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Ms Louise Gell
Secretary
Senate Legal and Constitutional References Committee
Parliament House
Canberra ACT 2600

March 25th 2004

Dear Ms Gell,

Victorian Aboriginal Legal Service (VALS) made a verbal presentation to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice on November 12th 2003. At that stage we informed the committee that we were unaware of what our future funding would be as of 31st December 2003.

The Committee said that they would be interested in receiving an update on these matters. I hope it will be possible to consider this report as it raises matters which will dramatically impact on current arrangements, equity and the wider community.

Our submission makes three points.

1. That the Commonwealth Government and ATSIS in particular continue to undermine the effective operation of Aboriginal and Torres Strait Islander Legal Services (ATSILS) by short funding periods and failure to appropriately consult in relation to policy formulation and program management.
2. That on March 4th 2004 ATSIS released an Exposure Draft which provides the Governments new proposal for tendering out Aboriginal Legal Services. This Draft document is clearly aimed at attracting non Indigenous providers and shifting responsibility for funding criminal matters to the States. In short it is a formula designed to have ATSILS squeezed out of existence.

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3. The Australian National Audit Report Number 13: Review of the ATSI Law and Justice Program identifies major deficiencies in the program administration. These deficiencies continue to be manifest in the operation of the ATSI up to the present day.

VALS hopes this information is helpful and is happy to provide any further information if requested.

Yours sincerely

Victorian Aboriginal Legal Service Cooperative Limited

A handwritten signature in black ink, appearing to read 'Frank E. Guivarra', with a large, stylized flourish extending to the right.

Frank E. Guivarra
Chief Executive Officer

**Submission to the Senate Legal and Constitutional References
Committee**

Inquiry into Legal Aid and Access to Justice

*The New ATSSIS Contestability Policy that Aims to White Out Aboriginal and Torres Strait
Islander Legal Services From the Legal Service Picture*

From: Victorian Aboriginal Legal Service Cooperative Limited

(March 2004)

The New AT SIS Contestability Policy that Aims to White Out Aboriginal and Torres Strait Islander Legal Services From the Legal Service Picture

1. Introduction

This report provides additional information to the Senate Inquiry into legal Aid and Access to justice. The report identifies:

- continuing difficulties and uncertainties that Aboriginal and Torres Strait Islander Legal Services (ATSILS) face,
- a new draft tender and service specification document (released on March 4th 2004) which reveals a high priority on attracting non Indigenous providers to become ATSILS
- AT SIS administrative failures which are highlighted in the Australian National Audit Office Report Number 13 review of the AT SIS Law and Justice Program and continue to the present day.

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Since VALS verbal submission to the Senate Inquiry in November we are proud to report that:

- VALS research about improving diversion for young people has resulted in approval of three pilot projects
- VALS submission about changes to the Bail Act has led to draft legislation which will enable circumstances of Indigenous people to be considered more fully
- VALS continues to coordinate the quarterly Indigenous Womens Justice Forums
- VALS obtained agreement in a protocol (about new Chroming laws) that police would notify VALS when if they had to take a young person who had been chroming to a police station
- VALS has negotiated a Memorandum of Understanding with the Equal Opportunity Commission
- VALS has made a submission about proposed changes to Gas and Electricity utilities which will threaten the safety and wellbeing of disadvantaged consumers.

If the proposed new AT SIS tendering policies go ahead none of these sorts of initiatives will be done by ATSILS in the future.

2. Delays and Uncertainties

In May 2003 ATSILS were invited to tender for unspent funds. The timeline was about two weeks. A few weeks after the deadline ATSILS were advised that there would be no projects

funded as all available funds were to be redirected to the newly renamed Aboriginal and Torres Strait Islander Services organization.

Shortly after this, late in June 2003 ATSILS were informed that:

- they would receive six months funding
- funds there after would be tendered
- State allocations of funds after January 1st 2004 would be decided on the basis of the new funding formula

As of November 12th there was no notification of what the future funding beyond December 31st would hold. Early in December ATSIIS notified ATSILS that funding would continue until June 30th 2004.

Late in February 2004 ATSILS were told that:

- A funding submission for 2004-2005 was required
- Funds would only be provided for six months E.g. until December 31st 2004
- A draft tender document would be released shortly

The Draft Exposure document will be described in more detail in the next section however four key features are worth mentioning here because they relate to poor consultation and information provision.

The Draft Exposure document departs from the preexisting 2001 ATSIC Administrative arm (Eg. ATSIIS) policy position that tendering out would effectively be an option of last resort for underperforming service providers and would be to Indigenous organisations.

The Exposure Draft changes the definition of core services, changes the structure and content of service priorities and introduces means testing.

There was a policy paper circulated in 1999 which concluded that a simplified means test was not effective or efficient and that instead a means test on expensive cases would be less expensive and more effective.

VALS is not aware that any of these matters have been subject to consultation with ATSIC Board, Regional Councils, ATSILS or other Indigenous organizations. This is in breach of the Royal Commission into Aboriginal Deaths in Custody recommendations 1991, the Commonwealth Grants Commission Inquiry into Indigenous Funding (2002) and the recommendations of the Australian National Audit Office Review (2003). ATSIIS were advised by the Australian National Audit Office that they should conduct extensive

consultation with stakeholders and potential tenderers prior to proceeding with the tender (pg 21 ANOA 2003). This has not occurred.

The continued uncertainty about funding which is exacerbated by the new Exposure draft intensifies the difficulty for ATSILS in relation to retaining and recruiting staff.

The proposed new funding formula to redistribute funds between states has still not been made available to ATSILS. The last Commonwealth funding formula to allocate Commonwealth Legal Aid funds had serious flaws. The extensive delay in providing any details of this new formula reduces the opportunity for ATSILS to comment on it in a timely manner.

The Commonwealth Grants Commission Report (2002) writing about other Aboriginal services highlights the deficiencies of an approach which turns its back on Aboriginal organizations and seeks to rearrange an appallingly under funded sector using complicated redistribution formulae.

Indigenous people in all regions have high needs relative to the non-Indigenous population. An important question is whether new methods of distribution should be applied to existing programs and funds. Any change in methods of distributing existing resources means that some regions would lose funding and others would gain. Redistributions risk losing the benefits of investments made over long periods of time, including those in developing organizational capacity and people. Commonwealth Grants Commission Report on Indigenous Funding (2002)

3. The New Contestability and Service Specifications Policies

The ATSSIS web site revealed the new ATSSIS policies in a 175 page document titled **“Exposure Draft Purchasing Arrangements: Legal Services Contract 2005-2007 for Legal Aid Services for Indigenous Australians”** on March 4th 2004.

The Exposure Draft Purchasing Arrangements (EDPA) represents a dramatic departure from previous policy as it appears designed to both tender services and make it unlikely that Aboriginal organizations will be able to win the tenders.

This summary describes key features of the **“Exposure Draft Purchasing Arrangements: Legal Services Contract 2005-2007 for Legal Aid Services for Indigenous Australians”**. The report will subsequently be referred to as the EDPA document.

3.1 New Contestability Policy includes new ATSILS policy

The 2004 contestability policy including new policies on ATSILS is contained in the EDPA document .It ignores the findings quoted most recently in the 2003 Australian National Audit Office Review that *the potential for finding a market of non Indigenous tenderers was highly restricted and in many cases non existent*(Para 212, Page 38 ANOA 2003). It also ignores the recommendation in the Office of Evaluation and Audit review which says, "In implementing its present contestability policy ATSIC should be cognizant of the demonstrated unwarranted costs of using the services of other than non-profit legal providers."(Recommendation 9, Pg109, Office of Evaluation and Audit OEA (ATSIC 2003)

The 2001 ATSIC contestability policy was to use tendering where existing providers were not performing adequately. The policy was also one of seeking tenders from Indigenous organizations. ATSILS knew in June 2003 that funds were going to be tendered when they were informed that they were receiving only six months funding. It was only in March 2004 that it became clear to ATSILS the tenders were open to non Indigenous and "for profit" services. It was also only in March 2004 that it became clear to ATSILS that there were major policy changes to the ATSILS policy guidelines. Compared with the existing ATSILS Policy Framework for Targeting Assistance Provided to Aboriginal and Torres Strait Islanders issued in July 2003, the EDPA document proposes a substantial narrowing of the purpose of legal services. It redefines and narrows the core services to be provided and sets out policy prescriptions which are more inflexible than those in the existing Policy Framework for ATSILS.

There has been no transparent policy making process to explain the significant changes which this EDPA document presents .It appears that there has been no consultation with the ATSIC Board or ATSIC Regional Councilors or Aboriginal organizations.

3.2 Purpose and Objectives of the Services

The EDPA document states that the ATSI Law and Justice program has a number of interrelated program (Pg 17 EDPA 2004). The EDPA document does not explain what the interrelationship with other Law and Justice programs will be or how tendering legal services out will advance these interrelationships.

There is no longer any mention that ATSILS "play a leading role in promoting and protecting the rights and interests of Indigenous Australians...(nor mention of)...important welfare roles related to these legal activities"(Para 1.2 pg 3 Policy Guidelines for ATSILS

2003-2004). Nor is there any mention of “....promoting social justice..... reducing the disproportionate involvement of Indigenous Australians in the Criminal Justice system...promoting the review of legislation and other practices which discriminate against Indigenous Australians ” (Para 2.1 pg 4 ATSILS Policy Framework 2003-2004)

“In many ATSSIS programs, the ATSSIS role is intended to be that of a supplementary funding body. In the case of legal aid to Indigenous Australians 89 per cent of legal aid cases were handled by ATSILS in 2000-2001 and 11 per cent were provided by LACs. Accordingly, ATSSIS through its Law and Justice program is effectively the primary funding body for legal aid to Indigenous Australian.”(Pg. 46 ANAO 2003)

The new proposed ATSSIS Contestability Policy does not acknowledge the primary role played by ATSILS in the delivery of legal services to Indigenous people. The policy is a recipe for mainstreaming ATSSIS and with that losing the capacity of those Indigenous organizations to continue to contribute to better justice outcomes in Australia.

3.3 Scope of service ATSSIS wants to purchase

The scope of service that ATSSIS wants to purchase is considerably narrower than the services provided at present.

1. Information, initial legal advice, minor assistance and referral delivered in the most appropriate format including:

- a) Face to face contact on a providers premises; and or
- b) Telephone using a 1800 reverse charge number and/or
- c) Outreach arrangements including field officers

2. Duty Lawyer assistance

3. Legal Casework including representation and assistance covering Criminal, Civil and Family Law matters.

These services will be delivered in accordance with the requirements, priorities and procedures set out in Policy Directions {Appendix A}(Para 2.3 pg 17 EDPA)

The ATSILS policy framework 2003-2004 described core services as follows:

- a) Preventative, information and education services;
- b) Initial legal advice, minor assistance and referral;
- c) Duty lawyer assistance
- d) Legal casework assistance in criminal civil and family law matters

- e) Input on law reform and law related issues to promote social justice for Indigenous Australians and
- f) Outreach support and other legal aid related services.

Core services a), e) and f) are omitted from the list of services to be purchased . This implies that they are not core services. If the omitted services are to be funded separately the EDPA does not explain how or why it is advantageous to excise some services from others.

3.4 Priority Categories

The new priority categories (in order of priority) are:

1. Where the safety or welfare of the child is at risk;
2. Where the personal safety of the applicant, or a person in the applicant's care, is at risk,
3. Where an applicant is at risk of being detained in custody;
4. Where a family member of a person who dies in custody seeks representation at an inquiry into the death.

Other categories may be dealt with only when all demand has been satisfied from applicants in the priority categories (Pg 62-63 EDPA 2004). Priority is also to be given to people in an area not serviced by a LAC.

3.5 The "One strike and you're out" policy

Apart from the four priorities mentioned above there are also additional policies which appear aimed at reducing access to criminal law services. Section 3.10 of the EDPA document states: " *Where a provider has previously represented an applicant charged with a criminal offence involving violence, assault or the breach of a restraining order and the circumstances of the two cases are the same or similar, the Provider may refuse to represent the applicant and refer the applicant instead to a service providing appropriate counseling and support (where such a service is available and reasonably accessible)*" (Pg 64 EDPA 2004).

This policy would exclude a significant number of ATSILS clients. This policy appears to be more restrictive than Legal Aid Commission policies. There is no rationale provided for this new policy which is a major change from existing policy. This policy would be likely to have the effect of funneling clients to Legal Aid Offices and private solicitors and shifting cost of service provision from the Commonwealth to the State Government.

3.6 Geographic Focus

The focus of ATSSIS is said to be that a supplier tender for a State but ATSSIS is also committed to consider a supplier tendering for more than one State and there is also a willingness to consider more than one bid for a State. Whether there would be different bids based on geographic sections of the State or whether that would mean particular services or particular client groups would be considered is not clear from the EDPA document. This policy appears designed to maximize the chances of private law practices being successful tenderers.

3.7 Selection Criteria

The selection criteria to be used in assessing tenders are described in Paragraph 3.6.2 (Pg 4) of the EDPA document. They are:

1. Demonstrated capacity to deliver high quality and efficient legal aid services in accordance with applicable professional and ethical standards (Weighting 40%);
2. Capacity to provide an accessible and culturally sensitive service to Indigenous Australians (Weighting 30%);
3. Capacity to achieve the priorities set out in the Policy Directions for the Delivery of Legal Aid Services for Indigenous Australians (Weighting 30%); and
4. Cooperation and relationships with other service providers (Weighting 10%)

The second criteria, "accessibility and cultural sensitivity" is spelled out in the Service Standards section. (Pg 87 EDPA 2004) It is clear that it can be achieved without Indigenous staff, or management and requires little more than training, policies and procedures. This is one criteria that ATSSIS might have expected to score well. The wording of the standard makes it clear that it will be assessed in a culturally insensitive way.

The tender document has been drafted to maximize the chances of attracting competitors and in particular private law firms . The new narrower and less flexible ATSSIS proposed policy directions mean the concept of ATSSIS has been downsized and targeted so it is a pale shadow of what it was. The new post contestability service envisaged by the EDPA document will no longer be holistic. It will no longer need Aboriginal staff or management; no longer be a primary service provider but a service to supplement Legal Aid.

3.8 The New South Wales experiment with tendering

The Tendering NSW Aboriginal Legal Services report (NSW report 1999) by Allen Consulting was generally positive about the results of tendering in NSW in spite of having no data to base its conclusions on. Tendering in NSW was accompanied by a regionalization policy which aimed to have services established in eight regions instead of the existing three services.

In NSW four of the eight regions had no "suitable" registrant. In other words the bids received were not of sufficient quality to be considered. In two regions there was only one suitable registrant and in two regions there were two suitable registrants. The NSW report (1999) states: "This was to be expected given that the majority of registrants were, for the most part, non-profit organizations that appear to have been relatively inexperienced in openly competitive tenders." (Pg 25 NSW report 1999). This comment implies that ATSILS are likely to face difficulties in an open tender environment. ATSIIS would be well aware of this report and its findings. The ATSIIS decision to shift from an approach of tendering as a last resort to an across the board tendering approach open to mainstream organizations is one that ATSIIS is aware is likely to disadvantage ATSILS.

3.9 Strong Cultural requirements versus Contestability

The NSW report (1999) also highlights the trade off between cultural specificity in the tender document and contestability. The NSW tender specifications included a requirement that the registrant should have, "An organizational structure which maximizes Aboriginal Community control" (Pg 40 NSW report 1999)

The Review questions whether Indigenous management or some lesser form of control is necessary,

- "ATSIIS should aim to set tender requirements that ensure cultural appropriateness but do not overly restrict the manner in which that appropriateness is achieved. This is not a simple process and will only be achieved through refinement of the tender criteria over time".

- "While the culturally appropriate delivery of legal services is enhanced by indigenous management and involvement, it is not clear to the Group that indigenous "control" is a precondition for cultural appropriateness. It may be that some lower threshold of indigenous involvement will still provide for culturally appropriate delivery of legal services but may increase the competition at the tender stage (ie, provide a wider range of differently structured organizations). That said, the Group does not advocate lessening cultural specific criteria at this stage".

The NSW report (1999) Review also quotes a range of arguments and reports in support of strong cultural requirements. One of these is the 1980 House of Representatives report on Aboriginal Legal Aid which was chaired by Phillip Ruddock, (see Appendix A)

The EDPA document appears to have ignored these issues in the specifications and policies that it proposes and instead redrafted the guidelines to maximize the chances that private law firms will tender for the funds. These changes not only change the contestability policy but change ATSIILS policies in a range of ways.

3.10 Contestability policies that increase the competitiveness of private law firms

There are several obvious measures which have been adopted by ATSIILS to encourage private law firms. These include:

-White Washing Cultural Accessibility

- Remove any reference to Indigenous management or control.
- Attach a weighting to the selection criteria for “..accessible and culturally sensitive service..” of only 30%.(Pg 51 EDPA Document 2004)
- Write the standard for accessible and cultural sensitivity in terms which make it clear that employing Indigenous staff is not a prerequisite (pg 87 EDPA Document 2004)

-Abolishing Wholistic service provision

Abolition of of wholistic service provision means that the EDPA document includes only those core ATSIILS services which private firms are likely to be familiar with: E.g. information, duty work and casework.(pg 9 EDPA document 2004)

It means excluding:

- Preventative, information and education services;
- Input on law reform and law related issues to promote social justice for Indigenous Australians and
- Outreach support and other legal aid related services. Pg 4 (Policy Guidelines for ATSIILS 2003-2004)

-Absence of a Geographic Focus for the tender

ATSIILS have previously made it clear that it believes there are economies of scale to be achieved by reducing the number of separate services and that this would be achieved via tendering 2.30 Pg.23 (ANAO 2003) At the same time ATSIILS has indicated in the EDPA document a willingness to consider tenders for only part of a state or for more than one State. These conflicting positions provide a large window of opportunity for private law

firms to put in a bid which would take over two or more smaller ATSILS areas or fragment State coverage by one ATSIL.

-Means testing

Introduction of a means test based on a Legal Aid Commission model where the provider gets to recycle the funds into further service provision encourages private practitioners to think that there will be some client income. It may also be an attempt to encourage Legal Aid Commissions to tender. The proposed means test appears to ignore the research by consultants Keys Young (Improved Targeting of ATSILS 1999) for the Commonwealth Government which reviewed a three centre pilot project assessing the operation of a simple means test. The research demonstrated that it was not a cost effective measure. As a result the report instead proposed a means test to apply only to expensive cases.

-Conflict of Interest

Providers are encouraged to set up "Chinese walls" to overcome conflicts of interest. Again this is something which will be easier for very large legal organizations than for smaller community based ones.

3.11 Contestability policies which make ATSILS less competitive.

There are other measures which appear designed to make ATSILS less likely to secure tenders. These include:

- The requirement to have adequate financial viability including operating funds to deliver a service. (Section 3.2.3, Pg 23 EDPA document) As most independent community organizations will be almost totally dependent on Government funding to operate, the requirement to have one or two months of cash to cope with the system of being paid in arrears is likely to represent a significant handicap to most not for profit providers.(Section 3.5.4 Pg 33 EDPA 2004)
- As ATSILS have traditionally focused on criminal law the new policy priorities which are now in priority order: child welfare and safety first, personal safety second and. criminal law matters third and deaths in Custody fourth. The Policy Guidelines for ATSILS 2003-2004 does not list priority categories in order of priority. The tender selection criteria allocate 20% to "capacity to achieve the priorities"(Section 3.6.2.Pg 41 EDPA 2004)which given the low rating to crime must put most existing ATSILS at a disadvantage.
- An assumption that ATSILS are supplementary providers to Legal Aid rather than primary providers as is the present situation. The report implies that Indigenous

people in cities don't need Indigenous legal services and states that ATSILS should prioritise rural areas where there is no Legal Aid office.(Pg. 63 EDPA 2004)

- A new policy which recommends people with a prior charge that involves violence be refused assistance and be referred to counseling.(Pg 64, EDPA 2004) This will lead to ATSILS being unable to help a significant proportion of their clients and clients seeking help elsewhere, representing themselves or failing to appear.
- There appears to be no recognition of the valuable organizational knowledge and skill that is likely to be lost in this process.

This EPDA document is a corrosive document because it seeks to deconstruct ATSILS by removing some of their core functions, it seeks to set city people against country people, it seeks to set women and children's issues against criminal issues and it seeks to shift responsibility for criminal law matters from the Commonwealth Government to the State government. All these things increase the likelihood of new competitors entering the market. They increase the chances that ATSILS will be significantly damaged if not defunded under this proposed contestability policy.

4. Previous and Continuing Deficiencies in ATSI's ability to provide Effective Administration

The extensive list of ATSI's administrative failures are highlighted in the Australian National Audit Office Report Number 13 Review of the ATSI's Law and Justice Program (ANAO 2003) Problems with ATSI's continue to the present day.

ATSILS have been subject to a number of reviews and there has been no suggestion that they are underperforming or that they are not providing value for money so an ATSI's plan to tender out services to non Indigenous and "for profit" services is at odds with previous policy and not indicated by performance of ATSILS.

The ANAO report makes it clear that there are serious deficiencies in relation to the lack of experience of ATSI's staff and this impacts on the capacity to implement policies and programs. The ANAO report states that the National Law and Justice Office was moved from Canberra to Sydney and back within a three year period. This resulted in the loss of all but one senior staff in the first move and all senior staff in the second move. The average experience of all staff in Law and Justice was 18 months compared to over six years for other areas according to the ANAO report. The ANAO report highlights lack of training of new staff, lack of clarity of roles in relation to State and National offices and a number of other issues .

The ANAO report identifies three year funding and a common Professional Indemnity Insurance schemes as possible opportunities for savings. (The ATSSIS state plans also talk about working collaboratively with State Governments and other stakeholders) However the ATSSIS enthusiasm for tendering appears to almost completely ignore the value of taking a more collaborative approach to building service effectiveness and appears to undercut the work being done on state plans. At the same time State offices of ATSSIS appear to have been given no information about the tendering policies which were being developed.

ATSILS had to complete their 2004-2005 funding submission at the same time as they had to respond to the Exposure Draft. It appears that information about changes to the 2004-2005 Funding Submission document had not been adequately communicated to ATSSIS State Office staff. As a result VALS received four different answers to the same question about the 2004-2005 funding submission within two days. The differences in the answers were significant as they related to a key aspect of the submission. VALS was trying to clarify whether something similar to last year's submission was required or something very much more detailed. The final answer we received was that something very much more detailed was required.

The process for providing information about the Exposure draft also reveals a lack of efficiency and effectiveness in ATSSIS processes. The "information" sessions in Victoria involved six staff from Canberra and two from the state office attending a meeting. A power point presentation which duplicated what was in the exposure draft was provided. Then questions were tape recorded and people were told that answers would be put on a web site a few days later. There was no information given. We are not aware of whether this wasteful process included so many ATSSIS staff at each stop around the country but if it did it could well have cost \$60-70,000 to do something that could have been done by email. ATSSIS have also wasted the time of the people that they invited to come to the "information" sessions because they were not providing information they were simply collecting questions; something that could be done more cheaply by fax, phone or email.

The Victorian Exposure Draft "information" meeting occurred on the 16th of March. As of the 26th of March there were no answers to questions. The deadline for comments back to ATSSIS is 16th of April. With Easter in between, prospective tenderers are going to have minimal time to make informed submissions.

ATSILS have and continue to be committed to being accountable and effective. The ANAO review of ATSSIS indicates that ATSSIS have not been up to standard in a range of significant areas of performance. During this period of under performance and wasting money by moving offices backwards and forwards ATSSIS have received a 20% increase in funds for

administration. If there is an argument for tendering out any functions or tasks on the basis of the available data it would more appropriately apply to tendering out the administration of Law and Justice rather than tendering out ATSILS.

5 Recommendations

New Recommendation: That there be an investigation into the cost- benefit analysis of tendering ATSILS to non Indigenous providers prior to proceeding with the tendering proposal.

Below are the recommendations that VALS originally put to the Senate Inquiry. With the exception of Recommendation 4 which events have overtaken they are all still highly relevant.

1. VALS calls on the Commonwealth Government to acknowledge that a cooperative and collaborative approach to meeting the needs of Indigenous communities is likely to most effectively provide access to a range of legal services and more just outcomes.
2. VALS calls on the Commonwealth Government to acknowledge the importance of Indigenous control of services and to respect and support the continued need for this and acknowledge the benefit that this participation and responsibility can provide.
3. VALS urges the Commonwealth Government to recognize that prior to tendering out Aboriginal Legal Services there should be consideration as to whether the public interest test would apply in relation to funding of Aboriginal legal services. VALS believes that Aboriginal legal services should not be subject to competitive tendering and that tendering should be utilized only as a last resort.
4. VALS strongly urges the Commonwealth Government to redress the uncertainty that the present six months funding allocation occasions and guarantee funding for the financial year 2003/2004.
5. VALS calls on the Commonwealth Government to ensure that there is consultation with ATSILS when the new funding formula report from the Australian Institute of Criminology is received.
6. VALS calls on the Commonwealth Government to act on the recommendations of the 2002 Office of Evaluation and Audit (ATSIC) Review which concluded that a significant increase to funding for ATSILS was required.

7. VALS requests that the Commonwealth Government reduce the persistent uncertainty about funding to ATSILS and shift ATSILS on to a three year funding agreement as has been done in relation to other community based legal service providers.

8. VALS urges a shift from ATSIIS predominantly accountability focused program expenditure on consultants to expenditure targeted at organizational capacity building and projects focused on prevention and community strengthening. Such targeted spending should be predominantly in line with regional and state policy priorities not determined solely by Departmental objectives.

9. VALS strongly advocates for the importance of ATSILS being adequately funded and resourced to do criminal, civil and family law casework, prevention, education and policy capacity, building the capacity of all staff and particularly para legal staff and improving access to mainstream services

10. VALS strongly recommends that the peak body, for the National Aboriginal and Torres Strait Islander Legal Services be refunded to reestablish a vital national voice for Indigenous people.

References

- Allen Consulting, 1999, Tendering NSW Aboriginal Legal Services report (NSW report)
- ATSIIS, 2003, Policy Guidelines for ATSILS
- ATSIIS, 2004, Exposure Draft: Purchasing Arrangements for Aboriginal and Torres Strait Legal Services
- Australian National Audit Office, 2003 Report Number 13; Review of the Law and Justice Program
- Commonwealth Grants Commission, 2002, Inquiry into Indigenous Funding
- Office of Evaluation and Audit OEA (ATSIC)., 2003, Evaluation of the Legal and Preventative Services Program
- Johnston,E 1991. National report 5 Vols, Royal Commission into Aboriginal Deaths in Custody, AGPS