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15 August 2003

Ms Louise Gell Secretary Legal and Constitutional Reference Committee Parliament House CANBERRA ACT 2600



Dear Louise

Re: Inquiry into Current Legal Aid and Justice Arrangements

I refer to your letter dated 14 July 2003 inviting NAALAS to make a submission to the Reference Committee's inquiry on current legal aid and justice arrangements.

The North Australian Aboriginal Legal Aid Service wishes to bring to the attention of the Committee two main issues of concern. These are:

- 1. Inadequate funding for NAALAS and resultant impact on the delivery of legal advice and representation to Aboriginal people in the Northern region of the Northern Territory; and
- 2. Unfair and unequal distribution of legal aid funding throughout the Northern Region in the Northern Territory.

In order to do that, and given the deadline for receipt of the submissions, I wish to forward a letter dated 6 August 2003 which was written to Mr Peter McCormack, Acting Regional Manager, ATSIS, Darwin, which argues the case for both these issues. Please see *attached*.

If you require further information and wish to discuss any aspects of these matters, please do not hesitate to contact me. *Attached* is our last Annual Report for your information.

Yours faithfully

Veronica McClintic

Director/Principal Legal Officer

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6 August 2003

Mr Peter McCormick Acting Regional Manager PO Box 40670 CASUARINA NT 0811

Dear Peter

Re: NAALAS Operational Core Funding 2003-2004

1. INTRODUCTION

As you are aware NAALAS has been provided with core funding of \$1,068,462 for the first six months of the 2003-2004 period.

I am now writing to you to request an urgent increase of funds to that amount because NAALAS will not be in a position to provide the same basic service we provided last year.

In effect, as you will notice in our revised budget, there is no allowance for the provision of advice and representation to Aboriginal people in the remote communities in relation to their criminal law matters.

To date NAALAS has been providing monthly criminal advice and representation to our clients at Wadeye, Daly River, Tiwi Islands, Jabiru, Oenpelli and Maningrida.

This service will cease within the next month if further funds are not provided.

In addition to this, NAALAS will also be forced to discontinue the employment of one of its much needed criminal solicitors.

NAALAS is grossly underfunded and under-resourced for the vital service we provide to the Aboriginal community within the northern region, even with this additional core funding for the bush courts and continued employment of a criminal solicitor.

Our organisation has not received any top up of funds to our core operational funding from ATSIC despite the enormous rise of insurance and the usual rises associated with inflation.

It is to be noted that ATSIC is our only funding body.

On numerous occasions, the need for extra funds to provide at least a basic legal service to Aboriginal people within the northern region has been highlighted to no avail.

2. CORE FUNDING

In February 2001 ATSIC commissioned a review of NAALAS with the result that the organisation was deemed to be in significant financial difficulty. The major review of the North Australian Aboriginal Legal Aid Service was conducted during the period of 22-28 February 2001. This review, which was conducted by Mr Bob Cowling, reported the following:

"NAALAS is insolvent and not in a position to pay its debts. It is relying on advance receipts of grant funds to pay operating expenses including wages".

"... the deficit of funds available to meet liabilities as at 30th June was \$193,000 but the situation deteriorating between the period to 31st December 2000 to approximately \$439,000. The \$193,000 deficit is core deficit that at the 30th June 1999 was \$182,000. NAALAS must receive additional untied funding of at least \$193,000 based on the situation at the 30th June to enable it to continue to operate."

At the end of the review the report stated:

"Recommendation 13: NAALAS obtain funding of \$440,000 to clear past debt or cease operations."

Prior to that time NAALAS had carried a deficit for some years accruing before the employment of myself. At no time following did ATSIC act upon this recommendation!

Following that review the organisation embarked upon major cuts to staffing and programs to pull expenditure within budgetary limits.

The following positions were cut:

- Articled Clerk
- Aboriginal Cadet
- Policy Officer
- Part-time Civil/Family Law Solicitor
- Community Development Officer
- Client Service Officer

Other cuts were made to all travel to bush courts to deliver community development projects and civil/family law assistance. In addition to these initiatives all systems within NAALAS were reviewed and made more efficient.

As a result of these cuts, although expenditure was brought within our budgetary limits, overall service delivery of legal services to Aboriginal people within the northern region suffered enormously.

The practical effect of this downsizing took away from the remote communities significant legal assistance (it must be noted however that prior to this the level of services were deficient anyway in comparison to the level of service provided to other persons in need of legal aid in Darwin). NAALAS had been providing legal advice and representation in family and civil law, to two remote communities, as well as a number of community development programs. In addition to this, through the employment of a Policy Officer, NAALAS was in a position to lobby for the rights of Aboriginal people in general through law reform and education. Through this position NAALAS was at the forefront of lobbying for an interpreter service, which is now in existence, and for the abolition of mandatory sentencing to mention some significant achievements.

3. As you are aware, during the 2002-2003 financial year this organisation, along with other legal organisations suffered greatly with the significant rises in insurance. That is, professional indemnity insurance and compulsory workers compensation insurance.

In the 2001-2002 financial year the insurance for the above areas were:

Workers compensation \$18,173 Professional indemnity insurance \$53,168

In the 2002-2003 financial year premiums were increased to:

Workers compensation \$41,409 Professional indemnity insurance \$109,956

This equates to well over 100% increase which, when considering the increase, was only for half of the year (December is the month increases were due) extrapolates out to being well over 150% increase. In other words, this organisation had to find approximately \$130,000 extra for the 2003-2004 financial year compared to the 2001-2002 financial year.

On 13 February 2002 NAALAS wrote to Michelle Adams – see attached letter, requesting an increase to our core funding. NAALAS argued that this money was required for the rise in insurance and the imposition of GST. The amount of money requested was \$180,000.

On 8 August 2002 I wrote to Greg Woodroffe, ATSIC requesting an increase to our core funding to the amount of \$54,333. This amount was in fact to enable NAALAS to pay its rent! Please see letter to Greg Woodroffe dated 8th August 2002 which is self-explanatory.

When preparing the budget for the first 6-months of the 2003-2004 financial year these set compulsory costs were obviously included.

As a result of these increases NAALAS requested extra funding from ATSIC and received in February 2003 \$54,333 for rent and \$68,638 for insurance.

- 4. In September 2002 another ATSIC review of NAAALAS was conducted which indicated satisfaction about the NAALAS financial state and which generally portrayed NAALAS in a positive light. It was also found at that time that NAALAS was well within budget.
- 5. Despite these reviews, requests for extra core funding (not new or additional funding!) and the extra funding given to NAALAS in February 2003 (which in effect amounts to an acknowledgement of necessity for vital additional core funding). ATSIC still have not provided extra funds which is urgently needed to provide vital legal services to Aboriginal people, in Darwin and the remote communities within the northern region.

6. BUSH COURTS

NAALAS currently employs 8 criminal solicitors who attend the following criminal courts on a regular basis:

- Darwin Magistrates Court daily
- Northern Territory Supreme Court daily
- Wadeye Court monthly
- Daly River every second month
- Tiwi Court monthly
- Jabiru Court monthly
- Oenpelli Court monthly
- Maningrida Court monthly

The average number of matters (and clients) listed on a monthly basis are as follows (the average has been taken from a 9-month period):

- Darwin magistrates Court 435
- Northern Territory Supreme Court 8
- Wadeye Court 94
- Daly River Court 28
- Tiwi Court 24
- Jabiru Court 19
- Oenpelli Court 19
- Maningrida 15

In order for NAALAS to continue our basic service to the bush, that is to attend the criminal court sittings for the provision of advice and representation, the following funding is requested:

Jabiru/C	Denpelli:				75. 4
T/A	Accommodation	Airfare	Fuel	Total	Per Annum
\$390.	\$696	\$210	\$70	\$1,366	\$16,392
					•
<u>Tiwi</u> :			T 1	m1	Dan America
T/A	Accommodation	Airfare	Fuel	Total	Per Annum
\$260	\$180	\$600	\$40	\$1,080	\$12,960
Maning			Y7I	Total	Don Amazza
T/A	Accommodation	Airfare	Fuel	Total	Per Annum
\$260	\$180	\$600	\$40	\$1,080	\$12,960
Wadey		A * C	Freel	Total	Per Annum
T/A	Accommodation	Airfare	Fuel		\$26,280
\$780	\$810	\$450	\$150	\$2,190	φ 20,200
				•	
Daly R		A *C	Fuel	Total	Per Annum
T/A	Accommodation	Airfare	\$100	\$840	\$10,080
\$260	\$180	\$300	2100	⊅ 040	\$10,000
	bush courts (x7):	A • C	TC-s-all	Total	Per Annum
T/A	Accommodation	Airfare	Fuel	:	\$7,560
\$260	\$180	\$600	\$40	\$1,080	ø/,JUU
			TOT	AT.	\$86,232
		•	101		

In addition to the travel expenses in relation to the remote communities, NAALAS also requires funding for the rental charges connected to the use of video conferencing.

The Department of Justice has implemented a scheme whereby all key stakeholders in the justice system are required to utilise video conferencing as a tool for the efficient delivery of legal services to the community. Video conferencing will allow a link with the communities to reduce the non-productive travel times for courts. It would also enable the facility to confer direct with clients without the need for travel.

The benefits are tremendous for NAALAS staff and NAALAS clients residing at the remote communities and in prison. NAALAS will be in a position to speak to clients within reasonable time, providing advice and taking instructions.

The funds required will only be for rental as the Department of Justice has given to NAALAS the video conferencing equipment on loan. The agreement with the Department of Justice is that if NAALAS uses the equipment to an adequate level, the equipment will be given to NAALAS. If it is not, it will be taken back. NAALAS therefore urges ATSIC to provide the funds to enable us to participate in this scheme and to increase the quality of service to our clients.

Based on 2-hours a week for each community, the cost would be approximately \$20,000. It is envisaged that once the system has been trialed these costs will reduce. The costing is based on \$200 per hour rental. The use of this facility will obviously be limited!

If NAALAS does not receive an immediate top up of funds to deliver services to the remote communities we will not be in a position to attend the bush courts that are coming up within the next month. This state of affairs will obviously be devastating for the remote communities as they will not receive any legal assistance at all. In addition to this, the court will find themselves in a state of chaos.

For many years now the remote communities have been in a very unfortunate situation in comparison to people within Darwin. Persons residing within Darwin have access to advice and representation in most areas of the law such as criminal, civil and family. However, persons residing in the remote communities have only ever had criminal law assistance, which in fact has been given by NAALAS only. This state of affairs is unacceptable and discriminative and further adds to the burden of these people who in effect live in conditions and standards that equate to third world standards.

In effect, legal advice and representation must be provided to the remote communities in the areas of family and civil as it could be argued that due to their social conditions there would be more need for this type of legal assistance. For example Aboriginal people in remote communities need assistance with consumer problems such as consumers being forced to pay high prices at the local store for basic items of food, unfair dismissals and other employment issues, discrimination in many forms, used car rip offs and many other relevant problems that need addressing.

In relation to family law there are child in need of care cases that may require legal assistance as well as a myriad of other issues.

Obviously NAALAS would like to be in a position to provide these services but as indicated above, NAALAS has never received funding to provide that level of assistance to the remote communities.

ATSIC must lobby both the Northern Territory and the Commonwealth Government to provide the same level of service to the remote communities as is provides to persons within the Darwin region. Both governments have a responsibility to ensure legal funding is distributed equally and fairly across the board despite whether you are Aboriginal or not or whether you live in a remote community or a large centre such as Darwin.

7. EMPLOYMENT OF CRIMINAL SOLICITOR

As mentioned previously, NAALAS has 8 criminal solicitors. In order to retain this number NAALAS must receive a further increase of core funds. The cost for 12-months is \$52,546. In the event that NAALAS does not receive this funding

for the eighth solicitor it will be forced to reduce the numbers of solicitors who currently are overworked.

Due to the immense number of clients that are serviced both in Darwin and the remote communities, NAALAS experiences extreme difficulties in managing the workload efficiently and within safe limits even with 8 solicitors. The criminal solicitors generally suffer from ongoing stress and anxiety with the result that they tend not to want to remain at NAALAS for a reasonable length of time. The retention rate of criminal solicitors is very poor, they tend to stay at NAALAS for only 6-12 months. This practice is unacceptable. It gives rise to many other problems within the criminal justice system and delivery of quality service.

8. ATSIS is now requested to immediately provide NAALAS with an increase in core funding for this year so that we can provide the basic service provided last year. Funds requested are:-

\$52,546	Criminal solicitor
\$86,232	Bush travel
\$20,000	Video conferencing rental
\$158,778	Total

NAALAS has proved to ATSIC that:-

• It is responsible, efficient and able to work within a given budget.

• It needs extra core funding to provide a service. NAALAS urgently requires \$69,840 for bush courts and \$52,546 for the employment of a criminal solicitor.

• Even if NAALAS was given extra core funding NAALAS would still be underfunded and underresourced.

NAALAS would like to express a deep concern about the administrative coordination of funding services by ATSIC/ATSIS for vital services such as legal services. Why did we not get an increase at least to compensate for the increase in insurance and inflation? Why was there no action following the first mentioned review?

Non-Aboriginal organisations such as the Northern Territory Legal Aid Commission do not have to suffer under this type of incompetent and discriminatory practice!

At a later date NAALAS will provide a further funding submission requesting funds for additional necessary services, in particular funds for the employment of a policy/education officer and further services to the bush communities.

If ATSIS requires further information please do not hesitate to contact me.

Enclosed is our last Annual Report for your information.

Yours faithfully

Veronica McClintic

Director/Principal Legal Officer

CC: Eddie Cubillo, Chairperson, Yilli Rreung

Noranea H a Clarke

Kim Hill, Zone Commissioner ATSIC

Wayne Gibbons, Chief Executive Officer, ATSIS



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13 February 2002

VMcC:jm

Ms Michelle Adams ATSIC PO Box 41221 CASUARINA NT 0811

Dear Michelle

Re: Submission for ATSIC Funding in the Financial Year 2002/03

I refer to your letter dated 11th December 2001 inviting NAALAS to make a submission to ATSIC for funding for the year 2002/03.

Attached is the submission.

You will notice that the amount of money that NAALAS is seeking for this period is \$2,280,664.00 which is in excess of the amount of money granted to NAALAS for the current financial year, which is \$2,063,242. The amount of \$2,280,664.00, which we are seeking for the next financial period, is one, which is based on projected estimates to 30th June 2002.

There are numerous reasons for our request for increase in operational costs. Some of the reasons are as follows:

1. Wages

Wages right across the board have increased, in particular, salary for senior lawyers have had to be upgraded in order for NAALAS to attract more senior and experienced staff who would be more inclined to stay at NAALAS. As ATSIC is well aware, NAALAS has traditionally had a very poor retention rate of solicitors. We have therefore attempted to resolve this problem by offering more competitive salaries. A high turnover of staff (identified in the NAALAS Major Review conducted on 22nd-28th February 2001) has cost NAALAS a lot of money in the past. It also causes extreme instability and lack of consistency. Younger solicitors do not always receive the support and advice that they should receive. These sorts of problems affect the quality of service to our clients.

2. Insurance.

Insurance premiums have in effect doubled, particularly in the areas of professional indemnity.

3. GST

The impact of the GST upon our service has certainly raised costs that were not provided for.

4. STEP Program/Funding

NAALAS was receiving funding from the STEP program agreement, however at the end of February 2002 that funding shall come to an end.

The costs mentioned above are real and essential. They are not for new projects or expansion of operation.

During the past year management took a number of steps to reduce spending. Some of the steps have included:

- Streamlining all systems and making them more efficient.
- All ad hoc travel to remote communities was ceased except for travel in relation to court circuits.
- The Community Development Manager's position was not filled following departure of employee.
- Non renewal of the law cadet's position at the end of employees contract.
- Non renewal of policy officer's position.
- Non renewal of Articled Clerk's position

Although this action has reduced spending to some degree, the necessity for core funding to be increased, still remains.

NAALAS must be in a position to fill some of the above mentioned positions in the next financial year however. In particular, the positions of Policy Officer and Articled Clerk.

On 19th December 2001 the findings of a matter in the Coroners Court in relation to a death in custody of an Aboriginal child in the Don Dale Juvenile Detention Centre was handed down by Mr R Wallace SM. There were a number of important recommendations that were made. In particular, the following recommendation was made:

"2. And that sufficient resources be allocated to Aboriginal legal aid organisation and that those organisations allocate their resources so that their clientele at bush courts receive a quality of service comparable to the clientele in major centres."

That recommendation is obviously suggestive of the need to provide adequate resources to NAALAS to provide a quality service. In order to do this NAALAS must provide the following:

Adequate travel to communities. 1.

More time to be spent on certain communities. 2.

Extra time is spent in preparation of cases, in particular for clients who 3. live in the remote communities because of their language and cultural differences.

Continual funding for interpreters. 4.

Ongoing and further training to prepare staff and upgrade their 5. knowledge in dealing with Aboriginal clients, in particular, to those in remote communities.

Sufficient lawyers to carry out the above. 6.

NAALAS will be placed in extreme hardship if it does not receive an increase in the core funding. If NAALAS does not receive this top up funding, it may very well have to decrease its staffing level further, which will mean a number of programs would be cut. It is considered that NAALAS's operations is now "on its bare bones".

As ATSIC is well aware, the Major Review of the North Australian Aboriginal Legal Aid Service was conducted during the period 22nd-28th February 2001. This review, which was conducted by Mr Bob Cowling, reported the following:

"NAALAS is insolvent and not in a position to pay its debts. It is relying on advance receipts of grant funds to pay operating expenses including wages."

"... the deficit of funds available to meet liabilities as at 30th June was \$193,000 with the situation deteriorating during the period to 31st December 2000 to approximately \$439,000. The \$193,000 deficit is core deficit that at 30th June 1999 was \$182,000. NAALAS must receive additional untied funding of at least \$193,000, based on the situation at 30th June, to enable it to continue to operate."

At the end of the review report the following was stated:

"Recommendation 13. NAALAS obtain funding of \$440,000 to clear past debt or cease operations."

NAALAS has carried a deficit for some years, accruing before the employment of the present Director. As indicated previously, the present management put in place a strategy to reduce spending which has been successful to some extent. The identified deficit to date stands at \$180,0000. It is to be noted that this amount does not include staff entitlements as this is an assumed cost that would be borne by ATSIC in the event that NAALAS ceased operations.

On this basis, NAALAS requests a one off grant of \$180,0000 to clear the past deficit.

In addition to the request for further core and deficit funding, NAALAS also requests financial assistance in relation to its future premises. The lease for our premises runs

out in March 2003. It is therefore vital that NAALAS now makes provision for either relocation or upgrading of present facilities. As ATSIC is aware, funds were provided previously in order to conduct a feasibility study to look into the costs of the provision of upgraded facilities at the present premises and the costs of relocating to another premise. At present the consultant who conducted the feasibility study is currently updating his report which will be forwarded to you when it is available.

Attached(*) is the original report.

At this stage we are unable to provide specific details however this shall be forthcoming.

NAALAS requests a meeting with yourself, Mr Hill and Ms Cummings to discuss these requests.

If you have any queries, please do not hesitate to contact me. Awaiting your response.

Yours faithfully

Veronica McClintic

Director

Cc: Kim Hill

Barbara Cummings

Alan Hedger



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8 August 2002

Mr Greg Woodroffe ATSIC PO Box 40670 CASUARINA NT 0811

Dear Greg

Re: Request for Further Funding for the Financial Period 2002-2003

I refer to previous conversations with you in relation to the abovementioned matter and to my letter to Michelle Adams dated 13 February 2002 (see *attached*).

I now write and request further immediate funding.

As indicated to you at the meeting on Friday 5 July 2002, which was attended by Jonathan McLeod, Noel Morris, yourself and I, NAALAS will be unfunded for a sum of at least \$54,333 for this financial year.

As you are aware, ATSIC's base grant to NAALAS for the 2002-2003 financial period is \$2,091,957. NAALAS has made great attempts to provide a projected budget within that amount. However this has proved to be impossible despite the drastic cuts which were made in the previous financial year, and also despite the further cuts to important projects such as that provided by a Policy Officer and an Articled Clerk.

In effect we are being underfunded as the \$2,091.957 plus \$54,333 is in fact a reflection of our actual current operations which, as pointed out in my letter to Michelle Adams, dated 13 February 2002 is "on its bare bones". It is to be noted that the \$54,333 does not include the cost of the Policy Officer, Articled Clerk nor any unforeseen increased in expected costs like insurance.

In reference to the letter to Michelle Adams I urge you to read that again as it clearly sets out our unfortunate situation.

NAALAS urgently requires at least a top up funding of \$54,333 to continue current operations. We simply cannot make any more further cuts!

If we are also able to receive further funding for a Policy Officer, that would indeed be appreciated as it is through that position we are able to produce the very important work of reform, prevention and education as we have done in the past.

As ATSIC is well aware, NAALAS was in the forefront of lobbying to abolish the mandatory sentencing laws, establish an interpreter service in the Top End and challenge the former NT Government on a number of issues.

Attached also is the review of NAALAS conducted by Bob Cowling on behalf of ATSIC and NAALAS's response to that review. I am disappointed that ATSIC appears not to have taken any notice of that review and acted upon it!

It is to be noted that NAALAS, in comparison to the Northern Territory Legal Aid Commission, Director of Public Prosecution and other legal offices, is grossly underfunded, understaffed and poorly housed!

Unfortunately this situation reflects on our clients, staff and the Aboriginal community as a whole. It is discriminatory to be treated in this fashion and the situation must improve.

Over the last 4 years, NAALAS's core funding has been unchanged. There is no doubt that wages and overall costs have increased over this period.

Without an increase in funding, NAALAS has been forced to reduce its services by cutting expenditure where possible, but more importantly and of greater concern, NAALAS has been forced to reduce its staff to an unacceptable and dangerously low level.

It is of national concern that legal aid offices throughout Australia cannot, through lack of funding, attract and maintain lawyers of experience to perform the functions required to provide adequate representation for the Aboriginal and Torres Strait Islander people.

Attached is a snapshot of our staffing/funding which indicates the staffing cuts that we have had to make and the decrease in funding over a number of years.

If you would like to discuss this further, I can be contacted on the above number.

Yours faithfully

Veronica McClintic Director/Principal Legal Officer

Cc: Jonathan McLeod
Kim Hill
Barbara Cummings
Alan Hedger
Ray Robinson



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5 August 2003

Mr Kim Hill ATSIC PO Box 40670 CASUARINA NT 0811

Dear Kim

Re: NAALAS Operational Core Funding 2003-2004

NAALAS is in the process of requesting further core funding from ATSIS to enable us to continue to provide criminal law advice and representation to our clients at the remote communities.

Attached is a letter to Peter McCormack dated 5 August 2003 which sets out our submission for your information.

I am writing to you to ask for your support in relation to our request.

If you require further information, please do not hesitate to contact me.

Yours faithfully

Veronica McClintic

Director/Principal Legal Officer

H' Clarke



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5 August 2003

Mr Eddie Cubillo Chairperson Yilli Rregung PO Box 42696 CASUARINA NT 0811

Dear Eddie

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Attached is a letter to Peter McCormack dated 5 August 2003 which sets out our submission for your information.

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If you require further information, please do not hesitate to contact me.

Yours faithfully

Veronica McClintic

Director/Principal Legal Officer

Noronea & Clarke