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25 June 2003

The Secretary
Australian Senate
Legal and Constitutional References Committee
Inquiry into Progress Towards National Reconciliation
Parliament House
CANBERRA ACT 2600

Dear Secretary

Re: Supplementary submission - ALRM Inc.

Please find enclosed the supplementary submission by the Aboriginal Legal Rights Movement to the Committee.

Kindly note that there are three attachments:

- Correspondence between myself as CEO of ALRM and the Hon Phillip Ruddock;
- Correspondence between myself and the Hon Mike Rann SA Premier, and
- A Joint Press Release by Gary Lewis, Hon Phillip Ruddock, Senator Patterson, and Hon Terry Roberts dated 22nd May 2003.

Should you require further information, please do not hesitate to contact me or Mr Chris Charles, ALRM's General Counsel.

Yours sincerely,

Neil E Gillespie
Chief Executive Officer

AUSTRALIAN SENATE
LEGAL & CONSTITUTIONAL REFERENCES COMMITTEE
INQUIRY ON PROGRESS
TOWARDS NATIONAL RECONCILIATION

SUPPLEMENTARY SUBMISSION OF
ABORIGINAL LEGAL RIGHTS MOVEMENT INC ADELAIDE
24th JUNE 2003

Further to the written submission of the Aboriginal Legal Rights Movement Inc to the Committee of 15 November 2002 and further to the oral evidence of Dr Irene Watson and Mr Chris Charles on the 19 May 2003, the Aboriginal Legal Rights Movement Inc (ALRM) makes the following further written submissions to the Committee.

Stores Policy on APY lands

Further to the oral submissions made on 19th May ALRM suggests that this committee also seek submissions on the Mai Wiru stores policy[1] , which is auspiced by Nganampa Health Council. The Director and the Chairman of Nganampa Health Council are, respectively, Mr John Singer and Jamie Nyaningu of Pukatja Community. Mr Singer can be contacted at PMB227 Umuwa via Alice Springs 0872

Legal Services Commission of South Australia

References made in oral evidence on 19th May 2003 to the "Aboriginal Legal Services Commission" should have been references to the Legal Services Commission of South Australia, a statutory authority set up under South Australian law. The point remains however, that as an ATSIC funded organisation ALRM is not benchmarked

[1] Mai Wiru- process and policy; regional stores policy and associated regulations for the Anangu Pitjantjatjara lands APY land council 2002-3

against the Legal Services Commission in terms of resources and suffers discriminatory disadvantage in the provision of resources by the State of South Australia.

Monitoring of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)

An essential role for ALRM is the monitoring of government implementation of the recommendations of the RCIADIC in order to prevent further deaths in custody. As indicated in oral evidence given on the 19 May 2003, there was an alarming increase in the numbers of Aboriginal deaths in custody in 1995 and that rate tapered off until the year 2000. In that period both ALRM and the Aboriginal Justice Advocacy Committee (AJAC) had written extensive letters to 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.

What follows is a description of issues which were pursued by ALRM and AJAC, including:

1. The removal or screening of hanging points from cells in the various divisions of Yatala Labour Prison; and

2. The improvement of communications between the Department of Correctional Services and the Prison Medical Service in relation to prisoners at risk.

Pursuit of these issues extended to attempting to ensure that psychological and psychiatric reports about prisoners at risk were brought to the attention of the Prison

Medical Service and to the prison authorities in appropriate cases. ALRM and AJAC pursuit of these issues has been ongoing and unfortunately preventable deaths in custody still occur in the context of these Coronial recommendations not having been implemented completely. The committee is respectfully referred to findings of the State Coroners Mr Chivell and Mr Schapel in the following matters:

Wilfred Wally Wassa - Inquest No 11 of 1997: Provision of Defibrillator Equipment

On pages 9-10 of the Finding of Inquest into the death of Mr Wassa, Mr Chivell comments on the diagnostic and therapeutic advantages the availability of this equipment would have given Mr Wassa and those treating him in the following terms:

> Obviously, this equipment would have been particularly useful in the present instance, since the paddles could have been applied to Mr Wassa's chest during the "seizure", and Dr Frost would probably have been able to ascertain that Mr. Wassa was not suffering a seizure at all, but rather that he had gone into ventricular fibrillation. ... If Dr. Frost had been able to successfully defibrillate Mr. Wassa, and had he been admitted to a major hospital with a properly constituted coronary care unit, Dr Heddle said he would have had a better than 50% chance of "walking from the hospital in two to three weeks" .... Dr. Heddle was unable to quantify the probability that successful defibrillation could have been achieved ..., but obviously Mr. Wassa has lost a substantial chance that this could have been done because this equipment was not available.

In addition, on page 16 of the Finding of Inquest, Mr Chivell recommends that:

> the Prison Medical Service give urgent consideration to the provision of cardiac monitoring/defibrillation equipment, of the type described by Dr. Heddle, in all infirmaries in South Australian prisons. [2]

In relation to the matter of Wassa, ALRM pursued the question of the provision of defibrillators to the clinics of the Prison Medical Service in all South Australian gaols. After about three years defibrillators were provided to some but not all of these clinics. It was necessary for ALRM to follow this matter up both through the Prevention of Aboriginal Deaths in Custody Forum, an Aboriginal Prisoners meeting convened by the department, and through formal correspondence.

Kamahl James Goldsmith - Inquest No 6 of 96 & Marshall Freeland Carter – Inquest No 23 of 2000: Exchange of Information Between Departments

Paragraph 8.9 of the Finding of Inquest into the death of Marshall Carter refers to the health assessment of the deceased carried out at Yatala Labour Prison. In that paragraph, Mr Chivell makes the following observation regarding the 'lack of communication of important information between Cavan [Training Centre] and [Yatala Labour Prison]':

> It is of particular concern that in Goldsmith (Inquest No. 6/96) I recommended that:
>
> > "The Department of Correctional Services consider ways in which information concerning prisoners is exchanged between

[2]On page 9 of the Finding of Inquest, Mr Chivell describes this equipment as follows:

> 'As I understand Dr. Heddle's evidence, "paddles" are applied to the patient's chest and the operator may then determine whether ventricular fibrillation is taking place or not. If so, a strong electric charge is then passed between the paddles, thereby attempting to cause the heart to cease ventricular fibrillation and return to normal rhythm.'

> departments when prisoners are transferred from the custody of one to the other …".

Four years later, in Carter, the same issue had arisen in relation to another Aboriginal death in custody.

Proper Recording and Transmission of Health Information in Case Notes

In the following matters, Mr Chivell refers in his recommendations to the importance of keeping case notes up-to-date in preventing or reducing the likelihood of deaths in custody:

Joseph Stanley Koolmatrie – Inquest No 8 of 1996

Simon John Baillie – Inquest No. 24 of 1997

Fallon Wanganeen – Inquest No. 10 of 2000

Sean Patrick Simmonette – Inquest No. 40 of 2000

In addition, in the matter of Brian Ronald Williams – Inquest No. 50 of 1995, Mr. Chivell recommends the following measures to facilitate the transmission of health information between external health professionals and prison authorities:

1. Whenever a prisoner returns to the prison after receiving medical or psychiatric treatment outside the institution, he should be reviewed on the day of return by the Prison Medical Service at the prison so that the Discharge Summary and any other relevant information may be considered, and appropriate steps taken for the ongoing care of the prisoner.

2. Whenever a prisoner returns to a prison in the circumstances outlined above, he should be subject to the same admission and assessment criteria as a new prisoner to the institution.

3. Whenever a prisoner returns to a prison as above, an updated Prisoner Self-Harm Management Notification should be issued giving custodial staff up-to-date information concerning the prisoner's current condition, so that they are not left to guess what may have happened during the prisoner's absence.

In the matter of Craig Mark Allen – Inquest No. 17 of 2002, Mr. Schapel makes a similar recommendation regarding the transmission of health information between the Prison Medical Service and Correctional staff:

> 7.3.... In my view the time has come for consideration to be given to implementing routine disclosure of medical information by the Prison Health Services to Correctional staff, especially where a medical issue may impact on the prisoner's management. I recommend accordingly. Legislation may be required to overcome any privacy or ethical considerations.

It may be remarked that this approach by the learned Coroner extends that of the Royal Commission Into Aboriginal Deaths In Custody-see Final report Vol 3 Ch24.4.69to 75., where Commissioner Johnston QC recognised that the balancing of competing interests in privacy and confidentiality against a the public interest in maintaining security and upholding the duty of care to all prisoners , likely already extends, as a matter of common law to the provision of information to correctional officers where it is necessary for custodial health and safety . [para 24.4.71 page 271 vol 3 RCIADIC]

In the matter of Alexander Wayne Keith Varcoe,, inquest no 2 of 2003, findings 20/3/03, Coroner Chivell recommended a review of the prisoner stress screening form, in light of issues raised in that inquest – again this is an issue that had arisen in Williams ,[recommendation 3 above]- in that 1995 inquest.

Removal of Hanging Points

In all of the following Findings of Inquest, the Coroner recommends the reduction or removal of hanging points:

Damien John Wakely – Inquest No. 7 of 1995

Kamahl James Goldsmith - Inquest No. 6 of 1996

Christopher Mark Bonney – Inquest No. 28 of 1996

Simon John Baillie – Inquest No. 24 of 1997

Fallon Wanganeen – Inquest No. 10 of 2000

Laurens Adrian Keith Nobels – Inquest No. 43 of 2000

Craig Mark Allen – Inquest No. 17 of 2002

Alexander Wayne Keith Varcoe - Inquest No. 2 of 2003

It is noteworthy that in the matter of Varcoe, the Coroner's recommendations regarding removal of hanging points in E Division had not been heeded or acted upon since the Bonney findings were handed down on the 26th August 1997.Another issue that arose in those inquests was delays in provision of a master key to unlock a cell in a night emergency and the Coroner's recommendation to install electronic door opening devices to aid and hasten emergency access to a cell .

It is in that context that ALRM, AJAC, and the Law Society of South Australia have all made submissions to governments for the implementation of RCIADIC recommendations 13-17 to make government departments accountable to the parties at inquest and to the Parliament over implementation of recommendations arising from deaths in custody inquests. In a letter dated the 13th February 2003, Ms Lennon, the Chief Executive Officer of the Attorney-General's Department and the Department of Justice, informed ALRM that it is not the present State government's intention to seek amendments to the Coroner's Act to implement these RCIADIC recommendations.

ALRM has also advocated the proper implementation of RCIADIC recommendations 1, 2 and 3 in providing proper support and assistance to AJAC. At the same time, ALRM has pointed out to the South Australian Department of Correctional Services (DCS) that implementing the RCIADIC recommendations as they apply to prisoners

necessarily increases and enhances the standard of care required of the DCS in exercising its duty of care to prisoners. Enhanced safety measures introduced by the RCIADIC, such as:

- Prisoner screening processes, and care of prisoners at risk;
- Improved interchange of information between Prison Medical Service and custodial authorities;
- Screening of hanging points;
- Employment of Aboriginal liaison officers and their employment being made effective to assist Aboriginal prisoners;
- Improving prisoner complaint processes;
- Improving visit facilities;
- Improving funeral leave processes for Aboriginal prisoners;

and many other matters to be found in Royal Commission recommendations 150 to 187 disclose relevant topics where the standard of care and management required of Correctional Services Departments throughout Australia must be improved. ALRM has pointed out to the DCS that it was for that reason that the RCIADIC recommended that:

> 'the monitoring of implementation of recommendations can only be carried out in close liaison with the authorities responsible for implementing them, and that a Secretariat was needed "to assist AJAC to give informed independent advice to government" '.
>
> RCIADIC Recommendation No 3

The above discussion provides examples of the RCIADIC recommendations ALRM is actively pursuing with the South Australian government. RCIADIC needs to be seen as a whole, implementation of all recommendations in relation to monitoring is

needed in order to lift the achievement level necessary to meet the standard of care required .

However, the RCIADIC recommendations are not confined to the position of Aboriginal prisoners, but also refer to underlying economic and social issues that contribute to the over-representation of Aboriginal people within the criminal justice system. Accordingly, ALRM has made efforts to monitor the implementation of RCIADIC recommendations of this broader type, including and in relation to the following matters:

The *Public Intoxication Act 1984* & Dry Areas

The question whether there ought to be dry areas proclaimed for the city of Adelaide is a matter of public controversy in South Australia. The government of South Australia has determined to continue a dry area on a trial basis and to conduct a full review of the provision of services to people who would be disadvantaged by a dry area.

ALRM has advocated for full implementation of the *Public Intoxication Act 1984* (*'PIA')* in South Australia by the proclamation of sobering up centres under that Act and by broadening the criteria for *PIA* detention to include disorderly behaviour. It has also recommended use of powers under the Local Government Act to create authorities to provide shelter for homeless people in the parklands. The South Australian government has acknowledged that ALRM had identified gaps in existing services. The relevant RCIADIC recommendations are numbers 80, 81, 82, 84, 85 and 86.

The South Australian Police department has been requested to provide statistics on *Summary Offences Act* arrests which involve intoxicated people, so that the statistical comparisons can be made between PIA detentions and arrests for summary offences- as required for RCIADIC recommendation 85b. ALRM is monitoring the progress of these submissions to the State government and this process is ongoing. In addition, ALRM has brought these matters to the attention of the Human Rights and Equal Opportunity Commission (HREOC) in some detail, and has maintained regular contact with HREOC in this regard.

Recognition of Aboriginal 'Customary' Law

On the 19th May 2003 ALRM agreed with Senator Bolkus's suggestion that police should consult closely with affected Aboriginal communities about the operation of general orders and general policing policies and practices in relation to customary law cases. There should be close consultation between senior men and women in discrete communities and police regarding police practices. Particular matters might include the use of the power of arrest, the nature of police investigations and the areas where police might find it best not to intervene.[3] The content of such consultations will necessarily be limited, however, because of the incongruity between Australian common law and Aboriginal Law, and the fundamental premise of the applicability of criminal statutes of general application.

In *Walker v NSW*[4] Mason CJ said:

[3] *R v Grant* [1975] WAR163@166 per Wickham J ' Should the Minister in his discretion decide that the white mans law has in this particular instance gone far enough with this black man, then it should not be thought that the Supreme Court would be so presumptuous as to dissent, even silently from that view' This of course is a good example of recognition around the edges, it does not address the fundamentals of incongruity, as discussed herein.

[4] [1994] 126 ALR 321 at 323-4

> 'Even if it be assumed that the customary criminal law of Aboriginal People survived British settlement, it was extinguished by the passage of criminal statutes of general application. --- There is nothing in Mabo No2 to provide any support at all for the proposition that criminal laws of general application do not apply to Aboriginal people.'

There is a growing call to reverse this common law impasse as a matter of policy. The 2002 Social Justice Commissioners Report at page 120 includes the following comment by the Hon Fred Chaney, from a summary of an April 2002 Governance Conference:

> 4.The examples presented to the Conference demonstrate the value and relevance of customary law in dealing with contemporary problems and issues

The Committee is referred, also to the literature in relation to the effects of substance abuse upon the maintenance of customary law values. Texts like *Alcohol in the Outback* by Palmer & Brady (Northern Australian Research Unit 1985) and *Heavy Metal-the Social Construction of Petrol Sniffing in Australia* by Brady (AIATSIS 1992) all suggest that substance abuse is relevant to particular practices which are subversive not only of the general law but of Aboriginal law. In those circumstances, community consultation needs to be directed to assisting the community in dealing with what it sees as being its major problems. This was the experience of Yalata Community, the subject of the monograph *Alcohol in the Outback*, when it agreed to an application to the Licensing Court of South Australia for restrictions on the take away licences of nearby liquor outlets. The point we make is a simple one: customary law cannot be seen in isolation; there needs to be acutely sensitive consultation with communities about the way in which particular social problems can be addressed, and

it may be that communities will assert that recognition of customary law practices is an integral part of addressing those social problems they identify. In those cases policing practices and, if required, criminal laws of general application should be fine tuned, to the advantage of the community as a whole. Consultation will lead to frustration over this impasse over incongruity unless it is addressed.

Petrol Sniffing is foreign to Pitjantjatjara Law

Issues arose in the evidence given on the 19th May 2003 about whether Anangu should or could be expected to deal with petrol sniffing themselves, while similar requirements are not made of other communities afflicted by substance abuse. The Committee is respectfully referred to Chapter 8 of the Coroner's Inquest findings into the deaths of Kunmanara Hunt, Thompson and Ken,[5] under the heading "Anangu attitudes to petrol sniffing". The following quotes from the Coroner's findings are relevant to this topic:

Mr Kawaki Thompson, the father of one of the deceased said the following:

> 'There has been petrol sniffing since the 1950's. Who is responsible? The petrol doesn't belong to us. It is not part of Anangu law. It was introduced to the lands by white people. It is important that Anangu revive their culture and hold onto their culture. The problem with petrol comes from outside......its like the Maralinga bomb tests. The solution should come from the outside too'.[6]

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[5] Inquest into the deaths of Kunmanara Hunt, Thompson and Ken, No. 11 of 2002, findings delivered 6th September 2002, State Coroner of South Australia. As this was an inquest into the deaths of three people, any of the following URLs will retrieve the same findings:
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_hunt.finding.htm>
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_ken.finding.htm>
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_thompson.finding.htm>

[6] Ibid, paragraph 8.4

Mr Thompson also spoke of the difficulties parents faced in dealing with petrol sniffers.

> 'Children and sniffers have become bosses over their parents. They are running the agenda by their behaviour. They are out of control and people have to react to the behaviour of sniffers rather than keeping to the law and keeping to the culture. Sniffers break their mother's arms. There is violence against families. Sniffers threaten their parents that they will commit further acts of self-harm. They swear at their parents, they breach traditional secrets by speaking out of turn … we as older people are worried about the children and about the younger generation of parents having to bring up petrol sniffers. We have no sniffers now, we have lost our only son'.[7]

Glenys Dalby, the mother of Kunmanara Hunt, whose death was also investigated said:

> 'if there is intervention early before they get taken into sniffing, it is possible to stop sniffers, but you need to have active young parents to do that. It is too hard for grandparents and in relation to my grandchildren it would be hard for me and my husband to keep a good eye on them now but my daughter is deceased'.

The Coroner recommended that:

> 'the fact that the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture, is clear. Government should not approach the task on the basis that the solutions must come from Anangu communities alone.'[8]

Monitoring the Inquest into the Deaths of Petrol Sniffers

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[7] Ibid, paragraph 8.5
[8] Ibid, 13.1.3

ALRM referred in some detail to the Inquest findings of the State Coroner of South Australia into the deaths of Kunmanara Hunt, Thompson and Ken.[9] ALRM made that submission to emphasize the importance of the findings, and the recommendations, particularly as they relate to governance and funding of community controlled organisations which deal with problems related to petrol sniffing.

It is submitted that a recommendation should be made that the Human Rights & Equal Opportunity Commission, Social Justice Commissioner should monitor the progress of the State and Federal governments in implementing the recommendations flowing from the inquest into the deaths of three petrol sniffers.

ALRM makes this submission for a number of reasons.

1. The implementation processes is occurring within the context of the Council of Australian Government agreements of 1992 about collaboration and interaction between State and Federal agencies and departments. . This collaborative approach was further emphasised by a joint press release of 22nd May 2003 from Ministers Ruddock, Patterson, Roberts and the Chairman Garry Lewis of the APY Land Council, entitled "APLands Communities to work together with Federal State Partnership", copy attached. Thus it would be useful to monitor the effectiveness of that approach, particularly in light of the Social Justice Commissioner's

[9] No. 11 of 2002, findings delivered 6th September 2002, State Coroner of South Australia.
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_hunt.finding.htm>
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_ken.finding.htm>
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_thompson.finding.htm>

Reports for 2000, 2001 and 2002 and his assertion that benchmarking of programs is required against real need and against human rights standards.

2. There are a number of matters of interstate jurisdiction that need to be addressed by the tri-state forum including the following:

   (a) The need for a uniform definition of a death by petrol sniffing.

   (b) Because the APY Lands straddle two States and a Territory, the need for uniformity of laws in relation to:

      i. prevention of the trafficking in petrol for the purpose of inhalation; and

      ii. the need for uniformity of laws in relation to provision of AVGAS and non-provision of petrol near the APY Lands.

   (c) There is also a need for discussion about uniformity of legislation in relation to proscribing the activities of petrol sniffing in general.

   (d) There is also the question that arises from the Esky Muller case inquested in the Northern Territory in 1998, of whether there ought to be a centralised petrol rehabilitation centre placed in Alice Springs to service the tri-State regions.

3. An important aspect of the Coroner's findings and recommendations is his recognition that petrol sniffing is such a complex problem or indeed series of problems to be faced by outback communities, that no individual measure will "fix it", rather there needs to be a series of measures all operating synergistically together to have any prospect of long term success. For that reason alone progress should be monitored.

4. The consequences of Governments not having confronted petrol sniffing with energetic and well-funded responses in 30 years were made apparent in the petrol sniffing inquests of 2002.[10] (See paragraphs 6.1-6.5 and paras 9.1and 9.2, including the quotations from the evidence of Mr John Tregenza).

5. Australia's reputation in upholding international human rights standards requires there be immediate and effective measures taken to assist the communities to deal with petrol sniffing.

6. In that context, there ought to be monitoring of the quite complex processes of government that are applying particularly in South Australia to do with Tier One, Tier Two and the Petrol Sniffing Task Force. (See Inquest into the deaths of Kunmanara Thompson, Ch 9, pages22-34).[11] That process needs to be judged against the thirty years history of State and Federal interaction on public policy questions affecting the APY lands.

7. The adequacy and effectiveness of consultation by these Tier 1 bodies will need to be monitored. Consultation must be made with all affected community controlled organisations, communities and individuals. Selective consultation can only lead to a distorted picture, particularly if it

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[10] Inquest into the deaths of Kunmanara Hunt, Thompson and Ken, No. 11 of 2002, findings delivered 6th September 2002, State Coroner of South Australia.
<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_hunt.finding.htm>
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<http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_thompson.finding.htm>

[11] <http://www.courts.sa.gov.au/courts/coroner/findings/findings_2002/kunmanara_thompson.finding.htm>

is in the interest of some of the parties consulting or parties consulted to make it so.

8. The question of whether sufficient resources will be provided to combat petrol sniffing by providing the funding required for necessary projects.

9. It is of concern for instance that the latest 2003-4 budgets bids have not included provision for a small correctional facility on or near the APY lands, of the kind that was recommended by the Coroner. ALRM understands that budget bids for such a facility have not been made or have not been successful for the last several years, because of lack of necessary provision in recurrent funding. If the State of South Australia does not have the necessary resources, outstanding needs should be identified and met by the Commonwealth, perhaps through specific purpose payments in the areas of health, housing infrastructure and education [12]

The ALRM, on behalf of the families of Kunmanara Hunt, Ken and Thompson, wrote to the Federal Minister for Aboriginal Affairs and the Premier in South Australia in September 2002, seeking advice and offering assistance in relation to the implementation of the Coroner's recommendations. We referred to the Coronial findings and recommendations as being a blue print for government to consider as the means best able to address the problems and provide the most likely long-term solutions.

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[12] See Social Justice Commissioner 2002 report pages 111-112, referring to the Commonwealth's agreed actions in response to the Commonwealth Grants Commission Report on indigenous funding

Australia's international reputation in human rights depends upon there being an effective implementation of Coronial recommendations to address petrol sniffing on the AP Lands.

Copies of ALRM's correspondence to the Honourable Phillip Ruddock and to the Honourable Mike Rann and their replies are enclosed with this submission and for the purposes of their being tendered to the Senate.

OFFICE OF THE HON PHILIP RUDDOCK MP

Minister for Immigration and Multicultural and Indigenous Affairs
Minister Assisting the Prime Minister for Reconciliation

Parliament House
CANBERRA ACT 2600

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MC 20020910

Mr Neil Gillespie
Chief Executive Officer
Aboriginal Legal Rights Movement Inc
321-325 King William Street
ADELAIDE SA 5000

Dear Mr Gillespie

Thank you for your letter of 27 September 2002 to the Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP, regarding petrol sniffing on the Anangu Pitjantjatjara Lands.

Your letter is currently receiving attention.

Yours sincerely

M. Oreshovic

Russell Patterson
Senior Adviser

Aboriginal Legal Rights Movement Inc

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Reply To: Adelaide

Your Reference:
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27th September 2002

The Honourable Phillip Ruddock
Minister of Immigration, Multicultural and Indigenous Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

Re: Findings of the Inquest into the Deaths of Three People who died as a Result of Sniffing Petrol on the Anangu Pitjantjatjara Lands

As you know the State Coroner of South Australia has handed down his findings into the deaths of three people who died as a result of sniffing petrol on the AP Lands. The findings are detailed, wide ranging and comprehensive. They represent a blueprint for Government in terms of the nature and extent of the problem and the best and most likely effective ways of dealing with it.

The Aboriginal Legal Rights Movement, an ATSILS funded by the Aboriginal and Torres Strait Islander Commission acted for the families of those who died and it has to ensure that their interests are maintained in the process of Governments considering and implementing the many recommendations the Coroner made.

The Coroner said;

> ....the wider Australian community has a responsibility to assist Anangu to address the problem of petrol sniffing, which has no precedent in traditional culture.. Governments should not approach the task on the basis that the solutions must come from Anangu themselves.

I draw your attention in particular to Recommendations 1to 7at pages 73and 74 of the findings and number 8.15, which deals with the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

Briefly, those Recommendations refer to the need for Governments to recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the AP Lands and that socio-economic factors must be addressed as they provide the environment in which substance abuse is resorted to. The Coroner urged the Australian community as a whole to recognise that it has a responsibility to assist Anangu to address the problem of petrol sniffing .

The Coroner urged the Commonwealth Government through the Central Australian Cross-Border Reference Group to accelerate its efforts to find solutions to the underlying issues and get beyond the "information gathering phase".

The Coroner recommended that Commonwealth and State Governments recognise the imperative need for coordination of approach and he made a specific recommendation about administration of programs that affect the AP Lands.

Recommendation 6 refers to the need for Governments to provide senior and trusted officials with sufficient authority to manage and assess programs on ongoing basis and so that service providers can have a line of communication with the funding body and some certainty as to future arrangements. I understand from talking to members of the NPYWomen's Council that the need for that recommendation to be implemented is already recognised. This is most encouraging.

It ought also to be considered in light of the Royal Commission Recommendation number 195 that

> "subject to appropriate provision to ensure accountability to Government for funds received, payments by Government to Aboriginal organisations and communities be made on the basis of triennial rather than annual or quarterly funding."

ALRM recognises that you as the Minister for Immigration, Multicultural and Indigenous Affairs do not have responsibility for all of the Departments and Agencies to which these recommendations refer. Nevertheless the broad thrust of the Coroner's findings and recommendations refer to the need for the Commonwealth State and Territory Governments to

> "recognise that petrol sniffing poses an urgent threat to the very substance of the Anangu communities on the Anangu Pitijantjara Lands".

I have referred to Recommendations 5 and 6 which relates to coordination between State and Commonwealth Governments and the need to improve the administration, management and assessment of programs.

These matters are also referred to by the Social Justice Commissioner in his 2001 Justice Social Report. I refer in particular to Chapter 3 of the Report -- Indigenous Governance and Community Capacity Building. At page 71 of the Report the Social Justice Commissioner refers to the Commonwealth Grants Commission review of indigenous funding need. The principles referred to by the Social Justice Commissioner are broadly consistent with the Coroner's recommendations referred to above.

Consistent with its charter and its obligation to its clients, the Aboriginal Legal Rights Movement undertakes to provide you with any assistance it can reasonably provide you in your consideration of the Coronial findings and the means to implement them.

We recognise that the coronial findings and recommendations present an enormous challenge to you personally and to ATSIC and to all Governments and agencies concerned.

As the Coroner said,

> "that such conditions should exist among a group of people defined by race in the 21st century in a developed nation like Australia is a disgrace and should shame us all".

Yours faithfully

Neil Gillespie
Chief Executive Officer

cc. Kawaki Thompson – Anilalya Homelands
cc. Glenys Dalby – Anilalya Homelands
cc. Mick Wikilyiri and Paniny – Amata Community
cc. Frank Young – Watarru Homelands

Hon. Mike Rann MP
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02P06083

Mr Neil Gillespie
Chief Executive Officer
Aboriginal Legal Rights Movement Inc
321-325 King William Street
ADELAIDE SA 5000

Dear Mr Gillespie

Thank you for your recent letter regarding the Coroner's recommendations relating to deaths as a result of inhalation of petrol fumes.

The issue of petrol sniffing is one that this Government is committed to resolving, and the Premier is taking personal interest to ensure progress is made and action is taken so that communities on the Anangu Pitjantjatjara Lands are fully supported in restoring their quality of life.

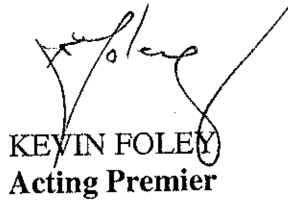
You may be aware that responsibility for the Anangu Pitjantjatjara Lands Inter-Governmental Inter-Agency Collaboration Committee (commonly referred to as Tier 1) has now been transferred to the Department of State Aboriginal Affairs (DOSAA) with the Petrol Sniffing Task Force (PSTF), a subcommittee of Tier 1, being the single point of reference for issues relating to petrol sniffing. While the responsibility of improved outcomes on the AP Lands will be shared by the members of Tier 1, "Champions" will ensure relevant issues are given their full attention, and in the case of justice issues, the Chief Executive of the Department of Justice would be the most likely Champion. The Chief Executive of the Department of State Aboriginal Affairs (DOSAA) as Chair of Tier 1 will forward your comments at the next Tier 1 meeting for consideration.

In your letter you also refer to recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and their relevance to the Coroner's recommendations, particularly with respect to the lack of full implementation.

I am advised that DOSAA has recently commissioned a review of the South Australian response to the recommendations of the RCIADIC in order to determine South Australia's commitment to the recommendations and their relevance for the 21st century. The review did not seek to audit agencies' responses to each recommendation, but rather to provide a platform to shape future directions. A report has now been provided and DOSAA is committed to working across government to address the many areas of disadvantage and achieve a systemic implementation of the recommendations.

I again thank you for taking the time to write to the Premier and for offering your assistance in the future.

Yours sincerely



KEVIN FOLEY
Acting Premier

15/12/2002

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Reply To: Adelaide

Your Reference:
Our Reference: CJC:nr 001.let

27th September 2002

Mr Michael Rann
Premier of South Australia
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Mr Premier

Re: Coronial Findings into the Deaths of Three Petrol Sniffers

As you know the State Coroner has handed down his findings into the deaths of th
people who died as a result of sniffing petrol on the Anangu Pitjantjatjara [AP] Lands

The findings are detailed, wide ranging and comprehensive. In my view they represent
effective blueprint for Government in terms of the nature and extent of the problem
the best and most likely effective ways of dealings with it.

ALRM acted for the families and it has to ensure that their interests are maintained in
process of Governments considering and implementing the many recommendations
Coroner made.

The Coroner said;

> ....the wider Australian community has a responsibility to assist Anangu to add
> the problem of petrol sniffing, which has no precedent in traditional cult
> Governments should not approach the task on the basis that the solutions n
> come from Anangu themselves.

Many of the recommendations will require creative and new methods for Governme
provide assistance to Aboriginal communities and community organisations. They
require effective and timely consultation .The families' endorsement of "Tier 1
contingent on effective consultation. [findings para9.39]

For example, the Coroner has called for the division of Family and Youth Services to
be "expanded into a much more proactive community development
(Recommendation 8.8). The Coroner has also called for improved coordination betw
Governments and the development of long term relationships between Government
community organisations. (Recommendations 4, 5, 6 and 7).

As the Coroner said:

> "For any strategy to be successful will require broad Anangu support.
> strategies will fail unless they are supported by others as part of the multi-fac
> approach. Strategies should be aimed primary, secondary and tertiary levels
> have outlined in these findings".[rec7]

Central to the Coroner's findings and recommendations is the question of improved and increased police presence on the AP Lands.Calls that had been made for such an increase, particularly by the NPYWomen's Council were endorsed by the families of the deceased.
[findings para 11.56 page 69]

Nevertheless the question there asked by the families' counsel, "what effective sanctions can police impose?" is not merely a rhetorical question. Police presence without effective police powers to deal sensitively yet effectively with petrol sniffing is going to be expensive but is not likely to achieve much.

It is in that context that the Coroner's recommendations about the Public Intoxication Act 1984,[rec8..6] night patrols[rec8.7] and secure care facilities on the AP lands[rec8.10] assume great importance.

Indeed ALRM would go so far as to suggest that effective implementation of the Public Intoxication Act 1984 may well require the presence of dedicated police and community sobering up facilities to receive intoxicated sniffers in as many as five or possibly six communities. That may need to be done at least until such time as the communities most severely affected have had enough respite to start up and be supported with effective actions [like night partrols]and diversion schemes. We suggest that the major communities on the AP Lands , most effected by chronic and disruptive sniffing should be consulted thoroughly and carefully on this suggestion .

Amongst the specific findings and recommendations which deal with sanctions, ALRM has a particular interest in Recommendation 8.5 namely ensuring that the range of sentencing options available to courts sitting on the AP Lands be increased.

The Aboriginal Legal Rights Movement has for many years provided representation in the courts of summary jurisdiction on the AP Lands and for those people sent to the District Court and Supreme Court in Port Augusta for trial and sentencing. We endorse the Coroner's recommendation that sentencing options available to the courts on the AP Lands be increased by the provision of real and effective programs which can be made the subject of bonds and undertakings. Respect for the law and its institutions can only be enhanced if this is done.

Royal Commission into Aboriginal Deaths in Custody

The Coroner stated at paragraph 12.1 that "A comparison of the issues which have arisen in this inquest with the findings of the Royal Commission into Aboriginal Deaths in Custody published in 1991 reveals that the recommendations of that inquiry have still have not been fully implemented".

The Coroner then referred to:

> Recommendation 88 in relation to police services reviewing the allocation of resources and placing an emphasis on community policing.
>
> Recommendation 113 in relation to effective non-custodial sentencing orders.

Recommendation 195 – provision of triennial funding to Aboriginal community organisations and communities rather than annual or quarterly funding.

Recommendation 238 - programs and strategies for youth.

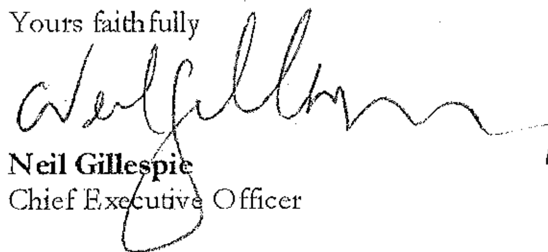
Recommendation 265 – mental health services.

Recommendation 286 – coordination of policies, resources and programs between the Commonwealth and the States.

These 1991 Recommendations of the Royal Commission are implicitly and explicitly referred to in the specific recommendations that the Coroner made. The Aboriginal Legal Rights Movement urges you and your Government to place a very high priority on the effective implementation of the Royal Commission and Coronial recommendations.

The Aboriginal Legal Rights Movement undertakes to provide you and the Minister of Aboriginal Affairs , and the Minister for Human Services and your respective officers whatever assistance it reasonably can in the provision of advice, information and submission on particular matters that will arise in the course of Government policy implementation on the Coroner's recommendations and findings.

Yours faithfully



Neil Gillespie
Chief Executive Officer

cc. Kawaki Thompson – Anilalya Homelands
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cc. Frank Young – Watarru Homelands

Anangu Pitjantjatjara Council
Pitjantjatjara Yankunytjatjara Land Council

Government of South Australia

JOINT MEDIA RELEASE

Philip Ruddock
Minister for Immigration and Multicultural and Indigenous Affairs

Terry Roberts
SA Minister for Aboriginal Affairs and Reconciliation

Senator Kay Patterson
Minister for Health and Ageing

Gary Lewis
Chair, AP Executive

ANANGU PITJANTJATJARA (AP) LANDS COMMUNITIES TO WORK TOGETHER WITH FEDERAL-STATE PARTNERSHIP

The Commonwealth and South Australian Governments, and the AP Lands communities have agreed to work together under the Council of Australian Governments (COAG) whole-of-government approach to improve the outcomes for Indigenous communities.

In April last year, COAG agreed to identify up to 10 Indigenous sites or regions around the country to trial the new approach which is tailored to needs and priorities of individual communities.

In each case, this will see the Commonwealth and State or Territory government work more flexibly and will lead to an agreement with the community on priorities, responsibilities and outcomes.

Two trial sites, Cape York in Queensland and Wadeye in the NT, were announced late last year.

Federal Minister for Health and Ageing, Senator Kay Patterson said that she was very pleased that the AP Lands communities have agreed to be involved in this COAG initiative.

"With the support of both governments local people will have a genuine opportunity to work towards improving the well being of their communities and families."

SA Minister for Aboriginal Affairs and Reconciliation Terry Roberts said: "This trial will build on positive initiatives already under way on the AP Lands, such as the work of the AP Lands Inter-government Inter-agency Collaboration Committee (Tier 1), of which the South Australian Government, the Commonwealth, ATSIC and AP Council are all members."

"It will aim to improve the way Federal and State governments and communities work together to get better results for Anangu on the Lands."

The Commonwealth Department of Health and Ageing and the SA Department of State Aboriginal Affairs will take the lead roles in coordinating across government agencies and working with the AP Lands communities. ATSIC will also be closely involved.

Federal Indigenous Affairs Minister Philip Ruddock said: "The key to this new initiative is that neither governments nor Indigenous communities can do it all on their own. We must work together, work in partnership and share responsibility for improving outcomes and building the capacity of people in communities to manage their own affairs."

Mr Gary Lewis, Chair of the AP Executive, welcomed the COAG initiative and the opportunities it could provide for Anangu on the AP Lands. "This COAG partnership gives us an excellent opportunity to get it right", he said.

22 May 2003

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	AP Executive office:	**Rod Williams**	**08 8954 8101**
		Bebe Ramzan	**08 8954 8102**