



# Aboriginal Legal Rights Movement Inc

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Reply To: Adelaide

30 April 2009

The Secretary  
**Standing Committee on Legal & Constitutional Affairs**  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Secretary

## **Inquiry into Access to Justice**

It is with extreme reluctance that I make this submission regarding Access to Justice for Aboriginal peoples of this country. The reason for this will become evident later in this document however it is suffice to say that the previous Howard Government and the Rudd Government continue to deny Aboriginal people access to justice.

Disappointingly the previous Legal Aid and Access to Justice Senate Inquiry and Report (2004) was dominated by Labor, yet once Labor gained office, it continued to ignore the 2004 recommendations. Furthermore, a commitment in November 2007 to ALRM by the Labor Opposition committed to ensure Aboriginal legal aid would be adequately funded. This was not honoured.

Furthermore, the South Australian Premier Mike Rann, previously stated in State Parliament that his Government would ensure ALRM would be adequately funded to ensure Aboriginal people have access to justice. This commitment was also NOT kept.

Each of the above contributes to my reservations about making a detailed submission to the Senate Committee when I expect that nothing or very little will be achieved.

I add that ALRM lodged a formal complaint in September 2008 under CERD Article 2 against the Australian Government for our gross underfunding of Aboriginal legal aid. Since 1996 ALRM's legal aid funding for advice and representation has been static. Here it is in 2009 and I continue to operate on 1996 dollars. This is in excess of a 40% reduction in funding in real terms for that period, and when compared to mainstream legal aid in SA which has increased in actual dollars by over 120%, it is little wonder I am frustrated by Government institutionalised discrimination against Aboriginal people and cynical of anything concrete coming from a Senate Inquiry.

Why is this Aboriginal legal aid funding disparity occurring? It is simple. The State of SA says it has no responsibility to fund ALRM for legal aid (despite Premier Rann's commitment) and the Commonwealth continues its stance that it is a supplementary funder to the State.

Who loses out because of this demarcation on responsibilities? Aboriginal men and women are the losers. No one would expect this situation to have continued since 1996 yet it has to the detriment of Aboriginal people and to my committed and overworked and underpaid staff.

Irrespective of Government commitments, I go as far to say that it appears to be the bureaucracy that is clouding the issue of our funding and preventing both the Rudd and Rann Governments from honouring their respective commitments on Aboriginal legal aid.

What is doubly disturbing is that our funding agency, the Attorney-General's Department does not see that it is behaving in a discriminatory way. It funds us and mainstream legal aid but will not acknowledge that this gross disparity in funding is discriminatory, yet the AGD is the peak legal office in the country.

This discriminatory behaviour continues in other areas in denying access to justice for Aboriginal people. Since the success of the landmark Bruce Trevorrow Stolen Generations case, ALRM has been inundated with requests by members of the Stolen Generations for assistance for compensation. Our limited funding precludes us from assisting these claimants which is devastating for us as an Aboriginal legal service. Our request to the AGD for funding received the response that we should go cap in hand to the legal profession for pro bono support.

How disgraceful for the Australian Government to treat Aboriginal people like that. I can say without reservation that mainstream legal aid would NOT be treated so shabbily and disrespectfully by the AGD the way ALRM has been.

In fact the conduct of both the Commonwealth and State Governments in my humble opinion in regard to the Stolen Generations is in contravention of the UN Covenant on Civil & Political Rights Article 2. I also advise that ALRM, in addition to lodging a complaint under CERD, will be lodging a complaint under this Covenant in regard to the Stolen Generations claimants.

ALRM expresses concern that Australia, in its candidacy for a seat on the UN Security Council is suggesting it is a principled advocate of human rights (see DFAT website). Australia claims that it strengthens "Indigenous relations through the National Apology and support to the UN Permanent Forum on Indigenous Issues." This is false. It has twice refused ALRM financial support to attend the UNPFII because it says it has no funds or do anything concrete to encourage the State of SA to implement a Stolen Generations compensation scheme. I even recommended having tied grants to the State re legal aid funding yet the Commonwealth said this is against policy (but only when it relates to Aboriginal people)

For the information of the Committee it is my intention to write to every member of the UN General assembly expressing concern about Australia's claim to being a principled advocate of human rights when it denies access to justice for Aboriginal people.

When the Committee considers the above history, and the Senate's inability to influence the discriminatory behaviour of Government following the 2004 Report, it is no wonder I have little if any confidence that the Senate has the ability to do anything that will change the discriminatory behaviour of Government as it relates to Aboriginal legal aid. But I live in hope hence my sending of this small contribution to your Inquiry.

That said, and knowing this submission will be publicly available, I am providing other comments on some of the Recommendations of the 2004 Report:

*Rec 27 – Not actioned. No legal aid funding increase for advice and representation has been forthcoming. I add that the Family Violence Prevention Legal Services program delivery is inconsistent with the way ATSIILS were tendered to provide services state-wide. Furthermore the FVPLS were funded per staffer at a substantially higher rate than Aboriginal legal aid and did not take advantage of economies of scale as suggested by ALRM repeatedly in the past (and which taxpayers and victims should be rightly annoyed).*

*The FVPLS are NOT delivered in major centres like Adelaide and Murray Bridge, again because of this ridiculous demarcation on responsibilities between the Federal and State Governments. Our women continue to be denied access to appropriate services and both our men and women continue to be incarcerated at unprecedented and internationally embarrassing levels.*

*Rec 28 – Tendering went ahead. But the less efficient mainstream legal services when compared to ALRM were NOT tendered. ALRM contends the tendering was discriminatory, to the detriment of Aboriginal people. The excuse offered by Government that mainstream can't be tendered because of the statutory standing is unacceptable. If a Government can abolish ATSIILS and can do things that ensure Government provided service provision is put to market to pursue efficiencies and value to the taxpayer, then it can tender mainstream legal aid in agreement with the States. Whilst mainstream legal aid could tender for our service provision, organisations like ALRM are not given the opportunity to tender for mainstream services. I refer the Committee to the Office of Evaluation and Audit Report January 2003 which benchmarked ALRM against mainstream. We were adjudged to be 2 1/2 times more cost effective yet were tendered and I suggest because of a misguided ideology that existed at the time. My suggestion is Aboriginal legal aid should revert to a grant based funding approach, or mainstream legal aid is put to tender so that the Government is consistent. It cannot act in such a discriminatory manner i.e. tender black organisations and leave white organisations untouched.*

*Rec 32 – Nothing concrete has happened in this regard. ALRM has repeatedly requested Aboriginal legal aid be raised at the Standing Committee of Attorney-Generals (SCAG). This body has failed to address this issue of underfunding. ALRM so desperately needs increased dollars to retain and attract staff and additional offices throughout SA but funding continues to be denied. It has only been the last month that we have been able to recruit a solicitor in Ceduna where we haven't had one for a number of years due to the salary on offer. I do acknowledge the AGD providing funding under a separate program for us to buy a residence to accommodate staff in Ceduna which assisted us in our recruitment package on offer. Disappointedly ALRM is endeavouring to build an office in Ceduna on a property we own yet we are told the Indigenous Land Corporation does not provide funds for building, but it will for landscaping. What an unusual approach to assisting Aboriginal people to achieve economic independence – cover the cost of flowers but not bricks. The development of a property in Ceduna will provide for Aboriginal employment in construction, subsequent service delivery, and will also provide an economic stimulus to the local economy. I simply wonder about the relevancy of agencies that don't accommodate regional and remote community needs when it is their mandate to do so.*

I am pleased however to report that Minister Brendon O'Connor has called for submissions for regional developments under the Jobs Fund. I am submitting a proposal on the Ceduna development with a reduced building capacity, due to the limit imposed on construction costs, which unfortunately means less dollars going to Ceduna during construction thereby reducing badly needed economic activity.

To conclude I now submit to the Committee the following documents which form part of this submission:

1. ALRM Complaint to the UN under CERD Sept 2008;
2. Letter Minister Debus Dec 2008;
3. Copy of my submission to Treasurer Swan relating to the 2009/10 Federal Budget;
4. Letter Treasurer Swan Tax Status January 2009;
5. Letter Prime Minister Rudd January 2009;
6. Copy of my submission to Premier Rann in regard to the State Budget 2009/10;
7. Copy of my letter to Minister Macklin March 2009, and
8. Letters (2) to Minister Debus 2008 and April 2009.

I respectfully seek the Committee's support in once your Report is presented to Parliament that the Senate as a whole, hold the Government to account on your Report recommendations (and which I assume will include those from 2004).

Yours sincerely,

*Neil E Gillespie*

**Neil E Gillespie**  
**Chief Executive Officer**