



*UTS LSS Submission to the Senate Standing Committee on Finance
and Public Administration Inquiry into Access to Legal Services*

27 April 2015

Dear Chair,

As Law students of the University of Technology, Sydney, we are deeply concerned about proposed changes to funding for Aboriginal Legal Services (ALS). We present this submission as members of the Justice Action Committee of the UTS Law Students' Society (UTS LSS). The Society is a student run organisation that caters to the educational, vocational and social needs of UTS Law students. We seek to:

- ensure that the educational, vocational and social needs of all UTS law students are met through a society that is responsive to student demand and the changing environment in which it operates;
- ensure that UTS law students are aware of the various career opportunities available to them, including: legal and non-legal; domestic and international; and in the public and private sectors;
- advocate awareness of issues in the legal profession, promote discussion and encourage action to generate positive change; and,
- ensure UTS law students graduate with a strong concept of social justice and their duty as lawyers to the community.

We believe that Aboriginal Legal Services provide essential services in relation to:

1. Access to Justice
2. Contribution to Policy and Advocacy.

Their already limited resources present challenges to effectively fulfil these roles. The final part of this submission will address:

3. Consequences of Funding Cuts



*UTS LSS Submission to the Senate Standing Committee on Finance
and Public Administration Inquiry into Access to Legal Services*

As Law students, we believe that ALSs are a critical part of the fabric of a just society. They promote substantive equality for Indigenous defendants, which is a mark of a fair justice system. Their advocacy work is also invaluable given that they are uniquely poised to contribute to law reform for Indigenous Australians. Values of substantive equality and participatory law reform processes are inherent in our aspirations for a just law system, which we have become aware of through our studies and hope to contribute to as Law students and graduates.

ALS was introduced in the 1970s to ‘defend Aborigines strongly against any interference with their rights, whether by police or anyone else, and that the long term interests of both police and Aborigines [would be] best served by the growth of mutual understanding and respect between the two groups.’¹ Reduced funding will be undermining this founding principle and all that the Aboriginal Legal Services stand for. It will be targeting a group that is victimised based on race.

I. ACCESS TO JUSTICE

Justice ensures equality and fairness throughout society. The Federal Government has a responsibility to ensure that the rights of Indigenous Australians are not compromised. The ALS provides culturally aware legal services, which are essential to our Nation’s First Peoples, providing fair treatment and adequate representation in the legal system. Australian policies have conventionally and consistently failed to consider Indigenous Australians’ right to self-determination and accessibility to fair judicial processes. In a climate of intervention, the ALS has acted as intermediaries between Indigenous peoples and the law. Their work helps to alleviate impartiality,

¹ Dr Christine Jennett, ‘Policing and Indigenous Peoples in Australia’ (Speech delivered at the History of Crime, Policing and Punishment Conference, Canberra, 9-10 December 1999).



which has previously contributed to miscarriages of justices. This acts to improve equality before the law, which as we are taught in law school, is paramount to the legitimacy of the legal system. The ALS is functioning as an essential organ of the judicial system. We are all part of the same society, and while this may seem like a minority issue, it is a majority concern because it reflects the capacity of our legal system to protect the most vulnerable.

II. POLICY AND ADVOCACY

Beyond legal assistance, ALSs also have an important role to play in matters of policy and advocacy. The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) has been essential in providing an Indigenous voice in a number of inquiries, which have been important in developing our understanding of the application and consequences of laws for Indigenous Australians. These include a submission on the Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities (April 2014),² and a submission to Senate Inquiry into the Prevalence and Impact of Domestic Violence in Australia (August 2014).³ These submissions are evidence of the ALS' ability to provide an informed contribution to public policy, raising issues that may otherwise remain overlooked and providing valuable statistical reasoning, importantly, tempered by cultural awareness. Such work is vital for providing a voice to Aboriginals and Torres Strait Islanders, who are all but too often not consulted on matters of policy that affect them. The implications of this work are far reaching. It involves advocating for human rights at a national level and helping to ensure equality in the law for all Australians.

² NATSILS, Submission to House Standing Committee on Indigenous Affairs, *Inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities*, April 2014.

³ NATSILS, Submission No 93 to Senate Standing Committees on Finance and Public Administration, *Senate Inquiry into the Prevalence and Impact of Domestic Violence in Australia*, August 2014.



The ALS have made submissions to the United Nations that address pressing human rights issues, for example, Submission to the UN Expert Mechanism on the Rights of Indigenous Peoples - Access to Justice for Indigenous Peoples (February 2013),⁴ and Australia's Draft 5th Report to the UN Committee Against Torture (November 2012)⁵. This also demonstrates how the ALS has a role in policy and advocacy at both an international and national level. The ALS is a leading example of social justice, promoting the rule of law, providing access to justice to minority groups, and protecting freedom of political speech.

III. CONSEQUENCES OF FUNDING CUTS

Cuts to ALSs, either in terms of its client or policy functions, will further alienate oppressed Indigenous Australians and result in gross injustice. Such action will result in higher rates of incarceration, a cycle of recidivism, and worsened community relations with police. In examining the issue of potential increases of incarceration rates, Australian Red Cross Chief Executive Officer Robert Tickner has told a Senate Inquiry into justice reinvestment that Australia already spends \$3.2 billion to keep people in prisons each year.⁶ Such costs will only continue to increase for government, but incarceration also impacts on the social difficulties experienced in Indigenous communities. This manifests in the breaking up of family units, social services becoming involved and a growing resentment within children towards the justice system. They will lead to worsened relationships with the police and creates a cycle of reoffending. This is seen in how an Aboriginal person is 14 times more likely

⁴ NATSILS, Submission to United Nations Human Rights Committee, *Expert Mechanism on the Rights of Indigenous Peoples*, February 2013.

⁵ NATSILS, Submission to UN Committee Against Torture, *Review of Australia*, November 2012.

⁶ Australian Red Cross, Submission No 113 to Senate Standing Committees on Legal and Constitutional Affairs, *Senate Inquiry into justice reinvestment approach to criminal justice in Australia*, June 2013.



to be incarcerated. We cannot ignore the problem when 70% of the prison population in the Northern Territory are Aboriginal and 75% of Aboriginal offenders in NSW return to the prison system within 11 months.

ALSs provide a crucial point of contact for the Aboriginal community, by ensuring the provision of education, legal consultation and advice. In particular, it provides women with the means to talk about their issues and communication because Indigenous women are often reluctant to express their problems to the police with whom there is a lack of trust. A lack of legal services will further strain the already tense relationships with the police. The ALS with their limited funding have funded projects such as the Custody Notification Service which alerts ALSs of Aboriginal arrests and has reduced the amount of deaths while in custody to 0% in NSW and ACT.⁷ Reduced funding will have adverse effects on these added frontline programs which have greatly improved access to justice for the Aboriginal community.

CONCLUSION

As law students, and as members of the society, the continued and consistent funding of the ALS is of utmost importance to us. Our Nation's First Peoples have the right to equality before the law, which the ALS helps provide. This is an essential service. It is not dispensable, and to cut or reduce its funding is to undervalue the rights of Indigenous people.

Regards,

The UTS Law Students' Society Justice Action Committee: Cecilia Ngu, Paul Bonjour, Genevieve Coffey, Emily Shepherd, Serena Saliba, Sheona Robertson,

⁷ Aboriginal Legal Service Western Australia, 'Coalition's proposed cuts "a heartless decision"' (Media Statement, 06 September 2013).



*UTS LSS Submission to the Senate Standing Committee on Finance
and Public Administration Inquiry into Access to Legal Services*

Raymond Salomonn, Hanna Aili, Michelle Xu, Tracey Xue, Julie Mehrdawi, Peter Tryfonopoulous, Bridie Norman, Laurie Mac, Tapiwa Bengura, Ellyse McCormack, Adriana Abu Abara, Aisyah Salim Ali Farrar and Wilson Luong.

University of Technology Sydney

PO Box 123

Broadway NSW 2007