

20 May 2004

The Secretary
Joint Committee of Public Accounts & Audit
Parliament House
CANBERRA ACT 2600

Fax (02) 6277 2220

Dear Sir

Re: Indigenous Law and Justice Inquiry

The Law Society of South Australia has considered the Terms of Reference of the above Inquiry and makes the following submission:

Terms of Reference

(a) **The distribution of resources of Indigenous Legal Aid Services between criminal, family and civil cases**

The Law Society of South Australia is not in a position to make a detailed submission upon this matter, however we note that throughout its 30 year history, Aboriginal Legal Rights Movement ('ALRM') has always placed a high priority on the provision of criminal representation to Aboriginals throughout South Australia. ALRM has provided criminal representation at all levels of the court system, including the Supreme Court, with an emphasis on regional remote country courts, including the Anangu Pitjantjatjara Lands circuit, and Yalata and Ceduna on the Far West Coast.

Since the mid 1980s however, ALRM has also provided a specialist service in civil matters for Aboriginal people in South Australia, through both its Adelaide and country offices. This includes test cases and human rights litigation. The Law Society is also aware that ALRM has taken a leading role in the conduct of major inquiries and other legal issues on behalf of Aboriginal people in South Australia, including:

- law reform issues, including support for the passing of the historic *Maralinga Tjarutja Land Rights Act*, 1984;

- representing the interests of families in the Royal Commission into Aboriginal Deaths in Custody, in relation to South Australian cases, and making submissions on underlying issues; and
- making representations to the inquiry into the Stolen Generation conducted by the Human Rights and Equal Opportunity Commission.

The Law Society understands that ALRM now has the services of one family lawyer based in its Adelaide office, who is able to provide family law services. It is clearly unsatisfactory for a single lawyer to be responsible for providing family law advice to Aboriginal people throughout South Australia, on behalf of ALRM. The Law Society is concerned that as a result Aboriginal women and children in regional areas, in particular, may be denied access to legal assistance.

The Law Society also understands that for at least the last four years, ALRM's budget submissions seeking to expand its family law service, and to give an emphasis to the needs of victims of domestic violence, have been unsuccessful.

The Law Society considers that it is inappropriate for it to express an opinion as to whether existing services should be redirected towards civil and family law from criminal law services, having regard to:

- the existing lack of legal aid resources to meet the needs of Aboriginal victims of domestic violence;
- the existing lack of legal aid resources to provide family law and other civil law assistance to Aboriginal people; and
- the continuing over representation of Aboriginal people in the criminal justice system.

The Law Society is however seriously concerned that an attempt to reallocate existing legal aid resources between these competing demands, without any increase in funding, could worsen the position of Aboriginal people. Given the current level of funding for legal services to Indigenous people in South Australia, it would be difficult to redistribute the resources of Indigenous legal aid services, without further disadvantaging Aboriginal people requiring criminal law services.

The Law Society suggests that before any changes are made to the current distribution of resources of Indigenous legal aid services, there be a full consultation process with the potential clients and service providers, to consider their needs, wishes and priorities. In particular the Law Society identifies improving access by Indigenous women to specific legal services as a matter of urgency, which requires detailed consultation with Indigenous women.

- (b) **The Coordination of Indigenous Legal Aid Services with Legal Aid Commissions through measures such as Memoranda of Understanding**

The Law Society understands that for many years there has been active cooperation between the Legal Services Commission of South Australia ('LSC') and ALRM, regarding the provision of services to Indigenous people. The Law Society also understands that, particularly in criminal law practice, there is a high level of cooperation between the various offices of ALRM and the LSC, throughout the State.

Significantly, the LSC does not restrict access to its services by Aboriginal people on the basis of their being Aboriginal. It provides a criminal legal aid service, carried out in conjunction with ALRM, on the Anangu Pitjantjatjara Lands and other remote country court circuits.

Nevertheless, the Law Society understands that the LSC provides legal assistance upon a more restricted basis, in terms of eligibility criteria than does ALRM, and it is not a specialist service designed to provide culturally appropriate services, from Aboriginal and non Aboriginal staff. To that extent the LSC cannot duplicate the services provided by ALRM.

The Law Society understands that a Memorandum of Understanding is being developed between ALRM and the LSC, which reflects many years of existing and practical cooperation between the organisations.

The Law Society refers to its submission made to the Chief Executive of Aboriginal and Torres Strait Islander Services ('ATSIS'), regarding the Exposure Draft for Purchasing Arrangements for Legal Aid Services, in which the Society stated that:

In circumstances where the Legal Services Commission of South Australia is already under considerable financial stress, and where ALRM is significantly under funded, the Society is concerned that the arrangements contemplated by the Exposure Draft may well have the effect of forcing Indigenous people in South Australia to rely more heavily on the State legal aid system, community legal centres and a more restricted Aboriginal legal aid service.

The Law Society continues to be concerned that such arrangements, if adopted, may further disadvantage Indigenous people in South Australia.

A copy of that submission is attached for your reference.

(c) **The Access for Indigenous Women to Indigenous Specific Legal Services**

The Law Society notes that there is only one Indigenous Family Violence Prevention Legal Service in South Australia, which is situated in Port Augusta. The Law Society has also been informed by ALRM that, notwithstanding numerous funding submissions for the last five years seeking to expand ALRM's services for the provision of legal aid to Indigenous women, there is still only one position for a family lawyer in ALRM. That is not, however, a position dedicated to assistance to Aboriginal women. The Law Society has also been informed that, in the last two years, ALRM has changed its own priorities to increase access to services by women and victims of domestic violence, however that has had a limited effect, in the absence of increased and dedicated resources.

The Law Society notes that both in the popular press and in public policy debate there has been considerable discussion recently regarding domestic violence in Aboriginal communities, and the need for more specific services to address the needs of Aboriginal women.

In addition, the Law Society draws to your attention the findings of the State Coroner, Mr Chivell, in his inquiries into the deaths of petrol sniffers, regarding domestic violence on the Anangu Pitjantjatjara Lands (refer to paragraphs 6.23 to 6.28 of the Findings of the State Coroner into the death of Kunmanara Hunt¹). The Findings indicate that there is an enormous unmet need for legal assistance to victims of domestic violence in remote communities, particularly in cases where petrol sniffing and other forms of drug and alcohol abuse are involved.

As discussed above, the Law Society is of the view that improving access for Indigenous women to specific legal services is an urgent matter, and the existing access to legal services by Indigenous women is inadequate.

(d) **The Ability of Law and Justice Program Components to recruit and retain Expert Staff**

The Law Society refers to the Evaluation of Legal and Preventative Services program conducted by the Office of Evaluation and Audit of ATSIC in 2003. That report discloses that for the years 2001 and 2002, ALRM received funding of \$3.455 million, and the estimated value of the work done by ALRM was \$9.12 million.

ALRM has provided the following information to the Law Society, regarding comparative wage rates for its legal staff.

In 1992 ALRM had an award registered in the Australian Industrial Relations Commission. Under that award, the salaries of lawyers employed by ALRM and the LSC were approximately equivalent. Since that time, however, ALRM salary scales have received no increase other than those imposed by safety net increases flowing from the Australian Industrial Relations Commission. Salaries offered by ALRM are significantly lower than those offered by equivalent public service providers, including the South Australian Crown Law Office and the LSC.

In those circumstances ALRM has had a history of experiencing difficulty in retaining quality legal staff, particularly in country locations. The Law Society has been informed by ALRM that it has great difficulty in filling legal staff positions, particularly in its Port Augusta and Ceduna offices, and that staff attrition rates are correspondingly high. In addition, since junior lawyers require adequate supervision, ALRM has found it difficult to attract suitably qualified solicitors, with an appropriate mix of legal skills, to country locations.

By way of illustration, the Law Society has been informed that the Port Augusta office of ALRM, with a staff of only three solicitors, had a very high staff turnover of at least six solicitors in the last five years, and the Ceduna office of ALRM, with a staff of one solicitor, has had a turnover of three solicitors in the same period. These figures highlight ALRM's difficulties in training and retaining competent professional staff to perform difficult legal work for Aboriginal people, particularly in remote

¹ www.courts.sa.gov.au/courts/coroner/findings 2002 Kunmanara Hunt

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areas of South Australia. The Law Society is of the view that ALRM's funding difficulties contribute to this high turnover, with its consequential direct and indirect costs, and the inevitable disadvantage suffered by ALRM's clients.

Finally, the Law Society draws to your attention its submission dated 22 April 2004 concerning the 2004 Exposure Draft Request for Tender for Indigenous Legal Aid Services, which generally considers the provision of Indigenous legal aid services in South Australia.

Yours faithfully

David Howard
President