



Submission of the Legal Services Commission of South Australia

To the Senate Standing Committee on Finance and Public Administration's Inquiry into Access to Legal Assistance Services (Aboriginal and Torres Strait Islander experience of law enforcement and justice services).

The Legal Assistance Sector in South Australia

1. The Legal Services Commission of South Australia (LSC) is part of the legal assistance sectors comprised of Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal services (ATSILs), Community Legal Centres (CLCs) and Family Violence Prevention Legal services (FVPLs).

The Commissions are funded by both State and Territory Governments and the Federal Government. They are required to spend State funding on cases involving State law and Federal funding on cases involving Federal law.

The only ATSIL in South Australia is the Aboriginal Legal Rights Movement (ALRM). ALRM is mostly funded by the Federal Government to provide legal assistance to Aboriginal and Torres Strait Islander peoples (ATSI).

There are 10 CLCs in South Australia, funded mostly by the Federal Government. A small percentage of some CLCs funding comes from the State Government, with funding usually for delivery of specific services. CLCs often act for disadvantaged people who are refused legal aid.

The Family Violence Legal Service Aboriginal Corporation (SA) is a free legal service assisting ATSI victims of family violence and sexual assault and has offices in Port Augusta, Port Lincoln and Ceduna. It is funded by the Federal Government.

The LSC fully supports all parts of the legal assistance sector, as each organisation provides unique services to disadvantaged South Australians.

2. The LSC supports culturally appropriate legal assistance services that are dedicated and available to ATSI Australians.

The LSC recognises and accepts that ATSI Australians are often among the most disadvantaged people in our community and are heavily overrepresented in the prison system.

The Legal Services Commission of South Australia

3. The services of the LSC are available to all South Australians.

In the 2013-2014 financial year the LSC received 17 940 applications for legal aid, of which 14 552 were approved. In this period the LSC also provided 14 773 duty solicitor services at courts and 24 830 legal advice appointments. The LSC also responded to 62 744 telephone calls for legal advice and delivered community legal education sessions to 18 243 participants throughout South Australia.¹

4. Statistics are recorded on Aboriginal and Torres Strait Islander (ATSI) clients' use of some of those services, however not in all, and only where the clients self identify as ATSI.

Terms of Reference

a. the extent to which Aboriginal and Torres Strait Islander Australians have access to legal assistance services :

5. ATSI clients are among the most socially and economically disadvantaged, with high legal needs across all areas of the law. The LSC recognises that ATSI clients require specific and targeted assistance.
6. The LSC provides community legal education, legal advice, and legal representation to many Aboriginal and Torres Strait Islander people living in South Australia.
7. The LSC maintains offices in the northern South Australian towns of Whyalla and Port Augusta. These offices provide a valuable service to the residents of Whyalla, Port Augusta and some of the most remote places in the north of South Australia such as Coober Pedy and the communities of the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

¹ Legal Services Commission Annual Report 2013- 2014, p4, available online at: http://www.lsc.sa.gov.au/cb_pages/annual_report_current.php

Commission solicitors are relied upon by these regional and remote communities to provide quality legal advice and court representation. A dedicated Aboriginal Advice and Education Officer is also employed from the LSC's Port Augusta and Whyalla offices and provides legal education to those communities.

The LSC has produced a legal advice card in Pitjantjatjara language for the use of Aboriginal communities in the northern areas of South Australia.

For detailed information on these programs see the **attached** report for the Whyalla and Port Augusta Program from the Legal Services Commission's Annual Report 2013-14.

8. The LSC works co-operatively with ALRM to ensure Aboriginal South Australians have appropriate representation in court and are provided with legal advice and information and family dispute resolution services. In this role the LSC provides an important alternative option of legal assistance, particularly in the cases of conflict of interest.

The LSC has a Memorandum of Understanding with ALRM to facilitate cooperation and referrals. This makes provision for ALRM to refer clients to the LSC where it is not possible, due to workloads, policy guidelines, conflict of interest and other proper reasons for ALRM to provide those services.

In the 2013-2014 financial year the LSC made **2 142** grants of aid to clients identifying as Aboriginal and/or Torres Strait Islander. In the same period **1 604** Duty Lawyer Services were offered to clients identifying as Aboriginal and/or Torres Strait Islander.²

The LSC has noted a significant increase in demand for services from ATSI Australians over the past decade. For example, from ten years ago, grants of aid have more than doubled to clients identifying as Aboriginal and/or Torres Strait Islander. In the 2005 – 2006 financial year 879 grants of aid were made, 546 duty solicitor services offered and 382 advice services offered to Indigenous Australians.³ The statistics show a steady increase, for example, in the 2006 – 2007 financial year 1 120 grants of aid were made, 826 duty solicitor services offered and 442 advice services offered to Indigenous Australians.⁴ In the 2007 – 2008 financial year 1 569 grants of aid were made, 984 duty solicitor services offered and 578 advice services offered to Indigenous Australians.⁵

² Ibid p.57

³ Legal Services Commission of South Australia, Annual Report 2005-2006, p30, available at: http://www.lsc.sa.gov.au/cb_pages/files/2005-06annualreport.pdf

⁴ Legal Services Commission of South Australia, Annual Report 2006-2007, p26, available at: http://www.lsc.sa.gov.au/cb_pages/files/2006_07annualreport.pdf

⁵ Legal Services Commission of South Australia, Annual Report 2007-2008, p20, available at: http://www.lsc.sa.gov.au/cb_pages/files/2007_08annualreport.pdf

The LSC has a free legal advice telephone line. This is available to anyone in South Australia. In the 2013 - 2014 financial year, the LSC provided **62 744** telephone advice sessions.⁶ ATSI client use of this service is not recorded.

The LSC also offers free face to face legal advice appointments in addition to our free legal advice line. These appointments are made where more complex advice or interpreter services are required. This also includes longer instances of advice at our Magistrates Court Civil Advice Outreach Service. They usually go for half an hour to one hour. In the 2013 - 2014 financial year the LSC provided **694** Advice appointments to clients who identified themselves as Aboriginal and/or Torres Strait Islander.⁷

9. The Legal Services Commission has a regular intake of Aboriginal students whom undertake a paid cadetship at the Commission while completing their studies. Currently all students are studying Law, but in the past the LSC has also had Accounting and Finance students as part of the program. Cadets often return to their communities and hence enhance legal knowledge and understanding in their communities. Cadets graduating and completing their practising certificates to become lawyers then increase the number of ATSI lawyers in the profession. This improves the access to culturally sensitive legal services for ATSI people in need of legal help.
10. Five LSC staff identify as Aboriginal or Torres Strait Islander (2.28% of staff). The LSC recognises that having ATSI staff increases cultural awareness and can assist in better representation of ATSI clients.

b. the adequacy of resources provided to Aboriginal legal assistance services by state, territory and Commonwealth governments

11. There is a consistent and increased demand for legal services throughout the State. As mentioned above [8], there are now more than double the grants of legal aid to ATSI clients than there was a decade ago.
12. There are limitations on the type of matters that receive legal aid funding.⁸ Increased resources could mean an expansion in the types of matters funded.

⁶ Legal Services Commission Annual Report 2013- 2014,p.58

⁷ Ibid p.57

⁸ See further the LSC website on eligibility for Legal Aid:
http://www.lsc.sa.gov.au/cb_pages/legal_aid_eligibility.php

13. In relation to Criminal Law matters, where there is no real risk of imprisonment in minor criminal matters and minor drug offences, a grant of aid is not usually funded. Increased funding to enable representation at this more minor end of offending may assist ATSI people to better state their case to the court and make more informed decisions about their options. Feedback from regional staff at the LSC, dealing regularly with ATSI clients, is that in these minor matters, if self represented, ATSI people often have difficulties being understood and/or in understanding police and court processes.

Staff from the LSC's regional offices, who deal predominantly with ATSI clients, have provided feedback that they deal with many clients who are subject to intervention orders. The intervention order hearing is not funded by the LSC as there is usually no risk of imprisonment. LSC staff say that often ATSI clients will have an intervention order placed on them at the time a substantive charge is made, and then sometimes the substantive charge is dropped, however the intervention order remains. This means clients are representing themselves at the hearing, often with little success, unable to articulate their case. They then may be charged for breaching those intervention orders when they may be eligible for a grant of legal aid as there is a real risk of imprisonment on the breach. The intervention order may not have been warranted in the first place.

14. LSC staff in regional offices also have stated that additional funding could assist ATSI clients by expanding the number of services delivered in the north of South Australia.

15. The Law and Justice Foundation of New South Wales' *Access to Justice and Legal Needs Legal Australia Wide Survey* (Law Survey) was published in August 2012. It found that in South Australia the predominant legal needs of Indigenous Australians were in the areas of health, rights and criminal law.⁹ It also found that Indigenous Australians had a higher prevalence of multiple legal problems.¹⁰ In these instances increased funding to enable a broadening of matters eligible to receive legal aid would inevitably increase access to justice for ATSI Australians.

The Law Survey also highlighted the significant scope in increasing access to legal services so that they more accurately reflect the behaviour of the people that use them.

⁹The Law and Justice Foundation of New South Wales - *Access to Justice and Legal Needs Legal Australia Wide Survey*, pp 71, 228-230, available at:
[http://www.lawfoundation.net.au/ljf/site/templates/LAW_SA/\\$file/LAW_Survey_SA.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_SA/$file/LAW_Survey_SA.pdf)

¹⁰ *Ibid*, p 171

It suggested that:

Legal services may need to be extended and provided with additional resources in order to widen accessibility and to meet current demand efficiently. For example, extension of operating hours, telephone, internet and video conferencing services, local services in readily accessible locations, outreach services in rural and remote areas, and services in appropriate languages may all be worth exploring as means of increasing accessibility.¹¹ Such potential changes could be considered if appropriately funded.

16. Enabling better access to legal services could have flow on benefits to all in the community. Early intervention, early assistance and prevention are key parts of the Legal Services Commissions work, providing free legal telephone advice, face to face appointments and community legal education. With early intervention, legal problems can often be resolved before costs escalate.

Concern over interpreter resources

17. The LSC hosts the South Australia Legal Assistance Forum (SALAF). Its members include community legal centres, aboriginal legal services, the Law Society, JusticeNet SA, university law school advice clinics and State and Commonwealth government representatives.

In the 2013-14 financial year SALAF supported the Aboriginal Legal Rights Movement in its concerns relating to the lack of interpreters for Aboriginal people in the Port Augusta gaol and in particular the effect of this during audio visual link attendances.

Aboriginal Court List in the Family Court / Federal Circuit Court

18. One of the LSC staff who works regularly with ATSI clients in the Family law area has suggested that the Federal Circuit Court/Family Court should have an Aboriginal Court list, as the State Courts have developed with success. In conjunction with this he has suggested that the Federal Government have Aboriginal liaison officers within the Federal Court System.

¹¹ Ibid, p207

c. the benefits provided to Aboriginal and Torres Strait Islander communities by Family Violence Prevention Legal Services;

19. The LSC runs specific Domestic Violence services.¹² The Commission recognises the unique problems faced by victims of domestic violence and has put in place policies to promote access to services for victims. A worker who specialises in domestic violence is available to assist victims with legal matters where domestic violence is a factor. This service is free of charge. Some of the advice that is provided by this service is in intervention order matters and matters that may arise upon the breakdown of a relationship due to domestic violence. Assistance is provided with applications for legal aid or in providing referrals to other services.

Additionally, the LSC has a dedicated staff member, working in the area of family law, who maintains a predominately ATSI client load.

The LSC can hence assist ATSI clients, particularly if there is a conflict with the Family Violence Prevention Legal Services.

Other Terms of Reference

d. the consequences of mandatory sentencing regimes on Aboriginal and Torres Strait Islander incarceration rates

e. the reasons for the high incarceration rates for Aboriginal and Torres Strait Islander men, women and juveniles

f. the adequacy of statistical and other information currently collected and made available by state, territory and Commonwealth governments regarding issues in Aboriginal and Torres Strait Islander justice

g. the cost, availability and effectiveness of alternatives to imprisonment for Aboriginal and Torres Strait Islander Australians, including prevention, early intervention, diversionary and rehabilitation measures

¹² See: http://www.lsc.sa.gov.au/cb_pages/legal_advice_dv.php

20. At this time we are not able to comment in detail on any of the other of the Terms of Reference.

21. However, as many of these refer to incarceration rates of ATSI Australians, we refer the Committee to a very recent report produced in April 2015 by The South Australian Council of Social Services (SACOSS), *Justice or an Unjust System? Aboriginal over-representation in South Australia's juvenile justice system.*¹³

The report explains that there has been an increase in Aboriginal over-representation in the juvenile justice system in South Australia, the economic costs of imprisonment as oppose to community supervision, and recommends policies and practices *"informed by principles of self-determination, of involving and empowering Aboriginal people at all levels of the system."*

22. We also refer the committee to the recommendations which came out of the report of the Royal Commission into Aboriginal Deaths in Custody 1991.¹⁴ We say that this report and recommendations remain a relevant and useful starting point for examination of these issues.

Date: 14 April 2015.

¹³ South Australian Council of Social Services, *Justice or an Unjust System? Aboriginal over-representation in South Australia's juvenile justice system*, April 2015, available at: <http://sacoss.org.au/justice-or-unjust-system-aboriginal-over-representation-south-australia%E2%80%99s-juvenile-justice-system>

¹⁴ Report and Recommendations of the Royal Commission into Aboriginal Deaths in Custody 1991 available at: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>

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Legal Services Commission of South Australia

Whyalla & Pt Augusta Program

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Whyalla & Pt Augusta Program 2013-14

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The Legal Services Commission maintains offices in the northern South Australian towns of Whyalla and Port Augusta. These offices provide a valuable service to the residents of Whyalla, Port Augusta and some of the most remote places in the north of South Australia such as Coober Pedy and the communities of the APY Lands. Commission solicitors are relied upon by these regional and remote communities to provide quality legal advice and representation and are highly regarded by the magistrates in whose courts they regularly appear.



Tim Weiss, Manager Whyalla and Port Augusta Program.

Staff

Two senior criminal lawyers and, since the beginning of 2014, 1.6 FTE senior family lawyers are employed in the Whyalla and Port Augusta offices of the Commission. Two duty lawyers provide representation in the Magistrates and Youth Courts in Whyalla and Port Augusta and give legal advice, both in person and over the telephone.

A community legal education officer/adviser provides legal education and advice to the Whyalla and Port Augusta

communities and provides an outreach service to the surrounding rural areas of the Iron Triangle and Eyre Peninsula.

A hard working team of four administrative staff ably assists the lawyers.

Lawyers employed by the Commission in these regional offices represent people who are marginalised because of their location and personal circumstances. The practice includes providing advice and representation to the indigenous population who reside predominately within Port Augusta and Whyalla and on the Anangu Pitjanjatjara Yankunytjatjara (APY) Lands in the far north of the state.

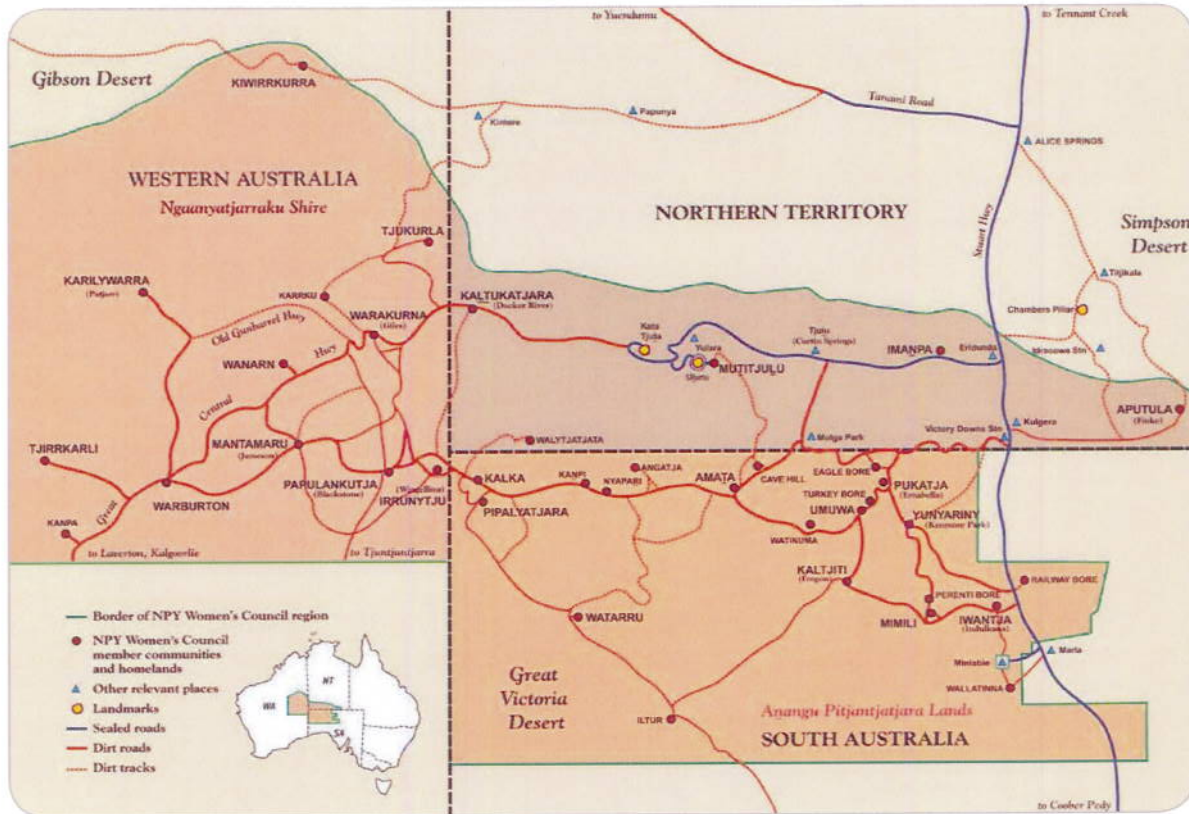
Criminal law practice

The Commission's criminal lawyers act for clients appearing in the Magistrates and Youth Courts in Port Augusta and Whyalla and for clients appearing in the District Court in Port Augusta.

Criminal Files

	2010-11	2011-12	2012-13	2013-14
Whyalla	226	233	336	277
Pt Augusta	292	273	299	279
Total	518	506	635	556

Whyalla & Pt Augusta Program 2013-14



Anangu Pitjantjatjara Lands.

The Magistrates Court sits for 45 weeks a year in Port Augusta and 37 weeks a year in Whyalla. The Northern District Criminal Court sits for 6 three week blocks throughout the year in Port Augusta.

The number of Magistrates Court circuits to the north of the state was reduced from 16 in the 2012-13 financial year to 12 in 2013-14. Six one week circuits have been scheduled for Coober Pedy and six in various communities

of the Lands, including the communities of Iwantja (Indulkana), Mimili (Everard Park), Kaltjiti (Fregon), Pukatja (Ernabella), Amata, and Pipalyatjara.

The APY Lands cover more than 103 000 square kilometres of arid land in the northwest of South Australia, running up to the border of South Australia with Western Australia and the Northern Territory.

Travel to the Lands is by road via the Stuart Highway to Marla, about

1070 km from Adelaide, and then on unsealed roads to the communities. The most remote community, Pipalyatjara, is about 480 km from the Stuart Highway and about 1580 km from Adelaide.

Accommodation is not readily available in most of the communities and solicitors usually camp at locations near the communities where the court is sitting.

Whyalla & Pt Augusta Program 2013-14

The roads, while improving, are often very rough, corrugated, dusty, muddy or even flooded and travel between communities can take a considerable time.

Court circuits are sometimes disrupted by events over which there is no control. During one circuit early in 2014 court was cancelled in two communities. In one, a funeral was occurring and in the other men's business was taking place. Later in the year an entire circuit was cancelled when heavy rains made the roads unsafe and impassable. Court staff and lawyers from the Commission and ALRM had travelled almost to the Northern Territory border when it became apparent the circuit could not safely proceed.

Those on circuit had to reluctantly camp at Uluru before returning to Port Augusta and Whyalla.

The work of the lawyers is enriched by the experience they have travelling to the Lands, a truly beautiful part of the country, and by assisting traditional Aboriginal people in their encounters with the judicial system.

It is a privilege to be permitted to travel to these Lands.



Mulga Park Road on the way to Amata



Camping near Ernabella (Pukatja).



Uluru

Whyalla & Pt Augusta Program 2013-14

Family law practice

The family law practice is continuing to grow.

In the last financial year there has been a focus on improving services for family law clients, particularly in Port Augusta and the surrounding area. To that end, there are now 1.6 FTE senior family lawyers, allowing a family lawyer to be present in the Port Augusta office three days a week and reducing waiting times for clients to obtain advice and representation.

Commission family law services have been actively promoted at community meetings and to other service providers in Port Augusta and Whyalla. In collaboration with the community legal education officer further promotion of the family law practice is occurring through community education and media exposure.

Duty solicitors

General legal advice is provided by two duty solicitors whose time is divided between providing a duty solicitor service in the Whyalla and Port Augusta Magistrates Courts and providing general legal advice both in person and by telephone.

The duty solicitors also have the conduct of case files for clients charged with criminal offences.

Duty Solicitor	2010-11	2011-12	2012-13	2013-14
Far North*	159	294	377	200
Pt Augusta	535	663	923	731
Whyalla	557	451	637	581
Total	1251	1408	1937	1512

* Far North comprises Amata, Coober Pedy, Ernabella, Fregon, Indulkana, Leigh Creek, Marla, Mimilli, Pipalyatjara.

Duty Solicitor appearances by court type in Pt Augusta and Whyalla

	2010-11	2011-12	2012-13	2013-14
Magistrates	1054	1070	1469	1190
Youth	27	35	79	122
Total	1081	1105	1548	1312

Advice sessions *including prison advice*

	2010-11	2011-12	2012-13	2013-14
Pt Augusta	526	635	699	934
Whyalla	658	734	907	863
Total	1184	1369	1606	1797

Whyalla & Pt Augusta Program 2013-14

Community legal education officer/adviser

The community legal education officer provides general legal advice as well as developing and conducting legal education programs and promoting Commission services in the community.

In the 2013-14 financial year a number of sessions were held in Port Augusta and Whyalla, providing legal information and promoting the services of the Commission to the community and to community organisations.

Although most information sessions were in Port Augusta and Whyalla, contact was maintained with other regional communities in the north, including Port Pirie, Port Lincoln, Quorn, Ceduna and the APY Lands.

As communities become more aware of the Commission and the services offered, greater demand for advice and community legal education sessions across the mid-north and north of South Australia is expected.

In February 2014 the Commission commenced a monthly legal talk program at the Whyalla public library. Topics covered included *Wills and Advance Care Directives, Family Law, Consumer Law, Criminal Law* and *Supporting Young People in Police Interviews*.

Another new and exciting project that commenced this financial year was the *Legal Talk* radio information sessions conducted with Umeewarra Media. This is an Aboriginal owned and operated radio station that many people in the Port Augusta

community tune into during the week. Many of the topics covered in the sessions at the library were also covered on this radio program.

This financial year saw an important advice matter which, with legal aid assistance, was finally resolved in the Supreme Court. The matter related to an Aboriginal burial dispute. It highlighted the need to continue delivering sessions on Wills and Advance Care Directives, particularly within the Aboriginal community across the mid-north and north of South Australia. With the changes later in 2014 to Advance Care Directives, this will become a bigger area of focus in the next financial year.

A major event in Port Augusta for the Aboriginal community is NAIDOC Week (National Aborigines and Islanders Day Observance Committee). The community legal education officer and other legal staff attended events during the week. A particular highlight was the Davenport Community Open Day where there was a display of the history of Davenport, traditional cooking and food tasting, traditional dance and song, as well as a tour of the healing garden with some story telling.

Number of participants in legal information sessions

	2011-12	2012-13	2013-14
Pt Augusta	312	225	621
Whyalla	53	339	170
CLE Outreach	N/A	714	331
Total CLE participants in the North	402	1278	1122

These figures do not include the audience in the 'Legal Talk' radio information sessions