Reply To: Adelaide

Your Reference:
Our Reference: NG:Indigenous L&J Inquiry

21 May 2004

The Secretary
Joint Committee of Public Accounts and Audit
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Dear Dr Worthington,

Indigenous Law & Justice Inquiry

I enclose the Aboriginal Legal Rights Movement's submission to the above Inquiry by the Joint Committee of Public Accounts and Audit.

Whilst the Inquiry's Terms of Reference are extensive, they fail to address the significant history of Aboriginal Legal Aid and concerns of organisations like ALRM have conveyed repeatedly to Government and ATSIC/S over the years regarding the lack of Government and ATSIC/S commitment to seek a resolution of Indigenous disadvantage in the Justice System.

I trust that this submission will assist the Committee and should there be any questions arising from the matters covered I will be happy to provide further information.

Yours faithfully

Neil E Gillespie
Chief Executive Officer

Aboriginal Legal Rights Movement Inc Submission

Indigenous Law and Justice Inquiry Joint Committee of Public Accounts and Audit

Recognising the need for specialist legal services

The first point that ALRM wishes to make in relation to Governments ensuring the facilitation of proper access to legal services for Indigenous communities is the observation made by the National Commission of Audit in 1996, and quoted in the 2003/04 Australian National Audit Office Report No 13 ATSIS Law and Justice Program (ANAO Report) [1]:

> "Mainstream LACs do not discriminate between Australians in the provision of
> services, although they do give priority to particular matters. Aboriginal and Torres Strait Islanders receive assistance at the same level of priority and funding as other equivalent income groups. **However, they might not receive assistance with matters to which the LACs give lower priority, such as to some civil matters and some test cases.**
>
> **There is a demonstrated need for Aboriginal and Torres Strait Islander people to receive general legal *advice* that relates to their own needs and background…** [2] (Our emphasis)"

On the basis of these reviews alone, there should be no need to debate the premise that Indigenous Australians have special and pressing needs for <u>specialist legal services</u>, as opposed to just "legal aid services" as those needs cannot be met by mainstream legal aid services because of the inherent and irresolvable limitations and restrictions found in those mainstream services.

ALRM's view is also that Indigenous Australians require effective and professional legal representation, as well as advice, within an accessible, culturally attuned environment, and that to provide services that do not meet this benchmark would amount to unacceptable failure on the part of Governments to meet the basic needs of Indigenous Australians and a waste of public resources.

<u>Recommendation 1</u>
ALRM recommends the Committee finds that:

1. **Indigenous Australians have special and pressing needs for <u>specialist legal services.</u>**
2. **Indigenous Australians require effective and professional legal representation, as well as advice, provided within an accessible, culturally attuned environment.**

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[1] Australian National Audit Office Report No 13 ATSIS Law and Justice Program at p. 32
[2] National Commission of Audit 1996, Report to the Commonwealth Government

ALRM makes the following further observations in response to the issues raised by the Joint Committee of Public Accounts and Audit Indigenous Law and Justice Inquiry terms of reference.

A) The distribution of Aboriginal and Torres Strait Islander Legal Services resources among criminal, family and civil cases.

There are a number of initiatives that need to be undertaken to ensure proper legal services are provided to Indigenous Australians. These include:

1. Adequate funding of organisations to enable sufficient resources are available in areas of most need.
2. Increase in the salary levels to attract high quality and high calibre individuals, particularly in Regional Centres.
3. Opening Regional Offices in centres not currently serviced or inadequately serviced.
4. A funding basis that reflects a proper diagnostic of the needs and expectations of Indigenous Australians.

- *What needs to be done to ensure a fair distribution of Indigenous legal services?*

Measuring Needs and Monitoring Disadvantage

ALRM asserts that, consistent with the 2000-2003 Annual Reports of the Social Justice Commissioner, a process of measurement and benchmarking of actual need for legal services needs to be undertaken in South Australia.

Inquiries, such as this now undertaken by the Parliamentary Joint Committee of Public Accounts and Audit ought to identify unmet need in the Indigenous community and recommend the creation of tools to measure that need and the degree to which existing or proposed services meet that need.

The disadvantage of Aboriginal people will not be overcome until it is measured and understood. So much can also be drawn from the Commonwealth Grants Commission Report on Indigenous Funding, 2001. To-date, the needs of our clientele have been assessed only using figures provided by the Courts Administration Authority[3] as an indicator of need. The scope of this data is extremely limited. It reports on the Aboriginality of those who appear only on criminal charges before Magistrates Courts in South Australia. Thus no account has ever been taken of the demand and use of courts, State or Federal, in legal matters other than Magistrate's Court criminal law matters, let alone those legal matters that are never reflected in court or tribunal statistics! The data takes no account of relative disadvantage, particular need nor the characteristics and problems of particular communities. It takes no account of the neglected area of family violence and the position of Indigenous women. To rely on such data for an assessment of need would be completely unsatisfactory. At the very least, comprehensive study should be undertaken to accurately determine Indigenous women's needs for legal services and access to justice.

Distribution of Resources: civil, family and criminal cases.

[3] Courts Administration Authority, "Aboriginality by Court" 1/1/201 – 31/12/2001

In relation to the distribution of resources between civil, family and criminal cases ALRM points to the fact that there has never been developed by ATSIS or ATSIC a means to measure the comparative value of:

- Criminal cases as between the states and territories[4] .
- Different kinds of criminal cases, for example a guilty plea on rushed instructions in a bush court vs a District Court criminal trial.
- Family court matters of varying degrees of complexity[5].
- Civil cases as between the state, territory and federal jurisdictions.
- The variety of civil matters covered by ATSILS , for example the comparative degree of complexity of racial discrimination casework assistance vs advice on a minor civil claim.
- Long term community development roles of ATSILS work, such as representing remote communities in licensing court applications to control the detrimental effects of alcohol on communities.

ALRM notes the failure of ATSIC's ALSIS project to create a means to measure comparative values for ATSILS work and submits that until a proper measurement tool is created, an inquiry into the distribution of resources between these branches of legal practice by ATSILS will have no proper basis of comparison or judgement of casework statistics.

Notwithstanding the above, it seems clear that protection of women's interests and protection of victims of family violence is a grossly neglected area[6]. ATSIC itself has recommended a comprehensive national study to accurately determine comparative need for legal services for women [7].

ALRM notes that questions raised with ATSIS arising from the Exposure Draft for Purchasing Arrangements of Legal Aid Services for Indigenous Australians about the elements of the funding formulae used to allocate funds as between the states, territories and regions have not been answered[8].

ALRM submits that the desirable attributes of a measurement tool would include:

- A measurement tool that normalises federal, state and territory jurisdictional and procedural variations and acknowledges significant variations.
- A measurement tool that acknowledges and weights remoteness, language difficulties and the use of interpreters.

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[4] Variations in substantive and procedural law between states and territories may mean that, for e.g. a serious assault or a break, enter & steal matter requires different degrees of skill, time and effort as between the states and territories, depending upon the jurisdiction or procedures of the courts concerned. The same considerations apply to civil matters tried by state and territory courts and matters dealt with by state and territory tribunals.

[5] In this federal jurisdiction there is at least some uniformity between states and territories although ALRM is aware that in Queensland and Victoria counsel fees in Family Court matters are far in excess of the fee we have been able to negotiate with counsel in SA.

[6] ATSIC Submission to the Senate Legal and Constitutional References Committee – Inquiry Into Legal Aid And Access To Justice, in which the point is made.

[7] Ibid, Recommendation 4 at p.15.

[8] ATSIS website www.atsis.gov.au / exposure draft for RFT/ questions and answers

- A measurement tool that recognizes complexity that arises from introducing and litigating issues of cultural difference and Indigenous disadvantage.
- A measurement tool that recognizes the input of Indigenous paralegal field officers in the proper presentation of cases.
- A measurement tool that recognizes the need to travel long distances to bush courts.
- A measurement tool that recognizes the need for adequate time to take proper instructions and properly prepare cases from many defendants in a cross cultural setting where English may be a second language.
- A recognition that family law cases, where alternative dispute mechanisms are not available, proceed by preparation of documentation and many court attendances which is labour intensive.
- A measurement tool that recognizes and weights matters across jurisdictions.
- A measurement tool that gives value to the special needs for legal services of Indigenous people which arise from their position of disadvantage and barriers to dispute resolution mechanisms.

Recommendation 2

ALRM submits that this Parliamentary Committee should recommend:

1. **The creation of a measurement tool of relative and unmet need for legal services in Indigenous communities of South Australia.**
2. **The creation of a measurement tool of comparative value of legal services by ATSILS across Australia.**
3. **The development of such tools in co-ordination and cooperation with Indigenous communities.**

Coverage of the State of South Australia by ALRM

ALRM currently provides criminal, civil and family law legal services to the following geographical areas.

Adelaide greater metropolitan area and outreaches

1. The greater Adelaide metropolitan area including offices located at Adelaide Magistrates Court, Elizabeth Magistrates Court and Port Adelaide Magistrates Court, attendances at Holden Hill Magistrates Court, Noarlunga Magistrates Court.
2. Adelaide Youth Court.
3. Lawyer and Aboriginal Field Officer (AFO) outreach to Yorke Peninsula, Port Pirie, Port Lincoln and at times Berri, for Magistrates Court and Youth Court circuits.
4. Representation in the Central District Criminal Court and Supreme Court criminal jurisdiction.
5. Corresponding civil court coverage across all jurisdictions which is accessed by clients across the State, including the Anangu Pitjantjatjara Lands.
6. Family Court.
7. Duty lawyer services including telephone advice.
8. 24 hour AFO call out service.
9. Ongoing backup to Regional Offices.

Murray Bridge Regional Office

1. The Murray Bridge and Riverland area, weekly and fortnightly Magistrates and Youth Court circuits with limited outreach to the South East[9].
2. AFO after hours call out services.

Port Lincoln Regional Office

1. AFO services.
2. Port Lincoln Magistrates and Youth Court circuit in conjunction with lawyer attendances from Adelaide Office.

Port Augusta Regional Office

1. Port Augusta and Whyalla Magistrates and Youth Courts.
2. Lawyer and AFO outreach to Leigh Creek, Marree, Coober Pedy, Oodnadatta and Anangu Pitjantjatjara Lands Magistrates and Youth Court circuits and bush court circuits[10].
3. Representation in the Northern District Criminal Court and Supreme Court criminal jurisdiction.
4. In co-ordination with specialist practitioners in Adelaide office, corresponding civil court coverage.
5. In co-ordination with specialist practitioners in Adelaide office, civil and family court matters.
6. AFO after hours call out services.

Ceduna Regional Office

1. The Ceduna area with outreach to Koonibba, Yalata and associated Lands Magistrates Court(civil and criminal) and Youth Court in Yalata and Ceduna – with District and Supreme Court matters being dealt with from Pt Augusta office or by arrangement with Ceduna office itself.
3. All civil and family court matters in cooperation with specialist practitioners in Adelaide office.

In all of these offices the services provided include, to the extend that funding permits, preventive, information and education services, initial legal advice, minor assistance and referral, duty lawyer assistance and, importantly, case work assistance in criminal, civil and family law.

These legal services are provided within the parameters of the ATSIS policy guidelines.

State-wide Services provided by ALRM

An essential role for ALRM, in partnership with the Aboriginal Justice Advocacy Committee (AJAC), is the monitoring of government implementation of the recommendations of the Royal Commission Into Aboriginal Deaths In Custody (RCIADIC) in order to prevent further deaths in custody. There was an alarming increase in the numbers of Aboriginal deaths in custody in 1995 and that rate tapered off until the year 2000.

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[9] For many years ALRM has requested additional resources in order to provide increased access to legal services for the south east. At present it acts for 1 community organisation and some criminal and family law matters are briefed out, with ALRM meeting the cost of those matters.

[10] The result of the 2002 Petrol Sniffing Inquests has been an increase in police presence on the Anangu Pitjantjatjara Lands and an increase in the number of bush court circuits per year.

In that period both ALRM and AJAC had written to and met extensively with the Department of Correctional Services and to the Prison Medical Service, enquiring as to the implementation of Coronial recommendations to prevent further deaths in custody. ALRM has had a similar role in relation to the implementation of RCIADIC in matters of public controversy such as "dry areas" and the involvement of the Human Rights and Equal Opportunity Commission (HREOC) in review of these measures. ALRM also provided representation to the families in the 2002 inquests into the deaths of petrol sniffers on the Anangu Pitjantjatajara Lands and other deaths in custody inquests. ALRM has also monitored and sought to enforce the implementation of coronial recommendations through participation in Government forums, civil litigation, Senate committees and HREOC.

ALRM provides legal representation for discrete communities in such matters as Licencing Court objections and applications to restrict access to alcohol and other factors which maintain disadvantage and inhibit development in communities[11]. Such representation inevitably includes related services in advocacy and negotiation with and on behalf of the community concerned with State, Territory and Local Government stakeholders. Such advocacy by lawyers and AFOs often uncovers lacunae in existing laws and practices and creates a need for specific advocacy in law reform. It also becomes a context for the provision of formal and informal advice to ATSIS on law and policy reform, often in the State and Territory arena and in relation to the Commonwealth's response to these State issues.

ALRM is asked to comment on proposed legislative amendments by Federal and State governments and agencies (including ATSIS itself); we identify from ALRM policy and casework needed change which we then promote; workers are asked to participate in a large range of forums within the broader community to make contribution about specific issues that are important to clients e.g. Magistrates Court Steering Committees, presentations to Law Society, talks to law students, Family Court Indigenous Issues Committees, Dry Areas Working Parties and direct submissions to the Federal and State governments on law reform issues that arise in every day legal practice.

Recommendation *3*
In assessing the distribution of resources to ATSILS, the whole range of legal needs of Indigenous people and communities must be assessed.

- *Do you feel that certain kinds of cases are not receiving the attention they deserve?*

ALRM has identified a number of areas where, in the experience of its lawyers and AFOs, areas of glaring unmet need remain. These matters have also been raised in previous submissions to Parliamentary inquiries and with ATSIC and ATSIS in previous funding submissions. Furthermore, the

[11] ALRM represented and assisted Yalata Community in its Licencing Court cases in 1991 and has provided much needed and ongoing support to the Community on these issues since that time. In the 4 months after successfully seeking restrictions to the licence conditions of nearby liquor outlets there was a 40% reduction in presentations to the Yalata Aboriginal Health Clinic for injuries arising from alcohol related violence and a decline in the rate of death and injury from alcohol related motor vehicle accidents. .Since then there has been a continual reduction in such cases. Similar assistance is provided to other communities.

restriction of this inquiry to 'kinds of cases', misses the need to expand services in such areas as community legal education, law reform, advocacy and related matters.

Community Disputes
Some conflicts such as community disputes over incorporated associations, or community disputes that entail mutual defamation between parties, do not fall within ATSILS Funding Guidelines and, in any event, are better resolved by conciliation rather than by litigation. ALRM does not fund litigation for communities in conflict.

However, if ALRM had adequate resources and there was further development of the ATSIC Legal & Preventative Services Guidelines, we would be better placed to provide the additional services, such as aid to resolve internal disputes of community organizations through culturally appropriate alternative dispute mechanisms. These are services the communities have indicated they seek.

ALRM considers that resources to address the need for mediation and conciliation of community conflict and training in running community associations should be given high priority.

Recommendation 4
ALRM recommends that an assessment of needs includes provision for a combination of community training in the legal aspects of operating incorporated associations, including the role of the association as an employer, and alternative means to resolve community disputes in the specification for tender of ATSILS services for South Australia.

Family Violence
There is no question that there are inadequate services provided in SA, and elsewhere in Australia, to deal with the enormity of the problem of domestic and family violence.

ALRM adopts the ATSIC Submission to Senate Legal and Constitutional References Committee, Inquiry into Legal Aid and Access to Justice which noted that there is an enormous unmet need to expand legal services for women and victims of domestic violence. Again that need is unmeasured. We therefore endorse Recommendation No 4 of that submission:

Recommendation 5
That a comprehensive national study be undertaken to accurately determine Indigenous women's needs for legal aid services and access to justice.

The experience of ALRM is that the majority of potential clients for such services actually live in suburban Adelaide and surrounding areas. So much is reflected in the demographic analysis. ALRM points out that for the last several years it has made budget submissions to ATSIC for an additional lawyer, AFO and assistant to provide an outreach service to outer metropolitan areas of Adelaide and Murray Bridge.
This matter is dealt with in more detail in the submission under term of reference C).

Servicing remote communities including the Anangu Pitjantjatjara Lands

ALRM is limited in its capacity to provide all the services that it is expected to provide by the ATSI communities of South Australia. The ATSIS *Policy Framework* for targeting assistance provided by ATSILS provides a guideline as to how ATSILS should prioritise the needs of clients. It is clear that ATSILS must take particular care to promote the accessibility of services to those living in rural and remote areas that include Coober Pedy, Communities in the Far North, including the remote Flinders Ranges, Marree, Oodnadatta and the Anangu Pitjantjatjara Lands.

These are areas where access to alternative legal providers is so limited as to be almost non-existent.. These are regions where language, custom, the tyranny of distance and literacy form the highest barriers to access to mainstream services.

For some, especially those on the Anangu Pitjantjatjara Lands, the need has been increased because there has been a reduction in services provided by the only other alternative provider, particularly in the areas of civil and family law. In the absence of access to legal advice and representation from legal staff employed by Anangu Pitjantjatjara, ATSI community members are completely denied the opportunity for face-to-face advice, unless they travel to Alice Springs to access the services of the Central Australian Aboriginal Legal Aid Service. However, because CAALAS is in the Northern Territory, and those who reside on the Anangu Pitjantjatjara Lands are residents of South Australia, that service is limited in its ability to provide assistance. Until the removal of access to services through Anangu Pitjantjatjara, people resident in those communities used the services of ALRM, but often in relation to civil and family law matters as second choice and without face-to-face consultation, unless those people travelled to Port Augusta or Adelaide. It is clear that this severely hampers the quality of service ALRM is able to provide, and compromises outcomes.

The communities based in Coober Pedy have also identified their need to have easier access to legal advice and representation, particularly in relation to civil and family law matters.

ALRM needs dedicated legal staff whose role will be to provide accessible and culturally appropriate legal services, particularly civil, human rights and family law, to the communities of Coober Pedy and Anangu Pitjantjatjara Lands.

The Anangu Pitjantjatjara Lands are the most remote parts of the State. ATSIC funded legal aid services operating from Alice Springs in the Northern Territory have no brief to operate in South Australia and their practitioners are not admitted to practice in South Australia. ALRM has conducted the criminal legal service to that region for many years in co-operation with the Legal Services Commission; any criticisms that can be made of that service relate solely to under-resourcing.

The operation of the criminal justice system generally on the Anangu Pitjantjatjara Lands has been extensively criticised by the State Coroner in

the inquest into the deaths of Kummanara[s] Hunt, Ken and Thompson.[12] Those criticisms relate to lack of servicing by State Government departments including Family And Youth Services, lack of community based programs for offenders, lack of adequate community corrections services, lack of supervision of community service work, lack of support for victims of domestic violence and lack of adequate policing generally.

Recommendation 6
There remains an unmet need for legal services in the far north of South Australia including, but not limited to, the Anangu Pitjantjatjara Lands. Any such services must be able to provide independent legal advice and representation and must be capable of operating across State and Territory boundaries. The development of such services must involve the co-operation of the affected communities, experienced service providers and State, Territory and Federal Governments.

- *Do you feel that changes to funding priorities are needed?*

Changes to funding priorities across governments are desperately needed so that current and expected future needs are addressed. There appears to be an over emphasis on post events service delivery rather than preventative services. This has an effect of more resources being channelled into policing, building more jails and law courts rather than assisting individuals and communities to address their particular circumstances and to instigate actions and procedures that will address the underlying causes of disadvantage (such as the legal action taken by the Yalata Community with the assistance of ALRM to restrict the availability of alcohol in that community).

In South Australia successive State Governments have consistently refused or ignored repeated requests for assistance to meet the costs of legal service delivery to Indigenous Communities.

A recent ATSIC review of legal aid services in South Australia shows ALRM's service delivery output is at a cost significantly below that of the mainstream ($3.45m compared to $9.12m respectively).[13] Even if it is accepted that by comparing the value of funding to ATSILS with the cost to Legal Aid Commissions of assignments to private lawyers is not an indication of the costs of similar services by Legal Aid Commissions, ALRM's position is that the value of its services is still greater than the value of services that would be provided by the Legal Services Commission of SA to the same communities for the same money, and that value is enhanced because the services that are provided by ALRM are specialist services that are accessible to Indigenous people and provided in the proper cultural context.

That value for funding dollar, however, is a cost borne by the staff of ALRM who are grossly underpaid, and who work in a highly stressful environment. That ATSILS are providing more service despite shrinkage in real value of

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[12] www.courts.sa.gov.au/coroner/findings/2002/Kunmanara Ken, Kunmanara Thompson and Kunmanara Hunt

[13] ATSIC Office of Evaluation and Audit Report 2003, Evaluation of the legal and Preventative Services Program p.44 Table 24.

funding was recognised by, amongst others, the Australian National Audit Office, which report commented:

> "The growing volume of services being delivered by ATSILS is being achieved on the basis of the efforts of individuals working within those
> organisations."[14]

We agree that more can be done should appropriate funding levels be made available including issues relating to access to justice particularly, but not limited to, those in remote and rural areas, children and in areas of increasing need such as family violence and child protection. But currently the Budget remains stagnant (Table 1), in fact has fallen in real terms, while client needs continue to climb resulting in a serious gulf in unmet needs that to this date and in spite of ALRM's consistent lobbying efforts, has remained unaddressed.

Table 1 – Aboriginal Legal Rights Movement Inc Funding

1996/7	1997/8	1998/9	1999/00	2000/1	2001/2	2002/3 To Dec/03
$3.12m	$3.23m	$3.47m	$3.40m	$3.37m	$3.35m	$3.42m $1.74m

ALRM's funding has been reported in the Office of Evaluation and Audit Report of January 2003 and the ANAO Report No.13 of 2003-04 which both indicate that our resources have fallen since 1997 and in real terms our funding has been reduced by 23%, which is an appalling situation when compared to funding of other legal services providers within the mainstream.

In these circumstances, any suggestion that an already under funded service should redirect its priorities from areas of identified need to other areas of need, is unrealistic,resulting in reductions in the quality of services provided, in short, a recipe for disaster. The appalling consequences of under funding and then mainstreaming legal services to Indigenous people in South Australia will be long term, and more difficult to remedy, the longer the neglect is continued.

- *Have you been prevented from reaching and adequately serving clients by the time and cost involved in travelling long distances?*

As set out earlier in this submission, in South Australia, we have offices in Adelaide, Ceduna, Port Augusta and Murray Bridge with a one person AFO only office in Port Lincoln. There is significant need for services in the Far North including the Anangu Pitjantjatjara Lands and Coober Pedy and representation in the Riverland and the South East. We currently service these areas, to the extent that our funding permits, which results in staff having to travel long distances in inadequate vehicles that lack air conditioning and other basic necessities. The increased demands set out earlier in this submission, particularly on the court circuits north of Port Augusta, have meant that this organisation is now providing two lawyers and

[14] p 17 Report No.13 ATSIS Law and Justice Program ANOA

an AFO to attend the bush court circuits whereas previously we were providing one lawyer and one AFO.

The effect is that RCIADIC Recommendation No 108, which provides:

> "That it be recognized by ATSILS, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers other than at the time of court hearings."

risks being breached.

The travelling distances to Courts of Summary Jurisdiction in South Australia are:

- Anangu Pitjantjatjara Lands, >1000km with court circuits held every 6 weeks at Indulkana, Ernabella, Amata and sometimes Pipalyatjara – (a further 500 km west of Indulkana) or Fregon/Mimili.
- Coober Pedy, 500km, courts held every 6 weeks.
- Oodnadatta, 700km , courts held every 12weeks.
- Leigh Creek, 300km, courts held every 3 months
- Yalata, 200 km from Ceduna, courts held every month, lists vary from >120 down to 20 or 30.
- Riverland, 250 km from Adelaide. ALRM sends lawyers and AFOs every 2 weeks to cover Magistrates and Youth Courts.
- Port Lincoln, reached by air from Adelaide with Magistrates and Youth Courts.
- Port Pirie, 200 km from Adelaide with Magistrates and Youth Court.

Practical means to cover these courts and attempt to comply with RCIADIC 108 means that lawyers and AFOs must travel on weekends and usually pressure of work requires that they are unable to take TOIL (Time off in Lieu) to cover the loss of weekends.

In each of these courts, except Port Pirie, Port Lincoln, the Riverland and Leigh Creek, it can be expected that many or most clients will need the services of an interpreter.

Within the constraints of time, attempts are made to maintain contact with clients in civil matters in the course of these court circuits. Civil matters are dealt with by Port Augusta and Ceduna solicitors in the time available between court circuits including acting as agents for the Adelaide Civil , Family and Human Rights Section in more complex matters.

The Port Augusta office is also responsible, with the assistance of Adelaide lawyers, for the conduct of the Northern District Criminal Court and Northern Circuit of the Supreme Court. Their alternating circuits cover almost the whole of the calendar year.

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?*

It is not the means test which is applied by the legal Services Commission of SA which precludes many Indigenous applicants, as few have such a level of income that they will not qualify for some level of assistance.

Mainstream legal aid services and in particular, in South Australia, the Legal Services Commission, place very restrictive guidelines on the types of matters for which they will give legal aid assistance. These restrictions work to preclude many Indigenous people from gaining assistance through the mainstream legal aid service which may otherwise be a more appropriate service due to proximity or greater resources.

For instance, whilst duty law advice is given, apart from referrals, no other assistance is given for civil law matters. Also, many "street offences" and minor dishonesty offences are not legally aided on the basis that there is no "real risk of imprisonment", which is contrary to the experience of Indigenous people. In relation to family law matters the SA Legal Services Commission, before granting aid to a person, imposes an urgency test which on many occasions does not recognize or meet the special needs of Indigenous people – resulting in a refusal of assistance in matters that otherwise demonstrate clear merit.

As the guidelines for assistance by the Legal Services Commission in South Australia are much more restrictive than that of ALRM, it means that some Aboriginal clients, who for one reason or another cannot obtain assistance from ALRM, are left without any alternative source of help.

Less restrictive casework guidelines for access to mainstream legal aid services for Indigenous people would enable those services to better assist Indigenous communities.

- *What kinds of measures have Indigenous legal aid services undertaken to improve cooperation with mainstream services?*

There has been a long-standing history of cooperation at the operational level between ALRM and the Legal Services Commission in South Australia. Examples of the cooperation between the two organizations which has existed for over two decades are as follows:

- Sharing of each others duty solicitor services.
- Representation by one organization of the other's client (e.g. ALRM will represent LSC clients at Leigh Creek Court or Ceduna Court where ALRM, but not LSC, attend). This is a mutually beneficial arrangement which has been in place at the operational level for many years.
- The sharing or use of each others office space or facilities.
- Mutual travel arrangements or sharing of vehicles on country circuits.

- Facilitation of transfer of clients' files from one organization to the other so that the clients' matters are not delayed.

- The use by LSC of ALRM field officers to make contact with LSC Aboriginal clients or take instructions from them (particularly where those clients reside in remote communities).

- Access to ALRM staff to LSC in-house CLE training (which cannot usually be taken up by ALRM staff because these sessions are provided in normal office hours and ALRM has no capacity to back fill already over worked legal staff to release them to attend).

- Access to ALRM AFOs and paralegal staff to LSC paralegal training.

At a more formal level, there are currently discussions between ALRM and LSC to implement a memorandum of understanding between the two organisations. This will formalize the cooperation that has been occurring at an operational level.

- *How have the mainstream services responded?*

In South Australia the Legal Services Commission has responded in a highly professional and cooperative manner at all levels – regional, operational and managerial.

However, this co-operative response has been within the constraints of the Legal Services Commission service guidelines, the limitations of which are discussed above. It has also been within the constraints of limited accessibility discussed below.

In South Australia, the Legal Services Commission makes no financial contribution to the cost of services to clients of ALRM. This is in contrast to arrangements between main stream legal aid providers and ATSILS in some other States where those mainstream bodies provide grants of aid, particularly in relation to family law matters, to clients of ATSILS. In family law matters in South Australia, the Legal Services Commission has refused to meet the costs of court ordered family assessment reports, and at times rejected the need for a child representative in court proceedings (the cost of which is met by the Legal Services Commission) despite our clients otherwise being entitled to grants of aid from Legal Services Commission.

Because it has been demonstrated that it is best to provide legal services to Indigenous people through a dedicated Indigenous legal service provider, but that access to mainstream legal aid funding within that environment varies depending upon the State in which the person lives, ALRM's view is that a proportion of mainstream legal aid funds, and State and Territory legal aid funds, must be channelled through Indigenous legal services.

Recommendation 7

That a proportion of mainstream Federal legal aid funds, and State and Territory legal aid funds, must be channelled to eligible Indigenous clients through Indigenous legal services.

- *What prevents Indigenous people from seeking the services of mainstream Legal Aid Commissions?*
- *What prevents the Legal Aid Commissions from helping Indigenous Australians?*

There are a number of factors which discourage Indigenous people from seeking the services of the mainstream legal aid provider in South Australia.

Notably in South Australia the mainstream legal aid provider, the Legal Services Commission, has a strong metropolitan focus as the location for the provision of in-house services. This is evidenced by the fact that the Legal Services Commission has five offices in the Adelaide metropolitan area and only one located in regional South Australia, at Whyalla. This failure to provide offices in regional and remote areas does not match the needs of numerous large Indigenous communities found in the regional areas of South Australia at, for instance, Ceduna/Yalata, the Anangu Pitjantjatjara Lands, Coober Pedy, Port Augusta, Port Lincoln, Maitland/Point Pearce, Murray Bridge and the Riverland.

The Legal Services Commission primarily provides legal aid services to clients outside the metropolitan area (except Whyalla and its environs) by funding private practitioners. In some of the regions mentioned above there are no private legal practitioners. Also, as a rule, where there are private practitioners their services are not culturally appropriate and therefore not accessible to Indigenous people.

Many Indigenous clients are socially and economically disadvantaged, with little or no understanding of legal processes. An application for legal assistance from the Legal Services Commission requires the completion of complex documents and the provision of supporting documentation. There are instances when Indigenous people, otherwise entitled to mainstream legal aid, have been unable to attend to these administrative requirements properly, or at all, or not in time for timely court representation, and they have as a result lost the opportunity to seek such assistance. There have been occasions when ALRM staff have been required to strenuously advocate on behalf of Indigenous clients who, for reasons of conflict, have been unable use the services of ALRM in order to maximise the likelihood that the client will access mainstream legal aid funding. That advocacy has not always been successful.

The disadvantage of many Indigenous clients also means that effective legal assistance must be intensive and, therefore, expensive. Standard mainstream legal aid funding rates fall below the rate that would properly reflect the greater levels of work required of a legal service provider representing clients with such backgrounds. They do not allow at all for the involvement of AFO's or similar to assist in bridging the gaps experienced by Indigenous clients.[15] Those practitioners who have been successful in providing such

[15] The ATSIC Office of Evaluation and Audit Report into Legal and Preventative Services, 2003 found that many ATSILS provided services at far less cost than would be the case were those services provided by Legal Aid Commission briefed private practitioners. Whether or not the additional costs, in time and resources, of the additional support and services provided by ATSILS to their clients to meet their additional needs arising from their position of disadvantage on many fronts was factored in to this assessment is not clear. What is clear is that effective Indigenous legal services will be those that provide these additional services.

services are usually former employees of Indigenous legal service providers, who have been trained by those organizations, but whose skills and experience are lost to those organizations because they have been unable to retain experienced staff due to the harsh working environment found in such organizations.

The Legal Services Commission and private practitioners funded through legal aid do not have any Indigenous Field Officers (AFOs) employed with them (nor access to such a service unless through the co-operative approach with ALRM discussed above). As the AFO is often the first point of contact by Indigenous people with the legal service provider, the absence of such a service is a clear disincentive for Indigenous people.

Legal service providers which are Indigenous organisations, AFOs, and other Indigenous support and professional staff, play a critical role in ensuring the accessibility of such services to Indigenous people. This uptake is reflected in the report of the ATSIC Office of Evaluation and Audit Report into Legal and Preventative Services, 2003.

In summary, the narrow range of services available, restrictive eligibility guidelines, restrictive administrative procedures, a lack of regional outreach and absence of culturally appropriate services mean that the mainstream legal aid service in South Australia remains a minor provider of services to Indigenous people (particularly outside the metropolitan area).

It is also suggested that there should be Indigenous representation on the Board of the Legal Services Commission and other mainstream legal aid bodies throughout Australia.

- *How do community groups and Indigenous legal aid providers work together? How can they better help each other?*

As the only Indigenous Legal Service provider in South Australia for nearly three decades, ALRM has developed a large number of cooperative and mutually beneficial relationships with many community and Indigenous groups or organizations. These relationships have developed organically at the operational level over many years. These relationships have meant that clients can be referred to or by ALRM with an efficient and smooth interchange of information between ALRM and the community organizations. This means a minimum of delay or duplication of service.

Just a few of the organizations with which ALRM has had a long history of cooperative participation are:

- Aboriginal Prisoner Offenders Support Service (APOSS).
- Nunkuwarrin Yunti.
- Westside Community Legal Service.

- Aboriginal Sobriety Group.
- Pika Wiya (Community Health Organization – Port Augusta).
- Welfare Rights Centre.
- Brady Street Women's Health Centre.
- Parks Community Health Service.
- Ceduna Koonibba Aboriginal Health Service.
- Adelaide City Council.
- Options Co-ordination.
- The Public Advocate.
- The Public Trustee.

As well as cooperating with the above and numerous other community Indigenous organizations for the purpose of legal service delivery, the cooperative arrangements allow ALRM and the associated organizations to provide community and preventative education to members of the Indigenous community.

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?*

As described above, ALRM routinely provides legal services in a range of areas. The bulk of services provided through our offices, court circuits and "bush courts" are best characterised as criminal defence advice and representation. Women have access to these services and represented approximately 23% of clients in this category.

However, there is an important subset of services provided by ALRM over the past 15 years through our Civil, Family & Human Rights Section (based in Adelaide but providing services throughout the whole of SA), Low Income Support Program (LISP) and staff at our regional offices, working either directly with clients or in co-operation with regional offices and other ATSILS. These services include the provision of duty law /"telephone advice" and representation in a range of civil and family law matters, in accordance with the current ATSIS's Policy Framework.

What is clearly demonstrated from our monitoring of use of services is that women form approximately 65% of family law clients, 46% of civil law clients, 45% of briefed out clients and 63% of civil and family law "telephone advice" clients. If identification by gender of service users is an indicator of services required, and we consider it is, the types of legal services required by women are different to those sought by men.

As these figures show, within the constraints of sorely inadequate funding, ALRM has been able to **begin** to meet the needs of Indigenous women, and has clear indicators as to what that need is. However, because of limited

resources ALRM has not been able to meet all needs, with access to services limited by staff numbers.

In 2002 the ALRM Board of Management recognised the need to alter service delivery priorities in order to better meet the needs of Indigenous women as victims of family violence. Acknowledging this area of special need the Board altered the ALRM "Conflict Policy".

Hitherto that policy had provided that where there was a legal dispute between Indigenous people both would be referred out to independent legal providers such as Community Legal Services, Legal Services Commission (LSC), or where the parties did not meet the eligibility criteria of LSC (as has not uncommonly been the case because LSC services are essentially restricted to representation in criminal law maters and some family law matters, and the assessment of need has not corresponded to the needs of Indigenous clients) private legal practitioners, with the cost of services met by ALRM (albeit with the current rate at which such legal fees paid being less than 80% than that paid by the LSC). The rational for this policy is that by avoiding in-house representation of one Indigenous party against another, the resulting creation of "legal" conflict with respect to the party that was not represented by in-house practitioners is avoided, and all parties are free to use the in-house services in the future. This ensures continuing access of all parties to the preferred, culturally accessible and responsive Aboriginal legal Service. It also ensures the most effective use over time of scant resources, as the costs of in-house services are significantly less than the cost of briefing to private practitioners, and the need to provide brief out monies for particular clients for future legal matters where such a "legal" conflict has been created is avoided.

That Conflict Policy now provides that in relation to victims of family violence, legal services are to be provided by ALRM's in-house practitioners, with the other parties referred to independent providers. The purpose of the change to the policy was to recognise the special and overriding need of victims of family violence to the best, the most accessible and most culturally appropriate legal advice. Those clients are almost invariably women.

This has led to an increase in the expectation of in-house services, especially in the area of family law. Because we have only one family law specialist we have been unable to take on all clients requiring assistance in such matters, and, whilst priority is given to taking on matters on behalf of victims of family violence, we have been unable to meet all demands for service, especially on behalf of those who cannot demonstrate circumstances of family violence, despite being able to otherwise demonstrate eligibility and need.

- *What are the main obstacles that prevent your organisation from helping Indigenous women?*

The main obstacle that prevents ALRM from increasing the level of assistance it provides to Indigenous women in South Australia is limited resources. For at least 3 years we have sought additional funds to establish an outreach program in the greater metropolitan area, thereby enhancing access to legal services by providing those services in conjunction with community centres and health services, already accessed by Indigenous women. These submissions have not been successful and the capacity of the organisation to

reassign resources has been compromised because of the effect of inadequate funding across the board.

Reduction in real funding
The gap in service availability has grown because ALRM has, at the same time as there has been increasing demand for services from the Indigenous peoples of SA and expanded expectations of levels of services from the Federal Government, suffered from the effects of a reduction in real funding. Despite a need and desire to execute an Enterprise Agreement with staff which will have the effect of introducing some key productivity gains (expanding even further the present demonstrated high value of services delivered by ALRM for each funding dollar) in return for wages and conditions that equate to staff in similar mainstream organisations[16] there has been no response from funding bodies to requests to increase levels of funding. At the same time ALRM has been required to absorb increased service delivery costs on every front – whether they be infrastructure costs like telephones, power and rent or staff costs including the statutory Superannuation Charge percentage increases and National Safety Net wage increases (the only pay increases that have been delivered to staff because most are on minimum wage levels).

ALRM has repeatedly sought additional recurrent funds to meet these additional demands and expectations, but these requests have been largely ignored.

Limited access in SA to Family Violence Protection Legal Services
In places, such as all South Australia apart from Port Augusta, i.e. for the bulk of ATSI peoples in SA, there is no accessible Family Violence Prevention Legal Service. Only those resident in the Port Augusta area are eligible to access the assistance offered by that organisation.

Mainstream family violence services have acknowledged they are not used by Indigenous people, and have indicated they do not have the experience they consider necessary to assist Indigenous families.

Need for Independent Indigenous Women's Legal Services
Our experience is that the reality of delivering services in communities using the present FVPLS model has given rise to at times unresolvable conflicts in determining service delivery priorities.

The conflicts in determining service delivery priorities arise in part from local political complexities, leading in turn to a juggling of services to both men and women; competing claims to victim status, at times that status being claimed by perpetrators; and the expectation that specific services such as counselling will also be delivered to perpetrators.

There is an expectation that the service can offer a holistic response for both victims and perpetrators – without recognising this creates an environment of legal and moral conflict. As there are limited resources the danger is that the services required by women and children are being diverted to perpetrators – who are most often men. This has been the experience in

[16] ALRM last negotiated rates of pay with staff more than 10 years ago, and present rates of pay are more than 30% below that paid to comparable staff in mainstream legal services.

ATSILS with their priority to act where the applicant is at risk of imprisonment, as can be the case in breaches of restraining or domestic violence orders and assault charges.

In effect, FVPLS are expected to undertake the impossible task of acting for both parties. The consequence has been that FVPLS are unable to provide the services that Indigenous women so patently require.

An example of the inherently dysfunctional brief for FVPLS was seen at Moree, NSW. The FVPLS pilot program had to be closed down for a period because it was unable to resolve the service delivery priority conflicts between advocacy for victims and counselling for perpetrators.

We understand that in NSW separate Indigenous Women's Legal Services have been created in recognition that the problems faced by women are so severe that the services had to be isolated in order to effectively deliver the services women need. Those services include the capacity to undertake the preliminary pro-active steps that interrupt the cycle of domestic violence and the immediate creation of places of safety for women and children, which may include the removal of perpetrators from the family home. The creation of these separate services avoids the need for communities to undertake the onerous and divisive task of making traumatic decisions about allocating resources between victims and perpetrators.

- *What do you feel are the most pressing legal issues confronting Indigenous women?*

Victims of family violence

One clear need for Indigenous women in South Australia is advice and representation in matters where those women (and their children) are victims of family violence. Those needs are discussed above.

Whether women victims of family violence who require services come from Indigenous/Indigenous or Indigenous/non Indigenous relationships one factor is clear, they must have extraordinarily high levels of support and advocacy, to address the effects of disempowerment and trauma they and their children have experienced. This includes intensive out reach services, para legal services and legal services of a very high quality. Such services cannot be effective unless they are properly resourced – the alternative is a recipe for failure.

Access to culturally appropriate, complex and broad ranging legal services that ensure basic entitlements

As our statistics show, women also require access to culturally appropriate, complex and broad ranging legal services that ensure basic entitlements are available for women and their families, including:

- Income, whether that be welfare payments or income through employment;
- Accommodation;
- Compensation for injury;
- Access to services;
- Debt management and avoidance;
- Protection of human rights.

It would be a grave mistake to suggest that the simple solution to meeting the legal needs of Indigenous women is to provide one dimensional "legal aid" services. As can be seen from the list of needs set out above, Indigenous women are often the mainstay of their families. From a position of significant social and personal disadvantage (ranging from inadequate incomes, inadequate housing, inadequate access to mainstream services, language and literacy barriers, cultural barriers, remoteness) they are usually the providers of support and care for their children, their grandchildren, and the children of their siblings.

The legal needs of Indigenous women that arise from this pivotal role within an environment of disadvantage require Aboriginal Legal Service providers that are able to provide highly professional, culturally appropriate and complex legal services with the capacity to advise and represent Indigenous women in the whole range of civil and family law matters, whether that be matters that fall within the jurisdiction of the Family Court, the Federal Court, the Administrative Appeals Tribunal, State and Territory civil jurisdictions, Equal Opportunity Commission or the Residential Tenancies Tribunal.

- *What would enable your organisation to help Indigenous women more effectively?*

As discussed above, the first requirement is that a proper assessment is made of legal needs, an assessment that addresses the issues we have set out at page 4 of this submission.

Once that assessment has been made, adequate funding must be made available.

To assist in the determination of effective policy and procedure, safeguards must be put in place to ensure adequate representation of women in all areas of decision making, ranging from funding bodies to service providers.

D) The ability of Law and Justice program components to recruit and retain expert staff.

- *Are Indigenous legal aid workers overworked, under-resourced or underpaid?*

ALRM has consistently requested funds from ATSIC and ATSIS to address the chronic situation facing Indigenous Legal Services. Our assessment is that ALRM staff have workloads of approximately 50% higher than our counterparts in mainstream service providers, because of the lack of staff due

to our limited funds and increasing demands. The ANAO Report 13 of 2003/4 records a 68% increase in case loads in ATSILS since 1997 and our assessment is our funds have declined by 23% in that period. Our staff are grossly underpaid to the extent that on average our legal staff are paid 30% less than their counterparts of the mainstream.

Low salaries, high workloads and lack of resources for coherent training programs mean that Indigenous legal services, though able to attract skilled and committed people to work for them, often struggle to retain staff over long periods. High turnover of staff, in particular in regional offices, makes for a lack of continuity of service and means the offices are in the frequent, if not constant, position of having to train new staff. This has been the experience of ALRM, in particular at its regional offices at Ceduna, Port Augusta and Murray Bridge.

High turnover of staff at small regional offices is even more problematical for service delivery. Small offices usually require multi-skilled staff. Replacement of such staff is difficult, particularly if the organization is trying to attract employees to a remote or regional office with pay scales substantially below comparative organizations.

As a result of recent changes to legal practice requirements in South Australia, which mean a lawyer with a restricted practicing certificate (usually in place for 2 years after first being admitted to practice) must be directly supervised by another legal practitioner with at least 5 years experience, ALRM is no longer able to employ junior legal practitioners in our single lawyer offices at Ceduna and Murray Bridge. The capacity of ALRM to attract suitably qualified legal practitioners to these offices is undermined by lack of resources.

- *If so, how does this affect their ability to serve the Indigenous community?*

At present ALRM is servicing its clients despite staff shortages and high workloads. This has been repeatedly reported to ATSIC/S over recent years without support for additional resources.

The staff at ALRM possess an incredible social conscious, which transcends into social obligations that has been recognized both in the OEA and the ANAO reports in one way or another.

It is also ALRM's view that both ATSIC/S and the Government take advantage of the commitment, dedication and community spirit of staff when making decisions about funding of ATSILS.

The difficult work environment in which these services have been provided have been aggravated in the last 12 months because of uncertainty in the future funding of ATSILS. The effect of recent ATSIS and government policies has been to reduce the already overly burdensome funding cycle from 12 months to 6 months[17] with no certainty of funding for present employers beyond the end of 2004. This has increased the pressure on staff who must

[17] "Annual funding of service providers under the Law and Justice Program (rather than multi-year funding) places an unnecessary and costly administrative burden on ATSIS and those organisations requiring the financial assistance." ONAO Report 13 at p.14.

plan for the future for themselves and their families. It has meant that the likelihood of attracting new competent staff to difficult, albeit rewarding, positions, especially in rural and remote areas, is jeopardised.

- *How does this affect the ability of Indigenous legal aid services to keep the skilled and committed people who work for them?*

ALRM is finding it very difficult to retain experienced staff because of the salaries offered by both private sector and mainstream service providers. The situation is made worse when the organisation has to make a decision on back filling staff when they leave. At present the Corporate Services areas within our organisation is about half what it was three years ago because a decision has been made not to fill these positions because of our reduced funding in real terms. This affects our ability to provide our corporate services support to front line service delivery by lawyers and field officers.

- *If the legal services are losing people, what can be done to keep them?*

The answer is quite simple. Increase the salary levels, the number of staff and the certainty of their employment.

Whilst the single most important factor is higher salaries, pay rates are by no means the only consideration. Improved working conditions are also an extremely important component in reducing high turnover of staff. Other ways of improving working conditions are as follows:

1. Extra or relief staff.
2. Additional leave for staff in remote or regional offices.
3. Regular training programs for professional, Para Legal and other staff.

Although a number of the above proposals do not involve additional pay, all of them require additional funding. All staff at ALRM, non professional and professional are paid at salary rates far below those of staff in comparative organizations. No amount of internal changes to the structure of Indigenous legal service providers such as ALRM will produce the funds necessary to increase salaries and working conditions to a level equal to those of comparative agencies such as the Legal Aid Commissions. Only an additional injection of funds will achieve this.

- *What changes would enable legal aid staff to better help their clients?*

Increase salaries, more staff, expanded regional locations, and training and development. Training has been absent in ALRM for the last 5 years.

Other changes desperately needed include a supportive bureaucracy and Government that cares about Indigenous Australians. ATSILS have been the subject of constant review by bureaucrats who appear to work less hours and have higher salaries than ATSIL staff.

E) Tendering of Indigenous legal services

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

ALRM is of the view that, unless eligibility to tender is restricted to not for profit Indigenous organisations, the quality and availability of legal services to Indigenous people across Australia will decline to the point of collapse.

In an environment of inadequate funding, with present levels of service dependent upon extraordinary work efforts on the part of employees of Indigenous legal service providers, the generation of profit from such operations seems possible only as a result of reducing either or both quantity and quality of services delivered. That is not an acceptable outcome.

Furthermore, the Commonwealth Grants Commission in their 2001 *Report On Indigenous Funding* recognised at page xiv that:

> "In all regions, and across all functional areas examined in our Inquiry,
> Indigenous people experience entrenched levels of disadvantage compared to
> non-Indigenous people."

and at page xv,

> "It is clear from all available evidence that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people."

And again at page xvi,

> "The mainstream programs provided by the Commonwealth do not adequately meet the needs of Indigenous people because of barriers to access. These barriers include the way programs are designed, how they are funded, how they are presented and their cost to users. In remote areas, there are additional barriers to access arising from the lack of services and long distances necessary to access those that do exist. The inequities resulting from the low level of access to mainstream programs are compounded by the high levels of disadvantage experienced by Indigenous people."

Importantly, the Report concludes at page xvii that effective service delivery requires "the full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery;"

Recommendation 8
That eligibility to tender for the provision of Indigenous legal services is restricted to not for profit Indigenous organisations.

See attached submissions by ALRM and ATSILS to ATSIS in response to the Exposure Draft.

- *Are the policy directions accompanying the tender an improvement over the old ATSILS policy framework?*

Proposed changes to the role of Indigenous Legal Service providers under the ATSIS Draft Exposure for Tendering

ALRM is concerned that the Federal Government is moving to restrict the role and functions of Indigenous legal service providers in a way that ignores the special needs of Indigenous people, despite the findings of a number of Inquiries, most importantly the Royal Commission into Aboriginal Deaths in Custody, and recently the Australian National Audit Office[18].

The Exposure Draft contemplates the separation of complementary programs in the areas of law and justice advocacy from the body of the Indigenous legal service. Such a separation will completely frustrate the overall objective of ATSIS Law and Justice programs to ensure there are effective programs that address issues of disadvantage because the capacity of Indigenous legal services to address those issues in a holistic manner (as required by Indigenous communities) will be neutered.

Such a move is also contrary to RCIADIC Recommendation 105 which provides:

> "That in providing funding to Aboriginal Legal Services governments should recognise that Aboriginal Legal Services have a wider role to perform than their immediate task of ensuring the representation and provision of legal advice to Aboriginal persons. The role of the Aboriginal Legal Services includes investigation and research into areas of law reform in both criminal and civil fields which relate to the involvement of Aboriginal people in the system of justice in Australia. In fulfilling this role Aboriginal Legal Services require access to, and the opportunity to conduct, research."

Furthermore, the Draft Exposure deletes important aspects of the 2002 ATSILS Policy Framework casework priorities:

> 4.1.1.c "where cultural and personal wellbeing is at risk";
>
> 4.1.1.f. "where circumstances of public interest exist and assistance will provide substantial benefit to individuals, their families and Indigenous Australians generally".

The effect of removing these crucial casework priorities is to deny Indigenous people the special services that have already been recognised as required. The effect risks mainstreaming by default, without proper assessment and consultation – and the proliferation of loss and disadvantage.

The effect of the omission is to put at risk the capacity of Indigenous Legal Service providers to effectively represent clients in matters of importance relating to social and cultural rights, including human rights litigation, inquests into matters of grave public importance such as petrol inquests, false imprisonment, racial discrimination, representation of communities in alcohol control strategies, litigation which preserves livelihood and access to housing.

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[18] see page 1 of this submission

The pursuit and protection of social rights are not matters which would attract funding from other mainstream legal aid providers, nor should this role be left to mainstream providers which operate without the imprimatur of Indigenous communities and without the requirement that the same be obtained.

Importantly, these types of activity can only be undertaken by instructing skilled professionals, who are accessible to and work closely with and for Indigenous peoples.

The further effect of the removal of these core priorities is the undermining of hard won rights of Indigenous people in Australia. The opportunity to act in a proactive manner (rather than just the reactive functions described in the Policy Directions 2004-05) by instigating, defending and exploring, through processes available under our legal system, rights including the right to negotiate on legislative developments, the right to preserve freedom and to ensure procedures are created and effectively implemented which uphold this right, the right to housing, the right to an income, should be a non-negotiable entitlement which should not be stripped away without extensive public debate. It is an essential corner stone which goes some way to ensure and promote the welfare and safety, in the long term, of Indigenous communities and peoples.

Furthermore, the removal of these priorities has the effect of removing the critical need for recognition and respect of cultural difference. It removes the recognition of the overwhelming need of most Indigenous peoples for the additional support offered by ATSILS to overcome hurdles to their free access to the legal system as a means of protecting and exploring their rights (and not just their obligations) as Australian citizens. These are the hurdles created by language, poverty, disadvantage, discrimination and dispossession.

Recommendation 9

ALRM recommends that the Committee find that Indigenous Legal Services must deliver services, which include advocacy, law reform, the protection of cultural and personal wellbeing and matters of public interest of benefit to Indigenous Australians.

- *Do you think there was sufficient consultation in the development of the tender conditions?*

No there was not. There is a distinct lack of consultation and the proposal totally ignores the RCIADIC recommendations.