

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into alternative dispute resolution

Melbourne — 30 June 2008

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Mr R. Tregonning, Aboriginal Projects Officer, Dispute Settlement Centre of Victoria

Ms A. Vickery, Manager, Koori Programs and Initiatives, Courts and Tribunal Services, Department of Justice

Ms R. Smith, Project Manager, Koori Programs and Initiatives, Courts and Tribunal Services, Department of Justice

Ms L. Ahmet, Project Manager, Koori Programs and Initiatives, Courts and Tribunal Services, Department of Justice

Ms J. Cooper, Respected Person, Koori Court, Broadmeadows Magistrates' Court

Ms J. Vickery, Koori Elder, Koori Court, Broadmeadows Magistrates' Court

Ms M. Staniford, Policy Officer, Corrections Victoria

Mr A. Fricker, President, Monash Postgraduate Association

Mr N. Twist – Acting Director, Alternative Dispute Resolution, Department of Justice, and Chief Executive Officer, County Court of Victoria

Ms A. Dupuche, Family Mediator/Family Support Worker, Melbourne City Mission

Ms M. Georgiou, Administrator, Darebin Community Legal Centre

Ms T. Callander, Aboriginal Liaison Worker, Darebin Community Legal Centre

Ms G. Clarke, Acting Executive Officer, Research Planning and Development Unit, Victorian Aboriginal Legal Service

Mr A. Besiroglu – Intern, Project Research, Victorian Aboriginal Legal Service

Mr C. Ison, Koori Support Officer, Parkville Youth Residential Centre, Department of Human Services

Ms T. Lee – Indigenous Education and Complaint Officer, Victorian Equal Opportunity and Human Rights Commission

Ms N. Langford, Committee Member, Broadmeadows Legal Service

Ms H. Archibald, Aboriginal Support Worker, Parkville Youth Residential Centre, Department of Human Services

The CHAIR — First of all, thank you all very much for coming. We will go around and do our introductions in a moment. My name is Johan Scheffer, and I am the chair of the Law Reform Committee. Before I go any further I would like to pay my respects and acknowledge the Wurundjeri people on whose land we are meeting today, and I thank our hosts for making the facilities available.

The Law Reform Committee is a multi-party committee, with members from both the Liberal Party and the Labor Party; it is not the same as the government. The committee has been asked to look at alternative dispute resolution, and we are looking at how ADR is being used in the community and how we can improve access to services and service delivery in the area of alternative dispute resolution. When we finish gathering evidence — and this is our last public hearing, but more desk research will be done — and we have finished doing our work, a report is prepared, then a set of recommendations will come from our findings; those recommendations will be tabled in the state Parliament. The government then has responsibility for having a look at those recommendations and reporting back to the Parliament in six months. We hope that a number of those recommendations will be taken up by the government either in changes to the law or in changes to government programs and practices, so that is how the process works.

I would also like to acknowledge Ms Greta Clarke, the research officer here with the Victorian Aboriginal Legal Service, and also thank her in front of you all for the submission she gave to the committee earlier on with another reference, so we have a previous relationship but also in relation to this reference.

I would also perhaps like to flesh out a little bit what the committee means when we talk about ADR. When I looked at the notice that went out it has a very clear description on it. It was put out jointly. Alternative dispute resolution services help people to solve conflicts outside of the courts, for example, mediation to resolve disputes with family members, neighbours, co-workers, businesses or government departments. That is a pretty clear definition, and everyone has a copy of that notice so I think we are all clear on what today is about.

The members of the committee are also very aware that everyone is extremely busy. We value your time, and we would like to thank you very fulsomely for the contribution you have already made, and the one you are prepared to make this morning. We are also obviously particularly interested in hearing about which ADR services are working with Indigenous people in Victoria and why, and what parts of those services need improvement, and also how you think they may be improved. We want to hear from you about some of the things that are working well, and some of the things that are not working so well. Even though there are a number of people here I think we should try to work this as informally as we can, but as you can see the proceedings are being recorded by our people from Hansard at the Parliament. They have a very big job to do, so before people speak it is really important that they say their name very clearly so that when the transcript is prepared it is clear who is saying what.

Initially Dr Loretta Kelly was going to give some opening remarks and a presentation. I believe her plane has been delayed, so we will fit her in a bit later on. We will start with you. What is probably a good way to start is if we work our way around. I do not know whether all of you wish to make an oral contribution to open up, but we will give everyone that opportunity. When that is completed there can be some general discussion, and we will probably then be ready to hear from Dr Kelly. Then we have some questions that we might want to ask you.

The last thing I should tell you is that this is a formal hearing of the committee. The conversation here is subject to parliamentary privilege, meaning that what you say here — for example, something critical of an organisation or person — is protected by parliamentary privilege and you cannot be sued or taken to task for that legally. But if you say the same things once this hearing is completed, either publicly or anywhere else, obviously you are not protected by parliamentary privilege. I think that is all I need to say other than that Hansard is making a recording, and you will all have copies of the transcript when it is available, and that will be sent to you afterwards. Where would we like to begin?

Ms LANGFORD — My name is Norma Langford. I am a respected elder at the Broadmeadows Koori Court.

The CHAIR — Would you like to make any comments, or tell us about the court briefly?

Ms LANGFORD — Yes. I am from Waradjuri New South Wales; my clan is up there. I have been residing in the Wurundjeri area for the last 50 years, and I am very proud to be on the Aboriginal court. I am thankful for that.

Mr TREGONNING — My name is Rocky Tregonning; I am an Indigenous dispute assessment officer with the Dispute Settlement Centre of Victoria at the Department of Justice. I am originally from Gippsland — Lake Tyers. I am a Gunai Kurnai man, born and bred around the Gippsland region. I have been living in Melbourne for the last 30-odd years and have been working in a lot of agencies in connection with my community and the government. I am pleased to be here as well; thank you.

Ms ARCHIBALD — My name is Helen Archibald; I am from the Department of Human Services. I work for young people in custody at Parkville Youth Residential Centre. I am the Aboriginal support worker there. I am from Shepparton, I am a Yorta Yorta woman, and I have been down in Melbourne for the last 25 years.

The CHAIR — We are very interested, as we go around — and this applies to you, Rocky and also to Norma — in hearing more about what it is that you do so we can get that on the record. I understand that introductions are important, but perhaps as we go through you could talk in a bit more detail about what it is that you do. We are very interested in that.

Ms ARCHIBALD — I support the young Aboriginal people coming into custody. We have three centres: Malmsbury, Melbourne and Parkville. Parkville has young women and young men. We have young men 10 to 14 and young women 10 to 21 in Parkville. The young men from Melbourne are 15 to 18, and at Malmsbury it is 18 to 21. Once they come into custody they might be on remand or on a sentence, depending how long, and we help them through their time in custody and help with their families coming in to see them or them going out on leave. They go to the Children's Koori Court if they are in the catchment, and that sort of stuff. We just help them on a day-to-day basis.

The CHAIR — What are the big issues that you deal with with the people who you see? How do you help them? What are the problems?

Ms ARCHIBALD — They come with a lot of issues. It might be mental health; it might be education, or family violence within their own little family community. We just help them as much as we can while in custody and get them over the line. We help them try to reintegrate back into their community before they came into custody as best they can, help them with jobs, and try to get them back into schooling and back into the wider world. That is pretty much what we do.

The CHAIR — Thank you. Rocky, did you want to develop that a bit more?

Mr TREGONNING — I suppose so, yes. I work with the Dispute Settlement Centre of Victoria. Our main business of the day is dealing with neighbourhood disputes. I deal with mainstream, but I also deal with Koori specific or Aboriginal/Indigenous specific. As the only Aboriginal worker in the office, most Aboriginal cases are referred to me. They are referred to us by either the courts, the police, or the local councils if they are civil issues, or whatever the case may be. As a dispute assessment officer I look at the issue of the family dispute or clan or neighbourhood dispute and make an assessment. Then through the process of attempting to resolve it through mediation or through the dispute resolution assistance services we provide, I make contact with both parties. One may ring us with an issue of complaint, or they may be referred to us by the courts or councils or police or by respected members of the community. We can be initiated by anyone. We deal with a lot of disputes right across the community, as well as government disputes with police and education workers. We do mainstream as well as local community disputes.

At my agency I bring into the agency the Koori perspectives, the cultural perspectives. I am 50 this year and was fortunate enough to be raised around elders. I think we have looked at ADR and dispute resolution servicing to the Koori community and how best to achieve goals — goals in respect to violence and conflict. A lot of it pertains to miscommunication. I have been working with Emeritus Professor Kit Carson and with the Victoria Police, with the local elders and respected members as well as RAJACs, LAJACs and all the old whole-of-government agencies as well to look at the whole process of how we can help the Koori community.

My concern is disputes and conflicts in the community and how to bring them back to some tribal control as well. When we look at it, we will have always gone to elders. I remember the times at Lake Tyers growing up with Uncle Noel Parsons. The men would be sitting there, the women over there, and the kids would be running around in the middle. If there were conflicts or issues within the community, I know my elders at Lake Tyers in the 1950s and 1960s would confidently deal with them through their council that was formed at the mission at Lake Tyers.

I believe we need to go back to a lot of those old traditions. It is about how to help my community in seeing the benefit of getting back to the way we were — whether we can ever really go back to the full tribal way of being nomadic hunters and gatherers, maybe not, but certainly how to bring across some of our culture into today's conflicts in courts.

Mr ISON — My name is Clayton Ison; I am with the Department of Human Services as well. I am a Koori support officer at Parkville with Helen. I am across all three centres. I have only been at the job for about six months now, but I have found that most of our young people do have a lot of conflict in their lives and usually resort to violence as a first means. That is why they are in our centres. Whether that is because their families have not taught them how to resolve conflict — we just try to help out basically day to day at the moment because there are a lot of kids in our centre. We are basically putting bandaids on and that is not really solving their conflicts or any of their disputes, whether that be with their family or their family against the department or against police or whatnot. At the moment we are only just the bandaid and we are not really fixing what the problems are.

The CHAIR — What would need to happen to make it more than just a bandaid?

Mr ISON — Basically their families have got a great conflict with authorities — whether that be with the department from its involvement with them, or with police where a family has had conflicts with police, whether it is generational stuff from way back. It is pretty hard if you get a 15-year-old kid in there whose dad has been bashed by the police, whose grandfather has been bashed by the police; they are automatically going to be against the police, whether or not they are good or bad. I am not too sure where we go, but at the moment the young people we get in there are very against authority at all levels.

The CHAIR — We will no doubt come back to that as we talk today.

Mr BESIROGLU — My name is Ali Besiroglu; I am currently doing my internship at the Victorian Aboriginal Legal Service. I am observing today and trying to take in as much as I can.

The CHAIR — You are on a learning exercise like us, okay.

Mr BESIROGLU — Yes.

Ms CLARKE — My name is Greta Clarke; I am the acting executive officer of the research, planning and development unit. I will just say in general terms what I tried to relay to the committee when I appeared before it earlier in the year. That was about the need to have an alternative dispute resolution service that is culturally appropriate. Mediation and alternative dispute resolution is often seen as an alternative to the courts because there is a problem with the courts and we do not want people going through the courts. It is called culturally alienating the formal structure. But ADR can also be culturally alienating. So maybe in discussions today try to think in your minds, 'If we could create a Koori dispute settlement centre, what would it look like?'

Mr FRICKER — My name is Anthony Fricker; I am a Dja Dja Wurrung man. My mob come from around Bendigo, although I have lived in Melbourne all my life. I am one of very few post-graduate students at Monash University. I am here as an observer in my capacity as president of the Monash Postgraduate Association.

Ms DUPUCHE — My name is Angela Dupuche; I work at Melbourne Citymission down at 19 King Street in Frontyard Youth Services in mediation and early intervention with young people who come in off the streets — lots of them — looking for housing because they are saying they want to leave home. We are working in two programs there. The Gateway Reconnect program is for early intervention, and the Family Reconciliation and Mediation Program, better known as FRMP, is also part of Melbourne Citymission. Both are set up to try to stem the homelessness flow of young people leaving families. I do a lot of family support and family mediation work with young people. One program is for 12 to 18-year-olds and the other one is for 15 to 25-year-olds, the FRMP program. That is my interest. I thought I would come along and observe as I am interested in what is going on here.

The CHAIR — Do you find that the mediation processes that you follow are useful? Are they productive?

Ms DUPUCHE — Yes, they are. Sometimes it is quite difficult to get young people to engage in mediation.

The CHAIR — Why is that?

Ms DUPUCHE — They are very reluctant to try and sort out the problem with mum and dad. They are saying, ‘I am old enough. I am out of here. I am going to be independent’, but then when we sit them down and try to talk them through it they begin to realise that they cannot be independent because they have not got the means to be independent. It is a case of trying to engage them in sitting down and using this process to talk to their parents about what the issues and problems are. When we do get them engaged it is usually very successful. They work it out pretty well and improve, hopefully.

The CHAIR — Could you just spell out for us what the process is that you follow?

Ms DUPUCHE — The way I work is a very slow process of a good, long intake with both parties, trying to get them to look at what are the key issues they want to bring to the table. I think if you do that sort of work with each party separately first, you have more success when they come. I am fortunate that our program is well funded and it does not limit us to just 2 hours. Some programs get 2 hours of mediation for a family to sort everything out, and that is all they are funded for. I can have a couple of hours and then I can bring them back another time and another time until we have time to work through things and trial things at home and see how they work and come back and see again, revisit and see how they are working and do it over a long period of time through a slow process like that. It seems to work best, but a lot of programs are not funded to be allowed to spend that much time.

The CHAIR — So resourcing is one of the things — —

Ms DUPUCHE — Resources and time. Time to do it well and slowly and put it through the process slowly. That is important, I think.

Ms COOPER — Joyce Cooper, Yorta Yorta Wurundjeri woman, respected person for the Broadmeadows court and foster carer for the last 13½ years. I have fostered nearly 50 children. I have four in my care and I am an observer today. I love fostering.

The CHAIR — Did you say you are associated with the Broadmeadows court?

Ms COOPER — Yes, I sit on the Broadmeadows court.

The CHAIR — What do you do there?

Ms COOPER — I sit with the elders. I am a respected person there. Two of us sit at a time with the magistrate and we can hear up to anything from four to eight cases a day. People appearing before the court range from the ages of 19 through to old age, I suppose.

The CHAIR — Could you just spell that out a little bit more? What is your role?

Ms COOPER — I sit on the court as a respected person.

The CHAIR — Yes, I understand that.

Ms COOPER — My role is basically what the elders do. I sit with the elders, and we help the magistrate with the decision making or the sentencing. We do not actually make the sentence. The magistrate makes the ultimate decision, but we sit with them and help them decide what is best for the offender.

Ms STANIFORD — My name is Miranda Staniford. I am a policy officer with Corrections Victoria. I mainly work on women’s policy, but given the overrepresentation of Indigenous women throughout the whole criminal justice system, but also in our prisons, I just thought it was important to come along and hear your thoughts and see whether there is anything we should be taking into consideration during our policy development.

The CHAIR — What kinds of things have you been looking at thus far?

Ms STANIFORD — We have got a few strategies in place at the moment. Across our women’s prisons region there are two prisons: a maximum security one near Deer Park and a minimum security prison up near Maldon. They are serviced by an Indigenous or an Aboriginal wellbeing officer. She is there to support the Indigenous women who come into the system with things like maintaining links with their families, linking them into programs and services that are available with the prison and then also with agencies that support women as they exit prison — agencies like Melbourne Citymission or the Brosnan Centre. There are also a number of

transitional services that are available to Koori women as well, and those transitional services help the women to access support services that are culturally appropriate as they are exiting prison. That would be things like looking to find safe and stable accommodation or looking to link in with further education or training or employment.

Ms LEE — Taryn Lee. I am a Yawuru person from Broome in Western Australia. I have been in Victoria for 10 years and I have worked in native title and women's policy and a bit of community development stuff in the Aboriginal community. I am currently at the Victorian Equal Opportunity and Human Rights Commission, and I am the Indigenous education and complaints officer. What that means is that I do community education about what discrimination is and what we do at the commission to help people resolve those disputes. The complaint side of it is that I provide people with information about what discrimination is and what we do — similar to the community education stuff — but I also assist people in writing their complaints that are lodged at the commission. Maybe in the future, when I am not involved in the initial part where I am writing a complaint for someone, I will be getting involved in the conciliation process. I have actually been on maternity leave for the last 12 months and this is my first project back at work.

The CHAIR — This, right now?

Ms LEE — Right now, this meeting.

The CHAIR — Good, we will go from there. Thank you very much. Tracey, is it?

Ms GEORGIU — Maria. We are both from the same organisation. I just want to apologise for being late. I am Maria Georgiou from Darebin Community Legal Centre.

The CHAIR — You are speaking for both, are you?

Ms CALLENDER — My name is Tracy Callender.

The CHAIR — You are speaking for both, are you?

Ms GEORGIU — And then I will add in after she is finished.

Ms CALLENDER — I am the Aboriginal liaison worker at Darebin Community Legal Centre. Darebin works with Minter Ellison to provide for free legal advice clinics within the Darebin community. We have two based at Maya, which is the Aboriginal healing centre in Thornbury, and also two at Darebin Community Health. Darebin has worked for nine years before these community outreach clinics began, forming relationships and being very conscious of culturally appropriate ways of being within the community and also providing a support service for Aboriginal organisations such as VALS. We see ourselves very much as mainstream, providing support and have always been very conscious of doing business the proper way.

Ms GEORGIU — The other thing is that we are also part of the family violence court division at the Heidelberg court, and we have a duty lawyer who is there five days a week. One of our clientele groups at the Heidelberg court has been people from the Indigenous community. We are also aware that some members of the Indigenous community have not been very happy with the way the family violence court division at Heidelberg court has been running, so we are trying very hard to look at ways of improving our service there and also supporting those who are wanting to use the service that is there.

The CHAIR — What have they been not happy about?

Ms GEORGIU — It is hard to explain. I am not that heavily involved. The way the court runs is that there is an applicant worker, a defendant worker, and then you have got the two lawyers, one from Victoria Legal Aid and one from us, which is Darebin Community Legal Centre. Then there are also support workers out in the field. I cannot tell you why, but that is something we are starting to try to look at. We are only in the beginning process, but we do know that people are not very happy when they come there. We are not sure whether it is the way that the system works. A lot of the system there involves an individual against another individual, but what we find with the community when it comes to the court is that there is more than one person involved. I do not think the service accommodates that community anguish, if that makes sense, rather than just the individual to individual. I am only just talking briefly. That is something that we are hoping for. We are trying to set up meetings to find out more about how we can improve the service that we provide there. And that is one of the reasons I am here: to see if we can add to it.

The CHAIR — I know that you are reluctant to go into too much detail — fair enough — but are you saying that one of the lacks here is that there is an inability in the system to deal with collective disputes?

Ms GEORGIU — We think that is the case. Yes, we believe that is the case. And that is one of the things with the legal clinics. We find that we seem to be successful when it comes to an individual having a legal dispute against, say, an organisation or something in the system, but when it comes to an individual having difficulties with other individual, even our legal clinics are finding it difficult there because it is a community we are not a part of. So those kinds of liaisons are difficult. We do not know how far we go when it is a community dispute.

The CHAIR — All right. I have got one name and two people.

Ms SMITH — I am Rosie Smith. I am a Aboriginal woman from Hobart, Tasmania — a Palawa woman. I have been in Victoria for the last five years working in the Koori Court. My background is that I have worked 30-odd years in my own community as a legal officer to lend support to the health worker to coordinate — so a number of different roles over the years. My interest certainly was the Koori Court and the involvement of the elders in the process and other participants, like the Koori Court officer and the Indigenous corrections officer. I have a strong belief in the process being a very inclusive one. Even though it is a foreign system — it is still the old court system — it is a system which allows Aboriginal people to have a voice, and that includes the elders. The role that the elders play is very significant in not only reprimanding an individual who might come before the court but also in providing that person — that they belong to the community and that they show respect. The Koori Court is based on respect. The system respects the elders who are involved. The increase in the number of Koori courts that are set up now — we have got nine Koori courts in the Magistrates division and two in the Children's Koori Court that we are now currently setting up. That is what is what I am project managing at the moment — the County Koori Court. The County Court is wanting to involve the elders in their process because of the success of the Magistrates Court.

In regard to family violence, I have been involved with family violence in the Koori community for a long time. The process itself ostracised Aboriginal women, not just Aboriginal women but Aboriginal people. It is not a system that is going to involve them because it is about pointing the finger, and the Koori community are not going to want to do that. The Koori community, particularly women — I have been involved with a number of different women's groups of late, and they are saying they do not even know very much about the family violence court. So there is that lack of information getting out to communities. We sit with the family violence court people in the courts and tribunals.

Mr TWIST — My name is Neil Twist. I am the acting director of ADR in the Department of Justice. I have a keen interest in what is being discussed today — the positions and new position that was funded in this year's budget. For the short term, which is the next six months or so, I have been asked to be in the role to roll out four projects essentially: one is to set up the ADR directorate, which will be essentially a policy and monitoring body around the initiatives that have been funded; the second project is ADR in the higher courts, so looking at the County and Supreme Courts and what they are doing in terms of ADR; and then there are two projects involving the Dispute Settlement Centre — one specifically in relation to intervention orders in the Magistrates Court, looking at which of those can be referred appropriately for mediation, and the second one is more in relation to civil disputes and trying to head disputes off before they get to court. They are basically the main things I will be working on over the next six months. In my substantive role, I am the CEO of the County Court, and I have been working very closely with Rosie to develop a Koori Court in the County Court, and we look like being able to launch that in November.

Ms AHMAT — I am Lisa Ahmat. I am an Aboriginal person from Darwin. I have been down in Melbourne for five years. I work in the courts and tribunals unit, specifically in Koori programs. Recently we have been involved in establishing the Koori Court in Swan Hill. Our unit looks at different alternatives for how courts can do things better for Aboriginal people. Koori Courts are our main example. I suppose it is where to from here now for us. I will probably be an observer today.

Ms A. VICKERY — My name is Annette Vickery. I work with Lisa and Rosie. We all come from the courts and tribunals unit, which is in the Department of Justice. I am observer here today as well. My family are from Gunditjmarra. This is my aunty sitting next to me. I have lived in Wurundjeri all of my life. We are interested in anything to do with ADR. Just as Greta and Rocky were saying, a culturally appropriate ADR service would be

fantastic. We work in the criminal justice area mostly in developing programs that are diversional alternatives to imprisonment, but what we are seeing pre-sentence in the Koori Courts in particular is a lot of offenders and families can benefit from ADR pre-sentence. There might be a connection there, an intersect, that we are not seeing at the moment but which we think might provide better outcomes for communities. And family violence, of course, is the other big emerging issue and trend. So thank you for allowing me to be here today. I am really looking forward to hearing what people have to say.

Ms J. VICKERY — My name is Joan Vickery. I am one of the elders at the Broadmeadows Koori Court. We are employed by the Department of Justice. As an individual I am involved with this organisation where you are sitting today. I have been on the board here at the Koorie Heritage Trust for something like over 20 years. I am on the board of the Aboriginal Community Elders Services out at Brunswick. I am sort of involved a bit around the place. I am the patron of Omenda, which is under the school of population health of the University of Melbourne. I do some work for Deakin University when Professor Wendy Brabham sings out, which she does to some of us elders from time to time. I do a few things. I have been retired for eight years. In that time — are we talking about our individual things? I am not sure about what I am actually doing here either today! In that eight years, when I retired I got my masters in public health, and I was made an Officer in the Order of Australia, all in 2005. So I sort of do a few things around the traps. I am on the reference group for the County Court. I cannot think of anything else. I just happen to be one of those elders who seems to go wherever I am asked to go and do whatever. That seems to be just something that a Koori elder does anyway.

The CHAIR — I suspect there is probably a bit more to it than that.

Ms SMITH — Joan, you should say that you are also the patron — you are the one who started the diabetes — —

Ms J. VICKERY — Koori Diabetes Services was a baby of mine. I got that incorporated, organised it, and I made an awareness program for this country for all our Aboriginal health services around diabetes. It is no longer needed, that organisation. It is not on the agenda permanently, so I am no longer required to do that, but people still call me Mrs Diabetes!

The CHAIR — Before we go on to working through some of the issues we want to raise with you, I will ask my parliamentary colleagues, the other members of the committee, if they want to make some comment or ask some questions. Picking up on what you said, Joan, a number of people have very politely described themselves as observers. That is all well and good — and you can observe if you wish; that is fine — but I would really encourage everyone here to be a participant in it. It is really obvious from going around the room that there is a great richness in what people here know, which is why we have called you together. We describe our job as a committee as being to gather evidence. Everything that you say and the insights that you have from your experience about this issue of alternative dispute resolution are very valuable to us. Do not feel you need to step back because you do not know a lot about it. Do not think I am being rude to my colleagues, but we would know less about it than you do. We are really relying on you to tell us some of the things we need to know so that we can use them as evidence, put them into our report and make recommendations that will improve the situation. That is basically what we are about. Think about what you know about ADR in your communities and areas where you work and how you might be able to put that into the pot.

Mr BROOKS — As we went around the table there was discussion around issues in the family violence court, and the Heidelberg court, I think, was mentioned in particular. I just want to see if we could flesh that out a bit in terms of what are the issues there. I think a suggestion was made that might be picked up that suitable matters might be able to be referred to mediation. Perhaps people could make comments on that. Has anyone had experience in that area?

Ms GEORGIU — I just asked Rosie for information because that is one of the things we are trying to find out, why there is unhappiness with the family violence court.

Ms SMITH — I think that there needs to be more Koori control over the whole family violence area, and the same, too, with the ADR. Anything that is going to be set up needs to be talked about among the community first, to find out what it is that they want to have in it and how they want to run it, so that it is something that is going to provide them with a positive outcome. The Koori Court is an excellent initiative, the same as the family violence court is a good initiative, but it is done with the intentions of what the politicians think is good.

Community members are the key stakeholders and the community might think it is good, too, but the ones that it is really going to have an impact on, how much involvement have they had in the decision making? That is why the Koori Court is so successful, because it is one of the initiatives under the Aboriginal justice agreement, so you have had Koori involvement right from the start.

I think the Aboriginal justice agreement is one of the most progressive documents Victoria has, compared to other states. You have a very good Attorney-General, you have a very active senior member of the Aboriginal community who pushed very much for all the initiatives that are in the Aboriginal justice agreement and it was done very much with community input. You have VALS and you have NAJAC, which is the National Aboriginal Justice Advisory Committee, as well as VAJAC, which is the Victorian Aboriginal Justice Advisory Committee. Then you have all the RAJACs, which represent all the different regions, and now the LAJACs, so you are getting all the local groups involved.

Mr CLARK — Just following on from Colin's question, which I thought was coming to one of the key issues that I am interested to learn more about as well, I think, as the Chair said, we are very much on a learning exercise here, and Greta's remarks about wanting to achieve culturally appropriate ADR is what we are aiming for. What we need to do is learn a lot more about what makes something culturally appropriate. That is probably an enormous exercise, to try to teach us the whole gamut of culture, but I am thinking that during the course of the discussions there might be some examples that occur to you that you can give as illustrations of what makes something culturally appropriate, or possibly culturally inappropriate. I would be interested also to learn a bit more about how the Koori Court is working, what the roles of the elders and the respected persons are, how one comes to be appointed to those positions and how elders and respected persons find the process operating.

Finally, a number of remarks have been made about the role of the community. I very much get the impression that it is very important that there be a collective agreement and consensus, in the sense of involving everybody in the decision-making process. Again, I would be interested in any specific examples of how you think there could be more community involvement in decision making in the justice process.

Ms J. VICKERY — Just something about the Koori Court, I was asked to become an elder on the Koori Court. I think we were all asked to be on the court in a different way. When you talk about what we do on the court, we definitely do not have anything to do with sentencing; that is completely the magistrate's decision. What we say in the courtroom may give her or him the guidance about where they are going or what they are going to do.

The first thing I do with a defendant — quite often we know who they are; they sometimes do not know who we are, but we all know who their family is and where they come from — is look at the behaviour, the actual charge, and remind the person that they are not there because they are good little people. I accept that they are pleading guilty to come into court and that tells me that they want to be responsible for their actions. After maybe picking out something in the charge which I find offensive, I will tell the defendant, 'This is offensive, this is no good, you know. I don't want to see you going to a higher court because you had a pocket knife and you could have done damage'. This sort of thing is the rapport that goes on. But then we could say two things. One is that the people who come to Broadmeadows Koori Court are generally people who are not Wurundjeri; they are people from another country. They could be Yorta Yorta, Kurnai or Gunditjmarra. We remind them that it is not appropriate behaviour in somebody else's country. That is a cultural issue.

We remind them of who they are and the family they come from. I have had people cry and I have cried with them. I had a young fellow who, because of his surname, thought it was appropriate to keep committing crimes, because that is what everybody said his family did. He forgot that in his family there were returned servicemen from the war. They had been in the air force and the army. He comes from Gunditjmarra, this young fellow. His family member was Captain Reg Saunders, the first Aboriginal commissioned officer. He is part of his family. They forget these things. I said, 'Your name and your father and your family, they have a tower in Canberra named after your family'. These are the things we bring to bear, that it is not appropriate to behave the way they are because they are not doing the right thing by their ancestry, where they come from. Is that the sort of thing you wanted to know?

Mr CLARK — Yes, that is very helpful. How do they react to people — —

Ms J. VICKERY — As I said, I go with them. There are just times when you know that you are not going to see again the person sitting across from you after you have finished; you are not going to see him or her again. There are people who will come back, and have come back. But you do not see this when you see data; you only

get numbers. But in actual fact crime is getting less. What they are doing is coming down, but I think it will be a long time before we get anywhere.

My issue is that we should have more Children's Courts because you start with the kids. I hear these young people around the table. The resource situation is the issue — Aboriginal resources. Our communities cannot cope with our needs. We need the psychiatrist at the medical service. People have to wait. We had a young fellow who came one day. The magistrate wanted the resource person at the court to assess him and make an appointment straight away to see the client. Because she wanted to see the client she did not make the appointment for about four or five weeks, and in that time he had committed another crime. She was more lenient with him because what she wanted to happen did not happen. That is the sort of thing that happens. The resources are not there.

The thing about family is that when we are talking about family, and when we talk to these young people we are reminding them of family because that is who we are. We do not have those things for our families, to sit down and be together, like I am sure we used to so long ago. I am sorry; I am taking up too much time.

Mr CLARK — No, that is very good.

Mr FOLEY — Joan, what you summarised was a bit like what Greta was saying earlier about how you marry culturally appropriate Indigenous approaches to alternative dispute resolution with the system we have, and how it works in that you have to plead guilty and you have to do all of those kinds of things first before it gets to you and your court. It is obvious from anyone's point of view as to how ADR works for a marginalised community in a justice system like the Koori community whether it is pre-sentence or sentence hearings in the corrections system itself. Are there any particular strategies that you think we need to have a crack at or that are not working and should be got rid of? Not just in the court system, but whether it is with Citymission or wherever, it is anywhere along the line from your first contact with the criminal justice system all the way through to the corrections system.

There are lots and lots of issues in there, but one of the specific references this committee has is to look at alternative dispute resolution for marginalised communities. All the data shows that Koori communities are well and truly underrepresented in each of those sections. We are learning something, long term as it might be, at the Broadmeadows court. What other kinds of things all the way along the line have you learnt, even if it is just from people as individuals engaging with the system along the way?

Ms J. VICKERY — I do not know where 'dispute' comes into it at the court, but when I look around the court in the gallery and see the support people, we do not have enough Indigenous people. Our services do not have enough services for us. I just think that all services should be integrated. They should have people from the Koori community working in there. But the one thing that people in the mainstream, which is what I will call it, need to realise is that because they have an Aboriginal person working in their organisation — it could be the office of corrections, police or wherever — they seem to think that that Aboriginal person has all the answers. That person has not got all the answers, and they could be out of their comfort zone. It could be me working. It cannot be me across this state, but it could be another Koori across the state that is comfortable with Gunditjmara land and knows everything about it. But if you send him to work down in Gippsland he does not know where he is and he does not know what is going on with the people down there. It could be all kinds of things from health to legal issues to Koori politics — we have them too, you know — that sort of thing. I do not know whether I am answering you properly.

The CHAIR — Spread it around a bit.

Mr FOLEY — Anyone can have a crack at it.

The CHAIR — Rocky?

Mr TREGONNING — I was just going to say that ADR is well utilised by the non-Indigenous community across Victoria. My agency takes anywhere up to 2000 calls a week on our 10 telephone lines. Probably I deal with one a week which is Indigenous connected. It might be a dispute in a workplace, it might be a family issue, it might be something referred to us. I have only been at my agency for 12 months, so I am still the new boy on the block in this area, but what I have been noticing is that we are referred to by all of the courts. We are referred to through the mainstream community. If you go to the court and say, 'I have a dispute with my neighbour over a fence' then straight away you will be told, 'Ring that mob, the Dispute Settlement Centre of

Victoria, because they know about processes'. We are getting mainstream people referred, but Kooris are not; they are slipping through the system because it is not being picked up that they could come back and utilise the services and utilise the ADR process itself, as well as looking at what could be done for them in that area.

Suddenly I get someone who rings me up, and I say, 'Good morning' or 'Good afternoon, Dispute Settlement Centre of Victoria, Rocky speaking. How can I help you?'. They say, 'I don't have a care, mate. I don't think I have a dispute, but I might have an issue with my neighbour', and it will be a mainstream one. The first thing we have to ask is how they know we are there. We ask how they got referred. They say, 'The local council', 'the local cop shop' or 'the local court who say they know you guys are there'. I say, 'Great. No worries, thank you'. And then we go through our dispute assessment procedure which is about 15 or 20 minutes with the customer on the phone, explaining our process to them as well as what ADR and mediation is all about. That is not happening in the general Koori community. I do not know whether it is fear or a lack of knowledge of our service provision.

The CHAIR — Can I just ask: when you say you go through your processes, do you lose people in that at all? Do they not come back?

Mr TREGONNING — No. If anything we usually gain their confidence because we explain to them in detail what mediation — the 12 steps in the process of mediation — is all about, but particularly how we may be able to assist as a voluntary, impartial, free government agency. Our mediation is confidential and works in a most private manner. In a Koori circle I will go a bit further into it and talk about whether it is men's business or women's business, whether it is elders, whether it is youth, whether it is a family issue, whether it is tribal, whether it is someone from Western Australia arguing with someone from Victoria so there might be cultural differences within their language communication.

A part of my process is making sure that that whole process is culturally adhered to, whether it is a dispute resolution, which is just setting out general information about their rights and how their rights might prevail on the issue, or how we may assist them if we have to. But if we are asked to assist in mediation then we sit all the parties down and we provide them with a mediation service which is not a quick-fix either. It is not about coming in, saying what you like and then walking out. Sometimes it is a gruelling 3 to 4-hour process. I have witnessed one which went for 8 hours, but it was a large corporate one. There were quite a few players in the whole process.

Again, I am finding that I get calls from police stations, from RAJACs — being the regional Aboriginal justice advisory committees — and from our local Aboriginal justice advisory committee members. They say, 'We have an issue going on down here, and can you come down and help?'. I will go down and attempt to help, but again I have been getting notified a little bit too late. If it had been in the first instance, where they may have gone to the court or gone to the police saying, 'Oh, this mongrel here has come around and said something, and I'm going to go around and flog him', and all that, before they had even got to that rhetoric, we could have at least stood in at the early stage. Early intervention, I suppose, is the best medicine. But if we could get involved in the early stages — and my community is not aware of our services, and that is something we are trying to push out there. I work with the whole of government at the moment doing workshopping. I am working with 20 other agencies from consumer affairs, sheriffs, Corrections Victoria and court systems, where we go out and we are doing a travelling roadshow, letting the community know that there are these processes and government assistance in place. We have noted that there is a lack of community knowledge about these services and provision of services.

The CHAIR — Yes, we will come back to that in a minute to ask people about that. Thanks, Rocky. Angela, you wanted to say something.

Ms DUPUCHE — Yes, I just wanted to — I probably should have said in the beginning as part of my reason for being interested in being here today, that Melbourne Citymission has been looking at its whole organisation as to why are we not attracting more young Aboriginal clients in the CBD in particular, because through Melbourne City Council we understand there are a lot of young Aboriginal people who access the CBD. So they have actually put a process in place and have offered — all front-yard staff in the last few months have done a cultural awareness program through various Aboriginal organisations putting them on for us. They have been invited in to help us all understand how to work more culturally appropriately.

I think it is important for non-Indigenous organisations to be doing more of that and also to look at how we can make our organisation more open and friendly to young Indigenous people who might want to access it, even by having some visible signs out the front. We have put Aboriginal and Torres Strait Islander and Australian flags

across the front of the building. Especially on certain occasions, like next week, we will have more of that happening and have more awareness raising amongst the staff. Next week there will be a new program put through for everybody to be offered an opportunity to watch a DVD that is important for them. That is something that they have done a lot of work on at Melbourne Citymission across all the agencies which are spread across Melbourne, as well as the one down in King Street. So that is something that is worth sharing that we are trying to do at the moment, because we are aware that we do not understand very well and need to work on that more.

Ms SMITH — I just wanted to also pick up on what Aunty Joan said. The reason why the elders are selected in each of the areas in the courts is that Aunty Joan will say that she is a Gunditjmara woman, but she has lived in the Victorian community. It is the same for Aunty Norma who will say that she is from her community but she has lived in the Victorian community for a lot of years and so they know family groupings and they know different community service organisations. One of the first things a magistrate says when opening up a court is that they acknowledge the traditional custodians so straightaway the respect of the community is there.

With the judiciary, when we set up a Koori Court we have Koori Court training which involves the magistrates — or in the County Court case it will be the judges — prosecutors, corrections, sheriffs and local community organisations, including DHS and victims support. It is not just the one-off cultural awareness training that stays in people's minds; it is the ongoing listening and seeing and anticipating. You know the judiciary will say that since the Koori Court has been up and going it has provided them with a lot more information, because elders like Aunty Joan and Aunty Norma will sit there and they will talk about things that their families or significant people in the community have done from particular areas, and that is connection to country, connection to history. It is quite interesting to hear judges, who are very well educated people, say that for the first time in their lives they are hearing about the Kooris in Victoria.

The history is so rich and vibrant and living. Magistrate Collins from Broadmeadows will go out to ACES, to the Aboriginal elders group, and she will go there not just for community things like NAIDOC but for community activities. So it is participating in and seeing what the community does do, because it is not just people offending that is happening out there in the community. Community organisations run wonderful primary health-care services — underresourced, yes. Child care is so underresourced, but the community is trying very hard to address some of the issues in regard to child care. So it is an ongoing thing. It is not just about having cultural awareness training, but it is also about including Aboriginal people, not just in decision making but in implementation. The Aboriginal justice agreement, once again, is a very good example of that. Before 2000 there was only one Aboriginal person working in the whole of Victoria; now there are over 82 Aboriginal people working in all levels of the administration of justice, but then with the elders on top of that — because we have got nearly 72 elders now — is that right?

Ms A. VICKERY — That is right.

Ms SMITH — And we are going to employ another 12. You are going to have nearly 150 Aboriginal people employed in the administration of justice in a whole range of different areas, and that has been done since 2000. So that is something that I think a lesson needs to be learnt from.

The CHAIR — We will go to Joan, and then we might move to some of the things we have got on our paper.

Ms J. VICKERY — Rocky just brought something back to me when he was talking about his job that reminded me of a job I had at the health services commission. I worked in health complaints. When I was there I actually had to go out to the community and have community meetings all around the state to get the complaints. They had real issues. But when the complaints came in it went away from me. That was not my role; it was another officer's within that department. The message I got back from the community was that it was just a toothless tiger, because it never did anything. It just went and talked to people and everything. They wanted action. They wanted a result, and they did not get one. I do not know whether that is a negative thing to say, but I thought it might be worth noting.

The CHAIR — It is fine.

Ms J. VICKERY — I understand about taking those calls, and I do not know how many times I have rushed for a book to understand what they were talking about. But our people just do not do it, and they do — over

the fence you go. If you have got a problem with a neighbour, sock him in the eye, and that is the end of the matter. They end up in court, and we have them at the court. It is just like a circle.

The CHAIR — Okay. We have touched on these things, because we have talked in a fairly broad-ranging way, but it is clear that ADR could be used more extensively. I think we are pretty clear on that. But could you think from your own organisations, your own base of information, about what the relative levels of awareness are about ADR amongst individual members of Indigenous communities and Indigenous organisations? Just interpreting for Hansard, there is a lot of head shaking, but could someone throw in a comment?

Ms LEE — I think with those information roadshows that you were talking about before, Rocky, and in working at the equal opportunity commission, which has been around for a long time, and by talking to the community, that they have no idea that they are facing discrimination that they could do something about, that they could ring us and take action on their complaints. My experience where I work now is that the community's knowledge is very little.

The CHAIR — So there are disputes relating to discrimination by the system against an individual or the system against a group of people. There are those, but there are also the sorts of dispute that Joan mentioned where you have a problem with a neighbour, who may or may not be an Indigenous person, and you jump over the fence and clock them.

Ms J. VICKERY — It does not matter who it is.

The CHAIR — People are saying there is a low level of awareness of those different types of issues. Could someone talk a bit about how that is experienced, having said it is a bit broad? Yes, Ali.

Mr BESIROGLU — I just have a question. Is it lack of knowledge or is it more about mistrust towards the system? If it is systemic discrimination that you are talking about, is it the discrimination that is part of seeing that as a foreign institution? If we can talk a bit more about that. Is it lack of knowledge or mistrust in the system?

Ms SMITH — It is both, I would think.

Ms GEORGIU — It is both.

Ms SMITH — You think about it. Aboriginal people have been oppressed by a dominant culture. Are they going to go somewhere where they think they are going to be hurt? It is not just the knowledge. It is about whether they have the trust in the system that they are going to have a fair hearing or have a say, and that involves a whole range of different things.

Ms LEE — I think that mistrust also comes from their knowledge of the organisation and then it is the consistency of how the complaint is dealt with. I think Rocky and Joan were talking about it before. I will give them the information or get them started and then they get palmed off to somebody else. I feel a sense of responsibility to another Aboriginal person to give them the best information that I have. But then I give it to someone else who can sometimes be a non-Indigenous person and they do not have that sense of responsibility or have that cultural awareness of how it should be dealt with. Then people think, 'That is just humbug. I am not going to follow on with that'.

Then it is also things like the time that it takes to resolve a dispute; the logistics of how it is resolved. Sometimes it is not right that you just put everyone in a room and say, 'Okay, let us thrash it out. Let us work out the issues'. They are just the logistical things. You have an Aboriginal worker at the front but there is not that support at the back. I think the reason the Koori Courts have been successful is because the process is consistent. You have an elder at the end. Where we work you have the officers, which is an ADR process as well. I do not think we have the conciliation.

The CHAIR — So there is the ADR system that is pretty widespread and a bit uneven and that is part of what we are looking at, how we try to sort that and improve it. My question before related to the extent to which Indigenous communities, individuals and organisations knew about how they could plug into the system of ADR. But for disputes such as the one that Joan mentioned, are there processes inside the community quite separate from the formal system that people plug into informally? I realised having said all that that Tracey wanted to make a comment, and I have skipped over you. Sorry.

Ms GEORGIU — No, I was going to. But I was going to answer the question about the trust, so I can hold on.

The CHAIR — Can we come back to that? Coming back to my point, in a situation like that, how in the community itself might that be worked through, or isn't it worked through at all?

Ms J. VICKERY — I know that there is still a girl — is the Fraser girl still working at the health commission? Nobody sees her. I think they did some awareness posters and things like that. I am going to say something quite political.

The CHAIR — Do; say what you like. It is okay.

Ms J. VICKERY — Our people are not going to stop the mistrust and all the rest of it until somebody has a look at the Australian constitution. I think that is my bottom line. Not for this committee but I just wanted to make sure that that comment was heard because it is a fact of life. You want to have a bit of a read of it now and then and see what it says about us. It is not too great and nobody does anything about it. How old is it for a start? But awareness can be a way — an awareness program within our community. It has to be run by Kooris and have Koori art and that sort of thing.

Mr FOLEY — If I can just talk about the roadshow that goes on with all the other agencies. That is not cutting through, or is it too early days?

Mr TREGONNING — It was thrown together by Consumer Affairs Victoria — the Indigenous issues unit from Consumer Affairs — and so we all jumped on board with it because we can see the benefit of it. Now we are looking at streaming it across different tier levels in the community to go into the schools, as well as to the communities, as well as to the workers, as well as to the non-Indigenous workers who work with the communities. Everyone has full wealth, the LAJACs and RAJACs, so we can basically overwhelm it with enough legal rights and knowledge of other service provisions.

ADR, like you were saying, has not been too successful in the Koori community across the whole process because in my mind I believe there is that distrust we talked about with the Department of Justice, where we were not part of it. That mentality of our community to not trust government agencies is still very strong, very prevalent. As soon as I ring up someone to do just a yarn with them about what the issue is and if we can help in any way, they go, 'Who are you?'. I go, 'Rocky, Rocky Tregonning', and I have to refer to the Lake Tyers mob, being born and bred down there, 'Yeah, I am working with this mob now. I have been here for a few years', 'Oh, yeah', and then we will go through, 'Oh, you [inaudible] boys, yeah'. And it is only through that that I am able to get the community's trust to at least talk to me to start with and we then go through the process of explaining to it.

You see ADR is not a forced issue. A lot of communities think they have to be forced to have dispute resolution assistance, where with mediation it has to be something that they want to bring to the party generally. In the old days it would have been steered through our elders: 'Oh, I will go and see the elders to help resolve this problem with another family'. It depends whether it is neighbours, family or whatever, you know. We would take it back through our groups, and that is where we looked at it with mediation: how do you come back through the elders to the succession groups, to the young parents, to the adolescents, to make sure that they get the best support from the mediation program?

Ms LANGFORD — My name is Norma Langford. I am really pleased that I came today. I have just been appointed to the committee of the Broadmeadows Legal Service.

The CHAIR — Congratulations.

Ms LANGFORD — Thank you. I was asked by our head magistrate, Mr Kumar, to go on the committee of the Broadmeadows community legal service, and I can see their point now. They want an Aboriginal lady on it so I probably can deal with some of this because I did not know half of this existed. In my time here this morning I have learnt such a lot. I really have, and I appreciate being asked. Now I can go to this committee with a lot more knowledge. Thank you.

The CHAIR — Thanks, Norma. I would like to welcome Dr Loretta Kelly. Thank you very much for coming.

Dr KELLY — Thank you. May I send my deepest apologies: don't fly Virgin. I was booked on the 6.15 flight from Coolangatta. I had my itinerary and they said, 'You are not on the system', and refused to let me on the plane. I had it all there. They would not let me on so I had to wait. Qantas would let me. They are Aboriginal friendly with their nice little — I won't say it is a break.

The CHAIR — Loretta, we will give you a few minutes to just collect yourself and get into the feeling of it.

Dr KELLY — To get my stuff together. Thank you.

The CHAIR — But I would like to say I did explain to people at the beginning that the discussion here is subject to parliamentary privilege and you can say all kinds of things, including things about Virgin, and you operate under privilege, so relax.

Dr KELLY — Okay. No, I am an academic so with academic freedom I am pretty happy with speaking my mind.

The CHAIR — Fair enough. All right. We will come back to you shortly. Robert wanted to ask a question.

Mr CLARK — I just wanted to explore this issue of the interface between ADR and traditional community ways of resolving disputes, which Rocky touched on and Maria talked about earlier I think in the example of why the family violence program was not working as well as it could because the community was not being involved. Can somebody tell the committee a bit more about how it would work to have the community involved in resolving disputes? And going on from that, can anybody think of a way in which the greater community involvement could be achieved with ADR or indeed through the Family Court, the Koori Court or any other institution?

Mr TWIST — Certainly in terms of the second part of the question about greater involvement, I think the way that we approach ADR we have now got a blueprint in terms of the Koori courts and the Aboriginal justice agreement for an approach to involve Koori communities more in the delivery of justice services. I think there is probably room to have a look at that development a lot more in terms of ADR on the civil side. The Koori courts have been very focused on crime, but I think in terms of assisting people to resolve their own disputes, there are principles that have been applied in the Koori courts that probably relate just as easily to the civil side. It is not just in terms of Koori communities either. The principles in the Koori Court, while Aboriginal principles and Koori principles are wildly different from Western tradition, in some respects they are remarkably similar — the notion of respect for your elders and your ancestry, for example, and things like that. I think there are elements that have been applied in the Koori courts that can and should be applied throughout the justice system. I think in terms of ADR there are things that we should look at in terms of that.

Mr CLARK — If I could push you a bit, would you perhaps see a role then for elders being involved in some part of the mediation or dispute resolution process for various forms of civil dispute?

Mr TWIST — Potentially; I think we have got to be careful about how far we stretch our elders. I think the increase in the place of respected persons, which gives you a bit more flexibility, has been a good thing. There is no doubt that the elders have had a significant role in the Koori courts, and a very important role. Potentially there is room for that, but, as I say, we have to watch the health of our elders in that respect as well.

Ms J. VICKERY — I will get Rosie, maybe, to help me with this. There is an issue around family violence and how they perceive the elders and respected persons. That is why we do not have certain things come to the court. It is because of the way that we can be perceived. Do you know what I am saying, Rosie?

Ms SMITH — That is right. In the Koori Court they will hear all matters except for sexual offences and matters of family violence. That is only a technicality, the matters of family violence, because it is the breach of an intervention order that does not come into the Koori Court. Let me say that the elders hear on a regular basis matters which involve a violent offence upon another person, whether it is the partner or family member or something. They do hear a lot of family violence.

The reason for excluding the family violence and the sexual offences was that at the time the community was discussing family violence issues and the sexual abuse issue and they wanted to work together about how we best deal with that. They wanted to take things slowly. The Koori Court is a new system in the magistrates system, so let us move slowly in the sexual offences and the family violence issues where it is very thin.

Ms J. VICKERY — The thing is that we can be seen to be taking sides with one family over another, or partner over a partner. It can really blur and it might muck up the whole issue, wherever you are at with helping those people. It is a little bit tricky. I am sure it can be done, but I understand we have to find out how it can be done. That is the issue. I think a lot of that stuff needs to be done before they come to court.

Dr KELLY — Your point about stretching elders, I wrote an article with another Aboriginal women in relation to youth justice conferencing, which is a restorative justice scheme for young offenders in New South Wales. One of our arguments was that Aboriginal elders were being involved in youth justice conferencing, but it was very much a tokenistic approach. Our argument was that our elders needed to be respected as consultants. In fact the act specified that elders can participate in an advisory capacity. My argument is: why can the solicitor get a minimum of \$250 per hour — that is a basic rate — yet with regard to our elders, who have the knowledge of our Aboriginal customary law, there is no recognition that they be paid equally. That is my response to stretching. There is no stretching if Aboriginal elders are actually paid according to their wisdom and knowledge and high level of skills.

Ms SMITH — I am just responding to that issue. Yes, the elders do get paid in the Koori Court, but it is not sufficient. If anything, when we tried to do a comparison about the payment, a lot of elders did not want to get paid, because a lot of them were on benefits, so they would get penalised. That is still an issue. We tried to get a tax exemption — that was not allowed. We tried to have an exclusion under the social security award, the Centrelink act, to have them exempt, but that was not allowed. What they ought to do is get the same sort of payment, like you were saying the solicitors' fee but even for people who sit on tribunals, because of the expertise that they bring into the court. That is something that Annette has been working very profusely with as manager of the Koori programs to try and get that. When Neil was talking about stretching the elders, the same elders who sit on the Koori courts are being asked all the time, because they sit on their own boards. Aunty Joan sits on how many boards?

Ms J. VICKERY — Two at the moment.

Ms SMITH — Aunty Norma, you know you have been asked to sit on another board. Our elders are being asked by local community organisations, other mainstream organisations, because it is cool. It is proper protocol to invite an Aboriginal elder, but not have that same sort of respect, I think is what you are saying.

Dr KELLY — Yes, may I just refer to an article that I recently published in the *ADR Bulletin*? People may get a copy of that. Laurence Boulle was the editor at the time. People might know he is a very well-respected, non-Indigenous practitioner and theoretician as well. We worked on this article that was part of my PhD chapter that I ended up not using and I published it — a long story. But my point is that I make several arguments in relation to what constitutes the elements of a good practice Aboriginal mediation model.

Under the heading of 'cultural appropriateness', the first point I make is the involvement of elders. The other point that I make is drawing upon customary practice. The points that you make are not new, but what I would submit is that they are actually what constitutes good practice mediation. If that is what we are talking about here, this forum is about having culturally appropriate — we know those words are a bit, you know, the arts going 'culturally appropriate' — and good, proper ways that work for Kooris, elders are crucial, as is drawing upon Aboriginal customary law. I think that needs to be explored further.

As you would be well aware, in both Western Australia and the Northern Territory there has been a response by the various state-based law reform commissions in relation to the recognition of Aboriginal customary law. If we can probably get some sort of working group happening out of this — I am not a Koori; I am not from Victoria. I am merely here to give some sort of support and advice to people if they choose for me to assist in any way. The whole issue of the recognition of Aboriginal customary law and incorporating that into mediation is a huge but fundamental issue.

The CHAIR — I think this is a really good opportunity to ask you to make a contribution. I know you have already started. We understand that you have a prepared contribution that you would like to make to our

hearing this morning. I would like to thank you formally very much for coming down from New South Wales and taking the time to share your insights with us. We will hand over to you.

Dr KELLY — Thank you very much.

The CHAIR — After that I think we will be having maybe a bit more discussion and have some lunch.

Dr KELLY — Thank you. I acknowledge the elders. Thank you very much for allowing me to come. I am Gumbaingirr on my mother's side and Dungutti on my dad's side — that is the north coast of New South Wales. Greta has been emailing me; I have been cc'd to Greta's emails for many years now. When she sent this to me I thought this is really good, and we had some discussions about the issue. I guess I have presented to the chairperson several articles that I have published in relation to the issue — the first being community mediation services towards good practice in mediation for Aboriginal communities; the second is mediation in Aboriginal communities on familiar dilemmas, fresh developments; the third is using restorative justice principles to redress family violence in Aboriginal communities; and the fourth is Indigenous women's stories speak for themselves, the policing of apprehended violence orders. I am not sure whether we have discussed family violence here in detail, have we?

The CHAIR — No, not in detail. We have just touched on it, but go ahead.

Dr KELLY — Okay. I would really love to be open to whatever any questions people have for me. But just a bit of my background: I went to law school, and in my final year I thought that this does not work for our mob. I could not see myself standing in front of a magistrate assisting one defendant after the other. So I worked for an Aboriginal legal service for a while, and I soon found that I just kept mediating matters. I realised that I was just naturally a mediator and that that was what I was interested in being. So I have been a mediator for the New South Wales government-funded scheme, which is called Community Justice Centres. It is quite similar to the Victorian Dispute Settlement Centre. It is a similar scheme to that. I have been mediator for them since 2000. I have been a mediator and facilitator for hundreds now — I think it is about 200, if I have a look at my files. Most of those involve Aboriginal parties. I guess the point I want to make is that it works. Mediation works. If done in a culturally appropriate way — sorry, if done in a proper way — then it can be very effective. It can address a wide range of issues. I have mediated the standard AVOs against the neighbours — say, the Aboriginal neighbour and the non-Aboriginal plaintiff. If the Koori sees that the white person is racist and you get into mediation and they are, then you have to deal with that. I have dealt with those sorts of AVO matters. I have dealt with huge community disputes involving police — say, a matter where police have unjustly dealt with an Aboriginal defendant in our community. I have facilitated those sorts of mediations. I have mediated some really sad mediations involving child protection matters where children have been abused by their parents. In New South Wales our welfare service is called DOCS. Here what would — —

Mr CLARK — DHS.

Dr KELLY — So yours is the Department of Human Services. We are the Department of Community Services. In mediated matters involving child abuse we have actually got some really good outcomes, and children have been able to be reintegrated into their family over a period of time once the — I guess, for want of a better word, to label the parent — abusive parent has pulled their socks up. They have gotten their act together and stopped the drugs and the alcohol and the domestic violence and all that sort of stuff and proven themselves, and the child has been restored to them. So there has been a restoration plan. I have actually attended mediations. I have gone in and DOCS has said, 'That child will never return to that family'. That has been the position at the start, and we have gone through this culturally appropriate mediation process, and at the end DOCS has actually changed its mind and seen these parents as human beings, as people who are suffering. Maybe they were members of the stolen generations, maybe there were drugs and alcohol in their own families, but for whatever reason they ended up abusing their children. But what they are saying and crying out to DOCS is, 'Please give us another chance'. We were able to shift DOCS from no restoration to, yes, restoration in, say, two years if they do A, B, C, D. Part of my mediation model is pre-mediation and post-mediation, so I actually follow through with clients and see if everything is okay and if they need any further services. These matters are actually long lasting. Mediation works for our mob. Even though I am speaking from a New South Wales perspective — I have mediated disputes across the whole state of New South Wales. I have been to Brewarrina, I have been to Dubbo, I have been to Wagga Wagga and Redfern; everywhere. There are common issues with Kooris, Gooris and Murris in New South Wales.

Other than my publications which I offer to you for you to read about and maybe get some ideas, the other point I did want to make was in relation to family violence. It is a controversial issue as to whether we use mediation where it involves family violence. Aboriginal women advocates on both sides of the fence — some argue very strongly that mediation should be used because it is about empowerment and choice and that with safeguards in place mediation can be used; others say absolutely not; domestic violence or family violence is about power, control and authority and a mediator can never address those power imbalances, and she — often a woman, but not always, as we know — the victim is unable to negotiate her interests, so mediation is a farce. They are the issues that have been brought forward. So I actually held a conference in, I think it was, about 2000. I got together a mob of Aboriginal men and women who worked in the area of family violence. I got this small grant — I do not even know where from — and I used that to have this little conference. We actually discussed this concept of restorative justice. In the first session I explained what restorative justice was, and then someone explained what mediation was, and someone presented on family violence issues. Then at the end of that two or three-day conference it was pretty unanimous that that restorative justice model should be used for family violence, not mediation.

What restorative justice is and how that is different is that communities of concern, which would be elders, aunts, uncles — whoever is involved in the family who provides family support — attend mediation and are actively involved in mediation or a restorative justice process. Whereas with mediation, support people have no voice. Support people are silent in most mediation models. Restorative justice gets communities of concern and these community members involved — elders, aunts, uncles, maybe a teacher who gets on really well with one of the children, actually participate in this restorative justice process. Are people aware of what restorative justice is?

Ms COOPER — Loretta, I am a foster carer, and I am currently going through the restoration resolution decision-making course now with one of my youngest children, and I have been doing it for the last two months. Just as you said, all the appropriate people were called in: DOCS, VACCA, grandmothers, grandfathers, aunts, uncles — they came from everywhere. It is so successful. It is working. It is only the second time but I am really happy with it because it has taken a long time. The other grandmother and I were never talking but we have become like best friends now, which we thought would never ever happen.

Dr KELLY — Thank you so much for all this, because that model — to put my academic hat on for the moment — is actually a restorative justice model. That would not be mediation.

Ms COOPER — We get the elders in — —

Dr KELLY — Yes, exactly.

Ms COOPER — who have the final say.

Dr KELLY — Yes. Please feel free to read our paper, which is about restorative justice principles in relation to family violence but can be equally applied to child abuse and neglect matters. The recommendations that I make include that respected elders control the program and the process, and then it is maybe an aunt or a younger Aboriginal man who you decide will work well with you. It is very flexible. The model has to be very flexible. In New Zealand they use this restorative justice model for child protection matters, and I do not know why we are not doing it effectively in Australia. It is not just a Victorian issue. It is an Australia-wide issue, but Victoria could actually lead the way in this area of using an Aboriginal model of family violence dispute resolution for child abuse and neglect. It would be very exciting and you would be the leaders in Australia.

The CHAIR — We have lots of questions so we will start with Joan.

Ms J. VICKERY — I was just thinking about a case in court, Loretta. How do you manage intervention? I had two young people, partners, both in court on charges. It was a diversionary type of day for me with the magistrate, like what you were saying, because she was completely unaware that she treated one differently to the other. She had her eye on the young girl. She just took an attraction to her, thought she was the prettiest thing she had ever seen. You could see her heart going out; she wanted to help this girl. But there was badness in the room. There was violence going on with this young couple. If she had have gone overboard, she was giving that girl a hiding that afternoon. The man would have gotten stuck into her. How do you intervene? How do you get people to come to you? We see a lot of this in the court and we are powerless to interfere in those private types of matters.

Dr KELLY — Thank you, Aunty Joan. That is a very good question. Firstly, I would not offer mediation or the restorative justice process to a family unless they had support mechanisms in place. For instance, I work on

the north coast of New South Wales. In a particular matter I am thinking of at the moment, we had the Aboriginal — I am not sure what her official position is, but she is essentially the victim support worker, so she works with victims. So we had her. We had the Aboriginal male person who works with perpetrators. He runs an Aboriginal men's program. So we had them involved. The couple were first getting counselling and support with the victim-oriented worker and then the perpetrator-oriented worker. They did a bit of work. Then we came in and did a mediation, a short session, just to assess the dynamics and see what happened. The answer to your question is that it has to be a holistic approach. I know that it has become rhetoric, to say holistic, but it is blackfella way.

Ms J. VICKERY — Yes, I know.

Dr KELLY — Traditionally we did not deal with just one little bit, did we? We dealt with the whole mob because if we didn't, our societies would become dysfunctional and we would not survive.

Ms J. VICKERY — But my question is: how do you get the person to see that this is the situation they are in? You know, this young girl may not see. She may think it is quite the norm to get a hiding every day.

Dr KELLY — Exactly, and that is where the restorative justice model comes in. That is why we have communities of concern. There are various theoreticians in terms of restorative justice theory and one term is 'communities of concern'; for us it is just having our mob around. So we have someone who we know is a strong elder, who is respected and who that woman respects. We bring her in and have a private session. That elder says to her, 'Daught, what's going on?', and then they have that yarn. I have seen it. I have facilitated these processes and I have seen this woman break down and realise: I'm a worthy human being; I don't deserve to be beaten; this is wrong. I have seen it happen. That is why we need that elder — or it may be a best friend or whoever — in that private session, to get through to her, because sometimes with the victim support person you can just go through the motions but you are not fully participating. Sometimes when you really get together and you are going through this process and you have the elder or best friend saying, 'Sister girl, why, why?', it really opens up for just a transformation. So it does work; I have seen it work, Aunt.

Ms SMITH — Thanks for that, Loretta. What I wanted to ask is: do you see the importance of any of the issues that a community might be facing being dealt with on country?

Dr KELLY — Oh, yes.

Ms SMITH — You know, don't bring it into a courtroom, don't bring it into a foreign building or anything, but have it somewhere on country, whether it is in a community organisation or a place which is mutually acceptable to everyone.

Ms COOPER — What we are planning on doing now is having barbecues every six weeks, one down at Portland and one in Shepparton, where we are all from, and hopefully we will work together.

Ms SMITH — So you are going to your own country and pursuing that cultural experience as well as doing it in a really collective way.

Dr KELLY — I have never held a mediation or a restorative justice process that was not on country. It has always been on country, and in my PhD thesis it was in relation to native title. Obviously with native title we had to have it on country. No one debates that, do they? But for family matters, for neighbourhood disputes, for workplace matters, or whatever, it still has to be on country. There has to be a venue that is acceptable to all parties. That is just basic mediation practice, and no-one disputes that, but what is an appropriate venue for a Koori person is not straightforward, it can be very complex: 'No I cannot do it at the Land Council because my brother is there and he will come in and he will just get so fired up, I know, and it will just be shame'. And so it will just depend on the scenario, but we have always found — sorry to use the term again, but — a culturally appropriate venue. We have always been able to find one, so it is really not a barrier.

Ms J. VICKERY — You have to look after cultural safety.

Dr KELLY — Yes, that is it exactly — thank you, Aunt — that term is 'cultural safety' and we use that a lot where I come from in terms of where I teach at Gnibi, Southern Cross University, all of our units that we teach are all about, that we start with cultural safety. Thank you for raising that.

Ms GEORGIU — Hi, I am Maria from the Darebin Community Legal Centre, and one of the areas that we are involved in is the Family Violence Court at Heidelberg. We have heard that the community is not happy with the court and so we are trying to get an understanding of why that is. This is fantastic; what you have brought down. The question I was going to ask is: where do you see this process occurring, because I suppose for us at the Family Violence Court we have seen it when it is at its worst, like the situation is. I am just curious whether that is probably one of the reasons it is not successful because it is at its worst, but more importantly it has other people involved, like the police, the magistrate, and people like that. I was just trying to work out at what stage could this work in a way that — —

Dr KELLY — Exactly, we need to intervene at the earliest stage possible and, once again, one of my articles states that best practice is that early intervention model, okay, so no-one disputes that. You do not just have a program without a completely holistic, Koori-specific education campaign around family violence, not general but specific to that community because for each community the dynamics in family violence will differ. I would not even commence some sort of court without having probably at least 12 months of full-on community education programs. You know, the women's weekly meetings. One will turn up to start with but by 12 months you are going to have 100 and you are going to have to pay — you need a lot of petty cash then, because you are going to get a big mob turning up — because it actually does work. They will work for family violence prevention units, when we had ATSIC and the very first one that we established in Kempsey, I was fortunate to be the manager and I established that service.

Everything that we did at the start was all about community, relating to the community, just yarning, having cuppas with everyone, a meeting with the elders — not these formal advisory committees. Yes, we had the formal advisory committees, but we actually went and sat down with people wherever they were. And I got into trouble from my boss once because I went to the pub and was yarning with people. I was not drinking, okay, but I was just yarning. You know, we had these violence prevention units, for these women who have black eyes and I was there saying, 'What is going on with you sister girl?' and then she told me these stories. Women were opening up to me in these different places and they actually ended up coming into the service, maybe three, maybe six months later, but they actually came in. And then they ended up getting that AVO protection order — what is it called here?

Ms CLARKE — An intervention order.

Dr KELLY — They ended up getting the protection order. Restorative justice can be a good model, because we know that intervention orders or protection orders are often inappropriate for Koori women, because the gunjies — the police — get a full exclusion just to stay away from the house. But this woman still loves the man. She loves him, but she hates the violence. We should sit down and work out what clauses or conditions on a protection order will work for these people. We should ask them, 'What sort of services are going to work for you to help you, sister girl?' — or brother. We had a children's counsellor there, and you work holistically with the family, so it can work. I have seen it work.

Ms DUPUCHE — The more I understand about the Indigenous way of working in their communities with people, the more I realise how much we have got to learn from that and incorporate that into working with our non-Indigenous community as well, because there is a huge amount for us to learn. With all the things that Loretta is saying, I am thinking that when I work that way with non-Indigenous families it works much better, too.

The CHAIR — Unless someone has something burning to say, that is probably a good note to end on. Does anyone want to make a final comment, given that it is 1 o'clock? No? That leaves it to me, on behalf of the committee, to thank you very much for your fulsome participation in this. Our particular thanks to Loretta. That was a fantastic discussion.

Dr KELLY — Thank you for having me. I will give you all my details. With the various programs that you are all working on, please contact me and we can all work together.

The CHAIR — As I said earlier on, the people from Hansard have recorded everything you have said — for better or worse! I am not sure how we will manage to get the transcript back to you, but we will do that through Greta.

Ms CLARKE — Yes, that would work.

The CHAIR — You will be able to make minor changes to it if something is not expressed in quite the way that it would make sense, but basically what you have said today stands as the record. Kerryn and Kate will be trawling through that and filtering out those bits that we need for our report. Partly on the basis of what you have said and all the other work that we have done, we will complete the report and we will be making a number of recommendations to the Victorian government on how we could improve things. As I said at the outset, the government will have six months to report back to the Parliament. We think it is a good process, and then it is back over to the community and the government to make sure that those recommendations are implemented. Thank you very much for your time. We have some lunch for you. Also, I absolutely want to thank Greta and the Aboriginal Heritage Trust for their hospitality. Thank you very much.

Committee adjourned.