brisbane men's group reveal. "Lad, the reason why they say that is, it's easier for them, and they get a lot of money. Then the blackfella go back to jail." "You ask anyone, they're gutless." "It may not matter if have committed the offence but they still want you to plead guilty." "And I'd like to add to that this culture with Aboriginal Legal Aid needs to change, where they're saying just plead guilty, plead guilty, plead guilty. You know, that needs to change."

Are positive legal outcomes everything?

Participants were asked whether positive outcomes were all-important in terms of measuring effectiveness of legal services. Responses varied. When asked if participants could be happy with legal service delivery if outcomes weren't as expected, a male participant in Rockhampton replied, "Nah. You can't be happy with that". A man in the Rockhampton group said that what he looked for was "just someone to help. And will they help us properly, will they actually go out of their way to get the end result what we want". A Legal Aid staff member also recognised the importance of positive outcomes and the message they send to the community about what legal services can achieve.

[They see us as effective if we can] give them their kids back, [if they can] stay out of jail.... These outcomes [affect our] reputation. We've had a few a good wins against the Department, and they see that as a big [thing]. There was that other [successful] one with the birth certificate and then the wills. **(Legal Aid staff)**

Where outcomes are not positive (and in this instance, the focus group participant is speaking about a criminal law matter), there can still however be a measure of satisfaction if the solicitor in question had tried for a win.

Yeah, I think if they were generous. If they really helped you the whole way, but [it] just didn't come out the way [you wanted], yeah... As long as he was just supporting me, you know, did everything he could to help me. Instead, they just... You go to court and they just expect you to rock up on your court date and just meet a solicitor there and ... then you tell them your problem, they write it down and they just defend you there... How's he supposed to do his research on the problem if he's just dealt with it there and then... in 15 minutes before he goes into court? **Rockhampton Men's Focus Group Participant**

Whilst whether outcomes are seen as favourable or not inevitably has some impact on satisfaction levels, legal service stakeholders believed that a good lawyer will always ensure that client expectations about results are realistic and that the client understands the nature of any limitations in this regard. This can go some way to alleviating dissatisfaction. Sometimes the best result for a client involves compromise.

Take for example the redress scheme that was in Queensland over a year ago now. It was an enormous amount of work for the civil [section]. There were so many rejections, late applications rejected, applications rejected, amounts of money coming through. So for us to manage and gauge how did the service go, really there's so much of a social side... It's how people feel at the end of the process, how did they walk out when they were told, 'You're going to get nothing, you were treated like that, you were raped, or whatever, all your childhood you were treated [badly], but you're going to get nothing'. And we've got to look

after ourselves there too, because that's psychologically quite distressing for us. That was a distressing two years. **(Indigenous legal service staff)**

You've got to reality check people. They [want to get] their kids back. Sometimes that's not going to happen and [you need] to be clear about the reasons why.... Sometimes the issues [of child safety] are really there. You might argue them down from 2 years to 18 months and that's a win, but they're still going to be out of the home for that long. Then there's that win that we had with the finance company for the couple in Mosman. There was this bill and all it took was a couple of letters with a letterhead and it was all sorted. That's a good outcome, when you can do that, 'Just write off this debt.' 'Okay.' **(Legal Aid staff)**

Because in family law, essentially what you're offering them realistically is some sort of compromise... [They say that] 'In family law, everyone gets a prize. Just not everyone gets the prize that they want.' So people start off full of righteous indignation they're going to beat the other side. Part of what you do is you're toning them down all the time in civil and family [law], whilst respecting them and understanding that they're upset, you're trying to manage [expectations]... or you're qualifying them. Some people call it 'qualifying your client'. **(Indigenous legal service staff)**

That's the hard part, especially in family law and child protection where kids are involved. Yes, where it's a highly emotional area. Where in some instances we have to encourage the family to work with the Department (of Child Safety) because that might be the better way to go because there's so many issues involved. But that is the hard part, sitting together with them and explaining things. Yesterday I was in court with a mother and I was trying to explain, and she said, 'Oh, do what you like'. 'No, I'm not going to present these orders to the court unless you're happy with them'. So she was like that, and then she had lunch and she came back and settled down. Then she was reading things and she was then ready to look at things and talk. **(Indigenous legal service staff)**

5.8 Issues of Communication and Interaction

Interpersonal interactions as a key measure of effectiveness

The latter point leads neatly into discussion of the importance of quality interactions and communication, both spoken and unspoken, between clients and legal service staff as an essential measure of service effectiveness. When comments were sought about what might constitute effective legal service delivery, there was often general discussion of staff working in legal services and of the type of relationships they established with their clients.

Some participants felt they were being treated poorly in this context, at times because of their Indigenous background.

And also it's the way they talk, too, and their manner. If they don't like you, or they don't like the way you talk... **(Charleville Women's Focus Group Participant)**

You go down and they see them with Aboriginal faces, a lot of people don't have respect for you. **(Mount Isa Women's Focus Group)**

They stereotype you before they get to know you. **(Rockhampton Men's Focus Group Participant)**

Dissatisfaction also emerged when services appeared to have no time to spend with clients, discussed previously in the context of guilty pleas. “They’ve got no time, you know”. “And they want to finish with you as soon as possible, as quickly as possible”, stated women in the Mount Isa group. Stakeholders also spoke about this issue.

But most importantly, it’s about the relationship that the legal rep has with the clients. There’s been too many cases where I know with my own family members they’ll have legal representation, and it’s a ‘tick and a flick and see you later’. So I would like to see, in a perfect world ... that we have a compassionate legal rep understanding their different needs. **(Indigenous community organisation worker)**

Other comments related to the strange ‘world’ of the law – unfamiliar, complex and foreign to most - and how it can leave Indigenous people feeling alienated and frightened, particularly where communication between clients and lawyers is problematic. “(We) worked in the legal service for over 20 years and it took us a while to learn everything”, a female Charleville focus group participant states. Non-legal services, too, identified having to step in to ensure that clients could make sense of ‘lawyer speak’.

[M]ost of the time our people come from poverty [so] they cannot afford proper legal representation. And even if they could, they would still need a support person with them for them to articulate what is actually going on from the legal jargon and the big words and everything, as opposed to understanding the legal process of it. **(Indigenous community organisation worker)**

It all comes back to understanding. Both systems, what they need Legal Aid for and from the solicitor’s... point of view. Yeah, there’s a real lack there. [The solicitor is the problem if the client doesn’t] understand what the solicitor is saying, so that’s why we try to get in there and help them. **(Community organisation worker)**

Further, some Indigenous people felt talked *at* rather than communicated *with* in their dealings with legal services. “And the simple answer is, please talk to us. Don’t talk *for* us, talk to us”, a man in the Thursday Island group said.

He was a solicitor and he was telling me what to do with my kids. I said, ‘Listen here. Don’t tell me what to do with my kids! These are my kids.’ And he said, ‘But that’s not how it works’ and I said, ‘I don’t care how it works, you’re talking to me about my kids!’ And he was telling me I had to do this with my kids and that with my kids and I said, ‘You don’t know my kids. You can’t sit there and preach to me!’ ...He kept saying, ‘Why don’t you let your kids go to Ipswich?’ and I said, ‘Yeah and if anything happens to my kids I’ll kill the father and I’ll come and kill you too!’ I said, ‘My kids aren’t going all the way down there. Anything could happen and by the time I get down there they could be dead!’ I said, ‘You’ve got to think about things realistically’ and you know like, how they preach to you about your kids, when they don’t know the situation.... Their father’s a drunk, he’s a drug user, the family’s just cracked... and you know, its’ been three years and he’s had no involvement with them. I haven’t seen him for three years. **(Charleville Women’s Focus Group Participant)**

An effective relationship is identified as being about trust, avoiding judgement, listening effectively and being friendly.

It's got to be someone who is concerned about your background and doesn't judge you, who can take you warts and all. They've got a job to do and they back you up. **(Roma Women's Focus Group Participant)**

Well, the delivery of quality care would have to come first, like you know, making people trust you and getting that trust back in return. And you know, 'Come here, I'll give you a cup of tea. Do you want something to eat?' So [being] friendly yeah. Everything is too stern, you know, makes you more frightened... Because all of us people, we are all really sensitive human beings, us Aborigines, and we're frightened of a lot of things from the white man, and we pick up those things too... **(Mount Isa Women's Focus Group)**

We don't know if we're going to fit in or not. If you go there and you don't like the way that bloke is speaking to you, you don't tell him nothing. **(Mount Isa Women's Focus Group)**

Shyness, shame and sometimes anger may need to be sensitively addressed, with some understanding of why anger (in particular) may be an issue. "A lot of the Aboriginal clients are shy too. They won't speak up", claims one community-based stakeholder.

For probably our more traditional clients, shyness is an issue. Sometimes even when they come to get a Birth Certificate they're very, very quiet and shy and very hard to get information from. We will assist at the counter. The girls will hand over the form but if it becomes apparent that they need assistance we will help complete that. **(Statutory Authority staff)**

A lot of Murrumbidgee, when they're angry, that's when they want help.... Don't worry, we have our days where they get angry with us, but we just take no notice. We know they'll be back when they're sober. **(Community organisation worker)**

Finally, given that relationships with individuals who work in legal services are all important, solicitor turnover can be an issue. "Solicitors come and go in legal services," states an Indigenous community organisation stakeholder.

Again when I come back to a particular centre here, they go through solicitors like going through kids in a lolly shop. So therefore you don't know what you're getting... So, it's inconsistent and I think that unfortunately, because of the environment it is in, it can be a bit hard or a hurdle for legal agencies in that regard. **(Indigenous community organisation worker)**

I think when you've got services that are really strapped for resources, have a high turnover of staff, people won't come back and use those services. Their trust within that organisation is basically in a person, not in the agency. So if that person goes, then so does that trust. Particularly some of those remote communities, they won't come back and use the service again. **(Statutory Authority staff)**

Language, literacy and cultural difference as barriers

Issues of language and literacy can give rise to particular communication-related barriers. Language and literacy issues may arise during communication with legal services, but *also* with other services or agencies (such as Centrelink or Department of Housing). Illiteracy, for instance, causes problems where people are required to fill in forms or read correspondence from lawyers or the court. This is

perhaps a more significant issue in the context of civil and family law matters as they more document intensive than criminal law matters.

English for an Indigenous person is not their first language. Language is a difficulty if it's all in spoken or written English. Tenancy (for instance) is all filling out forms and putting things in writing. You can have a verbal agreement but if you haven't got evidence of it it's hard to prove it. There's a fair bit of disadvantage on Indigenous communities. Even people whose learnt English as their first language may have issues with literacy. **(Legal practitioner)**

The literacy and numeracy stuff [is a problem] and also Creole is probably the first language for most of our young people that come through here. So their English is a real struggle. Too much English and too much language and jargon used in legal stuff they just find it overwhelming. **(Community organisation worker)**

It's actually about the barrier around language. We work with people who have English as a fourth or fifth language... Once you start with a certain particular rhetoric and jargon, then it's really difficult. So, I'm forever being put on the phone [to, for instance, Centrelink]... The people on the phone can't always understand what they're saying. They can't. It's a two-way thing. It works both ways. **(Community organisation worker)**

Residents of transitional/crisis accommodation bring the staff their legal papers from their solicitor. [They] don't understand what the paperwork's about. They don't understand the legal jargon and for that matter neither do we, to a certain extent. [We have one client], she just came in with this envelope full of papers [for an estate matter] ... What is happening is that the solicitors are sending her all the paperwork, and it is basically [a question of] trying to translate it for her... That's why she's bringing it to us cause she doesn't understand. And so, just for instance, the latest one is where ... they've got a draft and they want her to go through it and check that all the information is correct, if there's something that she wants to add. The actual terminology is the thing, because I'm not a legal person and even for me to try and understand the terminology is a bit difficult as well, so that's kind of what we're dealing with at the moment. She doesn't actually have set appointments with the solicitor. It's basically them sending her the stuff, then going through it and then getting it back to them. **(Indigenous community organisation worker)**

That is a real consideration. Civil and family law is document intensive as distinct from crime where basically all you say is 'Just be at court. We'll work it out'. **(Indigenous legal service staff)**

Communication issues also arise based on cultural difference or different (cultural) understanding of 'concepts'.

At the moment, I'm dealing with someone in Aurukun, a Wick woman, and she speaks basic English and if you talk to her and listen, you think, yeah she gets everything. But we don't get each other. And the concept issues as well that we have. And she has complaints against the police. So to explain to her what's happening now, she doesn't have those same concepts, I guess, in her culture.... It's really, really difficult. **(Indigenous legal service staff)**

Indigenous staffing

A number of comments were made about the importance to Indigenous people of having access to quality Indigenous staff working in organisations as an essential strategy to break down barriers relating to cultural and other communication.

I couldn't care less [whether staff are Aboriginal or not]. I'm not racist, hey, as long as they're helping. [But] it's just that some people don't take you seriously because of the colour of your skin, you know what I mean? **(Rockhampton Men's Focus Group Participant)**

It's really important that we start with people who've been delivering a service that is kind and compassionate and understanding.... (If the woman's in crisis again there, roll your sleeves up, give her a hand, really understand where these women are coming from. We have trouble working with other agencies to do that, but we find that the white workers just don't have that understanding and our clients resist them because straight away [they see] that judgement, straight away, but whereas [we're] not necessarily going to pass a judgement. **(Indigenous community organisation worker)**

It's not so much having an Aboriginal person [on staff]. It's about having a person that's going to take care of Aboriginal people. Because there's been Aboriginal people in there before and they just didn't give a damn... Its not just any Aboriginal worker, it's got to be the right person. **(Roma Women's Focus Group Participant)**

There needs to be greater use of Indigenous interpreters in some communities. Further, having local support staff able to assist with communication is also particularly vital; and they should be local, according to some, rather than from another part of the country. "A lot depends on your fieldies (field officers) too. Who's the field officer now? ... Is he from here?", states a woman in the Charleville group. Without local support staff, lawyers have to perhaps make do with local help sourced more informally. Of note, Indigenous support workers are said to be not as commonly available for non-criminal lawyers as they are for criminal lawyers.

The family section doesn't have field officers like we do in the criminal law section so I was always try in community legal education to work with local people... Community justice groups, they're great. Other people can also assist us to understand what it is someone is saying and get the message across. **(Indigenous legal service staff)**

It's interesting to watch the criminal guys. You watch the court support officers for the criminal adviser. They're all Indigenous and they'll know half the people. And I'm some white guy from Adelaide and I know nobody and I'm probably saying the wrong thing half the time - but that's all you can do. You try not to insult people intentionally ...but you probably do. **(Indigenous legal service staff)**

Where such staff *are* available they can make all the difference in terms of ensuring interactions are as positive as they should be. They can help to 'break the ice' between lawyers and non-Indigenous staff and community members.

[Needing] an interpreter, that's a big barrier too. [We are] trying to explain.... [but we] can't get it across. They say they have interpreters. You hardly ever see an Indigenous person come across. It'll be a whitefella. It's still English. You get a half-caste Indian person come out and

try to interpret for someone from the Torres Strait! That's not going to work! (**Cairns Women's Focus Group Participant**)

The reason QWIFVLS works [on Pormpuraaw] is because they have Indigenous liaison staff members that come up with [the solicitors]. (**Community organisation worker**)

As such, non-Indigenous legal services in particular may need to focus increased energy on recruitment of Indigenous staff.

I think funding particular Indigenous positions [is important]. We need to start putting some money into making sure that mainstream services like ours are forced to [recruit Aboriginal people]... Maybe looking at services that are in... areas with high Aboriginal populations and saying, 'Well, we need to put some funding behind ensuring that they have culturally appropriate service delivery'... And it can't come out of the money that's going to Aboriginal organisations. It's got to come out of the money that's already servicing white organisations, and that can't take away from the money that ATSILS gets and ATSIWLS. They are already vastly underfunded organisations. I think that mainstream organisations need to step up to the plate and, without detracting, taking away funding or taking away anything from those organisations because they're so important... (**Legal practitioner**)

However, even an Indigenous-specific organisation may fail to satisfy, in this regard.

They [ATSILS] got the wrong people in there. (**Brisbane Women's Focus Group Participant**)

Inside of this legal service here, in any government department and semi government department, agency and organisation... Sorry, I'm not going to be rude or disrespectful... You have got to have your people in there so that your people feel comfortable. (**Thursday Island Women's Focus Group Participant**)

5.9 Other barriers to accessing civil and family law justice

Prioritisation of civil and family law problems

Whilst it is suggested above that Indigenous people are just not that interested in civil or family law or in dealing with civil or family law problems, it is more likely that relevant issues may not be responded to as early as they should be or at all because of the complexity and significance of issues, legal *and* social, which Indigenous people are facing in their lives on a daily basis. "It's just not high enough on the agenda." "Well, there's a whole range of outside factors" impacting on access to justice "like access to alcohol and drugs and the impacts of that that the legal services have no control over, and poverty," commented a statutory authority stakeholder. Others had similar things to say.

When people come here with a legal issue, it might not be just one legal issue. You'll find out that there's a whole heap of different things you have to decipher. I don't know whether that's different for Aboriginal and non-Aboriginal people. Maybe [it's about] lower socioeconomic kind of background or education levels. (**Indigenous legal service staff**)

Clients won't necessarily come to you and realise they've got a problem until it has reached a crisis point, whether they're thrown out of the house or [something else]. And you can push it back further and further, but it's not until crunch-time that then they come for the help. They don't deliberately do that, it's just the nature of their lives and there are other things queuing

for their attention obviously and whole lot of other things going on. You've identified it for Indigenous clients, but I actually think it's an across-the-board thing with people who are really struggling in their lives. **(Legal Aid staff)**

Resignation, fear, distrust

Another reason for delay or not responding to these types of problems includes the difficulties Indigenous people are likely to face in challenging or defending themselves through the legal system, particularly given the largely negative interactions they have historically had with that system. These interactions have generally manifested as unwelcome government intrusion or intervention in their lives through child removal or interactions with police, for example. There is thus a level of resignation, fear and distrust within Indigenous communities when relevant problems arise.

Indigenous kids, like you said, they've grown up in that system. They think 'white person comes to my house with papers and that. I've got to accept it. I don't go to legal. I don't go to seek help and I don't say, 'This isn't right.' The person who's coming to the door isn't there to help you. They're there for a very different purpose. **(Indigenous community organisation worker)**

And whether it's a legal issue, whether they can bring it up, or some of them are too scared to bring it up. The majority of the time it's, 'Oh no, I'll just leave it, don't worry about it', and things like that. **(Indigenous community organisation worker)**

The law and legal services may be indistinguishable to Indigenous people from government agencies such as Child Safety or Queensland Police.

The other thing is to develop the trust. Queensland's history, particularly with policies, has been a pretty bad one and there is that cross-generational anxiety and mistrust in dealing with law, in dealing with police, even telling your story to somebody. You've got to develop those relationships. **(Statutory Authority staff)**

There's all the fundamental ones about trying to have an Indigenous client come anywhere near a court... given their history [with the legal system] and why they normally go to court. So, if it's in relation to a family law issue, [they are] very reluctant to issue proceedings. I think it carries over to lawyers as well. I'm sometimes an independent children's lawyer in family law proceedings, and the first question any Indigenous parent will ask me is, 'Are you part of Welfare?' **(Legal Aid staff)**

Transport, appointments, phones

Other more practical barriers include not having transport (or money to pay for transport) to (physically) visit legal services and not having access to phones.

Not many people have transport even though it's only a small community. **(Thursday Island Women's Focus Group Participant)**

The main barrier is just your day-to-day living. Most of the people who live where I live, we're lower socio-economic people. You've got to get money to get a bus into town. You've got to get a bus back out or a taxi. That's financial too. **(Cairns Women's Focus Group Participant)**

There are loads of barriers, like transport. They can't get in [to see you so it's that] logistical stuff. The poverty and sometimes the inflexibility around appointments and stuff like that, yeah. **(Community organisation worker)**

Sometimes it is a case of not being able to make that phone call because you don't have credit on your phone, or not being able to see a lawyer because you can't pay for your transport. Very simple, and that happens a fair bit. **(Indigenous legal service staff)**

Reliance on rigid scheduling of appointment times can also create problems, especially where services are being accessed only at a point of crisis. 'Murris want help there and then – if you wait too long they can't be bothered', said a woman in the Charleville women's group. Having a drop-in policy for Indigenous clients would help partly alleviate this problem.

Depending on what area of law you're seeking assistance with, you can't just walk in and make an appointment at Legal Aid. I think it's a lot more, there's a lot more barriers set up there. Whereas I think ATSILS, at least in a smaller town, like in Charleville and Murgon, I think it's more accessible. **(Indigenous Legal Service Staff)**

There is such a thing as Murri time. People joke about it, but there is. Then there's Indigenous time. Then there's just 'white' time. It's more significant for me to think about 'white' time because there's no [leeway], we give no leeway. 'White' time is strict, really strict... So time is a big, big, big one, and time is money **(Indigenous legal service staff)**

Cultural obligation.... is not understood by non-Indigenous people. And that would be, I've got an appointment, I can't make it, I don't ring you, I don't get a second chance. That sort of practical [stuff]... And it's all about obligation, understanding what a cultural obligation is, and when it's just an excuse for slackness, which it isn't often. **(Indigenous legal service staff)**

Legal processes

The legal process itself can hinder access, particularly for civil and family law issues where what is required on the part of the plaintiff or respondent may be more complicated than it is for criminal law matters. This can both deter them from initiating action or can lead them to drop out of the process after the wheels are already in motion.

And it might also be to do with, 'just too hard', even if you know you've got it, it's just that that process is too hard. And you've got to put in a form for everything, I mean they've just introduced these new water saving toilets. This is very miniscule, but these water saving toilets that have 6 flushes per toilet per prisoner, so if you want to have an additional flush you've got to put in a form to a white officer, saying, 'I've got diarrhoea', 'I've got my period', and people aren't going to do that. If you lose your shoes and you need another shoe, you've got to put in a form to do that. If you want to go to the oval for a game you've got to put [in a form]. It's so much based on forms and those often get lost or ignored, and if the officer doesn't like you they don't hand on the form. **(Legal practitioner)**

The barrier is people run out of steam the more complicated you make it for them. If pursuing their legal right involves five or six trips in to see us to do a first draft of an affidavit, change it around and then worry about 'Have you got a copy of your birth certificate? Have you got a copy of [this] thing [or that]?' All of a sudden you're asking them to do five or six things, and

with the best will in the world, people run out of steam. Especially if... you're not really promising them a pot of gold at the end of the thing. (**Indigenous legal service staff**)

Last minute and/or opportunistic access to legal help

Given the various barriers we have identified, Indigenous people may only seek help at the last minute and/or opportunistically; that is, when they cross paths at the right time and place with someone able to assist.

So they get the paper [for an eviction], they just look at it and go, 'I don't know what to do next.' But they might turn up on court day and say, 'Oh, you're here, all right then. I'll talk to you.' But there was no pre-planning. (**Legal Aid staff**)

And also the timing, time limit, they come to us a bit too late. I've had one back on Thursday Island. She was due to be evicted and she came to me on the day of eviction. And she missed her tribunal date. She didn't think that was important and didn't turn up and unfortunately she was evicted. There was nothing I could do. I tried to talk to [the housing authority] in TI but unfortunately it was a bit too late. So we try and stress to our clients that it's important to come to us straight away, before you get to the red, before you get disconnected, and things like that. But I think a lot of them are a bit too shy about when's the right time to go to seek help. (**Indigenous community organisation worker**)

They normally go down and set up a stall, but it's quite difficult in those scenarios to actually get any information across. I think shyness is probably an issue because the feedback I've had is that... We usually do up goody bags and pamphlets and all those sorts of things in there and take them along and people are interested in taking those, but don't really have any specific questions and that. [It will] sort of just be an incidental part of the conversation that you have with someone, if someone drops a question or something that they want answered. (**Statutory Authority staff**)

This may leave legal services feeling that they are servicing communities in a reactive way only, rather than addressing need in more meaningful ways.

I guess what we do is fire fighting. We come in after the scene and try and rectify the situation. Somebody has been charged or somebody's lost all their money or somebody's been evicted. Not a lot you can do then. (**Indigenous legal service staff**)

It also, of course, inevitably creates problems when there are time limits, including limitation periods, to be complied with. Indigenous people, unfamiliar with the workings of non-criminal law, may not be aware of these constraints.

There's timeframes with a lot of legal things and people don't know. And then they might find out eventually about those timeframes, and then you have to explain how to get over those hurdles and they don't understand that there's this concept of a limitation period. And the court is not always very accepting of people's situations... But they're the issues you're faced with because people don't know they can have an action. I'll be talking to somebody about one thing, and they'll say, 'Oh yeah, I had this really serious car accident and broke my back and this and that.' I said, 'Did you make a claim under that?' He goes, 'No. Nobody told me I could.' We think it's the most obvious thing in the world but... (**Indigenous legal service staff**)

‘Murri time’ is a big thing too. You can be saying it’s urgent, we have to do it now, but they have no concept of what now is, you know, so that is a real problem, especially in court.
(Legal Aid staff)

Courts

The present court system was labelled as “extremely archaic” and is seen as “not looking at changing in any way at all for our [Indigenous] clients, especially with this present government”, according to one Indigenous legal service provider. It was also identified as being culturally unresponsive.

I think also the courts don't always understand the significance of culture and they struggle with it. They think that if you mention NAIDOC day, that's culture. And I think that they don't understand the significance of funerals and children going to funerals and stuff like that. So that's a problem especially with family law courts. And even criminal courts say, ‘They're not here today. They've got sorry business.’ (Indigenous legal service staff)

Some participants called for a separate or alternative court system, including through re-instatement of the Murri Court. The defunding of this court in 2012 was seriously lamented as it was seen to be a good example of the court and legal system working to meet Indigenous needs (at least in a sentencing context).⁹¹ “They take away Murri Courts. That’s one thing I can’t understand either”. “At Murri court, you could go and face the Elders and that...I heard that not long ago they cut it out”, stated male participants in the Brisbane men’s focus group. The women in Rockhampton also said “They had a good little thing with the Murri Court with trying to nip the thing in the bud with the little fellas coming through court, and they had good rapport with the magistrate and the other people up in the court. Um, but then they cut that. They cut Murri Court now.” “Now they just go to court and send them straight out”. “I reckon they should just start their own Murri court. We lost our laws years ago... We don’t know all of this, because we’ve got our laws”, states a man in the Rockhampton focus group. Non-Indigenous people “got a law on everything now”, another in the same group continues.

At the very least, initiatives need to be established within the court system that will ensure greater access to civil and family law justice for Indigenous people (and others) as has happened to an extent within the criminal law justice system.

I think courts and tribunal have a role. It's unthinkable that an Aboriginal or Indigenous person would be sentenced unrepresented in a Magistrates Court. He'd be sent away to go get legal advice. So I think courts and tribunals have a role if orders are being made or matters are being progressed and the person is unrepresented [in civil and family too].... It could occur in a Family Court or in a tribunal, in a housing tribunal or whatever it might be. I think there's a role for those non-court tribunals [to make an issue of the person being unrepresented]. [The] Family Court of Australia or whatever they call it now, the Federal Court...Federal Circuit.... they [are] inured to the fact that family law is contested by unrepresented people on both sides.... They hate it but they just have to accept it because ‘white fella Legal Aid’ just isn't there at all anymore. (Indigenous legal service staff)

⁹¹ See Brisbane Times media (September 2012) on this issue at:
<http://www.brisbanetimes.com.au/queensland/diversionary-courts-fall-victim-to-funding-cuts-20120912-25sj5.html>

The court does the DVO stuff quite well.... There's a lot of court support going on around that, but there's never any court support around Child Safety or any of that sort of thing.
(Community organisation worker)

5.10 Communities and Services Working Together

Community-driven, community-based solutions

Communities need to also be resourced to find solutions to relevant problems, where appropriate.

There was really good research done in 2009.... by the national alternative dispute resolution body into how a lack of culturally competent, alternative dispute resolution services was leading to a small community experience [escalating]... to involve the whole community, and then [it] branched out into assault, all kinds of criminal charges. And there's one legal case study at Fitzroy Crossing where they got a team together and they sort of adapted traditional alternative dispute resolution techniques to that community, and to the cultural elements of that community. And they ended up doing a whole community-wide dispute resolution process because the cops were so sick of arresting the people because of this one dispute on all these assault charges. Yeah it was really great, it was really good research.... [T]hey called for a national project to look at Aboriginal and Torres Strait Islander versions of traditional alternative dispute resolution, so [NATSILS] ended up doing a submission about [that].⁹² [A] national framework [should] be developed... (Indigenous legal service staff)

It is also suggested that resolution of legal problems and improvement to legal services' engagement with Indigenous communities might be better achieved by drawing upon community knowledge, listening to community and working in a way that makes more sense to or is more effective for Indigenous people.

And, the answer to all this is sit down with Elders and look at our language and how you say 'How are you' [repeats in own language]. And look at us and say, 'What are you doing in your community', and then bring that information out and then imbed it in the policy of legal aid, and I'll tell you what, everybody would get a fair trial and a fair opportunity. (Thursday Island Men's Focus Group Participant)

The way that you do service delivery [with Indigenous people] can be different. Like, often if you know someone that's a leader within the community, they will get on the phone and they'll get a whole group of five people around them and pass the phone around between them, which you don't find in the non-Aboriginal community.... So it's about building relationships with Elders and key people within the community. (Legal practitioner)

⁹² 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>. See also National Alternative Dispute Resolution Advisory Council (NADRAC) (2006) *Indigenous Dispute Resolution and Conflict Management*, ACT.

Collaboration with non-legal services and organisations

It is not always necessary to rely upon legal services alone to assist with relevant issues. Non-legal services, particularly community-based services, are already doing some great work in helping clients with civil and family law related problems and, of note, they are often likely to be much better connected with communities than government or legal services.

Having worked in what I'd call a government position and then coming into the community [sector].... there's something about the lived experience and making that a part of your service that allows you to be more open and have a willingness to learn and understand. And I know from my experience working here is that having that lived experience.... really changes a lot of things... in terms of our policies and stuff, but also in our willingness to support our families and our willingness to learn and understand them and respect them. We find it much easier to understand and appreciate, whereas I think in my previous work it's been very difficult... [You are] institutionalised I reckon, [working in government]. Even when I came here I had to readjust myself because in some ways I had been indoctrinated to be a certain way, and that's quite confronting too. I think I've changed a little bit since I've been here. We don't have that two sides here, whereas in other organisations there is very much that 'you're out there, we're in here, never the two shall meet' type thing, which doesn't work. You show a bit more compassion too because you've had that experience, you can relate whereas you don't get that from mainstream. **(Indigenous community organisation worker)**

Financial counsellors, for instance, can work very effectively to a certain level with credit and debt related matters.

We as a financial counselling service, we could probably do things, like the standard would still be the same [if they saw a lawyer]. They're just retrieving information or things like that. A financial counsellor can do the same as a solicitor. It's the representation, if it was going into a court situation. **(Indigenous community organisation worker)**

A competent financial counsellor would be able to tell the client, 'If you are going to put in a complaint, look at your situation and look how it relates to whether you've been hard done by or not'. So it's about looking in the case of insurance at the insurance policy and what you signed up for, and then marrying that up to the event. 'Yes, I have been hard done by'. Then providing the evidence that you need to go through that complaint process. A lot of people don't know that. That's more critical to a person than someone representing them and saying, 'Don't worry about it. We'll handle it and, blah, blah, blah'. They are better off empowered to know the processes, than for someone representing [them and taking over]. And that can be the difference between financial counselling and a solicitor, because a solicitor has the right of passage to provide the advice, whereas a financial counsellor doesn't. A financial counsellor does not have the capacity to just say, 'I advise you to do this'. And that can be more meaningful than a solicitor in some ways. **(Indigenous community organisation worker)**

One of the following comments relates to criminal law work, but both quotes illustrate how non-legal organisations are already benefiting and/or could benefit from a closer working relationship with legal services. Such a relationship might involve sharing of legal knowledge, for instance, or legal services taking on the 'legal battle' for a mutual client after non-legal services have taken on the initial 'groundwork'. Non-legal services can support Indigenous people in their contact with legal services.

[In terms of gaps in legal service delivery] we probably fill that gap. Probably more legal knowledge would help us [with that], but that would be something we'd have to try to get training for. But they're (ATSILS) really good. They explain stuff to us if we need it and generally when they explain to the client, we pick it up so we know. **(Community organisation worker)**

We would love to have [more legal help to work with clients]. We don't really know what we're doing... This is criminal stuff so it's unrelated but sometimes in court, sometimes the magistrates want us to get up and talk... I had an embarrassing one last week where I put my hand up because the magistrate was going against a client so hard. I wasn't too sure if she'd got my support letter because I was running between three courts. We're doing a lot of court stuff, like at times I'm running between three courts at court, and we have basic legal knowledge but, you know, we don't know the processes and stuff. We probably need to do education around that. **(Community Organisation Worker)**

I think it has something to do with networking with essential services... Instead of taking the load themselves, we [participant's workplace] do the groundwork. They can just get to the legal battle, yeah, easily. **(Mount Isa Women's Focus Group)**

However, it is important that any networking and collaboration between Indigenous and non-Indigenous services is not tokenistic. This type of work needs to be meaningful and genuine in order to work effectively.

But then, it comes down to the point... the agency itself has got to improve its network system and really utilise Indigenous agencies and not just to come in willy-nilly and go do the old promotional stuff. Actually have some meaning and some heart about it. That's one of the biggest things that frustrates me.... you get these agencies that just go and do a doorknock, blah, blah, blah, but there's no substance to it. And I've seen it for twenty years of being in the game. It's a real cultural thing now within agencies, which is sad to see. **(Indigenous community organisation worker)**

Then we have another agency who's a local agency comes and tries to promote their service. You refer clients on to them and they get nothing from them... They come out and they say, 'We want your clients, we're here for you', and all that but then they put up the walls. And it makes it very difficult. **(Indigenous community organisation worker)**

Interviewees also spoke of community-based legal outreach as one way of non-legal and legal services working together. It is the non-legal service, probably already engaged at a grassroots level with community, that is most likely to both identify need and to be able to work with legal services to address that need.⁹³

[By] working with organisations or caseworkers or financial counsellors or domestic violence support services or all of those kinds of organisations it's easier for clients to access [CLC] services. Some of the stuff coming out of the New South Wales (legal needs) survey [is]

⁹³ QPILCH and the Homeless Persons Legal Clinic it operates are doing some great things in developing collaborations between legal and non-legal services. They have a Legal Health Check that non-legal services can use with their homeless clients to determine legal need. See QPILCH (2013) *Legal Health Check: Snapshot*. See also discussion (though not Indigenous-focussed), for instance, in Curran, L (2008), 'Relieving some of the legal burdens on clients: legal aid services working alongside psychologists and other health and social service professionals', 20(1) *The Australian Community Psychologist* 47.

talking about where people are going for information and how few of them know about the existence of community-based legal services. So unless we're creating relationships with those people and organisations where people with legal problems are already going for help, they're never actually going to come through to us. So it's really about those kinds of referral pathways or referral linkages. That is time intensive work that is outside the parameters of what governments think they are paying for when they purchase legal services. (**Legal practitioner**)

The ideal might be a more permanent arrangement; where a single service or hub combines legal and other types of assistance under the same roof, employing (for instance) both financial counsellors and lawyers. As the following speaker suggests, an arrangement of this type 'makes more sense' and could or should be funded as a best practice model for effective service delivery. The organisation in question talks here about an initiative for Indigenous people in Canada that has inspired this idea.

One of the goals that I would like to see in [our organisation] within the next 5 years is ... us having legal services [within our agency]... The accessibility [for the community] is there [already]. [You could have] the professional [solicitor] and a connection with the financial counselling [service we have]... It is long term, but if it was in a research document the government gets an opportunity to see that maybe that makes more sense... Because you know, I'm native Indian from Canada, Cree Indian, and I used to work... for Native Counselling Services of Alberta, which was like a restorative justice state - wide program but they did everything. So they did criminal court work and stuff like Cree Court and Murri Court, but also family support, fee for service for child welfare stuff and parole and all that sort of stuff. I just loved their model so much. They used to have weekly legal clinics that were at night and the lawyers from around town, even privately practising lawyers who wanted to do pro-bono work, would come and rotate every Tuesday. So there would be a different lawyer for every Tuesday of the month and just the range of expertise that could come in... and the range of issues that were covered.... And then it becomes about finding how that gets funded. But I think they do amazing work out there. (**Indigenous community organisation worker**)

Relationships between legal services

Legal services are to some extent working together to service Indigenous communities - at least in trying to identify existing gaps in and to avoid duplication of service delivery. "The only gap I can think of existing across the board is, is anyone going to visit these communities regularly enough and picking up the clients. Is the right service visiting the region?" (**Legal Aid staff**).

[We work to] single out who is doing what so we don't reproduce certain services and we also work collaboratively when they do community legal education. (**Legal Aid staff**)

We have a Regional Legal Assistance Forum meeting, but that's kind of like meeting going, 'Where's the gaps? Who's going to fill those?' 'We've got too many people going there'. (**Indigenous legal service staff**)

One of the things we did was share our calendars on who goes where and things like that... Yarrabah, for example, was so over serviced that we pulled our services out because ATSILS was going over and Cairns Community Legal Service had a service over there and QIFVLS. Even some of the legal services from Townsville were going. So [that's why] we pulled out

but they still contact us if there's a need for assistance over there. So that's one of the things that we're working together. **(Legal Aid staff)**

Sometimes the collaboration between the services is more substantial than this.

ATSILS has a memorandum of understanding with Queensland Indigenous Family Violence Legal Service about how we work together. I don't know how that works in different areas but we sometimes share resources with them, refer clients, our child protection solicitor tries to represent [clients] ... where she can if there is DV so that the other party can be represented by QIFVLS and everybody is represented. So they'll do that, she'll refer the other party to QIFVLS and whatever because often people are still together when children are being taken away and Child Safety is saying the issue is a DV. We share flights and different things. They kind of jump on our flights, or if we do community legal education we often do that together and invite other people along where relevant. So we do try to work with people. **(Indigenous legal service staff)**

However, there were a number of comments across legal services relating to the need for greater levels of networking.

Well going on six years that I've worked here [ATSILS has] only approached us once to sit down [and say], 'Hello, how are you going?' and invited us to a networking meeting - and that was the once in six years. We've informally met. **(Indigenous legal service staff)**

One area where legal services should be working more effectively together is in ensuring that Indigenous people are appropriately referred to alternative services, including legal services, where one service is unable to assist with problems raised. To a degree, this is already happening and sometimes at a more formal level. "[ATSILS] is pretty good. If he don't know [the answer], he puts you on to someone who know", commented a woman in the Roma focus group. But it needs to happen more, and to be done by way of warm rather than cold referral. CLCs reported that ATSILS and Legal Aid could be referring matters onto them more frequently, particularly where they had specialist knowledge about certain areas of law.

I think what is needed is that if this service here that you're at can't help you, they need to know what other options are available. That service needs to know what other places can help them. **(Rockhampton Women's Focus Group Participant)**

The other thing is that when we do referrals we do try and do warm referrals. So we'll make sure that it's an appropriate referral before we send someone over and in fact, I had my first referral from ATSILS yesterday, or the other day, and [name] rang me up and sent that young girl over. Whereas on the opposite we've had Legal Aid that have just 'Go up there, off you go,' and sent her round and the clients been walking around all day looking for us and hasn't been able to find us and by the time [they have], they've been stressed. There's a lot of that from Legal Aid, [not enough warm] referral and, you know, checking first that we can assist them before they send them on. **(Indigenous legal service staff)**

[We do have a referral process in place with ATSILS]. And things are improving in that respect. Certainly, if we have an Aboriginal person we can't assist we'd refer them to ATSILS, as the first option. Well then we've got them referred back, that's right... that's happened. I've had to physically take, to drive one lady around til I got her a solicitor that could help her and agreed to help her before I left. **(Indigenous legal service staff)**

We're in the process of drafting an MOU with ATSILS at a state - wide level at the moment and that's going to have some.... [draft] referral protocols attached to it, but I'm not aware of [MOUs at a local level]. Most of them I would say would have some kind of referral practice but I don't know that it would be documented or formal. ...[The MOU is intended to provide a] template referral processes that an individual CLC can use as the basis for a referral protocol with their local ATSILS office. **(Legal practitioner)**

Indigenous people spoke of wishing to be able to access a service that could address *all* of their legal needs. Whilst this is often not possible, having adequate referral processes in place would go some way to addressing this wish.

To have a one stop shop that they can go to that has all those facilities, whether it be criminal, civil or family, you know ... If they had it all in a one stop shop that would be ideal, instead of shopping around. They've got to go where they feel comfortable. **(Roma Women's Focus Group Participant)**

Interaction with government agencies

As a final point, services establishing relationships and connections with staff in government agencies, too, can be of great benefit to clients - and this applies to both non-legal and legal services.

We pick out individuals to go where we get to know somebody in an organisation. Like Centrelink, for example, we made some really good contacts in there and regardless of what the issue was, we would go straight to them. And that made a difference because we knew them. You've got that champion in there... and it made a difference. And it takes a lot of investment of time and energy into that person. Even if you can find someone who has the basic skills of empathy and they're personable and they're not stand-offish and don't freak out when they see a black face walk into the office and then to actually get that person on board and invite them to things. We'll say 'When you go to Centrelink, ask for [named person]'. 'When you go to so and so, ask for so and so.' **(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 <input type="checkbox"/> NO <input type="checkbox"/>
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?		
<hr/>		
Did you seek legal advice or help?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Who provided the help?		
<hr/>		
How did you resolve this problem or dispute?		
<hr/>		

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 <input type="checkbox"/>	NO <input type="checkbox"/>
Who provided the help? _____		
Are you pursuing any claims for compensation?	YES <input type="checkbox"/>	NO <input type="checkbox"/>

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 <input type="checkbox"/> NO <input type="checkbox"/>
Who provided the help? _____	
How did you resolve this problem or dispute? _____	

7. SOCIAL SECURITY AND CENTRELINK

Are you receiving any type of allowance specifically for Aboriginal people (such as ABSTUDY, CDEP or the Indigenous Cadetship program)? Are you receiving any other type of allowance through Centrelink (such as Youth Allowance, Newstart Allowance, Austudy, sickness or disability allowances, age pension, widow pension, Veteran Affairs pension, parenting payment, child care payment, baby bonus, carer payment)?

YES

NO

Are your Centrelink payments subject to Income Management? YES NO

Have you had any problems or disputes over payments with Centrelink over the last couple of years (such as overpayments or underpayments, getting cut off benefits, incurring a debt, problems with the Basics Card)?

YES

NO

If you answered YES, please complete the following questions:

Briefly, what was the problem or dispute about? _____

Did you seek legal advice or help?

YES

NO

Who provided the help?

How did you resolve this problem or dispute?

8. FAMILY MATTERS

Over the last couple of years, have you had any problems about residence or contact arrangements, such as custody or access, in relation to your children or grandchildren? Have you a problem with family members taking children away (and not returning them)? Have you had problems in relation to child support payments?

YES

NO

Have you had any problems in relation to children being taken into care, or problems about fostering, adoption or guardianship?

YES

NO

If you answered YES, please complete the following questions:

Briefly, what was the problem? _____

Did you seek legal advice or help?

YES

NO

Who provided the help?

How did you resolve this problem or dispute?

Have you been through a separation or divorce over the last couple of years and, as a result, have you had a problem or dispute over property, money or superannuation?

YES

NO

If you answered YES, please complete the following questions:

Did you seek legal help or advice?	YES <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 <input type="checkbox"/> NO <input type="checkbox"/>
Did you seek legal help or advice about compensation and/or insurance? YES <input type="checkbox"/> NO <input type="checkbox"/>
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 <input type="checkbox"/> NO <input type="checkbox"/>
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 <input type="checkbox"/> NO <input type="checkbox"/>
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 QUEENSLAND

Brisbane

Queensland Association of Independent Legal Services (QAILS)

Queensland Public Interest Law Clearing House (QPILCH)

Aboriginal and Torres Strait Islander Legal Service (ATSILS)

Legal Aid Commission

Financial Counselling Australia

Australian Securities and Investments Commission (ASIC)

Queensland Aboriginal and Torres Strait Islander Human Services Coalition (QATSIHSC)

Anti-Discrimination Commission Queensland (ADCQ)

Caxton Legal Centre

Prisoners Legal Service

Tenants Union

Ganyjuu Family Support Services

Kummara Family Care Centre

Queensland ATSI Child Protection Peak (QATSIPP)

Australian Competition and Consumer Commission (ACCC)

Murri Watch

Cairns

YETI (Youth Empowered Towards Independence)

Queensland Indigenous Family Violence Legal Service (QIFVLS)

Anti-Discrimination Commission

Legal Aid Queensland

Aboriginal and Torres Strait Islander Legal Service

Women's Centre Cairns

Dispute Resolution Centre

Tenants Union

Shelter Housing Action Cairns (SHAC)

Mission Australia Going Places (Indigenous Homelessness Program)

Cairns Community Legal Centre

Indigenous Consumer Assistance Network (ICAN)

Relationships Australia

Indigenous Justice Program (written response)

Charleville

Registrar, Magistrates Court

Aboriginal and Torres Strait Islander Legal Service

Legal Aid Queensland

Mount Isa

Nawamba House

Jimaylya Topsy Harry Centre

North Queensland Domestic Violence Resource Service

Indigenous Coordination Centre

Legal Aid Commission

Queensland Indigenous Family Violence Legal Service

Ngurri Ngurri Female Shelter

Registrar, Courthouse

Centacare

Riverbed Action Group

Pormpuraaw

Pormpuraaw Aboriginal Shire Council

Centrelink

Community Justice Group

Alcohol and Drug Services, Pormpur Paanth Aboriginal Corporation

Rockhampton

OzCare Homestay

Gumbi Gumbi Aboriginal Corporation

CQ Financial Counselling Service

Anti-Discrimination Commission Queensland

Rockhampton Women's Shelter

Helem Yumba

Bidgerdii Community Health Service

Legal Aid Queensland

Roma

Aboriginal Family Legal Service South Queensland

Aboriginal and Torres Strait Islander Legal Service

Thursday Island

Registrar, Magistrates Court

Mura Kosker

Aboriginal and Torres Strait Islander Legal Service

Thursday Island Community Justice Group

Relationships Australia

Townsville

Aboriginal and Torres Strait Islander Womens Legal Service (ATSIWLS)

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

Housing/Tenancy	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	25	35.7	42	51.2	67	44.1
No	45	64.3	40	48.8	85	55.9
Total	70	100	82	100	152	100

N = 152

Table 4.2 Percentage of Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord by Geographical Location

Location	Housing Issue	
	Yes	No
	%	%
Brisbane	52.4	47.6
Cairns	60.0	40.0
Charleville	35.0	65.0
Mount Isa	30.0	70.0
Pormpuraaw	72.2	27.8
Rockhampton	27.8	72.2
Roma	18.8	81.3
Thursday Island	52.6	47.4
Total	44.1	55.9

N = 152

Table 4.3 Reason Identified for Housing/Tenancy Dispute or Problem with Landlord

Type	No.
Repairs & Maintenance	36
Overcrowding	14
Bond	10
Rent	8
Eviction	6
Application for Housing / Access to Housing	5
Discrimination	3
Relocation & Transfer	3
Other	2
Total	87

Table 4.4 Number and Percentage of Participants Identifying Housing and/or Tenancy Dispute or Problem with Landlord Who Sought Legal Advice or Help

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	4	17.4	9	22.5	13	20.6
No	19	82.6	31	77.5	50	79.4
Total	23	100	40	100	63	100

Excludes 4 missing cases. N= 63

Table 4.5 Number and Percentage of Focus Group Participants Identifying a Problem or Dispute with Supported Accommodation

Supported Accommodation	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	8	12.1	12	15.4	20	13.9
No	58	87.9	66	84.6	124	86.1
Total	66	100	78	100	144	100

Excludes 8 missing cases. N=144

Table 4.6 Reason for Supported Accommodation Dispute or Problem

Type	No
Fees	7
Lack of, or poor services	4
Other service issues	4
Poor Management	2
Ill-treatment or demeaning treatment	2
Culturally inappropriate	2

Table 4.7 Number and Percentage of Focus Group Participants Identifying Use of Legal Help or Advice for Other Housing Issue

Housing	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	3	4.7	4	5.1	7	4.9
No	61	95.3	75	94.9	136	95.1
Total	64	100	79	100	143	100

Excludes 9 missing cases. N=143

4.2 NEIGHBOURS

Table 4.8 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem with Neighbours

Neighbour Issue	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	19	27.5	33	40.7	52	34.7
No	50	72.5	48	59.3	98	65.3
Total	69	100	81	100	150	100

Excludes 2 missing cases. N=150

Table 4.9 Percentage of Participants Identifying a Dispute or Problem with Neighbours by Geographical Location

Location	Issue with Neighbour	
	Yes	No
	%	%
Brisbane	35.0	65.0
Cairns	55.0	45.0
Charleville	25.0	75.0
Mount Isa	20.0	80.0
Pormpuraaw	50.0	50.0
Rockhampton	17.6	82.4
Roma	37.5	62.5
Thursday Island	36.8	63.2
Total	34.7	65.3

Excludes 2 missing cases. N=150

Table 4.10 Reason Identified for Dispute or Problem with Neighbours

Type	No.
Noise	29
Animals	17
Drinking, drunken people, fighting	8
Fence or Boundaries	4
Children	2
Privacy	2
Prejudice	2
Other	4
Total	68

Table 4.11 Number and Percentage of Participants Identifying a Dispute or Problem with Neighbours Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	3	15.8	4	12.1	7	13.5
No	16	84.2	29	87.9	45	86.5
Total	19	100.0	33	100.0	52	100.0

N=52

4.3 DISCRIMINATION

Table 4.12 Number and Percentage of Focus Group Participants Identifying Discrimination as an Issue

	Focus Group Participants					
Discrimination	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	25	35.7	23	28.0	48	31.6
No	45	64.3	59	72.0	104	68.4
Total	70	100	82	100	152	100

N=152

Table 4.13 Percentage of Participants Identifying Discrimination as an Issue by Community

Location	Discrimination	
	Yes	No
	%	%
Brisbane	47.6	52.4
Cairns	25.0	75.0
Charleville	25.0	75.0
Mount Isa	20.0	80.0
Pormpuraaw	16.7	83.3
Rockhampton	38.9	61.1
Roma	37.5	62.5
Thursday Island	42.1	57.9
Total	31.6	68.4

Table 4.14 Nature of Discrimination Nominated by Those Who Identified it as an Issue

Location	No.
Housing and real estate services	9
Workplace / employment	9
Government and non-government services	8
Shops	6
Police	5
Clubs/hotels	4
School	4
Verbal racial abuse	3
Racism (unspecified)	3
Discrimination on the basis of criminal record	2
Centrelink	2
Discrimination on the basis of age	2
Discrimination on the basis of sex	1
Other	2
Total	60

Table 4.15 Number and Percentage of Participants Identifying Discrimination As An Issue Who Sought Legal Advice or Help

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	6	26.1	1	4.5	7	15.6
No	17	73.9	21	95.5	38	84.4
Total	23	100.0	22	100.0	45	100.0

Excludes 3 missing cases; N=45

4.4 CHILD PROTECTION AND FAMILY LAW

Table 4.16 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					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	10	14.5	24	29.6	34	22.7
No	59	85.5	57	70.4	116	77.3
Total	69	100	81	100	150	100

Excludes 2 missing cases; N=150

Table 4.17 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					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	13	19.1	25	30.9	38	25.5
No	55	80.9	56	69.1	111	74.5
Total	68	100	81	100	149	100

Excludes 3 missing cases; N=149

Table 4.18 Nature of Family Law Issue Relating to Children

Type	No.
Children taken into care by Child Safety	18
Residence/contact/ access issue	14
Foster care	2
Other	2
Total	36

Table 4.19 Family law and child protection matters relating to children by location

Location	Child Support/ Residency/Access	Child Removal	Total
Brisbane	5	7	12
Cairns	4	3	7
Charleville	3	3	6
Mount Isa	7	8	15
Pormpuraaw	4	9	13
Rockhampton	4	2	6
Roma	-	1	1
Thursday Island	7	5	12
Total	34	38	72

NB. This is the total number of issues relating to children identified by community. A single individual may have identified problems with both family law and child protection

Table 4.20 Number and Percentage of Participants Identifying a Family Law/Child Protection Issue In Relation to Children Who Sought Legal Advice or Help

Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	8	57.1	15	55.6	23	56.1
No	6	42.9	12	44.4	18	43.9
Total	14	100	27	100	41	100

N=41

Table 4.21 Number and Percentage of Focus Group Participants Identifying Problem or Dispute in relation to Property, Money or Superannuation Post-Separation or Divorce

Property	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	7	10.1	6	7.6	13	8.8
No	62	89.9	73	92.4	135	91.2
Total	69	100	79	100	148	100

Excludes 4 missing cases; N=148

Table 4.22 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
	%	%
Brisbane	10.5	89.5
Cairns	10.0	90.0
Charleville	10.0	90.0
Mount Isa	25.0	75.0
Pormpuraaw	5.9	94.1
Rockhampton	0.0	100
Roma	0.0	100
Thursday Island	5.3	94.7
Total	8.8	91.2

N=148

Table 4.23 Number of Participants Identifying a Problem or Dispute In Relation To Property, Money or Superannuation Post-Separation or Divorce Who Sought Legal Advice

	Focus Group Participants		
Legal Advice	Male	Female	Total
	No.	No.	No.
Yes	1	3	4
No	4	3	7
Total	5	6	11

Excludes 2 missing cases; N=11

4.5 CREDIT AND DEBT

Table 4.24 Number and Percentage of Focus Group Participants Identifying a Problem with Paying a Bill or Loan or Other Debt Where Lender Has Threatened or Taken Out Legal Action

	Focus Group Participants					
Bill or Loan	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	18	26.1	21	25.9	39	26.0
No	51	73.9	60	74.1	111	74.0
Total	69	100	81	100	150	100

Excludes 2 missing cases; N=150

Table 4.25 Number and Percentage of Focus Group Participants Identifying a Problem or Dispute in Relation to Credit Reference Rating; as Guarantor for Another's Loan; and/or in Relation to Bankruptcy

	Focus Group Participants					
Credit Reference, Bankruptcy	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	9	13.0	8	10.1	17	11.5
No	60	87.0	71	89.9	131	88.5
Total	79	100	79	100	148	100

Excludes 4 missing cases; N=148

Table 4.26 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
Brisbane	6	3	9
Cairns	8	4	12
Charleville	7	3	10
Mount Isa	2	1	3
Pormpuraaw	1	-	1
Rockhampton	5	1	6
Roma	4	3	7
Thursday Island	6	2	8
Total	39	17	56

NB Twenty six distinct individuals identified issues in *either* (a) or (b) categories above. A further 15 individuals identified issues in *both* (a) and (b) above. Therefore a total of 41 individuals either had problems with debt and/or credit reference rating, bankruptcy or arising as a loan guarantor.

Table 4.27 Reason Identified for Credit/Debt Related Issue

Type	No.
Debt (unspecified)	10
Bill repayment (unspecified)	8
Loan repayment (unspecified)	4
Credit reference rating	3
Fines	3
Phone Bills	2
Utility bills	3
Bankruptcy	1
Other	2
Total	36

Table 4.28 Focus Group Participants Identifying: (a) Debt Problem Where Lender Has Threatened or Taken Legal Action; (b) Problem with Credit Reference Rating, Guarantor for Another’s Loan; and/or in Relation to Bankruptcy, Who Sought Legal Advice or Help .

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	4	30.8	3	15.0	7	21.2
No	9	69.2	17	85.0	26	78.8
Total	13	100.0	20	100.0	33	100.0

Excludes 8 missing cases; N=33

3.13 CONSUMER

Table 4.29 Number and Percentage of Focus Group Participants Identifying a Problem Accessing or Finding Superannuation, or a Dispute with Bank or Other Financial Institution

	Focus Group Participants					
Superannuation or Financial Institution	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	14	20.3	11	13.4	25	16.6
No	55	79.7	71	86.6	126	83.4
Total	69	100	82	100	151	100

Excludes 1 missing case; N=151

Table 4.30 Number and Percentage of Focus Group Participants Identifying a Problem with Insurance

	Focus Group Participants					
Insurance	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	3	4.4	3	3.7	6	4.0
No	65	95.6	79	96.3	144	96.0
Total	68	100	82	100	150	100

Excludes 2 missing cases; N=150

Table 4.31 Number and Percentage of Focus Group Participants Identifying a Problem with ‘Scams’ or Contracts (Funeral Funds, Used Cars, Etc.)

Scam	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	11	16.2	10	12.3	21	14.1
No	57	83.8	71	87.7	128	85.9
Total	68	100	81	100	149	100

Excludes 3 missing cases; N=149

Table 4.32 Number and Percentage of Focus Group Participants Identifying Other Problem Where Participants Didn’t Get What They Paid For

Didn’t Get What Paid For	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	8	11.8	9	11.1	17	11.4
No	60	88.2	72	88.9	132	88.6
Total	68	100	81	100	149	100

Excludes 3 missing cases; N=149

Table 4.33 Consumer Issues by Community

Location	Financial Institution	Insurance	Commercial Scams	Other Consumer Issues	Total
	No	No	No	No	No
Brisbane	8	-	5	9	22
Cairns	3	1	3	2	9
Charleville	-	1	2	2	5
Mount Isa	2	1	4	2	9
Pormpuraaw	6	1	-	-	7
Rockhampton	3	-	4	-	7
Roma	1	-	2	2	5
Thursday Island	2	1	1	-	4
Total	25	6	21	17	69

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 4.34 Reason Identified for Consumer Problem

Type	No.
Telephone Contract Dispute	6
Faulty Goods	5
Superannuation – Access and Entitlements	4
Internet/Telephone Scams	3
Dispute with Bank (Balance, Fees, Other)	2
Funeral Fund	2
Door to door sales	1
Motor vehicle sales / repairs	1
Insurance (Claim Declined)	1
Total	25

4.7 SOCIAL SECURITY AND CENTRELINK**Table 4.35 Number and Percentage of Focus Group Participants Identifying Receipt of Centrelink Allowance**

Allowance	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	48	68.6	60	73.2	108	71.1
No	22	31.4	22	26.8	44	28.9
Total	70	100	82	100	152	100

N=152

Table 4.36 Number and Percentage of Focus Group Participants Identifying Centrelink Payments As Being Subject to Income Management

Income Management	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	4	8.9	9	16.1	13	12.9
No	41	91.1	47	83.9	88	87.1
Total	45	100.0	56	100.0	101	100.0

Excludes 7 missing cases; N=101

Table 4.37 Number and Percentage of Focus Group Participants Identifying a Dispute or Problem With Centrelink in Relation to Payments

Centrelink	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	15	31.9	20	34.5	35	33.3
No	32	68.1	38	65.5	70	66.7
Total	47	100.0	58	100.0	105	100.0

Excludes 3 missing cases; N=105

Table 4.38 Percentage of Participants Identifying Centrelink Problem by Geographical Location

Location	Centrelink Issue	
	Yes	No
	%	%
Brisbane	20.0%	80.0%
Cairns	25.0%	75.0%
Charleville	30.8%	69.2%
Mount Isa	15.0%	85.0%
Pormpuraaw	58.3%	41.7%
Rockhampton	40.0%	60.0%
Roma	45.5%	54.5%
Thursday Island	46.2%	53.8%
Total	33.3%	66.7%

Table 4.39 Reason Identified for Dispute or Problem with Centrelink

Type	No.
Overpayment	8
Cut off benefits	7
Underpayment	6
Centrelink Debt	4
Work test related	2
Other: Reporting, Income Management, Child Support and other issues	7
Total	34

4.8 WILLS AND INTESTACY

Table 4.40 Number and Percentage of Focus Group Participants Who Have Completed Will

Completed Will	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	10	14.3	10	12.5	20	13.3
No	60	85.7	70	87.5	130	86.7
Total	70	100.0	80	100.0	150	100.0

Excludes 2 missing cases; N=150

Table 4.41 Number of Focus Group Participants Who Received Advice in Completing Will

Advice	Focus Group Participants		
	Male	Female	Total
	No.	No.	No.
Yes	8	6	14
No	1	1	2
Total	9	7	16

Excludes 4 missing cases; N=16

Table 4.42 Number and Percentage of Focus Group Participants Who Would Like Legal Advice To Complete A Will

Seek Legal Advice	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	35	59.3	44	67.7	79	63.7
No	24	40.7	21	32.3	45	36.3
Total	59	100	65	100	124	100

Excludes 6 missing cases; N=124

Table 4.43 Number and Percentage of Focus Group Participants Identifying Having to Take Charge of Estate After Death

Take Charge of Estate	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	7	10.3	9	12.0	16	11.2
No	61	89.7	66	88.0	127	88.8
Total	68	100.0	75	100.0	143	100.0

Excludes 9 missing cases; N=143

Table 4.44 Number and Percentage of Focus Group Participants Identifying a Dispute Over Deceased Estate After Death

Dispute Over Deceased Estate	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	8	11.9	7	9.2	15	10.5
No	59	88.1	69	90.8	128	89.5
Total	67	100	76	100	143	100

Excludes 9 missing cases; N=143

4.9 VICTIMS COMPENSATION

Table 4.45 Number and Percentage of Focus Group Participants Identifying as A Victim of Violent Crime

Victim of Crime	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	11	15.7	17	20.7	28	18.4
No	59	84.3	65	79.3	124	81.6
Total	70	100.0	82	100.0	152	100.0

N=152

Table 4.46 Percentage of Participants Identifying As A Victim of Violent Crime by Community

Location	Victim of Violent Crime	
	Yes	No
	%	%
Brisbane	38.1%	61.9%
Cairns	5.0%	95.0%
Charleville	10.0%	90.0%
Mount Isa	30.0%	70.0%
Pormpuraaw	33.3%	66.7%
Rockhampton	5.6%	94.4%
Roma	6.3%	93.8%
Thursday Island	15.8%	84.2%
Total	18.4%	81.6%

N=152

Table 4.47 Number and Percentage of Participants Identifying As A Victim of Violent Crime Who Knew About the Victims Compensation Scheme

Knew of Scheme	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	4	40	9	56	13	50
No	6	60	7	44	13	50
Total	10	100	16	100	26	100

Excludes 2 missing cases; N=26

Table 4.48 Number and Percentage of Focus Group Participants Identifying As A Victim of Violent Crime Who Sought Victims Compensation

Sought Compensation	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	4		4		8	31
No	6		12		18	69
Total	10		26		26	100

Excludes 2 missing cases; N=26

4.10 EMPLOYMENT

Table 4.49 Number and Percentage of Focus Group Participants Identifying An Employment Dispute or Problem

Employment	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	12	17.4	21	25.9	33	22
No	57	82.6	60	74.1	117	78
Total	69	100	81	100	150	100

Excludes 2 missing cases; N=150

Table 4.50 Percentage of Participants Identifying an Employment Dispute or Problem by Community

Location	Employment	
	Yes	No
	%	%
Brisbane	35.0	65.0
Cairns	26.3	73.7
Charleville	20.0	80.0
Mount Isa	10.0	90.0
Pormpuraaw	16.7	83.3
Rockhampton	16.7	83.3
Roma	0.0	100
Thursday Island	47.4	52.6
Total	22.0	78.0

Excludes 2 missing cases; N=150

Table 4.51 Reason Identified for Employment Dispute or Problem

Type	No.
Unfair Dismissal	10
Wages	9
Bullying, Harassment	6
Award Conditions	5
Discrimination (including racial, or not specified)	4
Superannuation	2
Other	2
Total	38

Table 4.52 Number and Percentage of Participants Identifying a Dispute or Problem with Employment Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	4	36.4	7	35.0	11	35.5
No	7	63.6	13	65.0	20	64.5
Total	11	100	20	100	31	100

Excludes 2 missing cases; N=31

4.11 EDUCATION

Table 4.53 Number and Percentage of Focus Group Participants Identifying Responsibility for Young Person Attending School, TAFE or University; or Having Attended Themselves

	Focus Group Participants					
Participation in Education	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	20	28.6	47	57.3	67	44.1
No	50	71.4	35	42.7	85	55.9
Total	70	100.0	82	100.0	152	100.0

N=152

Table 4.54 Number and Percentage of Focus Group Participants Identifying Responsibility for Young Person Attending School, TAFE or University Having Attended Themselves Who Encountered Problems with Issues Such As Suspension, Bullying or Fees

	Focus Group Participants					
Education Issue	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	5	25.0	18	39.1	23	34.8
No	15	75.0	28	60.9	43	65.2
Total	20	100	46	100	66	100

Excludes 1 missing case; N=66

Table 4.55 Percentage of Participants Identifying an Education-Related Issue by Community

Location	Education Issue	
	Yes	No
	%	%
Brisbane	40.0%	60.0%
Cairns	16.7%	83.3%
Charleville	55.6%	44.4%
Mount Isa	30.0%	70.0%
Pormpuraaw	10.0%	90.0%
Rockhampton	22.2%	77.8%
Roma	57.1%	42.9%
Thursday Island	50.0%	50.0%
Total	34.8%	65.2%

Table 4.56 Nature of Education-Related Issue

Type	No.
Bullying and harassment	11
Suspension	6
Fees	4
Expulsion	2
Racism	1
Other	3
Total	27

Table 4.57 Number and Percentage of Participants Identifying a Dispute or Problem in relation to Education Who Sought Legal Advice or Help

	Focus Group Participants					
Legal Advice	Male		Female		Total	
	No.		No.		No	%
Yes	1		6		7	30.4
No	4		12		16	69.6
Total	5		18		23	100.0

N=23

4.12 STOLEN GENERATIONS / STOLEN WAGES

Table 4.58 Number and Percentage of Focus Group Participants Identifying as a Member of the Stolen Generations

	Focus Group Participants					
Stolen Generations	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	9	12.9	4	4.9	13	8.6
No	61	87.1	78	95.1	139	91.4
Total	70	100	82	100	152	100

N=152

Table 4.59 Number and Percentage of Focus Group Participants Identifying as Being Entitled to Trust Fund/Stolen Wages Compensation

	Focus Group Participants					
Aboriginal Trust Fund	Male		Female		Total	
	No.	%	No.	%	No	%
Yes	15	22.7	14	17.9	29	20.1
No	50	75.8	63	80.8	113	78.5
Not Sure	1	1.5	1	1.3	2	1.4
Total	66	100	78	100	144	100

Excludes 8 missing cases; N=144

4.13 ACCIDENT AND INJURY

Table 4.60 Number and Percentage of Focus Group Participants Identifying Accident or Injury-Related Issue

Accident/Injury	Focus Group Participants					
	Male		Female		Total	
	No.	%	No.	%	No.	%
Yes	11	15.9	12	14.8	23	15.3
No	58	84.1	69	85.2	127	84.7
Total	69	100	81	100	150	100

Excludes 2 missing cases; N=150

Table 4.61 Percentage of Participants Identifying Accident or Injury-Related Issue by Community

Location	Accident/Injury Related Issue	
	Yes	No
	%	%
Brisbane	0.0%	100.0%
Cairns	15.8%	84.2%
Charleville	26.3%	73.7%
Mount Isa	30.0%	70.0%
Pormpuraaw	5.6%	94.4%
Rockhampton	11.1%	88.9%
Roma	18.8%	81.3%
Thursday Island	15.8%	84.2%
Total	15.3%	84.7%

N=150

Table 4.62 Nature of Accident/Injury-Related Issue

Type	No.
Motor Vehicle Accident	10
Other injuries not specified	8
Work-Related Injury	2
Medical	1
Total	21

Excludes 2 missing cases; N=21

Table 4.63 Number and Percentage of Participants Identifying Accident/Injury-Related Issue Requiring Medical Treatment for Injuries

Medical Treatment	Focus Group Participants			
	Male	Female	Total	
	No.	No.	No.	%
Yes	9	5	14	64
No	2	6	8	36
Total	11	11	22	100

Excludes 1 missing case; N=22

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

Legal Advice	Focus Group Participants			
	Male	Female	Total	
	No.	No.	No	%
Yes	8	4	12	52
No	3	8	11	48
Total	11	12	23	100

N=23

4.14 TAX RETURN

Table 4.65 Date of Most Recent Tax Return by Percentage

Date	Percentage
This year	19.8
Last year	38.8
2-5 years	10.3
5 years or more	9.5
Don't know or can't remember	2.6
Never	19.0
Total	100

Excludes 36 missing cases; N=116

APPENDIX D

ILNP COMMUNITIES IN QUEENSLAND

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

As noted, the level of accessibility for communities in Queensland varies from very remote to highly accessible. Levels of accessibility inevitably impact upon legal service delivery. Some communities have permanent offices of family violence legal services, ATSILS, LACs 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, and some more so than others (Pormpuraaw, for example).

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

- lower personal and (in general) household income for Indigenous people compared to non-Indigenous people;
- higher average household size of Indigenous households and a greater proportion of these households requiring one or more extra bedrooms; and
- significant levels of rented accommodation, the majority of which is outside the private rental market.

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 Brisbane

Brisbane is the capital of Queensland, located in the southeast of the State. It has 2065996 residents (as at 2011), of which 41904 are Indigenous (constituting 2% of the total local population) (see Table 1.3). Brisbane is defined as a *highly accessible* community, with relatively unrestricted accessibility to a wide range of goods and services and opportunities for social interaction.

Legal Services

- ATSILS (permanent (head) office)
- Legal Aid (permanent (head) office)
- CLCs (encompassing specialist, generalist, local and state-wide legal services)
- QIFVLS

*The Demographic Data for Brisbane*⁹⁴

⁹⁴ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Brisbane*, Canberra, Catalogue No 2002.0; available at

Table 1.1 Brisbane: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	20678	21226	41904
Non-Indigenous persons	949459	982283	1931742
Indigenous status not stated	49419	42931	92350
Total	1019556	1046440	2065996

Table 1.2 Brisbane: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	20	35	35
Median total personal income (\$/week)	444	636	633
Median total household income (\$/week)	1179	1394	1388
Median rent (\$/week)	290	325	325
Average number of persons per bedroom	1.2	1.1	1.1
Average household size	3.3	2.6	2.7
Proportion of dwellings that need one or more extra bedrooms (%)	9.2	2.7	2.9

Table 1.3 Brisbane: Tenure and Landlord Type for Households with Indigenous Persons⁹⁵

Tenure/Landlord Type	Total
Owned outright	1812
Owned with mortgage	5113
Rented:	
▪ Real estate agent	5775
▪ State or Territory housing authority	2809
▪ From parent/other relative or another person	1797
▪ Housing cooperative, community or church group	341
▪ Other landlord	386
▪ Landlord type not stated	121
<i>Total rented</i>	<i>11229</i>
Other tenure type	82
Landlord type not stated	562
Total	18798

1.2 Cairns

Cairns is located in northeast Queensland, approximately 1700kms from Brisbane. Cairns has 140232 residents (as of 2011), of which 6741 are Indigenous (constituting 4.8% of the total local population) (see Table 1.6). Cairns is defined as a *moderately accessible* community, with significantly restricted accessibility of goods and services and opportunities for social interaction.

*Legal Services*⁹⁶

- ATSILS (permanent office)
- QIFVLS (permanent office)
- Legal Aid (permanent office)
- Cairns Community Legal Centre (permanent office)
- NQ Women's Legal Service

⁹⁵ 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.

⁹⁶ ATSIWLSNQ services Cairns, by telephone contact only.

Table 1.4 Cairns: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	3104	3637	6741
Non-Indigenous persons	57965	59275	117240
Indigenous status not stated	5312	4624	9936
Total	69373	70859	140232

Table 1.4 Cairns: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	20	37	35
Median total personal income (\$/week)	400	646	627
Median total household income (\$/week)	935	1187	1163
Median rent (\$/week)	210	265	260
Average persons per bedroom	1.3	1.1	1.1
Average household size	3.3	2.4	2.5
Proportion of dwellings that need one or more extra bedrooms (%)	15.2	2.4	3.6

⁹⁷ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Cairns*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/IARE302002?opendocument&navpos=230

Table 1.5 Cairns: Tenure and Landlord Type for Households with Indigenous Persons

Tenure/Landlord Type	Total
Owned outright	289
Owned with mortgage	844
Rented:	
▪ Real estate agent	1537
▪ State or Territory housing authority	960
▪ From parent/other relative or another person	394
▪ Housing cooperative, community or church group	105
▪ Other landlord	160
▪ Landlord type not stated	50
<i>Total rented</i>	3206
Other tenure type	14
Landlord type not stated	253
Total	4606

1.3 Charleville

Charleville is located in central-southern Queensland. It is approximately 740kms from Brisbane and has 4620 residents (as at 2011), of which 530 are Indigenous (constituting 11.47% of the total local population) (see Table 1.3). Charleville is defined as a *very remote* community, with very little accessibility of goods, services and opportunities for social interaction.

*Legal Services*⁹⁸

- ATSILS (permanent office)
- AFLS (outreach: permanent office in Roma)

⁹⁸ Legal Aid visits only on an as needs basis (where it is acting for a client and there is a grant of aid (for non-Indigenous clients or Indigenous clients when ATSILS is conflicted out of assisting them)).

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

Indigenous status	Male	Female	Total
Indigenous persons	247	283	530
Non-Indigenous persons	1883	1889	3772
Indigenous status not stated	177	141	318
Total	2307	2313	4620

Table 1.7 Charleville: 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	18	39	37
Median total personal income (\$/week)	398	591	568
Median total household income (\$/week)	1008	970	973
Median rent (\$/week)	150	120	125
Average number of persons per bedroom	1.3	1.1	1.1
Average household size	3.3	2.4	2.5
Proportion of dwellings that need one or more extra bedrooms (%)	8.3	2.3	3.0

⁹⁹ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Charleville*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/315031409?opendocument&navpos=230

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

Tenure/Landlord Type	Total
Owned outright	25
Owned with mortgage	53
Rented:	
▪ Real estate agent	39
▪ State or Territory housing authority	29
▪ From parent/other relative or another person	23
▪ Housing cooperative, community or church group	0
▪ Other landlord	7
▪ Landlord type not stated	4
<i>Total rented</i>	<i>102</i>
Other tenure type	0
Landlord type not stated	13
Total	193

1.4 Mount Isa

Mount Isa is located in northwest Queensland, approximately 1250kms from Cairns, 1820kms from Brisbane and 1600kms from Darwin. Mount Isa has 21198 residents (as of 2011), of which 3202 are Indigenous (constituting 15% of the total local population) (see Table 1.6). Mount Isa is defined as a *remote* community, with significant restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- ATSILS (permanent office)
- QIFVLS (permanent office)
- Legal Aid (permanent office)

Table 1.9 Mt Isa: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	1541	1661	3202
Non-Indigenous persons	8103	6975	15078
Indigenous status not stated	1656	1262	2918
Total	11300	9898	21198

Table 1.10 Mt Isa: 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	31	30
Median total personal income (\$/week)	474	1045	954
Median total household income (\$/week)	1358	2190	2062
Median rent (\$/week)	150	275	250
Average persons per bedroom	1.4	1.1	1.2
Average household size	3.5	2.6	2.7
Proportion of dwellings that need one or more extra bedrooms (%)	16.3	3.7	5.6

¹⁰⁰ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Mount Isa*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/IARE304004?opendocument&navpos=230

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

Tenure/Landlord Type	Total
Owned outright	92
Owned with mortgage	259
Rented:	
▪ Real estate agent	100
▪ State or Territory housing authority	340
▪ From parent/other relative or another person	79
▪ Housing cooperative, community or church group	15
▪ Other landlord	45
▪ Landlord type not stated	6
<i>Total rented</i>	585
Other tenure type	10
Landlord type not stated	52
Total	998

1.5 Pormpuraaw

Pormpuraaw is located in far north Queensland, approximately 660kms from Cairns. It has 663 residents (as of 2011), of which 600 are Indigenous (constituting 90% of the total local population) (see Table 1.6). Pormpuraaw is defined as a *very remote* community, with very little accessibility of goods, services and opportunities for social interaction.

*Legal Services*¹⁰¹

- ATSILS (outreach: permanent office in Cairns)
- QIFVLS (outreach: permanent office in Cairns)

*The Demographic Data for Pormpuraaw*¹⁰²

¹⁰¹ Legal Aid visits only on an as needs basis (where it is acting for a client and there is a grant of aid (for non-Indigenous clients or Indigenous clients when ATSILS is conflicted out of assisting them)). NB ATSIWLSNQ services Pormpuraaw by telephone contact only.

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

Indigenous status	Male	Female	Total
Indigenous persons	300	300	600
Non-Indigenous persons	38	22	60
Indigenous status not stated	3	0	3
Total	341	322	663

Table 1.13 Pormpuraaw: 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	31	46	33
Median total personal income (\$/week)	293	966	313
Median total household income (\$/week)	1006	1218	1038
Median rent (\$/week)	93	30	80
Average persons per bedroom	1.6	1.1	1.5
Average household size	3.9	1.5	3.5
Proportion of dwellings that need one or more extra bedrooms (%)	32.6	0.0	28.0

¹⁰² ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Pormpuraaw*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC30300901?opendocument&navpos=230

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

Tenure/Landlord Type	Total
Owned outright	0
Owned with mortgage	0
Rented:	
▪ Real estate agent	0
▪ State or Territory housing authority	89
▪ From parent/other relative or another person	0
▪ Housing cooperative, community or church group	41
▪ Other landlord	6
▪ Landlord type not stated	0
<i>Total rented</i>	<i>136</i>
Other tenure type	0
Landlord type not stated	0
Total	136

1.6 Rockhampton

Rockhampton is located in northeast Queensland, approximately 630kms from Brisbane. It has 60201 residents (as of 2011), of which 3839 are Indigenous (constituting 6.4% of the total local population) (see Table 1.6). Rockhampton is defined as an *accessible* community, with some restrictions to accessibility of goods and services and opportunities for social interaction.

Legal Services

- ATSILS (permanent office)
- QIFVLS (permanent office)
- Legal Aid (permanent office)
- Central Queensland CLC (permanent office)

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

Indigenous status	Male	Female	Total
Indigenous persons	1802	2037	3839
Non-Indigenous persons	25598	26651	52249
Indigenous status not stated	2192	1921	4113
Total	29592	30609	60201

Table 1.16 Rockhampton: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	19	36	35
Median total personal income (\$/week)	411	598	588
Median total household income (\$/week)	1012	1162	1150
Median rent (\$/week)	220	240	240
Average persons per bedroom	1.3	1.1	1.1
Average household size	3.4	2.5	2.5
Proportion of dwellings that need one or more extra bedrooms (%)	11.9	2.9	3.5

¹⁰³ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Rockhampton*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC30500903?opendocument&navpos=230

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

Tenure/Landlord Type	Total
Owned outright	113
Owned with mortgage	336
Rented:	
▪ Real estate agent	366
▪ State or Territory housing authority	342
▪ From parent/other relative or another person	140
▪ Housing cooperative, community or church group	40
▪ Other landlord	24
▪ Landlord type not stated	16
<i>Total rented</i>	928
Other tenure type	10
Landlord type not stated	61
Total	1448

1.7 Roma

Roma is located in southwest Queensland, approximately 470kms from Brisbane. It has 6907 residents (as of 2011), of which 602 are Indigenous (constituting 8.1% of the total local population) (see Table 1.6). Roma is defined as a moderately *accessible* community, with significantly restricted accessibility of goods and services and opportunities for social interaction.

*Legal Services*¹⁰⁴

- ATSILS (satellite office: permanent office in Charleville)
- Aboriginal Family Legal Service Southern QLD Indigenous Corporation (CLC) (permanent office)
- Roma CLC (permanent office)

¹⁰⁴ Legal Aid visits only on an as needs basis (where it is acting for a client and there is a grant of aid (for non-Indigenous clients or Indigenous clients when ATSILS is conflicted out of assisting them)).

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

Indigenous status	Male	Female	Total
Indigenous persons	310	292	602
Non-Indigenous persons	2773	2776	5549
Indigenous status not stated	415	341	756
Total	3498	3409	6907

Table 1.19 Roma: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	20	33	32
Median total personal income (\$/week)	481	737	716
Median total household income (\$/week)	1159	1435	1401
Median rent (\$/week)	215	220	220
Average persons per bedroom	1.2	1.1	1.1
Average household size	3.3	2.5	2.6
Proportion of dwellings that need one or more extra bedrooms (%)	7.2	2.2	2.7

¹⁰⁵ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Roma*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC30600803?opendocument&navpos=230

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

Tenure/Landlord Type	Total
Owned outright	26
Owned with mortgage	51
Rented:	
▪ Real estate agent	49
▪ State or Territory housing authority	57
▪ From parent/other relative or another person	26
▪ Housing cooperative, community or church group	3
▪ Other landlord	12
▪ Landlord type not stated	3
<i>Total rented</i>	<i>150</i>
Other tenure type	3
Landlord type not stated	8
Total	238

1.8 Thursday Island

Thursday Island is located in far north Queensland, approximately 880kms from Cairns. Thursday Island has 1632 residents (as of 2011), of which 882 are Indigenous (constituting 54% of the total local population) (see Table 1.6). Thursday Island is defined as a *very remote* community, with very little accessibility of goods, services and opportunities for social interaction.

*Legal Services*¹⁰⁶

- ATSILS (permanent office)
- Legal Aid (outreach: permanent office in Cairns)¹⁰⁷

¹⁰⁶ ATSIWLSNQ services Thursday Island by telephone only.

¹⁰⁷ Legal Aid visits twice a year and then only on an as needs basis (where they are acting for a client and there is a grant of aid (for non-Indigenous clients or Indigenous clients when ATSILS is conflicted out of assisting them)).

Table 1.21 Thursday Island: Indigenous and non-Indigenous Persons by Sex

Indigenous status	Male	Female	Total
Indigenous persons	416	466	882
Non-Indigenous persons	290	290	580
Indigenous status not stated	87	83	170
Total	793	839	1632

Table 1.22 Thursday Island: Selected Medians and Averages

Median / Average	Indigenous persons/households with Indigenous person(s)	Non-Indigenous person(s)/other households	Total average
Median age of persons	22	36	30
Median total personal income (\$/week)	640	1220	867
Median total household income (\$/week)	1416	2240	1824
Median rent (\$/week)	100	33	65
Average persons per bedroom	1.4	1.2	1.3
Average household size	3.8	2.3	3.1
Proportion of dwellings that need one or more extra bedrooms (%)	18.2	4.9	12.0

¹⁰⁸ ABS (2011), *Census of Population and Housing, Aboriginal and Torres Strait Islander Peoples (Indigenous) Profile: Thursday Island*, Canberra, Catalogue No 2002.0; available at http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/communityprofile/ILOC30700104?opendocument&navpos=230

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

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

1.9 Conclusion

The above community-specific data is reflective of the lower socio-economic status of Indigenous people and communities across Queensland, as evidenced by lower incomes and poorer access to home ownership (and subsequent disproportionate dependency on rentals (especially social 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).