



**Aboriginal Legal Service**  
of Western Australia, Inc

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19<sup>th</sup> November, 2009

Attorney-Generals Department  
Social Inclusion Division

Dear

Thank you for the opportunity to comment and participate in the new Proposed Updated Funding Allocation Model dated the 2<sup>nd</sup> October, 2009. We apologise for the lateness of this response but as you will see we feel there are a large number of factors that need to be considered as part of this new model.

As a result of ALSWA's assessment of the proposed changes, we would like to raise a number of issues with regard to the proposal and seek your assistance to address and clarify our concerns.

### **Statistical Analysis and Funding Calculation Model**

Though you have provided the final percentage outcomes on the Demand and Cost factors that will no doubt impact on the need and cost of delivering services, no evidence was provided as to how the actual percentage impact was formulated other than to say it took into account the 2006 ABS Census, 2007-08 Case and Duty matters, regional service delivery and updated weighting. How these factors were brought together has not been described. Can you please provide this information?

Though you have indicated that the funding would affect each region in one of three ways:

- a) Reallocate the entire existing funding for the program;
- b) Distribute any extra one off funding amount;
- c) Reallocate any additional ongoing funding.

As you can imagine, the magnitude of the total funds would make a dramatic difference to the proposed funds received by each ATSILS and could well have a profound impact on ALSWA's ability to deliver appropriate services.

It would also be very beneficial to know, for comparison purposes, how the existing model is calculated and funding apportioned.

ALSWA's initial assessment of the proposed model would indicate that there would be adjustments to all territories by the following percentages.

Region	Percentage Change	
New South Wales	-26.62%	
Victoria	-25.20%	
Queensland	-8.95%	
South Australia	3.90%	
Western Australia	33.96%	
Tasmania	-32.02%	
Northern Territory South	60.75%	
Northern Territory North	32.94%	

This shows that WA, NTN & NTS will receive substantial increases to their percentage allocation, SA will have minimal change, while the other States may well be subject to dramatic reductions in their funding percentage.

Not knowing from what basis the funding will be based on (a, b or c above), makes the assessment of what impact these changes will have very hard to determine and what the ultimate change in funding value, if any, to ALSWA will be. Obviously any reduction in actual funding to the affected States will limit their ability to provide required services.

It would appear that from the current distribution and taking into account that New South Wales, Victoria and Queensland have over 70% of Australia's indigenous population, that this may well result in an overall reduction in the ATSILS funding if a reallocation of the existing funding model is used.

We would also like to pose the questions of what increase in total funding has been substantiated since the model was first introduced in 2004?

We further ask:

- (a) Has any increase taken into account the annual CPI increases,
- (b) Has any increase taken into account increases incurred as a result of unique pressures such as dramatic changes in rental, wages & accommodation specifically in mining areas, including in particular in Western Australia,
- (c) Has any increase taken into account the dramatic increase in the population of Indigenous peoples in Australia, which is something in the region of 15% over the relevant period, which in turn, translates to nearly double the annual growth rate of the population of non-indigenous Australians.

In addition, it is essential in order to properly understand the proposed model that a remoteness map be superimposed with indigenous population centres and existing ATSILS offices.

## **Consideration of Proposed Cost and Demand Factors**

In further exploring the proposed model principals we have done our own assessment of the percentage impacts as a result of the factors initially outlined and in general feel that the percentages are in the right broad ranges though some should be considered a little further.

### **Remote Services and Offices**

The cost of supporting and servicing remote offices and courts is more extreme in Western Australia than the model currently considers. We currently have 18 offices in Western Australia of which 13 would be considered Remote or Very Remote. Though you have indicated that a 50% loading should be applied to remote locations our feeling is that this should be more like 150% for Remote Court work and 200% for Remote Offices. We feel the additional impacts that have not been fully considered are:

- a) **Availability of local resources** – legal or paralegal staff are often not available in these remote centres at all. As a result, ALSWA either need to pay well above normal rates to retain the services of what resource are there or similarly to encourage suitable candidates to relocate to these locations. On top of this is the cost of relocation costs, both to and from the remote location and the extra cost of periodic home visit flights, both costs are an essential part of retaining suitably skilled staff in remote locations;
- b) **Cost of local facilities and services** – since many of ALSWA's remote offices are located near or in mining precincts the cost of office space and other local facilities is very high in proportion to similar Perth or eastern States facilities. In addition to this, local contractors for all types of services from air-conditioning to IT specialists are at a significant premium, adding a further burden to limited funding we have;
- c) **Tyranny of distance** – not only does ALSWA have the added burden of paying more to secure local legal professionals, if we do need extra resources on the ground by temporarily relocating one of our Perth based staff, we have a triple burden to bear. The cost of the legal personnel to be relocated needs to include travel and away from home allowances, paying exorbitant accommodation costs and the high costs of flights and ground travel to actually get the relevant staff to the desired location. Added to this is the huge amount of lost time to move someone to the remote location and then get them to communities. Balgo and Kalumburu in the East Kimberley are two significant remote indigenous communities that we service on a regular basis from our Kununurra office. Both are both more than 9 hours by car from Kununurra , more than half of the distance is on 4 wheel drive only roads. By way of further example, the Warburton and Warakurna court circuits which are serviced by lawyers from ALSWA's Kalgoorlie office and are 8 and 10 hour drives respectively on 4 wheel drive only roads from Kalgoorlie. In addition, it is almost impossible to deliver further training and continuing professional development programs (which are now mandatory for lawyers) to remote centres, which have to be delivered in Perth.

- d) **Client & witness costs** – ALSWA has the extra burden that when a matter needs to be brought to court we also need to cover the cost of transporting both clients and witnesses (sometimes separately) to the relevant court. Without doing this our clients would simply be further disadvantaged due to their remoteness and inability to get there. Further, superior court circuits to regional centres operate according to very tight schedules and there is an expectation that ALSWA will assist in transporting clients and witnesses to and from court. Once in the regional centre, the client or witnesses then need to be accommodated at ALSWA's expense.

In addition to these points we have assessed the individual actual cost of maintaining offices in the remote locations and they are in line with proposal of 200% extra per employee. We currently are unable to fund sufficient resources in our remote locations due to the high costs.

### **Additional Criteria**

In this final section, ALSWA would like to propose other significant factors that have had a dramatic impact on ALSWA's ability to service our clients that can be addressed with suitable funding:

- a) **Prison and Juvenile Detention Populations, Recidivism, Diversion and Rehabilitation** – it has long been recognised that once an individual has been convicted and sentenced to imprisonment then the likelihood of reoffending and a return to prison is dramatically increased. Latest statistics put this as high as 85% for indigenous adult males and juveniles in WA. As you would be aware, WA has the highest rate of indigenous adult imprisonment and juvenile detention per head of population in Australia. ALSWA is committed to trying to divert indigenous people from custody, to support them while in custody and to assist them in their rehabilitation once released from custody, in an attempt to reduce every burgeoning imprisonment rates. Further, ALSWA is committed to trying to address some of the over policing practices of the WA police service which also contributes to the over representation of indigenous people in the justice system and in custody. While ALSWA is uniquely placed to provide culturally appropriate and informed assistance in these areas, ALSWA's present capacity to do so is extremely limited.
- b) **Regional and Remote Population Demographics** – not only does the number of offices and courts in regional and remote areas increase the cost of service provision, these issues are compounded by the physical location of ALSWA's indigenous population. Currently some 41% of the West Australian indigenous population live in remote or very remote locations. This obviously has a dramatic impact on the cost of providing not just legal services but support to the local community overall.
- c) **Climatic Conditions for Access** – a further impact that has been identified as leading to further cost impacts and provision of services is the climatic variations (Cyclonic conditions and extreme heat and rainfall) that are experienced in some

of the remote areas causing both losses in time, overruns in accommodation and additional flight costs.

Although ALSWA feels that the result of your own cost and demand estimates will positively impact on our ability to provide services to our client base, we are still very concerned that the impact will not nearly be enough to take in to account all the factors that currently exist.

The impact to date has been that we have progressively had to reduce services and "choose" between essential and non essential services. The end result is a poorer and less effective legal service to the most disenfranchised section of our community.

Yours sincerely

Prof Dennis Eggington  
Chief Executive Officer,

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of Western Australia, Inc

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17 August, 2010

Attorney Generals Department  
Indigenous Justice and Legal Assistance Division  
Attorney General's Department  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600

**Attention:**

Dear

**CHANGES TO THE INDIGENOUS LEGAL AID AND POLICY REFORM PROGRAM FUNDING ALLOCATION MODEL AND MAY 2010 FEDERAL BUDGET FUNDING VARIATIONS TO ATSILS**

I write to raise with you a number of serious concerns held by the Aboriginal Legal Service of Western Australia (Inc.) ("ALSWA") in relation to the allocation of new budget funding of ATSILS, following the May 2010 Federal Budget. The concerns are outlined below.

**A. THE NEW FUNDING ALLOCATION MODEL AND THE PROCESS SURROUNDING RECENT CHANGES TO THE MODEL**

ALSWA has concerns about the fairness of the process for the development of the new funding allocation model and the fairness of the model as applied to ALSWA's service operations.

As you know, the May 2010 budget funding for ATSILS was based on a revised funding allocation model. The new funding allocations derived using the revised funding allocation model indicates that ALSWA's variation resulted in an increase of \$1,022,551 for 2010 – 2011, which reflects an overall increase in funding of 10.24%. This stands in stark contrast to, for example, the variation of \$1,723,405 to NT South (ie CAALAS) which reflects an increase in overall funding of 85.7% for 2010-2011 and the variation of \$1,404,712 to NT North (ie NAAJA) which reflects an increase in overall funding of 27.1% for 2010 – 2011.

ATSILS were asked to comment upon the new proposed updated funding allocation model dated 2 October, 2009. ALSWA responded by way of letter to Mr Fermin Lopez of the AGD signed by myself dated 16 November, 2009. A copy of the letter is **enclosed** for your perusal. ALSWA's stated position was the increased weightings should be given to reflect the costs involved in service delivery to regional and remote courts and offices in WA given that 13 of ALSWA's 18 offices would fall into the category of remote or very remote. The table at the bottom of page 1 of the letter indicates that under the new proposed updated funding allocation model ALSWA estimated it would be entitled to a funding increase of 33.96%. NT South would be entitled to a funding increase of 60.75% and NT North an increase of 32.94%.

The new funding allocations following the announcement of the May 2010 Federal Budget show little or no resemblance to the proposed funding allocation model dated 2 October, 2009. However, the new funding allocations for NT South and NT North roughly approximate the predicted increases referred to in ALSWA's letter, and in the case of NT South, is substantially more than the predicted variation.

A briefing paper for ATSILS, dated 1 June, 2010, from the AGD sought to explain changes to the updated funding allocation model. The changes failed to reflect in any way ALSWA's suggested changes, particularly in relation to the weighting provided to remote and very remote services and offices. Instead the briefing paper appears to suggest that for the most part the changes made reflected feedback received from ATSILS Queensland only. . If this is the case, then that is most disappointing and unfair that the views of ALSWA were not adopted and incorporated into the new model. Further, it is equally disappointing and unfair that as a result the ALSWA has fared so poorly in comparison with the increased funding allocations for both CAALAS and NAAJA and other ATSILS.

**B. ALSWA'S CRITICAL ROLE IN LEGAL SERVICE DELIVERY, ESPECIALLY IN REGIONAL AND REMOTE AREAS OF WA**

The apparent ongoing failure of the AGD to recognise ALSWA's critical role in legal service delivery, especially in regional and remote areas of WA is a major concern to our organisation.

ALSWA submits that the changes to the funding allocation model and the resultant variations in funding comprehensively fail to reflect the demands and commitments faced by ALSWA, some of which are outlined as follows:

1. Services in Regional Areas

ALSWA has a head office in Perth which services 17 ALSWA offices across WA :

- (a) Kununurra ALSWA office – currently employs 3 solicitors, funded out of contract monies. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 1 solicitor only. The 2 additional solicitors are funded out of contract monies. The need for 2 additional solicitors follows the appointment of a permanent Magistrate in Kununurra in 2008. Prior to that, Kununurra and the East Kimberley generally were serviced by a Magistrate based permanently in Broome who attended the East Kimberley on circuit approximately once every month. The establishment of permanent multi function police posts in several remote Aboriginal communities in the East Kimberley in the last 3 years has also increased the demand for additional solicitors in the Kununurra ALSWA office. There is now a permanent police presence in the Balgo, Kalumburu, Oombulgurri and Warmun Aboriginal communities which previously were serviced by police patrols. This has dramatically increased courts lists. For example, ALSWA had 140 clients in a one day court list in Halls Creek earlier this year, with very limited help from solicitors from Legal Aid WA.

Kununurra has a population of approximately 5,000 people. There are approximately 8,000 Aboriginal people resident in the East Kimberley. The Kununurra ALSWA office currently services circuit courts in Wyndham, Kalumburu, Oombulgurri, Halls Creek, Warmun and Balgo. When not on circuit the Magistrate sits in Kununurra on a daily basis. ALSWA's Kununurra office has no capacity to provide any services in civil, welfare and family law. Clients requiring assistance with these matters are referred to ALSWA's Perth head office.

By contrast, Katherine in the NT has a population of approximately 10,000 people. The Katherine NAAJA office services Katherine and 6 bush courts, Timber Creek, Ngukurr, Borroloola, Beswick, Barunga, Lajamanu, Dagaragu, Kalkarindji, Mataranka, and Jilkminngan, where the overall Aboriginal population is approximately 12,000 people.

However, the Katherine NAAJA office employs the following solicitors:

- (i) 7 solicitors in the Katherine NAAJA office funded out of AGD monies, with 4 solicitors practicing in criminal law, one welfare solicitor, one civil law solicitor and one family / child protection solicitor part-funded by the Northern Territory Legal Aid Commission
- (ii) one solicitor, who practices in civil law, is seconded to the office from the law firm, Blake Dawson.



The disparity as to resourcing as between ALSWA's Kununurra office and the NAAJA Katherine office from AGD monies (despite comparable Indigenous population numbers and demand for legal services) is obvious and gives rise to a justifiable sense of grievance on ALSWA's part.

- (b) Broome ALSWA office - currently employs 3 solicitors, funded out of contract monies. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 1 solicitor only. The 2 additional solicitors are funded out of contract monies. The need for the 2 additional solicitors mirrors the situation in the East Kimberley, that is, the Broome Magistrate is now based permanently in the West Kimberley and there is an increased police presence in remote Aboriginal communities following the establishment of permanent multi function police posts. There is now a permanent police presence in Bidyadanga and Dampier Peninsula Aboriginal communities (which includes large aboriginal communities such as Djarindjin, Lombadina, Beagle Bay and One Arm Point) which previously were serviced by police patrols. The Broome ALSWA office currently services circuit courts in Derby, Fitzroy Crossing, Bidyadanga, One Arm Point, Lombadina and Djarindjin. There is no capacity for ALSWA's Broome office to provide services in civil, welfare and family law given the volume of criminal law matters. Clients requiring assistance with these matters are referred to ALSWA's Perth head office.
- (c) South Hedland ALSWA office - currently employs 1 solicitor, funded out of contract monies. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 1 solicitor only. There is a need for 2 additional solicitors. The need for the 2 additional solicitors arises by virtue of the establishment of permanent multi function police posts in remote Aboriginal communities in the Pilbara, incredibly lengthy court lists and the vast distances between circuit courts in the Pilbara. The South Hedland ALSWA office currently services circuit courts in Roebourne, Karratha, Newman, Jigalong, Marble Bar, Nullagine and Yandeevarra. It is not uncommon to have over 100 ALSWA clients appearing on a single day in a Magistrates Court list in circuit courts such as Newman and Roebourne. There is no capacity for ALSWA's South Hedland office to provide services in civil, welfare and family law given the volume of criminal law matters and all such matters are referred to ALSWA's Perth head office. Further issues in relation to the Pilbara are raised later in this letter.

- (d) Carnarvon ALSWA office - currently employs 2 solicitors, funded out of contract monies. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 1 solicitor only. The additional solicitor is funded out of contract monies. The need for the additional solicitor arises by virtue of the establishment of permanent multi function police posts in remote Aboriginal communities in the Murchison/Gascoyne area, incredibly lengthy court lists and the vast distances between circuit courts in the area. The Carnarvon ALSWA office currently services circuit courts in Onslow, Paraburdoo, Wiluna, Mount Magnet, Meekatharra and Exmouth. It is not uncommon to have over 100 ALSWA clients appearing on a single day in a Magistrates Court list in places such as Meekatharra, Mt Magnet and Wiluna. Meekatharra, Mount Magnet and Wiluna are only accessible from Carnarvon by the plane chartered by the local Magistrate. There is only one seat on the plane for an ALSWA solicitor. The Legal Aid WA does not have an office in Carnarvon and does not service the Meekatharra, Mount Magnet and Wiluna circuit courts at all. Hence, the only legal assistance provided in these courts is by ALSWA. There is no capacity for ALSWA's Carnarvon office to provide services in civil, welfare and family law given the volume of criminal law matters.
- (e) Geraldton ALSWA office - currently employs 3 solicitors, funded out of contract monies. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 1 solicitor only. The need for the additional 2 solicitors arises by virtue of the fact at since 2006 the Geraldton Court has 1 fulltime and 1 part time Magistrates and the establishment of permanent multi function police posts in remote Aboriginal communities in the Murchison/Gascoyne area. The Geraldton ALSWA office currently services circuit courts in Yalgoo, Mullewa, Northampton, Morawa, Three Spring and Moora. There is no capacity for ALSWA's Carnarvon office to provide services in civil, welfare and family law given the volume of criminal law matters.
- (f) Kalgoorlie ALSWA office - currently employs 3 solicitors. 2 solicitors are funded out of monies from the WA Country Lawyers Program. ALSWA's contract with the AGD for 2009 – 2011 makes a funding allocation for the employment of 2 solicitors only. The need for the additional solicitor arises by virtue of the fact that three

Magistrates are now based in Kalgoorlie, the establishment of permanent multi function police posts in remote Aboriginal communities in the Goldfields and Ngaanyatjarra Lands areas, incredibly lengthy court lists and the vast distances between circuit courts in the area. In the Ngaanyatjarra Lands areas, multi function police posts have been established in Warburton, Warakurna, Kintore and Blackstone communities. The Kalgoorlie ALSWA office currently services circuit courts in Coolgardie, Norseman, Esperance, Kambalda, Leonora, Laverton and Warburton. The Warburton court circuit is serviced by charter plane with the Magistrate and only one seat is made available to ALSWA. Again, ALSWA is required to do the lion's share of matters with limited assistance from Legal Aid WA. There is no capacity for ALSWA's Kalgoorlie office to provide services in civil, welfare and family law given the volume of criminal law matters.

It is apparent from the above snapshot of ALSWA's staffing levels in regional areas and the workloads emanating out of them, far exceeds current funding arrangements. ALSWA is most concerned that despite repeated representations to the AGD, this position does not appear to be properly understood. In particular, little or no recognition appears to be given to the fact that in some parts of regional WA, ALSWA is the only legal service delivery agency working on the ground. Further, should ALSWA withdraw its services from these areas, it is inevitable that the criminal justice system would collapse almost immediately. One obvious consequence of this would be an increase in the number of Aboriginal people in custody.

In contrast, NAAJA has 2 regional offices besides the Darwin head office and CAALAS has the one office in Alice Springs. CAALAS services the Yuendumu, Hermannsburg, Elliott, Tennant Creek, Kintore, Mutitjulu/Yulara and Ti Tree bush courts. Some of these courts only sit every two months.

The increase in annual funding for NAAJA and CAALAS will clearly enable those services to offer a far broader range of services in non criminal areas of law to the Aboriginal people of the NT than ALSWA can offer the Aboriginal people of WA. These services are now heading in the direction of model, best practice ATSILS in terms of service delivery to Aboriginal clients in all areas of law, not just the traditional area of criminal law. This is a laudable outcome, however, ALSWA clearly lags far behind in this regard.

Mr Glen Dooley, the former head solicitor at NAAJA, is now working with ALSWA as the solicitor in charge of ALSWA's Kununurra office. As you would know, Mr Dooley has over twenty years experience working for Aboriginal Legal Aid in the NT. According to Mr Dooley, the WA system is cut-throat and the "average" ALSWA criminal solicitor is handling more cases that are generally more serious than the "average" NAAJA / CAALAS criminal solicitor. On the other hand, the NT intervention, which has resulted in 18 new police stations across the NT, has thus far resulted in police preferring charges involving low level offending such as minor traffic offences, alcohol possession, minor drug possession and street offences. Further, Mr Dooley advises that ALSWA solicitors are heavily outnumbered by police, court staff, court security, Department of Corrective Services staff and police and DPP prosecutors - more so than in NT. The end result is that ALSWA staff and clients are the trying to participate fairly in a criminal justice system that is funded to try and ensure the relentless processing of clients through that system. It is a battle to get a chance to get proper instructions from a client due to poor facilities and clients appearing on video links from prisons over a thousand kilometers away. Court sittings are invariably busy, particularly as police resources are such that more and more crime is detected and acted upon, thus the pressure is applied not to pursue not guilty pleas, chiefly by way of refusal of bail and lengthy waiting times in remand for hearing dates, delays that often see clients wanting to plead guilty to avoid remand in prisons so far from country and family. The fact that 1 in 12 WA Aboriginal men are in custody is testament to the pressures that the WA system operates under. By contrast, the imprisonment rate in the NT is 1 in 22 or so.

#### Indictable Matters in the District and Supreme Courts

Unlike ATSILS, for example, in Queensland, New South Wales and Victoria, ALSWA solicitors appear as Counsel in relation to Indictable criminal matters in the District and Supreme Courts.

Senior ALSWA criminal law solicitors appear as Counsel on average between 3 and 5 days per week in the Perth District and Supreme Courts in relation to status conferences, bail applications, pleas of guilty, sentencing hearings and jury trials.

The District Court attends the following regional areas at least every 2 months:

- Kununurra
- Broome
- South Hedland
- Karratha
- Carnarvon
- Geraldton
- Bunbury
- Albany
- Esperance
- Kalgoorlie

ALSWA's solicitors from regional offices are responsible for appearing as Counsel on behalf of ALSWA clients in the above courts. This responsibility is in addition to their commitments in the Magistrates and Children's Courts in their regions. It is not uncommon for the District Court to sit at the same time as the Magistrates and/or Children's Court. Hence, ALSWA solicitors are required to juggle their time between these courts which is stressful, time consuming and where there are clashes, often incurs the wrath of Judges and Magistrates.

ALSWA matters routinely comprise the bulk of matters listed in regional District Court sittings. For example, on 28 July, 2010, ALSWA matters comprised 18 matters out of a list of 26 matters in a Kimberley District Court list. Further, in the week commencing 23 August, 2010, the District Court will be sitting in Kununurra. ALSWA is acting in 5 out of 7 matters listed for pleas of guilty on the first day of the sittings and 3 out of the 4 matters listed for trial for the rest of that week. While some of the matters listed for trial have received funding pursuant to the Kimberley Indigenous Justice Taskforce and Expensive Indigenous Case Funding Programs, several matters do not fall under either umbrella. The pleas of guilty listed in Kununurra in the week commencing 23 August, 2010, involve serious matters where sentences of imprisonment are almost inevitable and include charges of aggravated grievous bodily harm, indecent dealing and unlawful wounding. Mr Dooley will be required to appear as Counsel in relation to all the matters listed for pleas of guilty as the other two solicitors in the office lack the experience to appear in such matters. At the same time, Mr Dooley will be required to appear before the Magistrate.

By contrast, the NT Supreme Court sits in Darwin and Alice Spring and rarely in Katherine. It is unheard of to have any more than a couple of matters listed before a Judge for a plea of guilty in 1 day. Multiple trials are never listed in the one sitting week in the NT Supreme Court.

**C. THE ONGOING FAILURE OF THE WA STATE GOVERNMENT TO ASSIST ALSWA AND THE ROLE OF THE COMMONWEALTH AGD IN ADDRESSING THIS ISSUE**

The ALSWA would like to see the AGD take a more active role in encouraging the WA State Government to provide funding to assist ALSWA.

Unlike other ATSILS, for example, the Queensland, New South Wales and Victorian ATSILS, ALSWA receives no funding whatsoever from the WA State Government. As I understand the situation in Queensland, New South Wales and Victoria, ATSILS clients in those States are eligible for grants of aid from their respective Legal Aid Commissions to brief barristers to appear in superior court matters. In Victoria this also includes grants of aid to brief Barristers in matters such as Coronial Inquests. These arrangements must involve a substantial saving for ATSILS insofar as representation of clients in superior court matters is concerned.

ALSWA has no such arrangement with the Legal Aid WA. ALSWA recently wrote to the State Attorney General requesting that consideration be given to allowing ALSWA to obtain grants of aid from the Legal Aid WA with respect to superior court criminal matters, but has thus far received no response. There is no expectation, in the current political and economic climate, on the part of ALSWA that any financial assistance from the State Government would be forthcoming.

ALSWA queries what sort of pressure or influence the Commonwealth Government is seeking to exert on the WA State Government for it to recognise its obligation to contribute funds to ALSWA, especially given ALSWA's critical role in the WA justice system.

**D. THE ONGOING CRISIS CONFRONTING ALSWA IN RELATION TO THE RECRUITMENT STAFF HOUSING AVAILABILITY AND AFFORDABILITY IN THE PILBARA AND KIMBERLEY REGIONS OF WA**

The ALSWA would also like to see the AGD take a more active role in providing assistance and solutions in addressing the lack of affordable housing problems for ALSWA's employees in regional and remote areas.

As you would be aware, ALSWA faces considerable difficulty in recruiting solicitors to regional areas of WA. For example, the solicitor in charge position at the South Hedland ALSWA office has been vacant since the start of the year despite continuing attempts to recruit. When the position was advertised, and nationally earlier this year, ALSWA received no applicants.

Very recently a candidate for the position withdrew because his partner was unable to find work in South Hedland. This has forced ALSWA to recruit very junior solicitors to these areas at salaries substantially higher than ALSWA's standard salary scales. At present, ALSWA has a very junior solicitor who is still completing her period of restrictive practice in the position of solicitor in charge of the South Hedland office and no immediate prospect of recruiting any further solicitors to work permanently in the office. This is an untenable situation.

As you would also be aware, there is an acute shortage of housing in the Pilbara region. The presence of multi national mining companies in the Pilbara has meant the supply of rental housing is almost non existent as well as being prohibitively expensive. The cost of renting housing in the Kimberley is also very high.

While ALSWA is most grateful for the financial assistance to date provided by the AGD to purchase limited housing in these regions, the remainder of our other staff working in these regions are forced to rent.

ALSWA recently offered a position to another solicitor (who is commencing her period of restricted practice and has no practical experience as a solicitor at all) to work in the South Hedland ALSWA office. The solicitor lives in Perth. She is also married with a young family. The solicitor subsequently rejected the offer of employment because her husband could not find work in the Pilbara. In any event, after an exhaustive enquiry with every estate agent in Hedland, the only suitable rental accommodation for the solicitor and her family was at a cost \$2,000 per week in rent. In order to attract the solicitor to the position in South Hedland, ALSWA was placed in a position where it was going to have to provide rental assistance of \$1,500 per week. Further, ALSWA is contributing \$700 per week to the rent of a solicitor working in Broome and \$500.00 per week to the rent of a solicitor working in Kununurra. In addition, ALSWA is contributing \$1,000 per week to the rent of an ALSWA court officer working in its Newman office. This amounts to \$180,700 annually paid in rental assistance to these employees. If ALSWA were able to attract a full complement of staff in South Hedland, it could cost ALSWA over \$250,000 per year in rental assistance. This impost on ALSWA is not sustainable under ALSWA's current funding arrangements. In addition, as the rental assistance provided to ALSWA solicitors in the Pilbara and Kimberley far exceeds what is paid to staff in other regions of WA, this creates serious parity issues and disharmony with other ALSWA staff.

ALSWA has recently written to BHP and the WA Housing Minister requesting financial assistance to purchase housing and/or access to housing for staff employed in the Pilbara. Both BHP and the Minister have refused to assist.

There is a pressing need for funding from the Commonwealth Government to purchase or otherwise secure sufficient housing in these areas for all legal staff employed by ALSWA. Of course, any other suggestions from the AGD as to how ALSWA might address this problem would be welcomed.

At present, ALSWA has vacancies for two solicitors in its South Hedland office. There are also vacancies for Aboriginal Court Offices in the Roebourne and Newman offices. These two positions have been vacant for most of the year. Repeated attempts to recruit for these positions have also been unsuccessful. The Roebourne and Newman offices are therefore currently vacant. This means that ALSWA's capacity to service Roebourne Regional Prison, which comprises an overwhelming majority of Aboriginal prisoners, is severely compromised.

The situation with recruitment of solicitors to the Pilbara, the shortage of housing and costs involved in rental assistance has become so dire that ALSWA is seriously contemplating withdrawing services from the area.

#### **E. EXPENSIVE INDIGENOUS CASE FUND**

ALSWA has benefited from monies made available through the Expensive Indigenous Case Fund ("EICF") and acknowledges the assistance provided through it. The funding guidelines for the EICF include a component of expense for in house solicitor costs. On 22 February, 2010, ALSWA's Director of Legal Services, Peter Collins, was contacted by Mr Dan Ticehurst of the AGD and advised that all unexpended in house solicitor costs in relation to completed EICF matters could be rolled over into ALSWA's main contract monies. This indication was most welcome as these funds were intended to be used to alleviate the rental assistance burden noted above and to provide staff salary increases which had been static since 2006.

ALSWA has now been advised that unexpended EICF monies will now be allocated to new EICF matters, ALSWA's long service leave liability and the Country Lawyers Program. This is a most disappointing development, especially in light of the indications provided by the Commonwealth Attorney General Mr McClelland and Mr Peter Arnaudo of the AGD at a meeting with ALSWA in Perth on 6 May, 2010, that unexpended EICF funds could be rolled over into contract monies and that further EICF monies would be available on application.



## **F. WA COUNTRY LAWYERS PROGRAM**

ALSWA received \$235, 000 in one off funding for 2009 – 2010 to employ solicitors under the WA Country Lawyers Program. These monies have been used to employ one solicitor from the Program in ALSWA's Bunbury office (where ALSWA is funded to employ one solicitor under contract monies but there are 3 permanent Magistrates) and 2 solicitors in ALSWA's Kalgoorlie office which has traditionally been difficult to recruit to. While the funding to participate in the Program is most welcome, ALSWA has a number of serious concerns about the Program and the funding of it. Firstly, as Country Lawyers Program solicitors are paid at Legal Aid WA rates, their salaries and conditions far exceed those enjoyed by ALSWA solicitors who work alongside them in the same office. Secondly, the overall costs involved in participating in the Program are very high, such that there was an \$85,000 shortfall in funding for last year. Finally, there has been no further funding allocation for the Program by the AGD for next financial year. Rather, ALSWA has been advised that it must fund the Program from unexpended funds. The crisis faced by ALSWA in the Pilbara means that the only option open to ALSWA at present is to seek to employ solicitors from the Program in the Hedland office. ALSWA simply cannot afford to do this and retain solicitors from the Program in its Bunbury and Kalgoorlie offices. ALSWA requests that urgent consideration be given by the AGD to provide further adequate funding to allow ALSWA to employ solicitors in the offices in the offices noted above.

## **G. CORONIAL INQUESTS**

Since the start of this year ALSWA has appeared on behalf of the families of deceased persons in three coronial inquests in relation to deaths in custody and is scheduled to appear in three further inquests into deaths in custody in September 2010. ALSWA has also appeared at a coronial inquest on behalf of the mother of a deceased child who died in hospital shortly after birth whilst co-sleeping with the mother. The Coroners Court has recently requested that ALSWA appear on behalf of the family of a young boy from Roebourne who was electrocuted while living in substandard public housing. ALSWA receives no funding from the AGD to appear in such matters. Solicitors from ALSWA's Perth Criminal Law Unit (which is already overburdened by work) appear as counsel in these inquests. Legal Aid does not provide grants of aid for Aboriginal families to obtain representation at inquests. There is a real need for further AGD funding to enable ALSWA to provide representation at inquests, especially inquests into deaths in custody.

## **H. CONCLUDING COMMENTS**

In light of the foregoing, I request that the AGD give urgent consideration to increasing ALSWA's annual funding by 33.96%, in accordance with the estimated increase referred to in ALSWA's letter to Mr Lopez dated 16 November 2009. Further I request that the AGD give urgent consideration to providing sufficient funding to ALSWA to enable it to provide an appropriate service to its clients in the Pilbara region.

I thank you for your consideration and I welcome the opportunity to discuss these issues further in person or by teleconference.

Yours faithfully,

**DENNIS EGGINGTON**  
Chief Executive Officer

Enc.