

- VIC Legal Services, 9 Feb 2015 -

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

# The ILNP Background

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

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

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

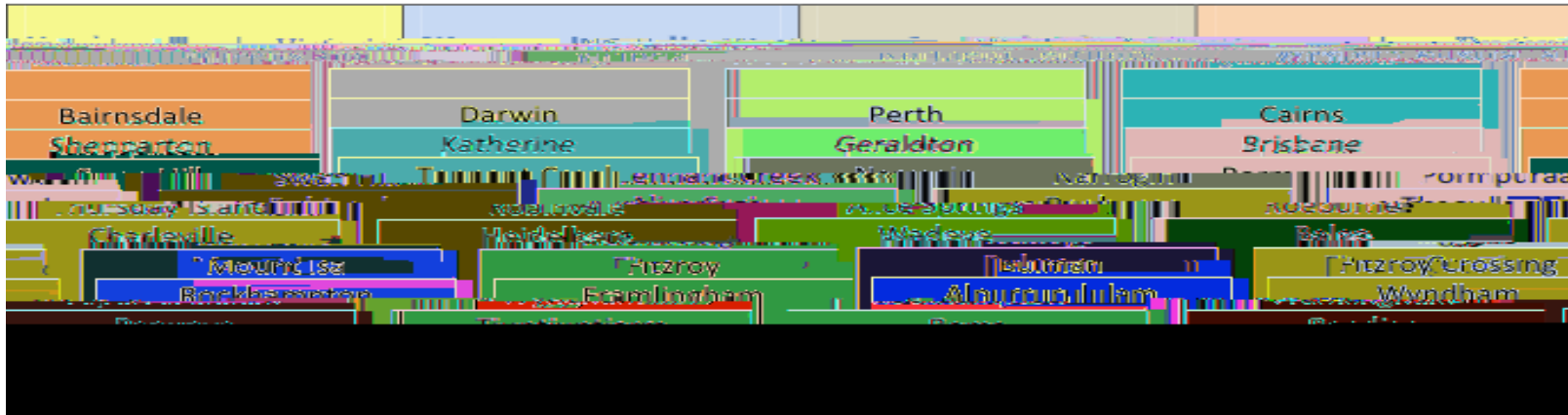
- ARC Linkage project, working with joint Indigenous and non -Indigenous industry partners, including legal services
- Focus on four jurisdictions: VIC, WA, NT and Qld. With NSW, u22v0 TdT66 0 Ptour2(, )-24(i)-1(n)1

# ILNP: Reporting Findings

## Reports and animated films for each jurisdiction:

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

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



# Focus groups/Stakeholder interviews



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



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

# Why the ILNP?

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

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

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

## Criminal law focus

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

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

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

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

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

## Why the ILNP?

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

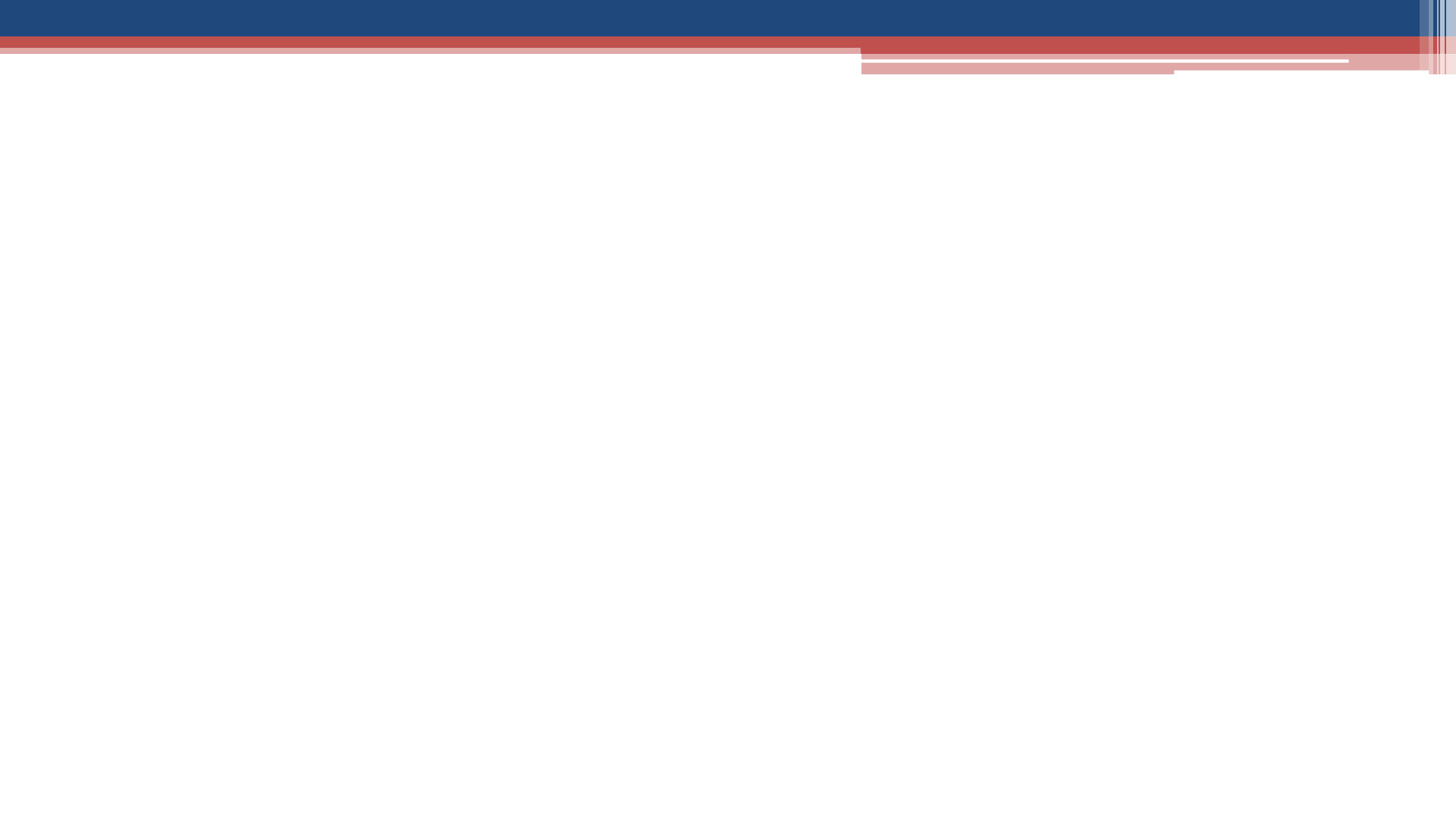
# VIC Priority Areas: most common issues

## VIC Priority areas: other issues

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

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





# VIC: Priority issues by gender

**Women**

**Men**

<b>Issue</b>	<b>Women</b>	

## VIC: Tenancy issue by type

*If you've split from your wife and the wife's got the kids, it's very hard for single men to get houses.. They want to have access to the children, but you can't have access unless you have a house, and you can't get the house unless you have the children. It's really going back and*

## VIC: Tenancy - Repairs and Maintenance / Rent

*A young girl was involved in [one housing issue]. She got her house broken into by small kids and they completely wrecked everything, turned the water on and flooded everything. [Housing said] they were going to come and clean up and do stuff, [but] they've done nothing. They were s'posed to rip the carpet up. That's about 12 months ago, the carpet's still there (31.8 c 0.36 -1.8 | 0.947nW3r8.3(t)..9(p) ).*



## VIC: Tenancy - Overcrowding and Connection with Other Issues

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

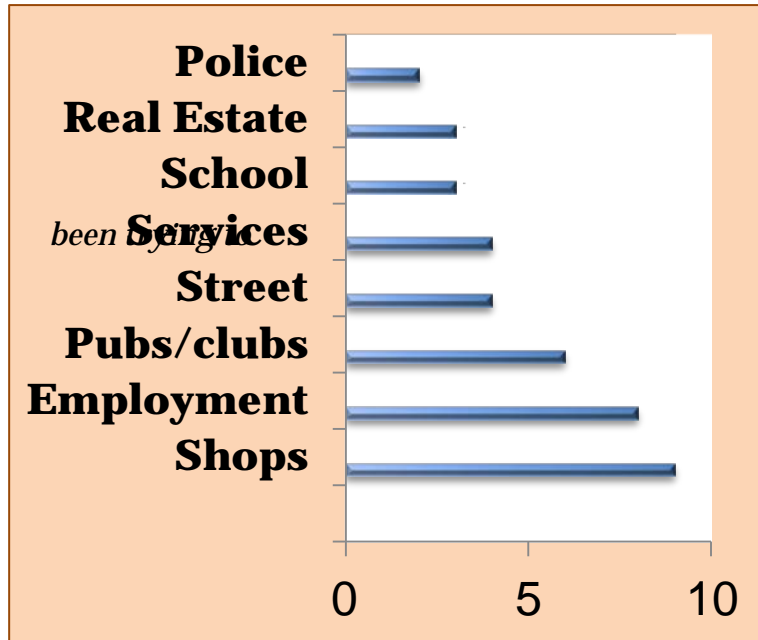
*The elders get abused because they won't turn away family. They'll come in... They'll use all the power and eat all the food.... I see that a lot - really, really, really high utility bills - because they haven't been able to afford to pay them. No one's contributing to the household. .... And they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

## VIC: Neighbourhood disputes

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

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

## VIC Discrimination - common issues



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

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

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

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



# VIC: Child removal

## DHS practice

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

.....

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

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

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

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

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

## Other Issues - CP

- Insufficient scrutiny by courts of DHS practice (Koori Court or similar as alternative/Koori List in Children's Court)
- Not sufficient contact with lawyers

DHS not encouraging contact with lawyers

Not enough CP specialist lawyers available (resourcing issue)

Problems with funding of assistance for child protection matters

- General unfamiliarity with family law system, including CP (>reluctance to challenge, mistrust)

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

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



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

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



# VIC: Wills/Victims Compensation - unrecognised legal need

- Wills often only associated with property ownership

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

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

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

- Little awareness of scheme but high levels of need

*If we were to go out to the regions with a bunch of VOCAT forms and we had a public*

# Access to justice issues

More focus on civil and family law need by better funded legal services

Increasing service provision outside capitals

Increasing access to information about civil and family law / legal process and who can assist with civil/family law problems

Complexity of need: implications for service delivery

Services working together more effectively





## 2. Melbourne-centric service delivery

Too much work done in and/or from Melbourne.

Location presents as significant barrier to accessing justice.

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

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

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

➤ A more permanent presence in the regions is crucial

### 3. Increased access to information

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

## 4. Complexity of need: implications for service delivery

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

- Complexity < Delay or avoidance in addressing issues

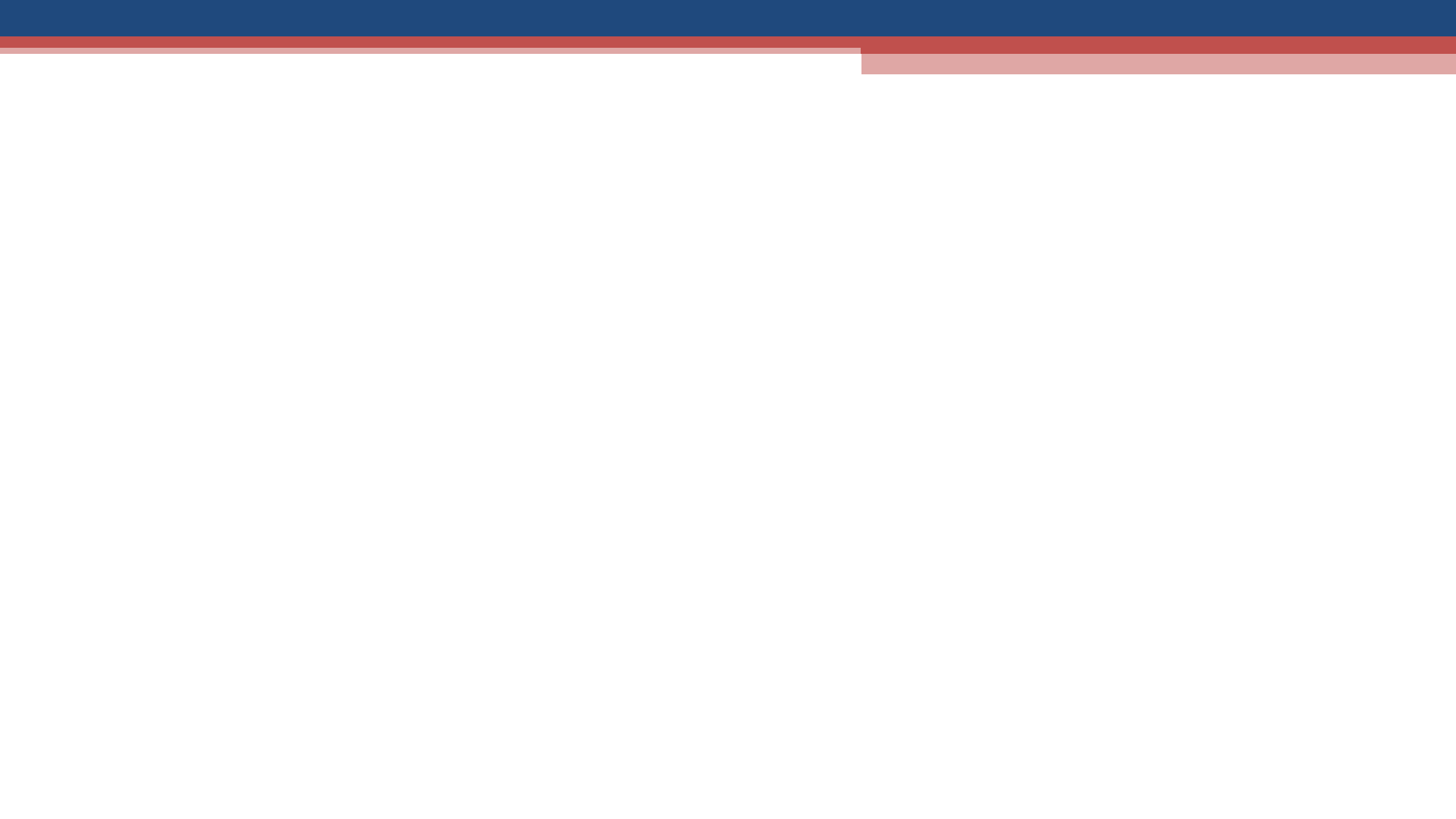
*It does escalate because it's left alone. And then you are seeing them again in three or six months' time for an issue that could have been resolved and saved, but because they weren't engaged, because it seems too hard, it doesn't happen. So, then it escalates to...getting an eviction notice (Community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

- Contact with legal service as early as possible

# Services working together more effectively

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

- Something like a one-stop shop (all needs, including non-legal, met in single place)
- Appropriate warm referral



# Where to find us

- **Website:** [http:// www.jcu.edu.au/ ilnp/](http://www.jcu.edu.au/ilnp/)
- **Facebook:** Indigenous Legal Needs Project

