

24 May 2004

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
Canberra ACT 2600

Dear Sir/Madam

**Re: Submission to The Commonwealth Parliament Joint Committee of Public
Accounts and Audit**

CAALAS presents its submission to the Inquiry with our response to the ATSSIS Exposure Draft purchasing arrangements attached. (Attachment "A").

We feel the tendering process as proposed would be a disaster for the provision of Indigenous Legal Services in the Territory and would be pleased if the Inquiry read and consider our response already forwarded to ATSSIS.

Yours faithfully

CENTRAL AUSTRALIAN ABORIGINAL LEGAL AID SERVICE INC

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Principal Legal Officer

**Central Australian Aboriginal Legal Aid Service
(CAALAS)**

**Submission to The Commonwealth Parliament
Joint Committee of Public Accounts and Audit**

**Indigenous Law and Justice
Inquiry**

May 2004

a) The Distribution of Aboriginal and Torres Strait Islander Services resources among criminal, family and civil cases.

- **What needs to be done to ensure a fair distribution of Indigenous legal services?**
- **Do you feel that certain kinds of cases are not receiving the attention they deserve?**
- **Do you feel that changes to funding priorities are needed?**
- **Have you been prevented from reaching and adequately serving clients by the time and cost involved in traveling long distances?**

CAALAS provides a criminal, civil and family law practice to Aboriginal people living in Central Australia. The criminal practice absorbs the greatest share of the organisation's resources. (for further details please refer to attached "Response to exposure draft Purchasing Arrangements" at page 4 'cost effectiveness of CAALAS'). We would say that this distribution is fair, given the preponderance of offending and adverse police contact among the client group.

Whilst the service does have discrete criminal, civil and family law sections, these resources and legal personnel can be re-allocated where needed, such as a demand spike, staff shortages or unforeseen urgencies. CAALAS support staff are similarly re-assigned where the demand or other necessity dictates. Operating expenses (as distinct from capital expenditure) can to an extent can be re-assigned for purposes other than what they may have been ear-marked originally. All three legal sections are busy and could almost certainly use additional [financial] resources but this is across the board rather than a situation where one section is under-funded because it is cross-subsidising another.

There is enormous scope for better promoting human rights and equal opportunity law in Central Australia. It is important to run test cases in these areas. Remoteness can make it expensive to obtain instructions from clients and have access to witnesses. Also the protracted nature of court processes can tend to exacerbate these problems. As a specialised remote area Aboriginal legal aid service, CAALAS is able to overcome these issues and run these types of matters although at a significant cost to the organisation.

CAALAS services a vast geographical area that is more than half the size of the Northern Territory (see attachment "B" for a map of the service area). The region has many challenges for the provider of Aboriginal legal services such as language barriers, cultural difference, remoteness, lack of transport and communication facilities, illiteracy, poor health and profound social and

economic disadvantage on every indicator. These factors are addressed in detail in the attached “Response to exposure draft Purchasing Arrangements” and elucidate on the necessity for remote ATSILS such as CAALAS to be assessed in the context of the living conditions that our client group experience. In summary, as a consequence of those living conditions, even the most rudimentary legal matters can require skilled advocacy, as well as superior cross-cultural skills on the part of CAALAS legal and support staff.

CAALAS attends ‘bush courts’ in 9 remote Aboriginal communities as well as Tennant Creek. Bush courts are enormously taxing on the organisation and there is a full description of those issues in the attached “Response to exposure draft Purchasing Arrangements” at pages 5,6 &7 under the heading ‘Magistrate’s Court in Alice Springs and Out Bush’.

Bush courts are a core function of CAALAS and one in which we have great expertise. Maintaining this quality service to bush communities is a priority of the organisation; comes at a high cost and is an ongoing expense. CAALAS is not adequately funded to visit those communities not on the bush court circuit, although we do in exceptional circumstances. We are aware people living in those communities would like CAALAS to visit on a regular basis, which we cannot afford to do at this time.

b) The coordination of Aboriginal and Torres Strait Islander Legal Services with Legal Aid Commissions through measures such as memoranda of understanding.

- **How can mainstream legal aid services better help Indigenous people?**
- **What kind of measures have indigenous legal aid services undertaken to improve cooperation with mainstream services?**
- **How have mainstream services responded?**
- **What prevents Indigenous people from seeking the services of mainstream Legal Aid Commissions?**
- **What prevents Legal Aid Commissions from helping Indigenous Australians?**
- **How do community groups and Indigenous legal aid providers work together? How can they better help each other?**

Alice Springs is a town of approximately 28,000 people, around a quarter of whom identify as being Aboriginal. As stated above, the CAALAS service area is much greater than Alice Springs and we have a total serviceable population of approximately 18,000 persons. This makes CAALAS' client base substantially larger than NTLAC's (the Alice Springs office) and accordingly, we are the larger of the two organisations in Central Australia. In short, CAALAS is the mainstream provider of legal services in Central Australia.

NTLAC and CAALAS work in close proximity on a daily basis. The practitioners and support staff know one another well and work co-operatively where appropriate. Referrals between the organisations are commonplace and there is also collaboration on issues of public interest, law reform and community legal education.

CAALAS has not identified a lack of co-operation with NTLAC.

The NTLAC is not equipped and able to provide service to remote area Aboriginal people. Less than half of CAALAS' client group live in Alice Springs, which is the site of [the only] NTLAC office in Central Australia. NTLAC is restricted in its service provision to Indigenous people in remote areas of Central Australia because it does not attend court circuit (except Tennant Creek), does not employ Aboriginal field officers, (who provide an integral part of CAALAS' service to our clients) and has a formal application process (bank statement for the previous three months etc.) for a basic grant of aid, which many Aboriginal people would find difficult to access.

It is our experience that Aboriginal people prefer to access an Aboriginal organisation for services and assistance. CAALAS has unique expertise in providing legal services to Aboriginal people of Central Australia. CAALAS has been providing a legal service for thirty-one years and our clients feel a sense of ownership toward the service. CAALAS is often the first place of call for Aboriginal people, even when their issue is not strictly a legal one.

NTLAC could not cope with the demand placed on their services if CAALAS ceased to exist. Perhaps unlike other jurisdictions, CAALAS is the legal mainstream in Alice Springs and deals with approximately 80 per cent of all matters in the criminal justice system.

c) The access for Indigenous women to Indigenous-specific legal services.

- Do you feel that your organisation is able to provide adequate legal services to Indigenous women?
- **What are the main obstacles that prevent your organisation from helping Indigenous women ?**
- **What do you feel are the most pressing legal issues confronting Indigenous women?**
- **What would enable your organisation to help Indigenous women more effectively?**

As discussed at item (a), CAALAS was historically a criminal defence organisation that evolved into a much broader-based and comprehensive legal service. Regardless of race, men offend more than women. Therefore, men make up a disproportionate number of CAALAS' [criminal] clients and this has led to the perception among some outside observers that Aboriginal legal aid is a service for men. This criticism is not unique to CAALAS and has been well documented and addressed elsewhere through other *fora* and strategies such as Family Violence Units.

Aboriginal women offend at a higher rate than non-Aboriginal women. As such, there is a higher representation of women among CAALAS' criminal clients than our counterparts in the legal aid commission/s. Despite this, CAALAS (as with other ATSILS) has been criticised as a service that is predominantly for men. We note this criticism is not leveled at 'mainstream' legal aid commissions who presumably assist a disproportionate number of male clients in criminal matters and who do very little by way of civil work.

We concede that some women cannot be assisted 'in house' as a consequence of legal conflict, and those women are appropriately referred to other service-providers. CAALAS can be distinguished from many other ATSILS in that we take on "Indigenous v. Indigenous" matters in criminal, civil and family law. The issue of legal conflict is therefore not restricted to women

In Alice Springs there are a number of other services that can provide legal assistance to Aboriginal women. CAALAS has a sister organisation, the Central Australian Aboriginal Family Legal Unit (CAAFLU) which deals with civil law, family law and domestic violence. CAAFLU is administratively linked to CAALAS, and it is staffed by a female lawyer and three female Indigenous support staff. There is also the Central Australian Womens' Legal Service which deals with civil, family and human rights and equal opportunity law as well as auspicing a dedicated domestic violence legal service and the NTLAC. The above bodies provide options for Aboriginal women.

There is approximate gender parity among CAALAS civil and family law clients.

The CAALAS building itself is accessible to Aboriginal people, including women. There are often large family groups waiting in reception or sitting outside in the front garden. Often CAALAS clients will attend in family groups even though only one member of the family is the actual client. There would not appear to be a perception among the client group that CAALAS is for men.

At present, CAALAS' has gender parity among field staff. Female field staff assist lawyers, particularly male lawyers, to take instructions from Aboriginal women. Also, whilst it is not a formal policy, CAALAS endeavours to ensure that female lawyers are employed at any given time. There is also gender equity among the Aboriginal management committee. These simple measures assist the organisation to comply with gendered protocols that operate among our more traditional clients. Cultural law is also taken into account when dealing with Aboriginal clients.

Domestic and family violence continues to be an ongoing concern for Aboriginal people in Central Australia. Generally speaking, there is and remains an alarming level of assault, sexual assault and homicide among Indigenous people in Central Australia. Indigenous women often bear the brunt of this social tragedy.

These problems can be quite complex and are social, economic, cultural in nature and therefore beyond the scope of a legal service to resolve in any holistic way. CAALAS continues to participate in a variety of legal and community *fora* focusing on issues of domestic and family violence and strategies to challenge and reduce problem behaviours. Our experience in assisting both victims and accused persons, brings a valuable perspective to any genuine inquiry into these social, cultural and legal issues.

We would emphasise here that the revised case-work guidelines in the proposed tender are most unhelpful in this regard. For further details on these concerns please refer to attached "Response to exposure draft Purchasing Arrangements" at page 11.

A second and allied concern for Aboriginal women of Central Australia is the lack of appropriate prison facilities.

d) the ability of law and Justice Program components to recruit and retain expert staff.

- **Are Indigenous legal aid workers overworked, under-resourced or under-paid?**
- **If so, how does this effect their ability to serve the indigenous community?**

- **How does this effect the ability of Indigenous legal aid services to keep the skilled and committed people who work for them?**
- **If the legal aid services are losing people, what can be done to keep them?**
- **What changes would enable legal aid staff to better help clients?**

Although most of the legal staff are recruited from inter-state, field and support staff tend to be local people with strong community links. CAALAS has focused where possible on recruiting legal staff who have a commitment to remaining in Alice Springs. This local emphasis assists in over-coming staff retention problems, adding to the stability and general functionality of the organisation. CAALAS workloads are heavy with approximately one in five of our serviceable population becoming an open file each year (CAALAS opens approximately 3,500 files per year out of a service population of 18,000) ! This figure does not include 'advice only' matters.

The work is not only high-volume but can also be difficult and stressful. Historically, 'burn-out' was something associated with working for ATSIILS and CAALAS was no exception. CAALAS has redressed problems such as workloads and adequate resourcing with measures like prioritising applicant's ties to the community at the recruitment stage; flexibility in allocating and where necessary re-allocating human and other resources, providing employees with favourable working conditions and encouraging a friendly and cohesive workplace; providing staff with other resources such as cross-cultural skills and awareness training etc. A commitment to servicing our clients is something that CAALAS seeks and fosters in its employees.

CAALAS has quite good remuneration for employees although this is reliant upon our PBI (public benevolent institution) tax status. PBI status allows CAALAS to offer attractive salary packaging for its employees. Without PBI status, CAALAS could not be competitive in recruiting and retaining appropriately experienced and qualified staff.

The critical issue for CAALAS is to be adequately funded. A legal service like CAALAS cannot function without secure funding, funding that allows the organisation to respond to the needs of the client group. This is particularly so for Central Australia where the operating costs are so high, and the need for legal aid service so great.

and) Tendering of Indigenous legal services

- **What will be the impact of tendering on the quality and availability of legal aid, particularly in remote areas?**

- **Are the policy directions accompanying the tender an improvement over the old ATSILS policy framework?**
- **Do you think there was sufficient consultation in the development of the tender conditions?**

We would refer the reader to the attached “Response to exposure draft Purchasing Arrangements” for the perspective of CAALAS on the proposed tender of ATSILS as it is an in depth response and canvasses all the issues.

In short, CAALAS is strongly of the view that the proposed tender exposure draft, if actioned, will further disadvantage CAALAS clients.

Remote work is a core function of CAALAS. The tender in its current form does not canvass this work, which is a fundamental aspect to providing an Aboriginal legal aid service in Central Australia.

The ATSSIS consultation process for the tender exposure draft was inadequate.