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Family Law Council Secretariat
3-5 National Circuit
Barton ACT 2600

Dear Sir or Madam,

Re: Indigenous and Culturally and Linguistically Diverse Clients (CALD) in the Family Law System

Introduction

Thank you for the opportunity to make this submission in relation to the Terms of Reference issued by the Commonwealth Attorney-General to the Family Law Council, about Indigenous and Culturally and Linguistically Diverse Clients in the family law system (Attachment A).

About National Legal Aid and legal aid commissions

National Legal Aid (NLA) represents the Directors of the eight State and Territory legal aid commissions (commissions) in Australia. The commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the appropriate cost of legal representation;
- obtain access to the federal and state and territory legal systems; or
- obtain adequate information about access to the law and the legal system.

The commissions provide a range of legal services to people in the area of family and related laws including legal information, advice, minor assistance, referrals to legal and non-legal service providers, community development, legal education, duty lawyer services, dispute resolution, and case work services. Most of these services are provided free and are not means or merits tested. For dispute resolution services and case work services a grant of legal aid is necessary. Grants of aid are made upon applications which pass eligibility requirements in relation to means, merit,

guidelines, and availability of funds. Contributions towards the cost of providing the grant of legal assistance may be required.

Context and structure of this submission

This submission is made in the context that members of Family Law Council have consulted with representatives of some of the commissions. Questions are answered from the perspective of legal aid commissions as service providers to people in the family law system. In responding to the terms of reference commissions have interpreted the word "client" to include a person who might receive a legal assistance service but is not a "client" of the commission in the strict sense, and "family law" to include what might be thought of as "state & territory - based" family laws such as those relating to family violence and child protection.

In responding to the terms of reference some key themes and issues emerged. These are set out immediately below. A more expansive description and discussion of the issues including case studies then follows. Some suggested recommendations are contained at the end of the submission.

Key themes and issues in this submission

NLA believes that the family law system (defined by the terms of reference as Courts, legal assistance and family relationship services) endeavours to meet the identified needs of Aboriginal and Torres Strait Islander (ATSI) Peoples and Culturally and Linguistically Diverse (CALD) people as well as possible in all the circumstances. It is not clear to NLA however, that the nature and extent of need in the many ATSI and CALD communities across Australia have as yet been sufficiently identified; although research is underway which may assist to inform the family law system about what is required.

An underpinning issue in relation to meeting the family law need of specific groups is accessibility. Accessibility involves a range of common factors including understanding of, and trust in, the Australian law and legal system, the capacity to communicate with each other, and the reach of services. For the family law system to be generally accessible there also needs to be an improved understanding of the causes, nature, dynamics and effects of family violence, and confidence that appropriate responses and support will be provided to those affected.

NLA suggests that the legal needs of both ATSI and CALD people could be better identified and managed if the following existing issues were addressed:

- 1) as a first priority, the availability of professional interpreters;
- 2) the requirement for a better understanding of the needs of these groups;
- 3) the need for greater availability of cross-cultural/community legal education and information about family and related law and processes, including where to get help accessible in different languages;

- 4) the need for education in relation to the nature, causes, and dynamics of family violence, including the intersection between family violence and other legal areas and the development and implementation of appropriate responses;
- 5) the need for education to ensure appropriate cultural awareness for family law system providers;
- 6) the requirement for improved outreach and technological initiatives to support the delivery of services to rural and remote areas, including non legal support services;
- 7) the need to develop a broader range and greater availability of culturally accommodating dispute resolution programs; and
- 8) the need to appropriately resource existing legal assistance/services that are engaged in providing assistance.

Indigenous clients of the family law system

i. Ways in which the family law system (Courts, legal assistance and family relationships services) meets client needs

The Aboriginal and Torres Strait Islander Legal Services (ATSILs) and Family Violence Prevention Legal Services (FVPLSs) provide culturally appropriate legal services to Aboriginal and Torres Strait Islander (ATSI) Peoples, including in the area of family law. NLA supports the provision of legal services to ATSI Peoples by culturally appropriate community controlled organisations.

Commissions also endeavour to provide culturally appropriate services to Aboriginal and Torres Strait Islander Peoples, and to work with researchers and ATSI service providers to ensure that legal needs are understood and met as far as possible. A range of mechanisms such as MOUs, secondments of family lawyers, and project co-operation exist between commissions and ATSI legal service providers with a view to maximising the use of limited available resources.

The new National Partnership Agreement on Legal Assistance Services has enabled commissions to use Commonwealth funds to provide legal assistance in state law matters where a child/applicant's safety is at risk (child protection and family violence) and there are other connected family law priorities for which a grant of legal assistance could be made. ATSI matters do not however always involve connected family law priorities, and the ability to use Commonwealth funds to assist ATSI people is thereby limited.

When Commonwealth family law is involved, commission experience is that ATSI family law legal needs mostly arise in relation to location and recovery of children, children living with and spending time with not only their parents but extended family/those with whom there is a kinship connection, and accessing financial support including child support.

Difficulties that ATSI peoples living in regional and remote areas have in accessing services can cause families to leave the communities and travel to town. Reasons

for relocation may include access to health services, housing, training and the courts. In the Northern Territory issues related to transience also arise from alcohol restrictions and income management arising from the Northern Territory Emergency Response (NTER). Relocation for any of these reasons can cause a fracturing of the family group and a break in contact with a parent and the extended maternal and paternal family, kinship group, community and ultimately country.

Commissions respond to the needs of ATSI clients in particular by arranging interpreters, employing ATSI staff in alignment with State and Territory governments' policies in relation to staff diversity, and by providing culturally accommodating services as far as possible. LANSW also has the Judge Bob Bellear Legal Careers Pathway Program which provides scholarships for school students, cadetships for full time undergraduate law students, professional legal placements to complete practical legal training and a career development program for newly admitted solicitors.

Some non-exhaustive examples of commission services designed for ATSI people and relevant stakeholder engagement follow under the headings immediately below and in response to ToR ii), ie whether there are ways the family law system can better meet client needs including ways of engaging clients in the family law system.

Community legal education/training and development

1. A series of cross-cultural legal education DVDs developed by the Northern Territory Legal Aid Commission (NTLAC) entitled: '*Romgu Dhukarr Dhiyal (A meeting of Two Laws): A Cross-Cultural Legal Education video in Yolngu Matha*', in 2006 and in 2008 as part of its Indigenous Families Project '*Family Problems: Your Rights When Things Go Wrong*'. Filming occurred in Arnhem Land, the Tiwi Islands and the Barkly Region. The communities were consulted about the content and the DVDs were filmed using local actors, filmmakers and interpreters with stories being translated into the local Indigenous language with English subtitles.

2. A "Koori Men's Training Workshop" conducted by LANSW about family and related laws for Aboriginal men who are elders in the Mount Druitt community. The program was developed with an Aboriginal Service Provider, *The Men's Shed*. Sessions were delivered by external workers including health, police and Federal Magistrates. Time was allowed for the trainers to listen to the participants stories. An Aboriginal worker involved in organising the training recorded: "The feedback by all participants has been fantastic...The information you presented can now be filtered in a culturally appropriate manner back into our communities, which ultimately may lead to minimising/reducing Aboriginal people's contact with the justice system and in particular Aboriginal male suicide".

LANSW also provides a range of community legal education and outreach services specifically for Aboriginal communities, including "Caring for kids in Aboriginal families" a Community Legal Education presentation, and "Learn about the Law" a workshop for older Aboriginal people which includes a family law component.

3. A regional stakeholder meeting in Kununurra where Legal Aid Western Australia (LAWA) has recently opened a regional office to respond to local needs. LAWA was a participant in this meeting which identified further community legal education was required in the areas of child protection and family law. One of the issues clearly identified by meeting participants was the disconnect between the family law system and the failure to recognise and incorporate traditional Aboriginal family laws. As a result LAWA has been providing legal education sessions to aboriginal men participating in a Kununurra based family violence perpetrator program. These sessions include information about violence restraining orders, the criminal justice response to violence and the child protection issues associated with family violence. The feedback from the program is that the child protection sessions are particularly successful in engaging the possibility of participants to work towards changing their behaviour because of concerns about their children being placed into care as a consequence of the violence.

4. The *Sisters Day Out* workshop program was developed in 2007 by the Aboriginal Family Violence Prevention & Legal Service (FVPLS) Victoria. Victoria Legal Aid's (VLA) Community Legal Education Team attends each *Sisters Day Out* to provide information about VLA services which may also be required by attendees. Included in workshops are a presentation and general discussion about family violence issues. Women who are experiencing difficulties can privately consult FVPLS Victoria lawyers and counsellors during the day for advice and support to feel safe and secure in their home and community, and matters can be referred for further legal and non legal assistance as appropriate.

Dispute Resolution

Family Dispute Resolution

All commissions offer legally assisted dispute resolution in family law matters. ATSI interpreters are arranged as appropriate in relation to these matters. Lack of available interpreters can be an issue which contributes to delay in scheduling family dispute resolution conferences. Conferences will be allocated additional time as required by individual circumstances, and where there is capacity conferences involving Aboriginal people are co-mediated by an Aboriginal mediator.

Commissions also work with other service providers to ensure appropriate service provision and to stretch capacity as far as possible. For example, NTLAC, through a Memorandum of Understanding with the Darwin Family Relationship Centre (FRC), provides cultural support to ATSI clients accessing lawyer assisted Family Dispute Resolution Conferences (not available at the FRC) at the NTLAC by liaising with the Indigenous Liaison Officer based at the FRC.

Child Protection Dispute Resolution

In more recent times, commissions have been engaged in dispute resolution practices into the area of child protection. For example:

1. Since November 2009, LAWA, the Department for Child Protection, and King Edward Memorial Hospital have participated in a child protection mediation program known as "Signs of Safety", which currently comprises lawyer assisted "Signs of Safety" Pre-birth Meetings involving pregnant mothers and their families at King Edward Memorial Hospital (pre Court proceedings); and "Signs of Safety" Pre-Hearing Conferences referred from child protection proceedings at Perth Children's Court. Although the program was not specifically designed for Aboriginal families approximately 40 per cent of the families who have participated in the pre-birth lawyer assisted meeting process have been Aboriginal, which it is suggested reflects the proportion of Aboriginal families in the West Australian child protection system.

From the evaluation, the lawyer assisted mediation process, which focuses on ensuring informed, inclusive decision making and the importance of the working relationships between the families and the professionals, and the professionals themselves, is working better for the families involved than traditional child protection processes. From King Edward Memorial Hospital statistics, in 2008/2009, the year before the start of the pilot, 24 per cent of the babies on a protection order were discharged home with their mothers. In 2009/2010 and 2010/2011 that figure has increased to 38 per cent.

2. LANSW participates in Child Protection "Children's Court Care Circles"¹. In 2008 the Department of Human Services, Community Services ("Community Services") and the Department of Attorney General and Justice, formed a partnership to implement a pilot "Care Circle" program in the Children's Court at Nowra. The Care Circle was designed to create an informal alternative dispute resolution process to engage Aboriginal people in the decision making process in care proceedings, where a determination has been made that an Aboriginal child is in need of care and protection, pursuant to provisions within the *Children and Young Persons (Care and Protection) Act 1998* ("Care and Protection Act") NSW. LANSW attends the working group which oversees the Care Circle Project, and also makes grants of aid for the legal representatives of the party/ies and child/ren. Lawyers involved may be from LANSW's in-house legal practice.

Case Study 1

Legal Aid NSW acted for a young Aboriginal mother of five children. Her previous four children are in long term care and these proceedings related to her new baby. At the first Care Circle, the parties identified a family member who could care for the child. The child was subsequently placed with the family member. It was established that the Care Circle members (2 "Aunts" and an "Uncle") knew the clients' mother from childhood; however the mother had not connected with the Aboriginal Community in Nowra since her mother passed away when she was a child. The members assisted the mother to reconnect with the community and were also able to

¹ For more information about Care Circles, see "Indigenous Issues in Child Protection, Aboriginal Care Circles: Putting principles into practice" A paper presented to the AIJA Conference on Child Protection, 5-7 May 2011, Brisbane, Australia, by R. Best, Executive Director, Accountability and Review Community Services, Department of Family and Community Services, NSW, Australia

suggest culturally appropriate services to help the mother with her issues. Ultimately, at the second Care Circle the matter was resolved on a final basis, with the child remaining in kinship care. The mother found the input of the community members powerful and she is very connected to the community now, she says, as a result of the Care Circle.

The positive outcomes achieved by the implementation of the Program in the Nowra Children's Court have enabled the pilot program to continue, and for it to be extended to Lismore with a target start date at the end of 2011.

Training for dispute resolution practitioners

In relation to mediator training and ATSI clients, of particular note are LANSW's Aboriginal Mediators Training Program, and LAWA's resourcing of a staff member to participate in the Mawul Rom Project in the Northern Territory. This is an initiative involving traditional and contemporary mediation and leadership providing both Indigenous and non-Indigenous people the opportunity to share and learn through direct contact about conflict resolution and decision making. The Mawul Rom project runs over a number of years and the benefits of participation have been translated into mandatory cross-cultural training for LAWA staff and is contributing to the ongoing development of culturally sensitive and appropriate family dispute resolution service delivery.

Grants of legal aid for family dispute resolution and proceedings

Special provision is made in the commissions' family law funding guidelines in relation to the prioritising of available funding where there is a likelihood of domestic violence, there are concerns for child/ren, the applicant has a language/literacy problem, the applicant has a disability, and/because it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location, and/or because the child/ren are ATSI.

Numbers of grants of legal assistance (dispute resolution and for ongoing legal representation services) to people who identified themselves on the legal aid application form as ATSI for the 2009-2010 and 2010-2011 financial years are at Attachment B to this submission.

Outreach services

The commissions conduct outreach services and work with other providers to reach communities, including ATSI communities, living in remote areas. Some examples follow:

1. Outreach is conducted by the NTLAC from its Darwin, Katherine, Tennant Creek and Alice Springs offices. Communities travelled to include Acacia town camp, Amangal town camp (Adelaide River), Peppimenarti, Palumpa, Kybrook Farm (Pine Creek), Katherine town camps, Jilkmggan, Manyallaluk, Minyerri, Barunga, Beswick, Mulgan camp (Mataranka), Warrawi & Minjilang, Alpururulam (Lake Nash),

Ampilatwatja, Arlparra, Utopia, Urapuntja, Elliott, Ali-curung, Murray Downs, Canteen Creek, Epenarra, McClaren Creek station, Barrow Creek, Laramba, Yuelemu, Harts Range, Bonya, Alcotta, Kintore, Docker River and Mutitjulu. The NTLAC focussed on these communities because they are primarily not on the court circuit and legal services were either absent or minimal. Varied and numerous unmet legal needs have been identified although many of these are civil law issues including credit/debt/consumer issues (unserviceable loans, mobile telephone bills, outstanding fines, debts to car repairers, tenancy, targeted scams or sales tactics).

2. Regional service delivery capacity has been increased in WA with the opening of LAWAs newest regional office in Kununurra. Duty lawyer services to circuit courts in the East Kimberley region are provided from this office. Distance and remoteness continue to be a challenge in service delivery with Carnarvon and the Gascoyne identified as an area for particular future focus. LAWAs regional offices visit communities on sittings of the court circuits as follows: Kununurra - Balgo, Halls Creek, Wyndham, Kalumbaru and Warmun; Kalgoorlie – Coolgardie, Esperance and Leonora; South Hedland – Karratha, Roebourne, Marble Bar, Newman, Nullagine, Jigalong and Yandeyarra; Geraldton – Carnarvon, Exmouth, Onslow and Tom Price. In the recent Kununurra consultation the establishment of better linkages between LAWAs and other Aboriginal service delivery agencies was identified and appropriate steps taken such as the provision of legal education sessions to aboriginal men participating in a Kununurra based family violence perpetrator program, referred to earlier in this submission.

3. VLA seconds a full-time family lawyer to each of the Victorian Aboriginal Legal Service and the Aboriginal Family Violence Prevention and Legal Service Victoria, both of which are state-wide services.

4. The Legal Services Commission (LSCSA) has a full-time family lawyer out-posted to the Aboriginal Legal Rights Movement to provide advice and representation to Aboriginal clients. The LSCSA has recently appointed an Aboriginal Adviser/Educator at its Port Augusta office with the aim of improving access to legal advice and assistance services for Aboriginal people by linking them to appropriate resources and services, and establishing a focal point within the LSCSA for the delivery of legal education to Aboriginal communities.

Non-legal support services

Clients come to the family law system with many and complex legal and non-legal issues. Associated with the family law system is a myriad of valuable services, programs and courses which are designed to assist family members to better deal with the realities of relationships, parenting and separation. These include, but are not limited to, parenting courses, anger management classes, relationship counselling, contact centres, domestic violence awareness courses, mental health services and drug and alcohol services. Appropriate referrals are made by commissions to these programs in the aim of providing holistic support.

Effective use of these services in combination with legal services can be invaluable in achieving an earlier resolution of disputes in the best interests of children. For example, LANSW refers Aboriginal men with family law matters to Gamarada a men's traditional healing program that has been in operation for over three years, and addresses emotion management. Gamarada is now commencing a program called 'Biyanga Naminma', which assists Indigenous fathers to become more involved in the care and development of their children, particularly following separation. The LANSW experience is that this program is useful for men who are involved in court proceedings, and/who want to share parental responsibility and/make application for spending time with their children.

The experience of commissions is that the availability of effective support services can be limited with access being particularly difficult in regional and remote areas. The situation is further exacerbated for ATSI people as a result of language and cultural differences/barriers. It is suggested that ATSI people may be more inclined to access non-legal family law related support services if they are targeted to meet identified local needs and are run by their communities.

ii. Whether there are ways the family law system can better meet the needs of indigenous clients including ways of engaging clients in the family law system?

NLA suggests that good initial steps would be informed identification of what the legal needs of ATSI people are, and improvement of existing services to the extent possible.

Research

NLA suggests that the family law needs of ATSI peoples are generally not as well known as they might be, and that research should help to identify need/s and inform the best response/s to it. Research might also help to confirm/dispel any assumptions made about what the legal needs of ATSI Peoples are.

In 2007 NLA commissioned the NSW Law and Justice Foundation to undertake a national survey of legal needs. This survey will provide some information about the legal needs of ATSI Peoples. The national report for this survey is based on the legal needs of the equivalent of 348 Indigenous respondents (once weighting was applied to the data), which account for 1.7% of the respondents sampled. Respondents were interviewed via telephone. Thus the survey was not able to include the Indigenous people who live without landline telephone access, such as many in remote communities. Further work may be needed to identify the legal needs of such Indigenous communities. It is envisaged that the report of this research will be available in early 2012 and that the results of this survey will be considered by NLA in consultation with ATSI service providers with a view to informing future service delivery.

In relation to the family law needs of aboriginal people in NSW, in 2007 Chris Cunneen and Melanie Schwartz, then academics from the University of New South Wales, were commissioned by Legal Aid New South Wales (LANSW) to undertake a report on the family and civil law needs of aboriginal people in New South Wales. The report² identified a range of unmet needs in Aboriginal communities across the state and provided recommendations for addressing those needs.

Professor Cunneen is undertaking further study in relation to the family and civil law needs of ATSI peoples in WA, QLD, the NT, and Victoria, as needs might be expected to vary across jurisdictions. Consultation with commissions in those places is occurring/intended as part of this exercise.

NLA also notes the recent forum "Improving access for Indigenous Australians within the family law system" held on the 6th and 7th of September 2011 and understands that the outcomes of this Forum will help to inform understanding of the ATSI family law needs.

The recommendations arising from various parliamentary inquiries into legal aid and/access to justice and legal need including in relation to ATSI legal needs are noted.³

Improvement of existing services to the extent possible

Fundamental issues

NLA takes the view that fundamental issues in relation to accessibility for some ATSI peoples include lack of appropriate interpreter services and capacity for reach of services to communities in remote locations. Access to justice will be impossible for those who are unable to communicate their situation. These issues are also relevant to the capacity of service providers to identify what the need is and how best to respond to it.

NLA notes the Family Law Council report "*Recognition of traditional Aboriginal and Torres Strait Islander Child Rearing Practices*"⁴ in relation to addressing issues of access to the family law system. Since the release of the report the role of Indigenous Family Consultant at the Family Court of Australia has been discontinued. Whilst it is understood that an Indigenous Liaison Officer role has been placed in some of the Family Relationship Centres, those positions do not appear to be playing the same role as that of the Indigenous Family Consultant.

² Civil and Family Law Needs of Indigenous People in New South Wales: The Priority Areas
<http://law.bepress.com/unswwps/flrps11/art8/>

³ See For example Report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, "Doing Time, Time For Doing" - "Language Barriers" at p. 205-210, and recommendations contained in the reports of each of the 2003/4 and 2009 Senate Inquiries into Access to Justice.

⁴Response to Recommendation 22: Pathways Report, Out of the Maze December 2004

Interpreters

Issues in relation to interpreters for ATSI languages have been canvassed before, and recommendations made in relation to interpreters are yet to be implemented.⁵

NLA also notes the very recently released report *"Interpreter policies, practices and protocols in Australian Courts and Tribunals A national survey"* by Professor Sandra Hale, University of NSW, a project jointly funded by the Australian Institute of Judicial Administration (AIJA) and the Interpreting and Translation Research Group, University of Western Sydney, also referred to later in the submission in the context of CALD groups. We support the recommendations in this report. A copy of the recommendations can be found at Attachment C to this submission.

On occasions a great deal of difficulty has been experienced by commissions in finding an appropriate interpreter/s including in relation to the presentation of CLE to ATSI communities. In relation to CLE substantial notice prior to going out to the community, can assist.

Interpreting services is an area of need which it is suggested should be addressed as the first priority.

Reach of services

Aboriginal and Torres Strait Islander communities in remote locations both on the mainland and the islands, face the additional barrier of distance in accessing the family law system. Some people live very remotely. For example, almost 30% of the NT population is Indigenous⁶ and over 80% of that demographic live in a remote or very remote region outside of Darwin.⁷ Geographic challenges include distance; roads, floods; vehicle access, and lack of public transport and other facilities/services in the individual communities.

For those people in remote communities, accessing Family Dispute Resolution services and the Family Courts will generally require travel to a major city/regional centre, with considerable time and travel costs likely to be incurred getting there. It would be ideal if services could be delivered within the communities. Whilst legal assistance service providers and/ court circuits do visit some remote communities on a "travel in - travel out" basis, it is suggested that this approach is not an ideal service delivery model. It is acknowledged however, that to achieve more will require a significant injection of resources to support the necessary infrastructure and to attract staff and maintain involvement. It is therefore suggested that 'Justice hubs' which are currently being discussed as part of the NT's Working Futures policy could be

⁵ See For example Report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, "Doing Time, Time For Doing"- "Language Barriers" at p. 205-210, and recommendations contained in the reports of each of the 2003/4 and 2009 Senate Inquiries into Access to Justice.

⁶ ABS - 1362.7 - Regional Statistics, Northern Territory, Mar 2011

⁷ ABS 4705.0 - Population Distribution, Aboriginal and Torres Strait Islander Australians, 2006

considered as one possible way to facilitate people's access in remote communities. These hubs would ideally serve to promote a more positive perception and interaction between the community, the courts and justice agencies, particularly if they assisted in the processing of birth certificates, mediation for community disputes and housed relevant permanent or visiting agencies such as legal and related services.

Community Legal Education/Training & Development

Cross-cultural education appears to us to be insufficient.

Further community legal education services and materials are likely to be of benefit if they are also produced in language.

There is a need to recognise cultural practices of Aboriginal and Torres Strait Islander people in an access to justice context. For example, 'Bush Holiday' or 'bush camping' is practised right across northern Australia from the Kimberly to the Cape. 'Bush camping' involves family gatherings when all families go to their homelands in June/July when the bush tucker becomes more abundant. It fortifies family unity and sense of identity. Where possible legal and related services, including courts circuits should be organised around such cultural practices.

Dispute Resolution

Generally it is suggested that an increase in the availability of ATSI family dispute resolution practitioners would be helpful. The NTLAC in particular notes the currently limited availability of practitioners and the capacity to meet demand.

Accreditation pathways for Family Dispute Resolution Practitioners potentially exclude some ATSI peoples who might have an appropriate background and practice experience for such roles. Currently the accreditation process provides three pathways – completion of Vocational Graduate Diploma of FDR (VGDFDR); or an appropriate qualification or accreditation under the National Mediation Accreditation Scheme and competency in six compulsory units from the VGDFDR; or inclusion in Register before 1 July 09 as well as competency in the three specified units from VGD. Taking into account the cultural complexities that can be involved in cases involving Aboriginal families and the potential for negative consequences if cultural practices are not acknowledged/followed, and given the experience of commissions that current accreditation criteria may rule out a number of practice experienced ATSI workers, the commissions suggest that there is a need for consultation with stakeholders to consider alternative accreditation pathways for ATSI practice experienced workers. These might include recognition of prior learning and relevant practice, an interim accreditation process which could include the requirement for a minimum number of practice hours involving supervision, consultation and co-mediation work with an experienced, accredited FDRP, before final accreditation.

iii. What Considerations Are Taken Into Account When Applying the Family Law Act to Indigenous clients?

The family law system recognises the significance of Aboriginal culture in the Family Law Act 1975 pursuant to section 60CC (3) (h) and section 61F, however the number of Aboriginal families engaging with family law services has not increased since these sections were introduced.⁸ The law has changed, yet Aboriginal people are not accessing the family law system and "realising their full legal entitlements".⁹

It is suggested that this situation may arise from a lack of understanding of ATSI needs and challenges associated with awareness, accessibility and confidence in the system, and the lack of interface between the mainstream family law system and traditional law and cultural practices. Greater awareness and understanding of ATSI traditional law and cultural practices are required. Commission experience suggests that cross-cultural community legal education and family dispute resolution practices may provide an important opportunity to collaborate with Indigenous elders and/or respected community members utilising their expertise and status in the community to develop culturally appropriate family law programs.

Culturally and Linguistically Diverse (CALD) clients of the family law system

(i) Ways in which the family law system (Courts, legal assistance and family relationships services) meets the needs of CALD clients

In providing the suite of services offered, commissions respond to the needs of CALD clients in particular by arranging interpreters, employing CALD/NESB staff in alignment with State and Territory governments' policies in relation to staff diversity, and by providing culturally accommodating services as far as possible.

Providing legal assistance and representation to CALD clients requiring the use of interpreter, generally requires a larger commitment of resources than for non-CALD clients. More time is usually required for appointments and additional meetings/conferences may need to be scheduled.

Commissions have also developed the following ways to improve accessibility by CALD people to the family law system, and resources permitting, intend to continue to do so.

Community Legal Education/training and development

Legal aid commissions, under the auspices of NLA, and the Adult Migrant English Service, have produced a national legal education package for recent arrivals called "What's the Law?" (<http://www.legalaid.vic.gov.au/3641.htm>). The package was

⁸ Kaspiew R, Gray M, Weston R, Maloney L, Hand K and Qu L, *Evaluation of the 2006 Family Law Reforms*, Australian Institute of Family Studies (2009).

⁹ Cunneen Chris; Schwartz, Melanie, "The family and civil law needs of Aboriginal people in New South Wales: Final Report, 2008, Law Faculty, University of New South Wales, p 31.

developed for use in the Adult Migrant Education Program and other community legal education settings. It is envisaged that it will also be used by the Humanitarian Settlement Services (HSS) Program providers around Australia. NLA is currently liaising with the Department of Immigration and Citizenship in relation to implementation. A copy of this education package is provided with this submission.

Commissions have also for many years provided community legal education in a range of formats, (such as publications, information forums, seminars, and training) including to CALD communities and to service providers to those communities. Some examples follow:

1. The LSCSA's migrant community legal education program, was established in 2004 to work with CALD communities to improve their understanding of Australian family law. This program was engineered to identify barriers and challenges faced by CALD migrants. In collaboration with the Migrant Resource Centre and the Multicultural Communities Council an action plan was formulated in the provision of legal education to improve access and understanding of family law. In 2006 a legal education kit was developed and distributed to service providers to utilise as a resource in the delivery of family law legal education. The New Migrant Education Program continues to provide legal education to improve access and understanding of family law issues and processes. Knowledge of the family law system is imparted at sessions held at schools, community groups and new arrival education programs. These sessions provide information relating to parenting, separation, domestic violence, family law processes and court considerations.

2. VLA, in conjunction with community groups, held a series of "Family Harmony" forums in the country town of Shepparton, aimed at informing recent migrants, predominantly from the Horn of Africa, about Australian laws relating to families, and the services families can access in times of stress or family breakdown. VLA has also recently applied for a Victorian Legal Services Board grant to employ four part-time community development workers to work with CALD peak bodies to ensure that education about family violence services is available in CALD communities.

3. Publications about family and related laws are produced by individual commissions in a variety of languages depending on local communities. For example, LANSW publishes two family law brochures, *Working out what's best for my children* and *Family law frequently asked questions*, in Arabic, Chinese, Korean, Spanish, Turkish and Vietnamese. The popularity of these publications suggests that resources permitting, the further development of family law materials in relation to both content and range of languages would be beneficial.

4. Commissions also participate in projects undertaken by others in the family law system and wider community in relation to CALD communities such the "Living in Harmony Partnership: Families and the law in Australia, the family court working together with new and emerging communities", 2008, a project of the Family Court of Australia, and the Department of Immigration and Citizenship.

Staff diversity and Cultural awareness training

Commissions align with local states and territories requirements in relation to staff diversity and cultural awareness policies and practices. Staff in individual commissions have identified as either CALD/NESB/People from racial, ethnic, ethno-religious minority groups, accordingly. The range across the commissions around the country is between 10.5% (Legal Aid ACT), and 20.4% (Legal Services Commission, South Australia) from these groups.

Examples of cultural awareness training include:

1. LANSW staff attend a 2-day cultural awareness training course provided by the NSW Department of Attorney-General.
2. The Migrant Resource Centre in Perth has provided a number of sessions for LAWA staff and external providers relating to migrant and cultural issues from both a legal and ethical perspective.
3. The LSC SA in partnership with the Muslim Women's Association and an Imam in July 2011 held a Sharia Law forum for legal practitioners and other service providers. This detailed cultural considerations surrounding family separation and was held with a view to practitioners and service providers achieving improved understanding of the cultural views and perceptions of some Muslim clients and to improve service delivery through knowledge of the client's cultural background.

Dispute resolution

All commissions offer legally assisted dispute resolution in family law matters. Interpreters are arranged as appropriate in relation to these matters.

LANSW has devised the Culturally Responsive Family Mediation Program through which it has recently trained ten mediators from CALD backgrounds to become accredited Family Dispute Resolution ("FDR") practitioners. The purpose of this program is to give clients the opportunity to select a mediator from their own CALD group. It is acknowledged that CALD clients will not always desire a mediator with their own cultural background and the provision is therefore completely optional and contingent upon the agreement of all parties. The following Case Studies provide some insight into the work of those CALD mediators.

Case Study 2

R is a CALD FDR practitioner who is fluent in Spanish: "The Culturally Responsive Family Mediation Program has given me the tools to assist families in the early resolution of their parenting and property disputes in a cost-effective and culturally sensitive manner. I am able to draw on my skills and experience as a lawyer and mediator to offer a non-judgemental, impartial service to families from Spanish speaking backgrounds and their lawyers. I look forward to being able to help such parties in understanding family law requirements as well as provide their lawyers with a model which caters to their clients' unique cultural needs."

Case Study 3

R is a CALD FDR practitioner who is fluent in Hindustani, Urdu, Gujarati and Punjabi: "As a solicitor of some 23 years experience I became increasingly convinced over the years that people of Indian ethnicity (particularly recent migrants) have very unique issues when it comes to dealing with separation and family law. I found that the legal system lacked the ability to appreciate certain cultural attributes. Whilst these unique issues, quite rightly should not be used as excuses or justifications, having an understanding goes a long way in helping the parties in resolving family law issues in such communities. I am pleased to say that programs such as this will greatly benefit the community in which I work."

Case Study 4

J is a CALD FDR practitioner who is fluent in Mandarin and can communicate in Cantonese, Hokkien, Teochiew, Malaysian and Indonesian: "The program is appropriate to my community, which is the Asian and Chinese community, particularly given my knowledge of alternative dispute resolution methods over courts and lawyers. Many are unaware of the availability of FDR within Legal Aid NSW. The community can benefit from an Asian speaking and looking FDR practitioner who is also a solicitor, giving mediation greater merit in communities in which status and face-saving is important. I am able to advise clients that there is a cheaper, more efficient system that allows them greater control over outcomes concerning their own affairs rather than leaving it in the hands of lawyers and protracted and uncertain court battles."

Grants of legal aid for family dispute resolution and proceedings

As referred to above, grants of aid are available for dispute resolution and representation services contingent on eligibility tests being passed. Special provision in commission funding guidelines is made in relation to the prioritising of available funding where an applicant has a language problem, because it is difficult for the applicant to obtain legal assistance or because the applicant lives in a remote location.

Numbers of applications involving a request for a disbursement for an interpreter for the 2009-2010 and 2010-2011 financial years are at Attachment B of this submission.

ii. Whether there are ways the family law system can better meet client's needs including ways of engaging CALD clients in the family law system

Interpreters

Interpreters are integral to the ability of lawyers, court staff, and members of the judiciary to communicate with people of CALD backgrounds. At present we believe the availability of interpreters for CALD people and the quality of interpreting services could be improved. A lack of readily available interpreters can place people of CALD backgrounds at a severe disadvantage, while poor interpreting can lead to

misunderstandings and crucial mistakes being made. Barriers arise not only for clients who speak a language other than English, but also for hearing impaired clients.

The report *"Interpreter policies, practices and protocols in Australian Courts and Tribunals A national survey"*¹⁰ contains 13 recommendations which we support. We further suggest that initial steps in improving services to CALD clients should include ensuring the use of qualified (as far as possible) interpreters who understand the importance of court proceedings (to both the individual participants and society), and that remuneration to interpreters is commensurate with the importance of the proceedings. Without interpreters access to justice will be impossible for some CALD people. Interpreters should be "considered as official members of the professional team".¹¹

Interpreters at courts

Legal aid commissions provide duty lawyer services to unrepresented litigants at the family courts, and also provide representation at courts for those litigants in receipt of a grant of legal aid.

Our experience generally is that the family courts make language interpreters available to CALD clients free of charge if the client requests an interpreter in advance. Sometimes our experience has been that people wishing to use the duty lawyer service (and no doubt other unrepresented CALD people) have an expectation that an interpreter will be available to assist them, and may not appreciate that arrangements for an interpreter to be present need to be made with the Court before hand.

On occasion we have experienced situations where it appears either that the Court has not booked an interpreter or that the interpreter has been booked but failed to attend. There have also been occasions where an interpreter of the wrong language group or dialect has been booked/attended court. Challenges also exist in relation to availability of interpreters from emerging or newly established communities in Australia.

Legal aid commission solicitors have observed a number of issues around the quality of the interpretation being provided for a range of reasons such as the mode of interpretation (e.g. telephone), the lack of experience and/professionalism of the interpreter, or a lack of understanding of how to properly utilise interpreters by those in the family law system. For example, observations have included that some telephone interpreters used in divorce proceedings had difficulties interpreting concepts such as "jurisdiction", "service" and "affidavit". As a consequence, some time may be spent where a conversation is held only between the client and interpreter as they attempt to "break down" and explain a particular concept in their

¹⁰ Australian Institute of Judicial Administration Incorporated, Professor Sandra Hale, University of New South Wales, 2011

¹¹ At P. 3

language. Other problems experienced have included poor sound quality, interpreters apparently being distracted by other things whilst on the phone and interruptions by and of the interpreter, including in court proceedings, which it appears may have not been appropriate.

Case Study 5

A legal aid commission duty solicitor assisted a client in property proceedings in the Federal Magistrates Court. The client/husband was an elderly man who suffers from numerous medical conditions, including diabetes, gout and dementia. He also has a hearing impairment in one ear. In court he was assisted by a Polish interpreter. Due to his hearing impairment, the interpreter needed to repeat everything that was said about 3 to 4 times before the client could understand it.

In these proceedings, there were allegations by the wife that the client had sold the matrimonial home and had in his possession the proceeds of sale. The client maintained that he had withdrawn all the money over a period of months and that it had been stolen. The Federal Magistrate did not believe that the money had been stolen and was threatening to put the client in custody on contempt charges.

On this occasion, certain documents had been produced by a bank under a subpoena. The client had not yet had the opportunity to inspect the documents or to have them translated. There appeared to be an inconsistency in what the client was saying and what the bank documents suggested had happened to the money. There were also certain errors in the bank's records that became apparent to both solicitors and the Federal Magistrate. The Federal Magistrate wanted to question the bank manager about the mistakes.

The bank manager later appeared over the telephone and was questioned at length by the Federal Magistrate. At no stage during the exchange between the bank manager and the Federal Magistrate were the proceedings slowed down to allow the interpreter to interpret what was being said. The questioning took place at a pace that it would have if an interpreter was not required in the proceedings. This was of particular concern given that the Federal Magistrate had already indicated he might place the client in custody and charge him with contempt. The client had no way of understanding what was being said about the bank documents or the money.

See: *A BANK & COLEIRO & ANOR [2011] FamCAFC 157*

More/improved cultural awareness training for those working in the family system

The following case study illustrates how a lack of understanding can affect a CALD client's ability to meaningfully access justice within the family law process.

Case Study 6

A legal aid solicitor represented a father from a refugee background in parenting proceedings in the Federal Magistrates Court. The parties had come to Australia as

refugees. They had separated before the child was born. By the time the matter had reached final hearing the child was about 2 years old.

There had been allegations of domestic violence. The client had been charged with assault and the matter proceeded to hearing in the Local Court. The client was found guilty of assault in the Local Court, but maintained his innocence to his solicitor.

At the interim stage, the client was only permitted to see the child while supervised. This occurred at a contact centre and at a child care centre.

There were reports to the court which interpreted the client's behaviour as aggressive, loud and that the client became flushed and red in the cheeks and that the client had anger management issues. As a result of such reports the Court ordered that the client undertake an appropriate course.

The father's solicitor was unable to readily find an appropriate group course that was conducted in Arabic. Ultimately she was able to find one organisation, Unifam, who was willing to conduct a one-on-one course with the client, enabling him to use an interpreter.

No family report was ordered in the proceedings, because the Federal Magistrate did not feel there were any issues that needed to be investigated by a Family Consultant. In the absence of such a report the legal representative sought a report by the client's GP. The GP highlighted the fact that the client had limited education, had been exposed to war most of his life and had been traumatised by his experience as a refugee. The GP also highlighted the fact that the hot flushes were simply a physical manifestation whenever the client experienced heightened emotions, and did not necessarily mean he was aggressive or bad tempered.

On the first day of the hearing, the client walked out on the proceedings. His lawyer summarised the client's attitude in the following way: "He was just fed up with the process. He felt like he was constantly being misunderstood and he felt the domestic violence proceedings would forever be held against him. This affected his pride so deeply that it acted as a barrier to him being able to access services in any meaningful way."

In addition to cultural awareness training, greater understanding is required of a multitude of other stressors faced by CALD clients when accessing the Australian justice system which may not be apparent but may have a significant impact on their ability to engage in the family law system.

More/better resourced non-legal support services able to assist CALD people

It is the experience of legal aid commissions that effective support services to which clients can be referred are insufficient in number/capacity and this situation is exacerbated for CALD clients as a result of language and cultural differences/barriers. This can lead to further marginalisation and negative

consequences. For example, In South Australia, when a CALD client admits to perpetrating domestic violence and is requested to attend counselling by a court there are no relevant programs to address cultural perceptions that certain acts of violence are acceptable in relationships. The need to provide tailored, culturally appropriate service delivery for CALD families is especially important for preventative services.

Case Study 7

L is a LANSW solicitor with specialist accreditation in family law and over 20 years experience as a lawyer: "To my knowledge there are no post-separation courses, no anger management courses and parenting courses in languages other than English in Sydney. The LANSW office in Fairfield is based in South West Sydney which has a high concentration of clients from South East Asia. In one matter I was unable to find a parenting course for a father who spoke Vietnamese and the father was not able to complete a parenting course."

Case Study 8

G is from a CALD background and lived in Australia with her husband, their three month old child and three children from her previous marriage. The parties separated and the father commenced proceedings in the Federal Magistrates Court seeking interim and final orders that the youngest child live with him. The father alleged that the mother was suffering from mental health issues and suicidal ideation affecting her parenting capacity.

When the matter came before the Court, the Federal Magistrate ordered the child live with the father and for the mother's time with the child to take place daily twice per day to allow the breastfeeding to continue. The mother's time with the child was supervised by the father or members of the father's extended family. The fact that the mother had three other children in her primary care and for whom she was responsible did not appear to be a consideration taken into account. Interestingly, the mother had also complained of severe domestic violence, but again due to cultural issues, did not report those incidents. Those allegations could not be assessed at the interim stage of the proceedings, but the allegations were significant.

An expert report was ordered to enquire into the mental health of the mother. The expert opined that the mother was isolated with no community ties, support or relationships and this led to her frustration. Her threats of self harm were more related to 'cultural' comments made in the context of a stressful or difficult experience. A real issue in this case was finding the supports and linking the mother with those types of community supports which she needed; there were insufficient services available for appropriate referrals for the client.

Community consultation and research

New initiatives should be informed by community consultation and research. For example, in early 2011 Legal Aid NSW staff and community workers participated in a

family law forum run by the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS). The following were identified as areas in which improvement in culturally appropriate training, information and assistance were required:

- (i) how/when to report domestic violence and ensure that reports are followed up by police;
- (ii) what is expected in court (such as punctuality, courtroom etiquette and court procedures;
- (iii) how to work effectively with lawyers and officials from various Government agencies;
- (iv) engaging in mediation; and
- (v) how to engage with systemic advocacy and express views to decision makers and politicians.

LANSW has also identified the following issues and challenges faced by CALD clients in the family law process:

- (i) the need for information and assistance to CALD communities regarding family and domestic violence, including information aimed specifically at temporary spouse visa holders who may be reluctant to seek help due to fear of removal;
- (ii) over representation of clients from CALD communities in litigation and under-representation in mediation; and
- (iii) lack of understanding of legal and related concepts by CALD communities including family violence and child protection.

It is intended that the NLA product "What's the Law?" and other commission CALD initiatives will go some way to addressing some of these issues from a prevention aspect.

Improved recognition of and responses to family violence and the relationship between family violence and immigration status

NLA notes the current ALRC Inquiry in relation to Family Violence and Commonwealth laws. Please find enclosed our submissions to each of the ALRC Papers being *Family Violence and Commonwealth Laws (DP76 Summary)*, and *Family Violence and Commonwealth Laws: Immigration Law (IP 37)* in relation to the issues of family violence, CALD people, and immigration. We refer to the recommendations contained in our submissions.

Dispute resolution

Accreditation pathways for Family Dispute Resolution Practitioners potentially exclude some CALD peoples who might have an appropriate background and practice experience for such roles. Currently the accreditation process provides three pathways – completion of Vocational Graduate Diploma of FDR (VGDFDR); or an appropriate qualification or accreditation under the National Mediation Accreditation Scheme and competency in six compulsory units from the VGDFDR; or

inclusion in Register before 1 July 09 as well as competency in the three specified units from VGD. Taking into account the cultural complexities that can be involved in cases involving CALD families and the potential for negative consequences if cultural practices are not acknowledged/followed, and given the experience of commissions that current accreditation criteria may rule out a number of practice experienced CALD workers, the commissions suggest that there is a need for consultation with stakeholders to consider alternative accreditation pathways for CALD practice experienced workers. These might include recognition of prior learning and relevant practice, an interim accreditation process which could include the requirement for a minimum number of practice hours involving supervision, consultation and co-mediation work with an experienced, accredited FDRP, before final accreditation.

iii) What considerations are taken into account when applying the Family Law Act to clients of CALD communities?

The *United Nations Convention on the Rights of the Child (UNCROC)* refers in its preamble to “the importance of the traditions and cultural values of each people for the protection and harmonious development of the child”.

Whilst section 60cc 3 (g) of the *Family Law Act 1975* considers ‘*the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;*’ it does not specifically state that a CALD child has a right to enjoy his or her culture as it does for an Aboriginal or Torres Strait Islander Child; or subsequently consider the likely impact any proposed parenting order will have on the right to culture.

It is suggested that further consideration should be given to whether the Family Law Act as presently drafted appropriately reflects Australia's obligations under the UNCROC.

Recommendations

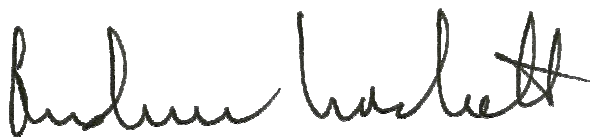
- 1. That the recommendations contained in the report by the Australian Institute of Judicial Administration Incorporated and Professor Sandra Hale of the University of NSW entitled “*Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals A National Survey*”, as attached to this submission as “Attachment C”, be adopted and implemented. A national protocol should ensure arrangements for interpreters at point of filing.**
- 2. That for court proceedings, onsite interpreters should be available wherever possible. Telephone interpretation should only be used in urgent circumstances and only if an onsite interpreter is not available.**
- 3. That more research into the needs of ATSI and CALD peoples needs is undertaken.**

4. That improved cultural awareness training is provided to people working within the family and related law system/s.
5. That more/improved cross cultural/community legal education be funded so as to enhance understanding of issues and the accessibility of the family law system to ATSI and CALD peoples.
6. That dependents reliant on partner temporary visas upon establishing family violence be able to stay in Australia at least until the visa that they were reliant on expires.
7. That where an application for family violence orders has been made and/or a criminal prosecution in relation to alleged conduct which would constitute family violence has been made, then the immigration process should be suspended until finalisation of the Court processes, unless the delegate is satisfied that family violence has been established by way on non-judicially determined evidence.
8. That consideration be given to the current accreditation pathways for FDRPs so as to increase participation in the workforce by ATSI and CALD experienced qualified practitioners.
9. That Outreach and technological initiatives to support service delivery in rural and remote areas, where face to face assistance is not possible, are funded for development.
10. That 'justice hubs' be considered as one possible way to facilitate people's access in remote communities.
11. That consideration be given to the re-instatement of the Indigenous Family Consultant role in the family courts.

Conclusion

We thank you for the opportunity to make this submission. Please do not hesitate to contact us if you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Crockett', with a stylized flourish at the end.

Andrew Crockett
Chair

November 2010

Family Law Council Terms of Reference

Indigenous and Culturally and Linguistically Diverse clients in the family law system

I request that the Family Law Council consider and advise me by November 2011 on the following issues in relation to Indigenous clients of the family law system:

- i. ways in which the family law system (Courts, legal assistance and family relationship services) meets client needs.
- ii. whether there are ways the family law system can better meet client needs including ways of engaging clients in the family law system.
- iii. what considerations are taken into account when applying the Family Law Act to Indigenous clients.

The Family Law Council should have regard to the National Indigenous Law and Justice Framework developed by the Standing Committee of Attorneys-General.

The Family Law Council should consult with representatives of Indigenous communities.

I also request that the Family Law Council consider and advise me by November 2011 on the following issues in relation to Culturally and Linguistically Diverse (CALD) clients of the family law system:

- i. ways in which the family law system (Courts, legal assistance and family relationship services) meets client needs.
- ii. whether there are ways the family law system can better meet client needs including ways of engaging these clients in the family law system.
- iii. what considerations are taken into account when applying the Family Law Act to clients of these communities.

The Family Law Council should consult with representatives of CALD communities.

Number of legal aid applications approved, by State and Territory, by Law Type, by Indigenous Status, 2009-10									
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
FAMILY LAW									
Indigenous Australians	2,008	370	724	257	147	92	33	87	3,718
Non-Indigenous Australians	13,422	14,466	9,080	2,577	2,283	1832	1,043	419	45,122
Unknown/not recorded	0	25	0	18	209	0	0	0	252
Total applications	15,430	14,861	9,804	2,852	2,639	1,924	1,076	506	49,092
CIVIL LAW									
Indigenous Australians	204	9	487	44	69	1	6	21	841
Non-Indigenous Australians	1,513	683	3,735	155	430	36	55	96	6,703
Unknown/not recorded	0	0	0	17	96	0	0	0	113
Total applications	1,717	692	4,222	216	595	37	61	117	7,657
Number of legal aid applications approved, by State and Territory, by Law Type, by Indigenous Status, 2010-11									
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
FAMILY LAW									
Indigenous Australians	1,790	606	625	276	147	91	56	136	3,727
Non-Indigenous Australians	11,444	13,884	7,309	2,900	2,230	1,720	1,021	386	40,894
Unknown/not recorded	0	447	0	18	122	0	0	0	587
Total applications	13,234	14,937	7,934	3,194	2,499	1,811	1,077	522	45,208
CIVIL LAW									
Indigenous Australians	126	16	323	73	67	2	6	11	624
Non-Indigenous Australians	1,562	917	2,989	238	436	73	29	94	6,338
Unknown/not recorded	0	30	0	7	73	0	0	0	110
Total applications	1,688	963	3,312	318	576	75	35	105	7,072
Number of legal aid applications by State and Territory where disbursement for Interpreter* 2009-10									
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
FAMILY LAW									
Language	278	479			61			0	818
Hearing Impaired	6	6			2			0	14
Total	284	485		108	63	15	28	0	983
CIVIL LAW									
Language	228	71			1			0	300
Hearing Impaired	3				0			0	3
Total	231	71	^196	0	1	0	1	0	304
Number of legal aid applications by State and Territory where disbursement for Interpreter* 2010-11									
	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
FAMILY LAW									
Language	254	479			37			1	771
Hearing Impaired	9	20			1				30
Total	263	499		107	38	12	21	1	941
CIVIL LAW									
Language	179	87						19	285
Hearing Impaired	2								2
Total	181	87	^282	0	0	0	4	19	291

* NOTE - if you can separate out language from hearing impaired please do (otherwise use Total).

^ LAQ - data not split by Law Type

iii. Recommendations

- Recommendation 1: That all courts and tribunals always give preference to the best-qualified interpreters.
- Recommendation 2: That all interpreters be required to state their qualifications at the commencement of proceedings.
- Recommendation 3: That all interpreters who work in courts and tribunals complete formal legal interpreting training.
- Recommendation 4: That special legal interpreting training scholarships be established
- Recommendation 5: That NAATI introduce a specialist legal interpreter accreditation.
- Recommendation 6: That a national register of qualified legal interpreters be established
- Recommendation 7: That lawyers, tribunal members and judicial officers receive basic training on how to effectively work with interpreters.
- Recommendation 8: That interpreters be provided with adequate working conditions in the court or tribunal
- Recommendation 9: That interpreters be provided with background information and materials where available, before the case, in order to adequately prepare for their assignment.
- Recommendation 10: That two interpreters be used to work as a team for long trials
- Recommendation 11: That differential pay rates be implemented according to qualifications
- Recommendation 12: That interpreters be booked and paid for a minimum of a full day at court, and a minimum of half a day for tribunals, regardless of the actual duration of the case
- Recommendation 13: That more transparent contracting practices be implemented
- Recommendation 14: That better feedback mechanisms be established for judicial officers, tribunal members and interpreters
- Recommendation 15: That a national register of interpreting experts be established
- Recommendation 16: That a national protocol on working with interpreters in courts and tribunals be established.