



- VIC Legal Services, 9 Feb 2015 -

The Civil and Family Law Needs of Aboriginal and Torres Strait Islander People in Australia: The Indigenous Legal Needs Project

The ILNP Background

The Family and Civil Law Needs of Aboriginal People In New South Wales (2008) (NSW Legal Aid)

- Analysis of the civil and family law needs of Aboriginal people in New South Wales.
- Based on legal needs analysis, exploration of how Legal Aid NSW could improve service delivery for Aboriginal clients in the areas of civil and family law.

The Assessment of the Civil and Family law Needs of Indigenous People in Australia (2011– 2015) (Indigenous Legal Needs Project (ILNP))

- ARC Linkage project, working with joint Indigenous and non-Indigenous industry partners, including legal services
- Focus on four jurisdictions: VIC, WA, NT and Qld. With NSW, project includes jurisdictions where 85% of Indigenous people reside

ILNP: Reporting Findings

Reports and animated films for each jurisdiction:

- (1) Indigenous legal needs assessment: priority civil and family law issues
- (2) Barriers to accessing civil and family law legal assistance and justice and ways to address them

Reports based on information gathered during fieldwork (**32** communities, **8** in each jurisdiction).

Northern Territory	Western Australia	Queensland	Victoria
Darwin	Perth	Cairns	Bairnsdale
Katherine	Geraldton	Brisbane	Shepparton
Tennant Creek	Narrogin	Pormpuraaw	Swan Hill
Alice Springs	Roeburne	Thursday Island	Robinvale
Wadeye	Balgo	Charleville	Heidelberg
Bulman	Fitzroy Crossing	Mount Isa	Fitzroy
Alpurrurululam	Wyndham	Rockhampton	Framlingham
Papunya	Tjuntjuntjarra	Roma	Bendigo

Focus groups/Stakeholder interviews



- Key Aboriginal organisations
- legal services, non legal services (NGOs, statutory authorities and government agencies)
- Priority civil and family law needs in their respective communities
- What works and what doesn't work in addressing these needs

- 10 men, 10 women (160 in each jurisdiction)
- organised by a local Indigenous person or organisation
- complete a questionnaire identifying problems and help accessed
- group discussion of legal needs and of access to help and advice

Why the ILNP?

Significant civil/family law need and poor levels of access to justice

It would be really good to be able to undertake regular, strictly civil outreach work... There is a good service being provided but it's the tip of the iceberg.. It's still a big unknown exactly how much work is out there.. (Indigenous Legal Service)

Not every Aboriginal person is brought before the criminal justice system, but every Aboriginal person has to live somewhere, they have to get an income... they buy goods and services, live with their neighbours, may face discrimination, have accidents... (Indigenous Legal Service)

Criminal law focus

(For) legal aid services, the emphasis is always on the criminal work because that's the most time pressure, people tend to go to jail or the penalties are that they can be incarcerated. So understandably, a lot of priority and resources are put into criminal law... and not a lot into civil law... (Registrar)

They think the only thing those (legal) services are there for are the courts, for fighting, or when you are in trouble with the police.. They don't know there's other stuff out there you can see (them) about. (Tennant Creek MFGP)

Because they're having tenancy problems and they lose their house, they're homeless. Leads to drinking, police surveillance. Then people get themselves into trouble, because they're angry. You know, it's that balance at home and then what's happened there, I think, what affects us.... I think there is [a connection between all these things]
(Indigenous community org)

It's a very complex system. It's intimidating in many respects... (M)ost Aboriginal people, they wouldn't attempt it without the assistance of a lawyer. The instances of self-represented Aboriginal people getting involved in the civil law jurisdiction is just nothing... (Without a lawyer)... the walls are just too thick and too high (Registrar)

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

Why the ILNP?

- Right to adequate access to justice to resolve legal problems
- Not doing so only feeds into criminalisation/offending and leads to continuing social exclusion of Indigenous people
- Properly funding civil/family law services ultimately saves government money

VIC Priority Areas: most common issues

Issue	Overall % of participants identifying issue
HOUSING	41.8%
CREDIT/DEBT (Consumer)	32.4% (13.4%)
DISCRIMINATION	29%
NEIGHBOURS	26.7%

VIC Priority areas: other issues

Issue	Overall % of participants identifying issue
SOCIAL SECURITY	29% *of those receiving benefits (=75.5% of all participants)
CHILD REMOVAL	14.5%

Issue	-	-	-
VICTIMS COMP	Victim of crime 20.5%	Knew Of scheme 31.3%	Applied for assistance 22.6%
WILLS/ESTATES	Completed Will 5.7%	Want to complete will 56.6%	

VIC: Priority areas (accessing help)



VIC: Priority issues by gender

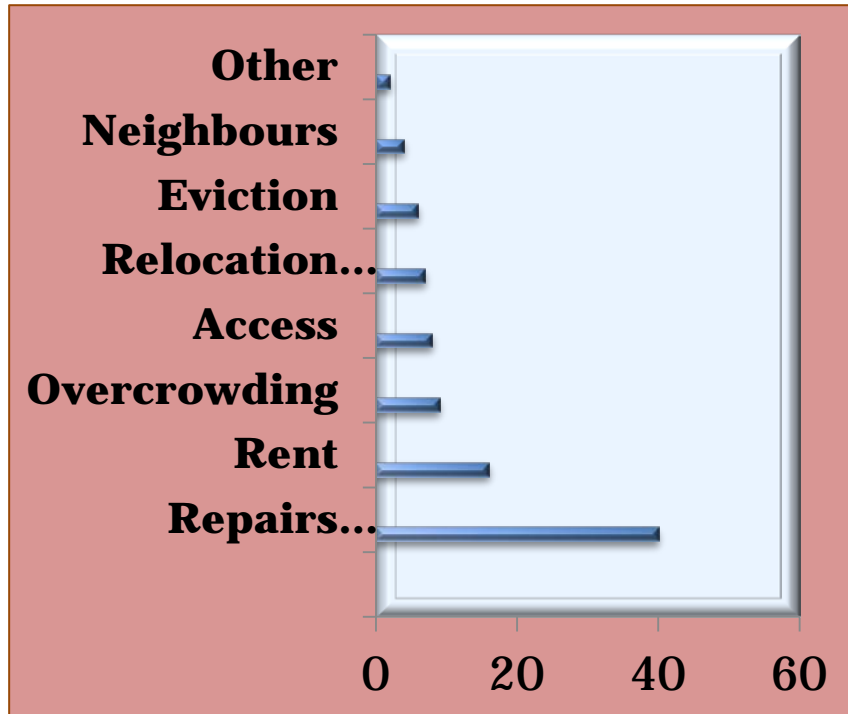
Women

Issue	Women	Men
HOUSING	44.6%	37.9%
CHILD PROTECTION	20.2%	6.3%
OTHER CHILD ISSUES	23.1%	11.9%
NEIGHBOURS	30.4%	21.7%
CREDIT/DEBT	38.5%	24.2%

Men

Issue	Women	Men
CONSUMER (superannuation/banks)	9.1%	17.1%
STOLEN GENS	7.9%	17.6%

VIC: Tenancy issue by type



If you've split from your wife and the wife's got the kids, it's very hard for single men to get houses.. They want to have access to the children, but you can't have access unless you have a house, and you can't get the house unless you have the children. It's really going back and forth. And that causes all that family violence... It might be that one housing issue that feeds into so many... It affects so many people....And it's actually killing people. I can see a lot of our elders, like it's killing them, this sort of stuff

(Community Org)

VIC: Tenancy - Repairs and Maintenance / Rent

A young girl was involved in [one housing issue]. She got her house broken into by small kids and they completely wrecked everything, turned the water on and flooded everything. [Housing said] they were going to come and clean up and do stuff, [but] they've done nothing. They were s'posed to rip the carpet up. That's about 12 months ago, the carpet's still there (Bendigo MFGP)

There was a burnt out car in a laneway beside my house. [Housing] charged me for that. The young ones had dumped it down a laneway.... We had to get out of there in a hurry (due to domestic violence) and I have a fair bit of maintenance [to pay] for stuff that wasn't my fault. This wasn't on my property, that's why I tried to fight it. It was in a laneway between two houses. That's wrong (Heidelberg WFGP)

.....

*You pay your rent and they can't even repair your home. Where's the money going mate?
(Shepparton MFGP)*

*Our rents are sky high.... And you can't have members of family stay with you 'til they get a house 'cause your rent goes straight up... Since this Aboriginal Housing started they've put a lot of tenants in, but they've also evicted a lot of tenants. And where do those tenants go? Back to family, then the rent goes up again!
(Bairnsdale WFGP)*

VIC: Tenancy - Access to Housing and Overcrowding

Housing is an issue because homelessness is an issue...Tenancy issues, we deal with some, but no, I don't see [this as] as big an issue [as homelessness]. Certainly not coming from our clients. Getting them into housing is a big issue

(Indigenous Legal Service)

[We need] more housing. We say that all the time but it doesn't get anywhere

(Shepparton MFGP)

*[T]he private housing market [is] closed to Aboriginal people in our community....
[A]ccess to public housing is sometimes the only access to housing that they have*

(Community Organisation)

I've got a one bedroom flat and I've got people all the time, bodies on the floor all the time.... They sleep in the laundry and all [in my place]. Sometimes you get three, sometimes you get fifteen, sometimes you get one. I'm never alone, a lot from out of town (Fitzroy WFGP)

VIC: Tenancy - Overcrowding and Connection with Other Issues

I found that the definition of homelessness in the Koori community is slightly different. You don't find that many on the street, not that many. But they are on someone else's couch or somewhere. And it's still homelessness, but because of this community type of relationship, that's why they end up with some cousin or uncle (Community Org)

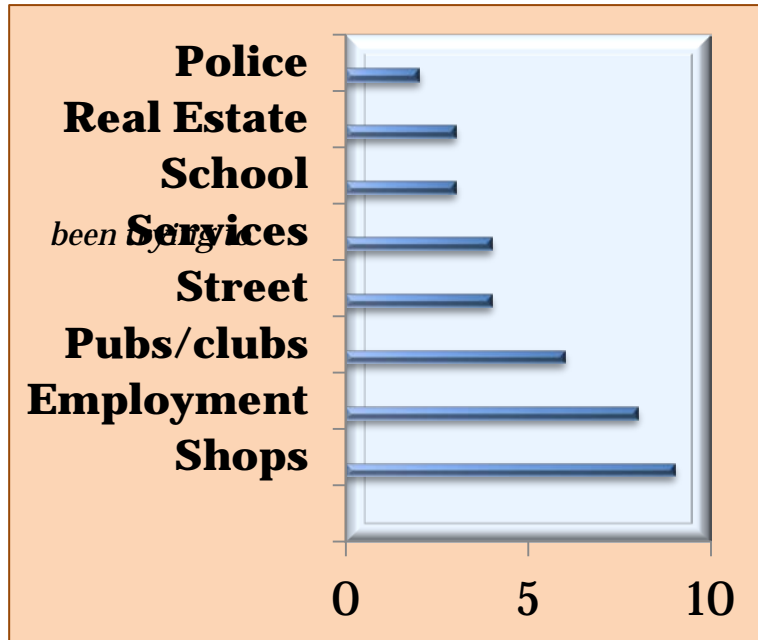
The elders get abused because they won't turn away family. They'll come in... They'll use all the power and eat all the food.... I see that a lot - really, really, really high utility bills - because they haven't been able to afford to pay them. No one's contributing to the household. And they ...won't turn them away because they are family. They would rather put their housing at risk and their power at risk than say no (Community Org)

VIC: Neighbourhood disputes

And as soon as that person rings up, that Housing Officer is out on the street then interviewing all the white neighbours in the street. They don't go in after 'darkie'. They get all that information first. They don't bother to come near you. They have all that information ready to battle in court. That's discrimination...The least bit of noise in the street my kid gets blamed for it (Bendigo WFGP)

Just across the river there they've just slapped eighteen to twenty houses and called it the 'Namtjira Mission', and thrown eighteen to twenty Aboriginal families in there that might not necessarily be from around here. ... And the government then saying to the poor police officers out there 'Reduce crime there'.... Well, that's going to be hard to do. ... [And] then you've got the other end of society saying well I don't want them living next door to me though (Community Org)

VIC Discrimination - common issues



I'm thinking hello, is anyone going to say excuse me can I help you? They're too busy following you round... thinking you're going to take something (Bendigo MFGP)

Still making me feel real shame about this town of Bendigo, as in shame for...white people. I've seen that many times when young Aboriginal ladies, young Aboriginal men go to normal real estates to get houses, they just push them aside all the time (Bendigo MFGP)

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

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

VIC: Child removal

DHS practice

- Not sufficient support to maintain and strengthen families
- Not fulfilling statutory requirements (cultural plans, AFDM)
- Lack of cultural competence
- Obtaining consent orders without genuine consent
- Feelings of disempowerment leading to disengagement with DHS > poor outcomes

.....

99.9% of our female clients don't have their children with them (Community org)

They're quick to take the kids... They should be working with the families (Bairnsdale WFGP)

We had a major... drama because none of the beds were made, all the mattresses were in the lounge room and ...they were all around the heater. But the... workers were just so appalled they removed all the children immediately... What's the child protection concern here? (Community org)

We know... that half of our clients do not get legal advice. Many of our clients do not understand all the factors.... They are often tricked into signing documents (Indigenous Legal Service)

One of the biggest problems we have (in Gippsland) is antagonism by workers who say our clients won't engage. So, that's a really black mark against them (Indigenous Legal Service)

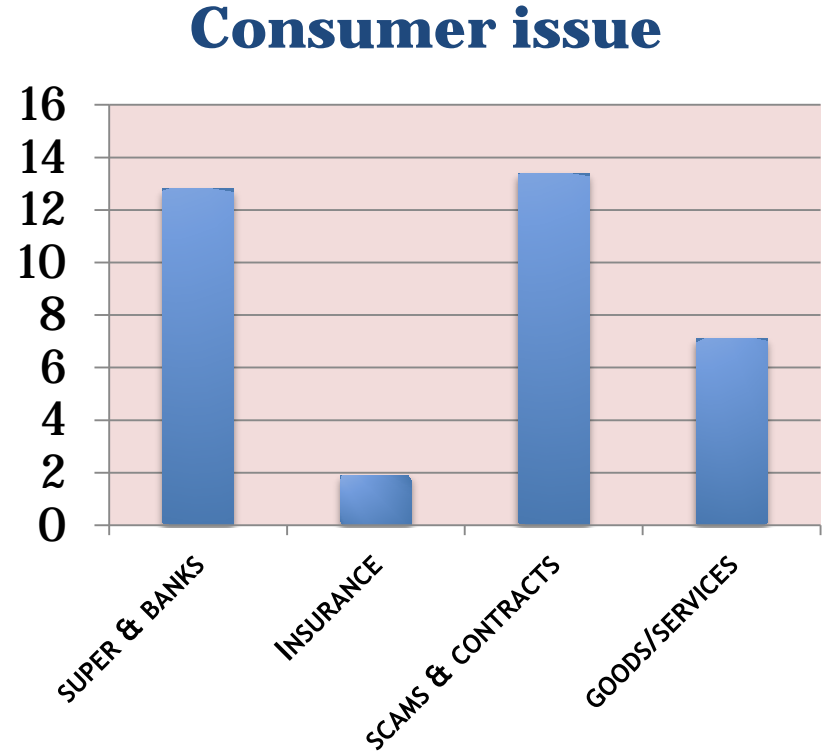
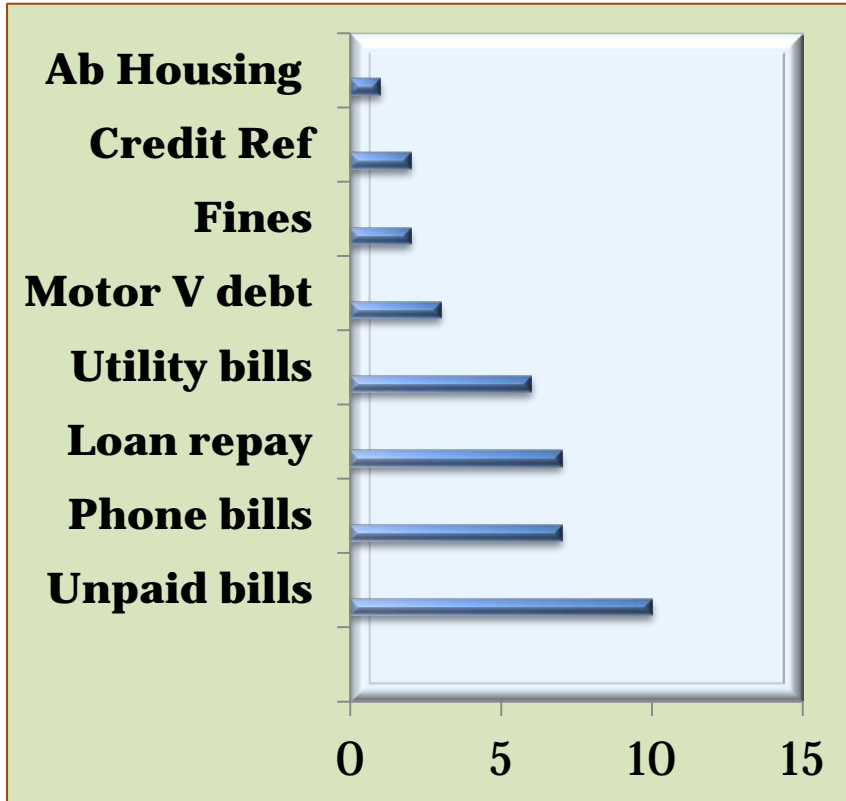
Other Issues - CP

- Insufficient scrutiny by courts of DHS practice (Koori Court or similar as alternative/Koori List in Children's Court)
- Not sufficient contact with lawyers
 - DHS not encouraging contact with lawyers
 - Not enough CP specialist lawyers available (resourcing issue)
 - Problems with funding of assistance for child protection matters
- General unfamiliarity with family law system, including CP (>reluctance to challenge, mistrust)

[T]he court doesn't know that someone has come to their front door and said 'sign this' or they've been brought into DHS and told 'sign this or you won't get your kids back'. The court doesn't investigate that process that's happened before hand because there is a consent order (Community org)

[Parents] don't have a lot of representation in court. ... And I don't know whether that's because they don't seek it or When it comes to money [to pay for a private solicitor] and what they call shame—a lot of them just give up. They think 'Ah, well ... The kids can come looking for me when they are older.' (Indigenous community org)

VIC: Credit/debt and consumer

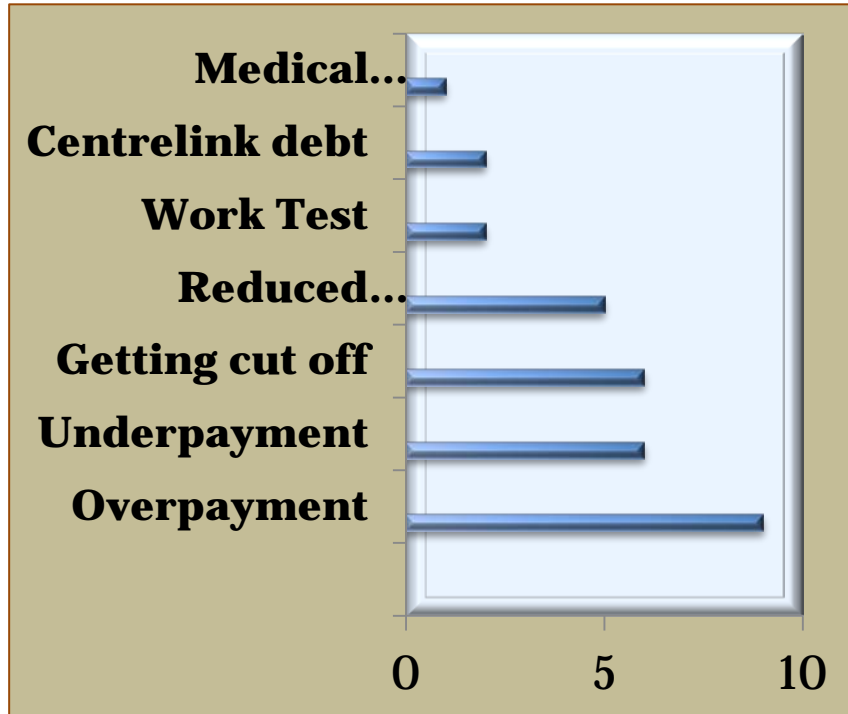


The people that call up over the phone and sign people up, they give people a phone that's worth \$80 and they'll sign them up to a contract where they [actually] have to pay \$80 a month... And they direct debit out of your bank account. A lot of our people, once they're signed up to that contract they don't really question it (Shepparton MFGP)

[I]t's a little bit too easy to get [credit] still for the mob, and a lot of these credit providers, I don't know whether they exercise judgments properly, with caution, but a lot of our mob get credit cards that they just can't handle. They prey on the vulnerable people and that's how they get their money (Indigenous legal service)

There was one guy I know he bought a ... I think it was a \$200 couch and in the end he paid \$4000 for it... They are not really informed about the risks involved (Indigenous community organisation)

VIC: Social Security



You feel a bit cut off because it's a remote town. There's no Centrelink office here. We only have a Centrelink agent. All the paperwork has to get faxed to Swan Hill, which is the main office. (Robinvale WFGP)

They were taking Centrepay, it was for my electricity and gas, and I rang my electricity and they're like no, we're not getting no payment but it was coming out of my Centrelink payment (Heidelberg WFGP)

VIC: Wills/Victims Compensation - unrecognised legal need

- Wills often only associated with property ownership

We weren't entitled to all the benefits that mainstream (society) had. We got jack-shit to leave behind for our children because we didn't know anything about super and all this and that. So what 'will' have we got to talk about, you know? You were only a child yourself, turned out to work for a pound a week or something. (Bendigo MFGP)

- Around one in ten had been involved in a dispute around deceased estate

We've seen disputes coming up after someone has passed away about burial and where people wish to be buried (Community organisation)

- Little awareness of scheme but high levels of need

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

I think in family violence matters I'd be very surprised if many Indigenous women actually firstly are aware (of victims compensation). I reckon police wouldn't be forthcoming and tell them. And even if they did, I don't know if they can give out good referrals to places. (Community organisation)

Access to justice issues

- ① More focus on civil and family law need by better funded legal services
- ② Increasing service provision outside capitals
- ③ Increasing access to information about civil and family law / legal process and who can assist with civil/family law problems
- ① Complexity of need: implications for service delivery
- ① Services working together more effectively
- ① Better engagement with communities

1. More focus on civil/family by better funded legal services

- Significant levels of civil/family law need + little satisfactory resolution of issues, including because of insufficient access to legal services
- To a large extent, gaps in service delivery due to under-resourcing of legal services
- Some comments about too great a focus on criminal law by legal services
- Policy issues sometimes impacting on access to legal services (eg conflict of interest)
- Need for funding for more strategic work (policy/law reform, VIC Charter)

Maybe there is room there for the legal service provider to be a bit more flexible with their policies about these civil matters and that would encourage some of our mob to come forward.
(Indigenous Legal Service)

For me, I think challenging some (policies) at their source—for example, someone who is skilled enough to actually challenge the Office of Housing policies around debt, around those things. That then means that we are not spending heaps of time trying to negotiate using their (problematic) policies.
(Indigenous community org)

**INCREASED FUNDING FOR LEGAL SERVICES,
esp but not solely. for Aboriginal Legal Services
and without decreasing funding for criminal law
work**

2. Melbourne-centric service delivery

Too much work done in and/or from Melbourne.

Location presents as significant barrier to accessing justice.

- VALS: 1 civil lawyer for the whole State
- 'City' lawyer may not understand 'country' town
- Whole areas not effectively covered (eg. Mildura)
- Very limited reliance on private practitioners (cost, not culturally competent)

I haven't referred anyone to VALS just because I know that they don't have a regular presence in this region.... [T]hey are stretched and... they've only got one lawyer... doing civil work (Community org)

It would be good if there was a policy... so those legal firms have cultural awareness training and it's not just a one off training - they go through a proper course (Indigenous legal service)

➤ **A more permanent presence in the regions is crucial**

3. Increased access to information

- Poor awareness of civil/family law process, rights and obligations and of where to access help = barrier (esp. compared with criminal law)
- Civil/family law requires proactivity to challenge or defend
- Increased awareness will help to avoid *and* to address issues directly, including without legal assistance - though the importance of availability of advocacy is also stressed.

I think it'd be good if the justice people in town organised community workshops and programs so you could learn a bit about this stuff (Swan Hill WFGP)

We need some sort of cheat sheet with what your options are, how you tackle it. There's nothing really out there (Shepparton WFGP)

➤ **Increased and improved access to information about law and services**

4. Complexity of need: implications for service delivery

- Complexity < literacy and disability
- Complexity < interconnection legal and non-legal issues AND between different legal issues

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

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

[Links between family violence and civil issues include] things like... debts that are signed up for by the victim under duress (Community org)

- Complexity < Delay or avoidance in addressing issues

It does escalate because it's left alone. And then you are seeing them again in three or six months' time for an issue that could have been resolved and saved, but because they weren't engaged, because it seems too hard, it doesn't happen. So, then it escalates to...getting an eviction notice (Community org)

- Contact with legal service as early as possible

➤ Avoid compartmentalising need

*These other things aren't being picked up, which then just means [they] become a crisis in the future. So, our clients are in perpetual crisis because nobody is dealing with this stuff in the beginning. I think people need to start working on the little stuff .. because it's just going to become big stuff [and] I think that people should be provided with assistance at an early stage.... You will find that a lot of my clients had been to lawyers but this [thing] has not been resolved... I think there are gaps in services in asking the questions.
(Indigenous community organisation)*

➤ Work flexibly and holistically with client

Services working together more effectively

When people go to legal services, they often have a myriad of problems... [and] are looking for a service that will solve all of their problems (Indigenous community org)

- Something like a one-stop shop (all needs, including non-legal, met in single place)
 - Appropriate warm referral processes, where need to engage other services
 - Networking, relationship building
 - Includes both LEGAL *and* NON-LEGAL (esp. Indigenous) SERVICES
 - Legal services outreaching through non-legal services
 - Non-legal services providing referrals to legal services
 - Legal services assisting a non-legal service to work with a client (eg. by providing information to non-legal service)
- **Services need to work as collaboratively as possible, including so as to address complexity of legal need**

Better engagement with communities

- Indigenous staffing
- Building capacity to engage through developing relationship with those already connected with community (eg. key Indigenous organisations)
- Need to 'get out from behind their desks'
- Avoid service segregation

[A woman from Mildura was sent to me by a mainstream service] and I had to go to them and say 'What do you want me to do for her?' 'She is an Aboriginal'. 'Well yes. Do you not work with Aboriginal women?' And they get all flustered when I ask that question... (Indigenous community org)

Where to find us

- **Website:** <http://www.jcu.edu.au/ilnp/>
- **Facebook:** Indigenous Legal Needs Project

