

ABORIGINAL LEGAL RIGHTS MOVEMENT



SUBMISSION TO DR WARREN MUNDY FOR THE INDEPENDENT REVIEW OF THE NATIONAL LEGAL ASSISTANCE PARTNERSHIP 2020 – 25.

TERMS OF REFERENCE

This submission is directed mostly to the question of whether Aboriginal and Torres Strait Islander specific legal assistance services funded under NLAP have been delivered in an effective, efficient and appropriate manner in South Australia.

Consistent with previous submissions to the Commonwealth and State Attorneys General it focuses upon the quantum and allocation and distribution mechanism for the funds to South Australia and ALRM and their insufficiency.

The submission highlights the necessity for wraparound services connected to the achievement of social self-determination, and social, cultural and economic goals for Aboriginal people and the unique capacity of ALRM to provide the same in a timely, efficient and culturally safe manner.

It points to the relative efficiency of ALRM in doing so, compared to other legal aid organisations, and it speaks to the unmet needs of Aboriginal people in South Australia and how their legal needs may be achieved through ALRM. The submission asserts that because previous underfunding necessitated the primacy of front-line services, ALRM is already a very efficient organisation, and, it needs more resources for infrastructure and supports.

ALRM is well aware of its client base. The brutal fact is that many are illiterate, many are subject to disability, whether intellectual or physical disability, a mental illness or a chronic physical illness. All the consequences of dispossession violence, and intergenerational trauma and all their sequelae.

Face-to-face contact

In those circumstances, ALRM believes that face-to-face contact with clients is extremely important, and preferably with the assistance of interpreters of western desert languages, family practitioners, mental health social workers and other supports when they are needed. For these reasons, ALRM is somewhat sceptical of the use of technology to provide legal assistance services, except for very basic legal information and advice being provided by mobile phone apps, and the use of contact cards.

For example, ALRM does not believe that AVL links to interpreters for our clients who speak English as a second language are at all effective. Seeing themselves on the screen, our clients think they are in a movie. ALRM is sceptical of the concept of the “virtual office”. There will be some instances when sophisticated question and answer logic trees may be useful for some clients but not many. On the other hand, the use of IT for our service providers, the lawyers, the field officers, the family practitioners is very important, and ALRM always welcomes innovations that can assist us. The civil section of ALRM has an established relationship with the Flinders University law school in regard to the provision of electronic information and support systems for lawyers.

The work of ALRM is vital to the achievement of the closing the gap targets on incarceration rates for Aboriginal people, youth and adult, and the overrepresentation of Aboriginal children and their families through the South Australian child protection system.

Early intervention?

In South Australia, Aboriginal people’s involvement in the justice system is generally reactive not proactive. This tends to limit the capacity of early intervention legal services to be relevant or useful. A person is arrested and charged with an offence by police, an Aboriginal family has their child taken from them by Department for Child Protection. Their need for ALRM is reactive but that may be mollified somewhat by community legal education about rights and responsibilities to a limited degree, or mollified by early intervention through wraparound, essentially welfare services to assist families to avoid child protection proceedings.

This can happen in the legal sphere only to a limited extent. The obvious example is the use of the Family Law Act through the Adelaide Registry Indigenous List which is used to encourage Aboriginal families to go to that court to forestall child protection proceedings in the state Youth Court. This is discussed below.

ALRM sees advocacy with senior police about policing methods and the implementation of specific RCIADIC recommendations about community policing as a potential way to mollify the effects of over policing, particularly in regional areas such as Port Augusta. Aboriginal youths are there subject to intrusive and arguably unreasonable conditions of bail, even for the most minor offences. Bail is no longer a means for the citizen to maintain their liberty until convicted, rather it is used by police as a means of surveillance and control, particularly over Aboriginal youths.

Another example of early intervention is the successful legal work ALRM did between about 1992 and 2013 in the Licensing Court of South Australia. By seeking and obtaining orders of the Licensing Court as to the licence conditions of rural and remote hotels there was some success in limiting the availability of takeaway liquor to remote communities. This work was done at the behest of those communities. By having these conditions imposed, ALRM was able to some degree to limit the amount of alcohol-related violence that occurred, as well as the

ruinous health consequences of takeaway liquor. Due to that ALRM advocacy, and due to amendments to the *Liquor Licensing Act*, the present South Australian Liquor And Gambling Commissioner has been much more proactive in imposing limitations on takeaway liquor outlets near or more relevantly, within driving distance of remote Aboriginal communities. This is gradually having a beneficial effect, although the problem of grog running is by no means resolved. It can be seen that that this kind of proactive legal work had a beneficial effect on the overall health and welfare of the Aboriginal communities concerned.¹

Another effective means of early intervention is very proactive advocacy in the Coroner's Court. The 2013 "sleeping rough inquests." in which ALRM acted for Yalata community, highlighted the disastrous health effects of takeaway liquor on Anangu from remote communities and highlighted the need for reforms to Public Intoxication legislation and the running of sobering up units. ALRM continues to advocate for those coronial recommendations to be actually implemented. Clearly, all of this work in relation to liquor control ultimately has a beneficial effect on the well-being of Aboriginal people, insofar as there are gradually improved health outcomes.

ALRM calls on the review of NLAP to place a high priority upon

1. the principle of self-determination for Aboriginal people through their chosen community-controlled organisations and peak bodies such as ALRM. Government responsiveness to the principle of codesign and real consultation on policies, programs and practices which affect Aboriginal people and their families must be implemented and be seen to be implemented. This should move to a shared decision-making model in due course, in the development of the JPP in South Australia.
2. Correspondingly, money and resources allocated through government in matters affecting this justice related closing the gap targets must be seen to be going to Aboriginal Community Controlled Organisations and Aboriginal people.
3. ALRM submits that it is the peak body for the representation of Aboriginal people and the representation of the interests of Aboriginal people in the justice system, civil criminal, child protection and family law in South Australia. But there needs to be much stronger policy and work and resource coordination between ALRM and the FVPLS Aboriginal Corporation. Both groups are Aboriginal Legal Services and they should accordingly receive a priority in resources flowing from the NLAP Review, as it relates to the legal needs of Aboriginal people in South Australia, particularly women, children and victims of crime.

ABOUT ALRM AND ITS HISTORY OF COVERAGE OF THE STATE OF SOUTH AUSTRALIA.

The Aboriginal Legal Rights Movement was incorporated as an association under the Associations Incorporation Act of South Australia on 25 January 1973. It consisted of a management committee called the Council, an employed solicitor, field officers and secretarial staff. The Council then included in its number an honorary member Mr Elliott Johnston, who later became a Supreme Court Justice and the lead Commissioner of the Royal Commission into Aboriginal Deaths In Custody.

¹Brady Byrne & Henderson Australian Aboriginal Studies 2003 Volume 2 page 62 "Which Bloke Would Stand up For Yalata"?; the struggle of an Aboriginal Community the control the availability of alcohol"

At that time and until 2013, ALRM lawyers were retained with a right of private practice because it was not possible for an incorporated association to employ legal practitioners. ALRM made extensive submissions to the Law Society and the Attorney General department and in 2013 this led to the inclusion of Division 3B of Part3, new provisions in the *Legal Practitioners Act*, which allowed for community legal centres (which was defined to include ALRM) to be recognised as law practices. Division 3B of Part3 is a very important step which meant that the marginalised legal aid sector had been acknowledged within the law of South Australia. ALRM lawyers have strong links to the Law Society of South Australia with many ALRM lawyers serving as voluntary members of committees.

As such, ALRM lawyers are now employed by ALRM as members of the *one* law practice. However, that does give rise to the need for constant conflict checks between the civil and criminal sections.

In 2017, ALRM ceased being an incorporated association, and became a company limited by guarantee under the Commonwealth Corporations Law, and it is recognised and registered under ACNC as a Public Benevolent Institution. The Council of ALRM had initially had up to 20 members in order to reflect the diversity of Aboriginal people throughout the state, however this has been gradually reduced to a board for the corporation of between 6 and 10 members.

ALRM started its life primarily as a criminal law practice and its expansion into the country reflected the need for representation of Aboriginal people in criminal courts where they regularly appeared. Civil work was not systematically commenced until the late 1980s with the employment of a civil solicitor in Adelaide to cover the whole state. That has gradually expanded but is still based in Adelaide. Although NLAP requires coverage of the whole state, in civil matters, this is achieved through outreach services only. There is now an emphasis upon family law and child protection through the family law pilot project, and the women's legal assistance service which have been incorporated into a NLAP in the last two years. ALRM is also responsible with the Working Women's Centre for a program of community legal education to Aboriginal Community Controlled Organisations on the prevention of sexual harassment and bullying in the workplace, also under the revised NLAP. ALRM submits that its community legal education program and casework legal assistance services should include equal opportunity and discrimination remedies including for sexual harassment and bullying in the workplace.

In 1978, ALRM opened a regional office in Port Augusta staffed by a solicitor and 2 Aboriginal Field officers.

Starting in the mid-1980s, this was gradually expanded to 4 or 5 criminal law solicitors with correspondingly greater responsibility for the north of the state. Also in the 1980s, an office was opened in Ceduna again staffed by a solicitor and two field officers, to cover the West Coast. ALRM also had a regional office in Murray Bridge to cover that town, the Port McLeay mission (RAUKKAN) Meningie, but never the south-east of the state. At various times, ALRM also had regional offices staffed by field officers in Coober Pedy and Port Lincoln.

At the time of writing, ALRM has 2 solicitors and 2 field officers in Port Augusta. That office now covers Port Augusta magistrates Court and Youth Court and District Court, but does not cover Whyalla, Port Pirie, or any of the other small regional Magistrates courts in the hinterland of Port Augusta. The APY circuit and the Coober Pedy Magistrates Court circuit are covered by a combination of Port Augusta and Adelaide lawyers with Port Augusta field officers.

A solicitor based in Port Lincoln in a newly reintroduced Port Lincoln office, covers Port Lincoln on his own and also covers Ceduna with assistance from Adelaide. The Murray Bridge office has been closed for some years, and due to recent service restrictions in 2023, neither Murray Bridge Court nor the courts of the Riverland are covered by ALRM services. ALRM has never covered the south-east of the state which means magistrates courts in Mount Gambier, Naracoorte, Bordertown and Millicent. Neither does ALRM cover the District Court or Supreme Court sittings in Mount Gambier which deals with major indictable matters and jury trials for the south-east of the state. ALRM does not cover Christies Beach suburban magistrates Court and Youth Court. This is unfortunate because the demographics show that that is a growing area of Aboriginal population in greater metropolitan Adelaide.

The detail of the restriction of services imposed in 2023 is outlined in correspondence to the State Attorney General of April 2023, already in the possession of the reviewer. Similarly, the costings and aspiration of ALRM to become a truly statewide service, are dealt with in correspondence to the Commonwealth Attorney General of January 2023, also in the possession of the reviewer. This correspondence also covers the history of underfunding of ALRM and excessive workloads which topics do not need to be further discussed.

It should be noted, however, that that correspondence did not include costing for the refurbishment of the Adelaide office of ALRM. That office is in prime location and the site needs to be kept. Nevertheless, it is a three-story building that is about 50 years old. It is not large enough for our needs and certainly not large enough for an expanded ALRM.

Considerable capital expenditure will be required to either demolish and rebuild or to refurbish and extend by another three or four floors. It will be a multi-million-dollar exercise but is vitally necessary for the continuation of ALRM services.

INTERPRETING AND TRANSLATING SERVICES

Like ALSWA, NAAJA and to some degree Queensland ATSILS, ALRM has a significant client base for whom English is a second language. This does not apply to other ATSILS.

The main language for which interpreters and translators are needed are Pitjantjatjara and Yankunytjatjara, the languages of the APY lands and Yalata. Pitjantjatjara speakers now also live in Coober Pedy, Port Augusta, and the iron triangle generally, as well as in Ceduna and there is a significant population living in Adelaide. In summertime, some Walpiri speakers come to live in Adelaide, and theirs is a separate language entirely, which also requires interpreters. All ALRM lawyers and field officers need to learn how to interact with and work effectively with these clients. Some ALRM lawyers have gone to the trouble of undertaking Pitjantjatjara language courses at their own expense.

These 2 languages are very similar to each other and in fact may be described as dialects of each other. Not only do people who speak these languages have major problems in understanding the court process, legal language, and problematic relationships with police and corrections, but also, they live in a different cosmology, and in very crude terms, they are not assimilated in the same way, or to the same extent as Aboriginal people who only speak English. They maintain cultural ceremonies, they maintain kinship obligations, they maintain

through ceremony connection between the law, the land and the people. They are also very vulnerable to exploitation and substance abuse.²

ALRM has brought to the attention of the review, the significant South Australia Supreme Court case of *Frank v Police* (2007) SASC288 (2007) 98SASR547. Although that case sets out the mandatory requirement for the use of interpreters in courts, it is not able to set out precise criteria which lawyers need to be able to use to determine when an interpreter is actually needed. ALRM continually trains its staff in the use of a document, “Lawyers Protocols for Dealing with Aboriginal People,” a 2001 Law Society of South Australia publication in order to address this issue. By necessity, it is an important part of continuing professional development for our lawyers, which again, does not apply to some other ATSILS. It is vitally important for culturally safe and inclusive practice for ALRM lawyers that they be proficient in are communicating with their clients through effective and competent interpreters.

ALRM does not see a lot of value in having important documents translated into Pitjantjatjara language. That is because in the 1970s, bilingual education was abandoned on the APY lands. In other words, if a person cannot read and write English, they will not be able to read in Pitjantjatjara.

ALRM has recommended that the review speak personally to our board member Ms Karina Lester who is a member of the APY Executive, and a leading academic worker in cross-cultural issues, including through work for the University of Adelaide. There remains a significant deficit in the provision of adequate interpreter services, for the use of ALRM lawyers and field officers, as well as in Courts, as is mandatorily required by *Frank*, and as well in the work of police, as is required by sections 7 9A, and by section 83A of the *Summary Offences Act*.

The requirement to deal with clients for whom English is a second language should be more adequately dealt with under the funding allocation model for the allocation of funds for the Aboriginal legal assistance programs, generally. Also, the geographical distances required for attending very remote Aboriginal court circuits. ALRM notes that RCIADIC recommendation 108 has never been effectively implemented in South Australia. The only way that ALRM can implement it is to take multiple lawyers and field officers on every APY circuit, knowing that each lawyer will see their client and communicate with their client, only on the date of the court appearance.

That recommendation was:

108. That it be recognised by Aboriginal Legal Services, funding authorities and courts that lawyers cannot adequately represent clients unless they have adequate time to take instructions and prepare cases, and that this is a special problem in communities without access to lawyers, other than at the time of court hearings.

SUBMISSIONS ON RESTRUCTURING ARLM CRIMINAL SECTION TO MEET THE UNMET LEGAL NEEDS FOR THE STATE OF SOUTH AUSTRALIA

This part of the ALRM submission closely mirrors the addenda to the submission to the Honourable Mark Dreyfus KC of 23 January 2023. However, ALRM now has the benefit of

² See the inquests into the deaths of petrol sniffers of 2002 and 2005 undertaken by State Coroner, Mr Chivell. Also, the 2013 sleeping rough inquests undertaken by Deputy Coroner Schapel. (Available on the South Australian Court Administration Authority website under Coroners Findings for those years)

considering Courts Administration Authority statistics in relation to criminal file court lodgement, and numbers of unrepresented defendants in criminal courts, as well as information from The Legal Services Commission in regard to the amount of work for Aboriginal people that they cover in the criminal courts.

It is significant that the new figures and estimates closely mirror the originals, even with the benefit of the extra information now provided.

ALRM attaches to this submission a document produced by the Courts Administration Authority of South Australia, which shows the number of criminal file openings in the last five years, in each Magistrates Court, Youth Court, District Court and Supreme Court sitting in South Australia.

Significantly, the numbers are broken down to Aboriginal and non-Aboriginal and disclose that just for Magistrates Courts, the number of Aboriginal lodgements was 11,429 in 2018 – 19, 12,948 in 2019 – 20, 11,554 in 2020 – 21, 10,480 in 2021 – 22 and 11,247 in 2022 – 23.

Just for 22- 23, the total number of Court lodgement’s involving Aboriginal people was: District Court 343, Supreme Court, 79, Youth Court, total 2467, and magistrates’ courts total 11,247, a grand total of 14,136. Some previous years had been even greater. A further document to be provided to the review will include numbers of unrepresented Aboriginal people in the criminal courts of South Australia. That document indicates that approximately 20% of Aboriginal people, defendants go unrepresented.

ALRM submits that as near as possible, it should be funded to eliminate the number of unrepresented Aboriginal people in South Australian criminal courts.

These documents which give statistics on criminal lodgments in South Australian courts show a relatively static rate of criminal lodgments over the last four or five years, whilst some years are higher than others. Of course it could go up, if for example, there were further restrictions on bail through further widening of the description of ‘prescribed applicants’ under the Bail Act, or other amendments to the law which made vulnerable Aboriginal people more liable to arrest and charge. Nevertheless, the current state governments policy of being serious about reducing the excessive rate of incarceration of Aboriginal people may have the opposite effect in the long-term.

From 1 July 2019 to 30 June 2022 for country Magistrates Courts:

- 24,835 of the finalised case defendants who had a finding or admission of guilt were finalised in country courts. Of those (Table 3):
 - the majority were male with over a third not having legal representation
 - 7,262 were Aboriginal with one in five not having legal representation

					Total	Total %
Aboriginal	5,861	80.7%	1,401	19.3%	7,262	100%

In relation to those country magistrates' courts where ALRM historically has not been able to provide representation, the figures are not disaggregated to Aboriginal /non-Aboriginal, nevertheless, in the south-east of the state, the rate of lack of representation is most concerning.

Location	Represented defendants		Unrepresented defendants		Total	
	Number	%	Number	%	Total	Total %
Mount Gambier	1,461	71.3%	589	28.7%	2,050	100.0%
Naracoorte	186	61.2%	118	38.8%	304	100.0%
Millicent	72	35.5%	131	64.5%	203	100.0%

The current program is funded for 18 lawyers' positions to service Adelaide Magistrates, Adelaide Youth Court, Elizabeth, Port Adelaide, Murray Bridge, Berri, Ceduna, Port Lincoln, Kadina, Maitland, Port Augusta, Coober Pedy, Whyalla, Port Pirie, Leigh Creek, Yalata, as well as the remote areas including the Anangu Pitjantjatjara Lands in the far north- west of the State and Yalata and Oak Valley Communities.

The Criminal Law Practice provides advice and court representation to persons charged with criminal offences, across all jurisdictions from the Youth Court, Magistrates Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court of Australia. The most significant part of the criminal section activity Court consists in matters for summary offences, minor offences, major offences, extended supervision orders, through committal, trial, sentencing, appeals before the courts and appearances before the Parole Board.

The ALRM Criminal Section does not take on the following matters:

- Intervention Orders (the intervention order shall be linked to a substantive matter for the ARLM criminal section to act).
- Plea of Convenience.

For the past financial year, the ALRM Criminal Section has reached its KPI for representation matters in February 2023.

This same year, due to the high number of resignation by solicitors who faced an unsustainable workload and underpaid wages, the Criminal Section had faced a significant shortage of staff, which had led to the decision of the Board to cease servicing key locations: Whyalla, Port Pirie, Murray Bridge, Berri, Kadina and to put in place a limit on the number of new matters to be taken on by the ALRM Criminal section. This decision was temporary but has dramatically increased the unmet legal needs.

At the same time, ALRM wishes to express its gratitude to the Legal Services Commission of South Australia, which has striven nobly to attempt to pick up the work which ALRM is unable to do pending the expansion of the ALRM criminal section. They have done this with their in-house lawyers, and with assignments to external lawyers and have been very understanding of ALRM's position. We express our gratitude.

The ALRM Criminal section is currently composed of 16 lawyers for 18 FTE positions. A senior Counsel will cease being on retainer and start their employment in December 2023. Two other criminal lawyers positions are being recruited for at the time of writing. It is likely there will be a further position in Port Augusta to take over APY and Coober Pedy, thus relieving some of the workload on the Adelaide criminal section.

As of today, the ALRM Criminal Section only services:

- Adelaide Magistrates Court AMC (including Aboriginal Community Court in Adelaide)
- Adelaide Youth Court AYC (including the Aboriginal Youth Court in Adelaide)
- Port Adelaide (including Nunga Court) PAMC
- Elizabeth Magistrates Court (EMC), (including Aboriginal Community Court in Elizabeth)
- Port Lincoln (including the Nunga Court)
- Ceduna
- Port Augusta
- Coober Pedy
- APY Lands
- Maitland.

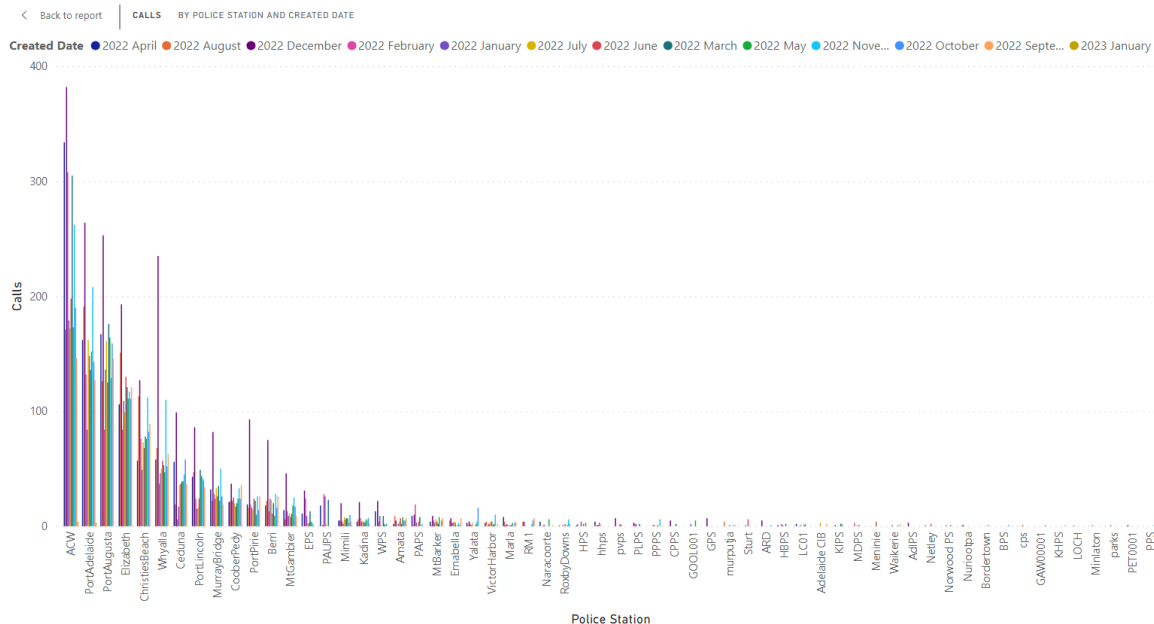
To resume servicing the critical locations and start servicing regions where there are unmet legal needs, the existing structure of the ALRM Criminal section should be revised as detailed above.

A. How to assess the number of lawyers to meet the unmet legal needs

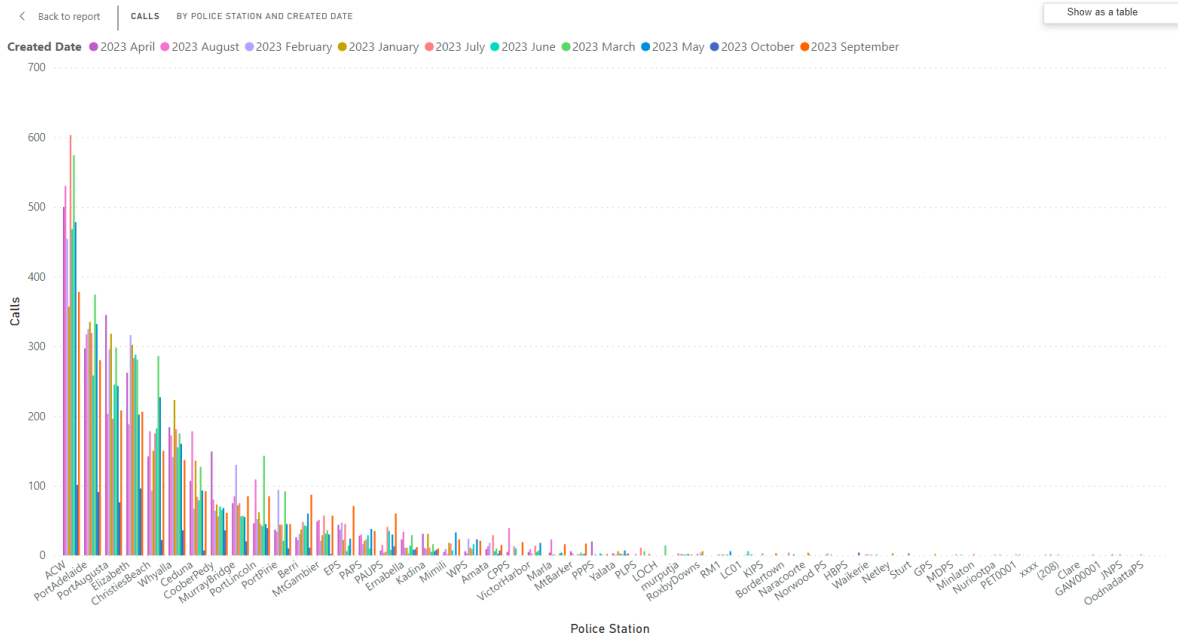
1. CNS Statistics to assess the number of DS

The CNS data reflect the number of custody notifications and is a useful tool to assess the needs for a Duty solicitor.

Notifications received by Police station for the year 2022:



Notifications received by Police station for the year 2023:



By retrieving the CNS data to match the ALRM financial year 2022/2023, the following results are found:

Police Station	Notifications received
AWC	4,154
Port Adelaide	3,016
Port Augusta	2,865
Elizabeth	2,443
Christies Beach	1,676
Whyalla	1,462
Ceduna	903
Murray Bridge	677
Port Lincoln	617
Cooper Pedy	631
Port Pirie	522
Berri	429
Mount Gambier	318

The need for Duty Solicitors (DS) in each court serviced is established by the fact that ALRM DS KPI are reached early in the financial year. As an example,

- For the years 2022-2021, DS KPI were reached by March 2021.
- For the year 2022-2023, DS KPI were reached by November 2022.
- For the current year 2023/2024, ALRM has reached 45,8% of its KPI by September 2023.

ARLM Criminal section will therefore benefit from the addition of DS solicitors for each court serviced based on the model in place in LSC, whereby ALRM act as DS for all Aboriginal clients then triage.

2. Criminal Lodgements

The data provided by the Court's Administration Authority and LSC and ALRM reveals the following met and unmet legal needs with respect to the representation of Aboriginal people in the criminal courts of South Australia.

Years ³	2020/2021	2021/2022
Criminal Lodgements (CAA data)	13,453	12,861
Matters dealt by LSC and private profession	3,834	3,814
Matters dealt by ALRM	6,374	6,288
Potentially Unmet legal needs	3,245	2,759

For information, ALRM dealt with 6,626 for the year 2022/2023, which indicates room for growth in representing Aboriginal people.

Based on the information contained in the above table, there were approximately 10,000 cases per year that ALRM could take conduct of. That refers to courts, we do not cover, and cases where Aboriginal people generally are not represented.

3. The 3 C's

Assessing the number of lawyers required to meet the legal needs is an intricate operation as the situation differ depending on:

1. Complexity of file
2. Complexity of client
3. Conflict of interest.

PAMC / EMC and AMC all have a different "type" of clients. AMC have large number traditional people, while EMC has drug and alcohol abuse clients. Clients who are in custody require weekly phone call for check up and regular in prison visit. As an example, the Port Lincoln/Ceduna lawyers travels to Port Augusta to do Prison custody clients.

The conflicts of interest, which arise when ALRM (as an organisation which comprises the civil department) has previously acted for the alleged victim or the alleged co-accused, also impact on the possibility for ALRM to provide legal representation to all Aboriginal people. Historically, the number of such conflict cases has not been that large, however, there are other kinds of conflicts of interest which prevents ALRM acting, such as "cutthroat" defences of multiple accused and past client conflicts in remote communities, discussed elsewhere in this submission.

Therefore, it is not simply a numbers game based on court statistics, although that is very relevant to indicating the numbers of Aboriginal people requiring representation.

4. Sustainable workload per lawyer

Until recently, unsustainable workload has led to the burnout of many young lawyers, who have resigned, and this explains the high turnover in the ALRM Criminal Section. Like any other law firm, ALRM should value the mental health and wellbeing of its employees.

³ The year 2022/2023 could not be taken as a reference year as the data provided by LSC are only for the half year to Dec 2022. However, for 22- 23the total number of Court lodgements involving Aboriginal people was District Court 343, Supreme Court, 79, Youth Court, total 2467, and magistrates' courts total 11,247, a grand total of 14,136.

Regarding the matters dealt by the Criminal Section, vicarious trauma is also an issue of critical importance.

Therefore, each lawyer should have the conduct of a sustainable number of files.

ALRM data reveals that 4240 Representation Services were opened for the period of July 2022 to June 2023 with a team originally of 18 lawyers reduced to 13 in April 2023 due to the resignation of staff. That is of course not a reliable guide to actual ALRM workload because many files maintained ongoing in the same period.

By comparison, according to the LSC Annual Report 2021-2022, 3001 matters were assigned to inhouse lawyers, with a criminal section composed of 30 lawyers according to the source from LSC. ALRM would not wish to speculate as to how this is mapped out in terms of individual lawyers file loads. However, it is a matter which the Review may wish to raise with the Legal Services Commission.

Based on our experience, we consider that the following workload would be sustainable:

Years of Experience	Number of Files
0-1	Duty Solicitor
2-3	30
3-4	50
Over 4	80

Major Indictable lawyers should have a workload of 25 files, having regard to the complexity of the matters.

B. The structure to be implemented to meet the unmet legal needs

A new Infrastructure is required to increase from small business model to large scale.

- Lawyers according to criminal justice needs – Duty Solicitor and Lawyers
- Office locations
- Administration support
- Investment in Technology

Lawyers according to criminal justice needs – Duty Solicitor and Lawyers

A system to the one in place in LSC should be implemented: ALRM shall act as DS for all Aboriginal clients and then triage based on conflict / complexity / case. A position of Duty solicitor should be created in all the current Court currently served and, in the location, where there are unmet needs.

ARLM should resume servicing Murray Bridge, Berri, Kadina, Whyalla, Port Pirie, Leigh Creek and open offices unmet needs are identified like in Christies Beach, Mount Gambier.

Aboriginal people in South Australian courts assumes that approximately 3,000 matters will be dealt with by the LSC and the private profession, leaving approximately 10 to 11,000 representation services per year to be handled by ALRM. Accordingly, based around the abovementioned workloads, and these requirements per court, ALRM proposes a significant expansion of the criminal section which is outlined below.

Based on the numbers provided by the court and all the factors explained above, and the calculations of the numbers of lawyers required to service, we are considering the following as our proposal. It will be noted that even with these further verifying data, this proposal for the

additional needed lawyers is very similar to that which had been given to Mr Dreyfus KC in January 2023:

Location	Criminal Lodgements 2022/2023	Current numbers of lawyer	Proposal
District Court / Supreme Court	422	2 MI lawyers	3 MI lawyers + 2 Senior Counsel
Parole Board	N/A	1 lawyer	1 lawyer
Adelaide Magistrate Court	2,441	2 lawyers	3 lawyers + 1 DS
Adelaide Youth Court	1,058	2 lawyers	2 lawyers + 1 DS
Port Adelaide Magistrate Court and Youth Court	1,755	2 lawyers	3 lawyers + 1 DS
Elizabeth Magistrates Court and Youth Court	2,237	2 lawyers	3 lawyers + 1 DS
Christies Beach Magistrates Court and Youth Court	1,026	Not serviced	2 lawyers + 1 DS
Mount Gambier Magistrates Court and Youth Court	266	Not Serviced	1 lawyer
Murray Bridge Magistrates Court and Youth Court	417	Not Serviced	1 lawyer
Berri Magistrates Court and Youth Court	316	Not Serviced	1 lawyer
Port Lincoln Magistrates Court and Youth Court	436	1 lawyer	1 lawyer
Ceduna/Yalata	317	Covered by the Port Lincoln lawyer	1 lawyer with assistance from Adelaide
Maitland / Kadina	151	Only Maitland Service (31 matters)	1 lawyer (civil/criminal)
Port Augusta Magistrates Court and Youth Court	1,522	2 lawyers	2 lawyers + 1 DS
Whyalla	806	Not serviced	1 lawyer
Port Pirie	442	Not Serviced	1 lawyer
Coober Pedy/APY lands	399	1 lawyer	2 lawyers (as the numbers have been impacted by the closure of the communities and should be back to their pre-covid level of 2018/2019 of 652 criminal lodgements)

All Country positions should be filled in by lawyers with at least 5 years' experience. To fine-tune this proposal, detailed data regarding the type of offences per criminal lodgements should be provided by the Court Authority. Also, this proposal shows the number of lawyers required to cover criminal lodgements. It does not go into the details of the management and organisation of the criminal section to cover the court circuits. For example, we consider that 2 lawyers are required to answer the needs in Coober Pedy/APY lands and work on the files. However, during the APY Lands court circuit, an additional ALRM lawyer would have to assist

them, particularly on busy circuits and a private lawyer would have to attend the circuit to represent the clients in case of conflict.

Thus, the total complement of criminal lawyers required would be approximately 37, effectively a doubling of the size of the criminal section.

1. Office locations

ALRM has currently offices in Adelaide, Port Augusta, Ceduna, Port Lincoln, Port Adelaide, and Elizabeth. The offices in Port Adelaide and Elizabeth are located on the premises of the Magistrates Court and provided by the court itself. Those offices are so small that they cannot accommodate the number of lawyers based on those courts and they do not satisfy the work health and safety regulations. As was indicated in the Dreyfuss correspondence, ALRM will need to obtain its own premises in the vicinity of suburban courts with the additional costs associated.

CORONIAL INQUESTS AND EXPENSIVE CASE FUND

ALRM, like other ATSILS has recently received significantly increased NLAP Commonwealth funding for expensive cases and coronial inquests.

Fortunately, there have been relatively few deaths in custody recently in South Australia and of those, two were inquested this year.

ALRM recommends that the NLAP reviewer make some recommendations for amending this funding stream and its proper use by ALRM.

1. That the coronial case fund be extended beyond deaths in custody to include deaths of children in state care (we have had 2 such cases in the last five years in which we have acted for the families) the failings of the child protection system revealed in inquests give rise to powerful recommendations for reform and ALRM will continue to work in this field. But AGD should recognise its importance by expanding the criteria specifically to cover such inquests.
2. Given the unmet legal need for civil remedies, outlined in this submission, and the present incapacity of ALRM to meet such a need, it is recommended that the AGD make specific amendments to the usages of this funding to enable it to be expended in assigning civil matters of merit for Aboriginal people to competent law firms who are able to handle them. An example is that in 2023, ALRM did not have the capacity to handle important workers compensation cases for Aboriginal people and has made assignments to a firm that is able to do so, essentially using this funding, but again, ALRM should be specifically approved to do so.

Health Justice Partnerships – Aboriginal Health Services and ALRM

Collaboration helps different Aboriginal services respond to complex problems.

Health justice partnerships are collaborations to integrate legal help into services that support people's health and wellbeing. Health justice partnerships provide integrated health and legal care for individual clients. They build the capability of health and legal practitioners and services to provide more holistic person-centred care. They also advocate for change which improves the health and wellbeing of communities.

An ALRM Lawyer / PCP / Field Officer could be based in the Aboriginal Health Service or hospital on a regular basis. ALRM should be funded, whether from Commonwealth or State resources as part of the health budget. Similar considerations apply to the use of the health budget to fund our proposal for the use of doctors in magistrates courts and ALRM collaboration with the Aboriginal Sobriety Group of South Australia. Again, for the sake of the health of the Aboriginal litigants who appear in state magistrates courts,

Use Of Doctors In Magistrates' Courts

In view of work that is currently being done on justice policy partnerships, and the incarceration rates Commission, ALRM proposes a revival of interest in the arrangements which previously took place between ALRM Ceduna and the Ceduna Koonibba Aboriginal Health Service regarding mutual assistance on behalf of Aboriginal patients and clients.

Under the previous arrangement, clients signed a mutual release between the health service and the legal service allowing for interchange of information between the doctor and the lawyer with the client's consent.

In practical terms, the doctor spent time working with the lawyer reviewing client files prior to court week and establishing the matters which needed to be proven in court by expert opinion evidence of the doctor as to the clients health and welfare needs and to ensure that the rehabilitation processes put in place by court orders, were consistent with the fulfilment of the therapeutic needs as indicated by the health service Doctor.

In addition, the health service obtained the benefit of receiving, again with the client's consent, medical psychological and psychiatric reports obtained by the legal service from outside services which might be of use to the doctor in terms of the client/patient's ongoing medical needs.

In addition, it is pertinent to note that the recommendations of the Royal Commission into Aboriginal Deaths In Custody made recommendations regarding the work of Aboriginal Health Services, particularly regarding Aboriginal Health Services and people in police custody – see recommendation 127, 130,152, 154, and perhaps others regarding custodial health and safety. Our major concern is for the revival and expansion of this model. A pilot program could begin on the APY Lands.

Allowing doctors into Magistrates' Court is not a usual Medicare program. However, the Aboriginal Health Service funding could well be adapted to maintain and foster the arrangement. Conventionally trained Aboriginal Health Service General Practitioners would require specific training and courses to enable them to do this work with Aboriginal Legal Service Lawyers.

Having a doctor available to give expert opinion evidence or to write short and immediate reports is an enormous advantage for ALRM criminal practice in the Magistrates Court.

Prisoner Care Program (PCP)

The Prisoner Care Program is well-established at ALRM and it is funded by NIAA. It provides welfare assistance to Aboriginal people nearing and at the end of their sentences to enable them to be re-established in the community with proper housing and the means to survive in society without again resorting to crime and becoming a recidivist offender. In terms of wrap around services ALRM needs to increase PCP staff. This would allow PCP staff to have further involvement with the organisations listed below as well as coverage of more prisons in South Australia.

Aboriginal Sobriety Group

Port Adelaide

Toundi Aboriginal College

Tiraapendi Wodli

Tiraapendi Wodli is an Aboriginal Leadership Group in Port Adelaide and was formed in 2018. A Tiraapendi Wodli Hub has been established to provide a place for Aboriginal families to access the information, social and cultural support, and services they need.

Grannies Group

“Salt and Pepper” – Aunty Pat Waria-Reed.

Support, work with and advocate for the Women in prison and post release clients. They offer support, refer these women to appropriate services providers and encourage engagement into their family units and the community.

Elizabeth

Aboriginal Elders Village in Davoren Park.

This facility is maintained by Aboriginal Community Services and assists in housing and residential care facilities, as well as community engagement.

Nunkawarrin Yunti is situated at Elizabeth Downs, Muna Paiendi Community Health Care Centre. A number of ALRM clients are treated in this facility for simple counselling and medical services.

ALRM has, at times, been provided with brief notes from the doctors at the facility which have allowed us to further inform the courts about the background of the client and if needed, can be used as a basis to order to persuade courts to order reports under the South Australian mental impairment legislation.

Bookyana also has a few housing sites in the area that many of the clients attend for supports and SIL services.

Port Lincoln

Yarredi Services

West Coast Youth & Community Support (WCYS)

Port Augusta

Stepping Stones: A service for helping individuals deal with drug and alcohol problems as well as having a day centre. A recent service.

New Directions: a service that helps offenders reintegrate back into their communities. This includes support for released individuals to help find their way back home. It also works closely with the Lemongrass Facilities at the Port Augusta Prison.

Youth Court

ALRM utilise the following services and could partnership or develop MOU.

Backpacks 4 SA Kids

Backpacks 4 SA Kids exists to provide resources that contribute to the care, Safety and wellbeing of children and young people during periods of dislocation from home and routine care.

Service to Youth Council SYC
ALRM Lawyers work closely with SYC.

SYC has a wraparound service that our eligible Youth Court clients can participate in. The programs they offer range from an 'enter adulthood' service, help youths find housing, to working out what white goods, furniture etc they need for their housing. The programs teach life skills like healthy eating, grocery shopping, paying bills and working out their budget. SYC also work with other services, for example, Child And Adolescent Mental Health Services CAHMS.

The programs our clients have participated in are:

Navigator

The Navigator Service provides one-on-one support following a person's release from prison. Delivered by SYC, Navigator works with individuals for 12 weeks after they are released from custody and supports them in reintegrating into the community.

Ignition

The Ignition program has been designed by SYC to improve the social competency and independent living skills of young people who are involved with the criminal justice system.

Community Service Order Program

The Community Service Order program supports young people to meet their community service requirements while developing important skills for studying, working and living independently. This program is funded by the Government of South Australia Department of Human Services.

ALRM could improve its wraparound services for criminal clients in suburban and country magistrates' courts by increasing its cooperation with the above organisations and services and in particular the Service To Youth Council

Case studies: PCP

Example 1

PCP worked with ALRM client Mr Z. ALRM Lawyer worked with NDIS and successfully had him accepted onto the NDIS after obtaining neuropsych assessments for his court matters. The Lawyer identified that Mr Z had foetal alcohol spectrum disorder (FASD).

PCP assisted with his medical appointments etc. When he first got bail, PCP also assisted with clothing, medication, centrelink, a TV etc (which was important because he was on HD so needed to be entertained at X Cottages). Mr Z had been in the system for decades prior to these matters in 2020/2021. He has not returned since ALRM finalised his last matter. He is not a recidivist offender anymore. This is because he finally has the supports he needed through NDIS, and the support he received from PCP. The individual worker developed a rapport with him and would spend time together months after his matters were complete.

Example 2

Mr X had an intellectual disability and a serious psychotic mental illness. With the help of PCP, the Lawyer was able to finalise Elizabeth Magistrate Court matters and he was released from custody. At the young age of 21 with the help of PCP he obtained NDIS funding and housing with support staff. This was significant as often he could not access bail accommodation. Mr X remained engaged with PCP and they were case managing him in community until sadly, he passed away.

This example illustrates the importance of the wholistic service we offer. Legal, emotional, cultural safety. On account of the mutual assistance of the ALRM criminal section and PCP Mr X was at least in the community and not in custody when he passed away.

Family Violence Prevention Aboriginal Legal Services FVPLS.

ALRM supports the proposition that as a result of the NLAP Review, the two specifically Aboriginal service providers in South Australia, ALRM and FVPLS Aboriginal Corporation, should be better coordinated and much better resourced.

It is not for ALRM to make a submission for the FVPLS Aboriginal Corporation of South Australia. And we do not do so. However, ALRM remains committed to improving coordination and assistance, particularly through the representation of Aboriginal women and children in domestic violence cases. It must be remembered that the vast majority of family violence cases are dealt with in the Magistrates Court by domestic violence assault prosecutions and intervention orders. Consistent with the “Julia Lansley model” of representation, (provided already provided to Dr Mundy) ALRM sees a potential for Aboriginal women and victims to be separately represented in court by an Aboriginal legal service provider. That could not be ALRM on account of conflict-of-interest questions. The criminal section acts for many Aboriginal accused. Recent South Australian legislation makes specific provision for the representation of [Aboriginal] victims in court. See Section 22.1.d *Sentencing Act* and see section 9AA(1) & (4) *Magistrates Court Act* in respect of Nunga Courts, which by no means prevents the involvement of Aboriginal victims in that Court.

Proposed APY Family Violence Court

Acts of violence in Aboriginal communities are experienced by many individuals. This is well documented over many years. It is also well documented that the impacts of violence are experienced predominantly by women.

It is submitted that it is time to review the current situation in relation to family violence on the APY lands.

As such, it is proposed that a new model of court be considered.

The APY communities should be supported in strengthening community capacity to end violence.

Currently the Courts Administration Authority has a number of special purpose programs that have been designed to help specific groups of offenders. Currently there are 3 programs:

- Court Intervention Program
- Aboriginal Sentencing Court
- Conferencing Unit

Further there are 4 intervention programs operating in the Magistrates Court. These are:

- Magistrates Court Diversion Program
- Treatment Intervention Court
- Nunga Court Treatment Program

- Abusive Prevention Program

An intervention program is defined in the Bail Act and the Sentencing Act as a program that provides.

- A) Supervised treatment or
- B) Supervised rehabilitation or
- C) Supervised behaviour management or
- D) Supervised access to support services or
- E) A combination of any one or more of the above

Intervention programs aim to address the underlying cause of crime prior to sentencing so that the likelihood of reoffending is reduced and participation can be taken into account in sentencing.

The Courts Administration program also currently has the Abuse Prevention Program and Family Violence Court.

It is well established that the Abuse Prevention Program provides an opportunity for men to undertake an intervention program aimed at stopping their abusive behaviour towards their female partner or former partner.

Currently, the intervention program operates in the family violence court. The abuse prevention program was established as part of the intergovernmental response model to enhance the safety and protection of women and children from domestic violence and is currently available to men issued with an intervention order.

The abuse prevention program provides assessment, referral supervision and monitoring components for the family violence court.

It is submitted that it is time to look at all current models currently operating in the courts and establish a model that is relevant to the Aboriginal people of the APY lands.

In essence, it is submitted that this court should include a mix of models including Nunga Court/Family Violence Court and Abuse Prevention programs.

The model that is envisaged is as follows: A person is charged with Aggravated Assault whereby the aggravating feature is on the basis that it is their partner.

The client can then be referred to Abuse Prevention and Family Violence court.

Sitting in the Abuse Prevention and Family Violence court would be the following organisations and participants:

- Prosecution
- Defendant
- Legal Representative for Defendant
- Elders from the relevant community
- NPY Women's Council
- Cross Borders Program
- Ngungkaris (traditional Anangu healers)
- Legal Representative for the Victim to work in concert with the prosecution.

The aim of the program would be such that a Defendant would appear on the first return date and be assessed for the said program.

The matter would be adjourned for the Defendant to conduct the program. The program that is envisaged is the Cross Borders Program.

The Cross Border Indigenous Program is a joint initiative of Northern Territory/South Australia and Western Australia governments. The program aims to address family violence in the remote cross border region of central Australia. A team of facilitators are based in the

communities during the program, work with cultural brokers to deliver the program to mandated and voluntary male participants. The program takes a multifaceted approach to achieve enduring behaviour change.

After the first appearance in the court the Defendant would be remanded and mandated to undertake the Cross Borders Program.

In essence, this is currently occurring on some level in the APY circuit.

The proposed model extends and includes a cultural element.

- By having all relevant parties, such as Elders, Ngankaris, NPY Women's Council and Cross Borders.

It is submitted that greater outcomes could be achieved.

Programs for domestic and family violence offenders

There are two programs available for men who have engaged in Intimate Partner Violence (IPV), in both custodial and community-based settings. Participants must provide voluntary signed consent to participate in a program.

Domestic and Family Violence Intervention Program (DFVIP) – targets intervention to men who score 5 and above on the Ontario Domestic Abuse Risk Assessment tool and runs for approximately 20 weeks.

Family Violence Program for Aboriginal Men (FVP-AM) – targets intervention to men who score 5 and above on the Ontario Domestic Abuse Risk Assessment tool, and who are recognised as Aboriginal and prefer to engage in a culturally adapted program. It runs for approximately 20 weeks. Aboriginal men are also considered eligible for the DFIGIP.

ALRM could partner with DCS to provide cultural safety and further enhance our ability to provide wraparound services.

The Cross Borders Programs

The Cross Borders Indigenous Family Violence Program (CBIFV) was created in 2007 as a result of a proposal put forward by DCS, with the support of the Western Australian Department of Corrective Services and the Northern Territory Department of Justice.

The CBIFV is a family violence perpetrator program that operates primarily within the Ngaanyatjarra Pitjanjatjara Yankunytjatjara (NPY) Lands and is delivered over a 4-week period.

The central tenet of the program concerns the criminality of family violence, and the content aims to challenge abuse-supportive attitudes in a non-threatening manner to encourage participants to take responsibility for their thoughts, feelings and behaviour.

The Cross Borders Program is also delivered in Port Augusta Prison to Indigenous men who have engaged in domestic abuse and are planning to return to the NPY Lands.

ALRM could partner with DCS to provide cultural safety and further advance our capacity for wraparound services.

ALRM EMPLOYMENT AND INCREASED RESOURCES FOR THE CRIMINAL SECTION

1. The increase in Lawyers wage levels to LSC levels has been a major leap in ensuring continuity and retention of legal staff. Nevertheless, it was done as a one-off from the further subventions from the AGD for financial year 23-24 only. But only lawyers'

salaries were increased, all ancillary staff remain at earlier levels. ALRM has noticed that since the salary increases, the rate of attrition of lawyers has slowed down and that expressions of interest are being received from ex-ALRM lawyers, employed in prosecutions wishing to come back to ALRM.

Other major issues to consider:

2. Increase in wages for Administrative Staff and increased numbers and training for administrative staff to reflect new and enhanced duties. The recent introduction of ECMS data system for all criminal matters in all South Australia and courts requires considerably more resources for the conduct of every criminal file electronically, as well as the production of more forms for applications to the court. All correspondence is carried out electronically, and law clerks are employed to assist the solicitors with this. Currently, in the ALRM Adelaide office, the admin support is composed of:
 - 2 Legal Secretary FT positions
 - 2 Legal Secretary/Law Clerk at 0.6 time
 - 1 Law clerk at 0.8 time

These people assist 12 lawyers, which is a ratio of 1 admin staff for 3.15 lawyers. The ratio should be closer to 1 to 2.

1. Thus, new work evaluations need to be carried out and new classification systems for law clerks and legal secretaries in the criminal section.
2. There will be new demands for IT services, as all criminal files become electronic, it will be vital that all ALRM criminal lawyers have their own laptops, which are able to be taken to court.
3. The working from home policy in place during the pandemic and the decision of the court to implement the electronic Court Monitoring system have shown the limits and flaws of our IT system. Sharing information in compliance with our professional rules and barrier information policy is at core of any IT system.
4. ALRM should be equipped with software that allow to have a file managed numerically, accessible by lawyers and admin staff wherever their location.
5. Investment for a new system / “One Drive” shall be a topic of discussion in how to meet the legal unmet needs.
6. This could also assist management in allocation of workloads and measurement of workloads of lawyers. The IT platforms which have been used in the past have proven inadequate and more development needs to be done for the criminal section.
7. Performance Reviews with positive outcomes and incremental wage increase
8. Maternity Leave
9. Permanency
10. a massive increase in the numbers of ALRM criminal lawyers in order to provide an extensive and effective statewide service and is so as to provide also, for reasonable and not excessive workloads for individual practitioners. (See above)
11. These matters are raised by the criminal section, in parallel to similar concerns of the civil section. Whether they are achievable, will depend upon the outcome of the Enterprise Bargaining Agreement negotiations currently undertaken by ALRM, and that in turn will very much depend on the outcome of this review..

EFFICACY OF ADVOCACY “PUNCHING ABOVE OUR WEIGHT”.

1. The ALRM model of criminal representation and legal aid service provision has a number of specific features which are worthy of consideration by the review.

2. Value for money and Low-cost model for service provision. We have Lawyers based in Courts and share clients who appear in multiple jurisdictions as opposed to a model whereby one lawyer attends each court for a client. While it requires strict guidelines and procedures for Lawyers in terms of communication it enables ALRM to reach a maximum number of clients within the funding provided. Some of our clients have multiple appearances before multiple courts.
3. The ALRM model for the granting of legal aid consists of the lawyer making an immediate assessment of a new client at the point of initial contact, preferably with a field officer. If the prospective client can demonstrate their Aboriginal identity and their poverty via social service payments, they automatically comply with the existing NLAP criteria and a retainer letter is provided to them on the spot, which sets out the terms and conditions of the grant of legal aid. The client is encouraged to consider that and, if possible, to sign it on the spot. That has the effect of confirming ALRM's right to subrogation should there be a successful costs application on their behalf, and also of indicating that should a conflict of interest be later identified, that ALRM will arrange for alternative representation by a warm referral. That legal aid has been granted in this matter is immediately confirmed on CMS, the data program applied by the criminal section.
4. Each week, a conflict check is carried out between the civil and criminal sections of ALRM, such that, if there is a new criminal client who has a potential or actual conflict of interest with an existing or new Civil client, then the new criminal client is referred. This checking is provided for in the grant of aid and terms and conditions of retainer.
5. Some minor criminal matters can be resolved on the day of first appearance. These are "duty solicitor matters". The South Australian Legal Profession Conduct Rules do not require stringent conflict of interest checking for duty solicitor matters and they may be resolved on the day, provided that the lawyer concerned is not aware of any actual or potential conflict of interest in relation to this client and this matter, from their existing client load or their awareness of ALRM clients generally. Many minor matters are resolved on the first appearance in that way, particularly in remote bush courts.

Other features of the culturally safe and legally competent ALRM criminal law practice.

6. We perform twice our KPIs per year, in some years more than twice, in some years less.
7. ALRM has had and maintains deep involvement in development and success of Aboriginal Specialist Courts.
8. Courts look to our cultural competency for advice and guidance.
9. ALRM lawyers working with Aboriginal Field Officers maintain considerable family and cultural knowledge of our clients.
10. ALRM acknowledges and refers to intergenerational trauma in submissions on penalty. ALRM ensures that psychological reports it obtains cover that topic, where relevant. ALRM has worked with Flinders University and Melbourne University academics in the creation of a text for clinical and forensic psychologists about proper standards of report writing for psychologists in criminal cases involving Aboriginal people in South Australia. The document is produced as part of the "Magnolia Project" and the book will be launched on 24 November this year. A copy of the text may be provided for the review upon request.

11. ALRM lawyers are Aboriginal Sentencing Conference specialists. Whilst this is some cause for pride, it should be noted that the work in attending Sentencing Conferences and Nunga Courts is very labour-intensive. If normal complex sentencing submissions might take ½ to ¾ of an hour, a Sentencing Conference might take ½ a day or longer, and correspondingly submissions and work in Nunga Courts equally take much longer than ordinary submissions.
12. ALRM is the only organisation to provide criminal legal service in remote areas including the APY lands, Coober Pedy, Ceduna and Yalata. When service restrictions can be lifted, this will be extended to all courts in the iron triangle and Port Augusta hinterland.

ALRM and LSC Means and Merit and Coverage

Until about 2016 the Legal Services Commission (LSC) used to attend the APY circuit with ALRM. This caused a problem for ALRM, because when we visit the same communities month after month, year after year, it is inevitable that eventually one month's defendant could become the next month's victim. This creates a conflict of interest and ALRM had always prevailed upon LSC to pick up those cases for us. Now, ALRM needs to take a private lawyer on the circuit at our expense, to cover these conflict cases, and they do so upon the basis of grants of aid from LSC for our conflict cases.

While grants of Aid may be provided by LSC to private practitioners to appear in remote locations it is only through the resources of ALRM and use of ALRM services that they can actually attend on those clients in remote courts. ALRM provides transport for a private lawyer as LSC do not provide travel funding allowance for the private practitioner. When the private Lawyer can not attend, and subject to the Legal Practitioners Conduct Rules we appear as "Friend of Court" at no cost.

ALRM is the only legal aid provider that travels regularly to the north of the state and to the far west of the state to attend courts for clients.

The costs involved are considerable. In 2023 APY lands circuits were held every month from February – March until October. Two vehicles have to be taken, and usually a party consisting of 2 Aboriginal Field Officers, up to 3 lawyers and all of their equipment, files, computer equipment and a refrigerator. The total cost to ALRM is \$25,000 per trip. For the Ceduna circuit, one lawyer has to be flown in from Adelaide and return with another lawyer coming from Port Lincoln. Yalata is a very long day trip starting early in the morning and getting back after dark on a round trip of 400 km to visit the community and attend the Court. The lawyer is straight back into the Ceduna magistrates Court the next day.

LSC - Eligibility for Legal Aid and Criteria under which legal assistance is to be granted

As required by section 10 of the *Legal Services Commission Act 1977 SA* the Commission has determined the criteria under which legal assistance is to be granted.

1. the applicant meets the Means Test (this includes a \$50 levy on all legal aid Grants)
2. the matter meets the Merits Test
3. the matter comes within the Commission's Funding Guidelines; and
4. the matter meets the Forum Test (Cases in South Australia)

The Merit Test consists of three tests. These are:

- the **reasonable prospect of success** test;
- the **prudent self-funding litigant** test; and
- the **appropriateness of spending limited public legal assistance funds** test.

A matter will be assessed as having merit if all three of these tests are met.

As indicated by the above, the LSC process is complex and restrictive when compared to ALRM. LSC grant of aid is only granted when a client faces an immediate term of imprisonment. There is a complex means test, requiring the provision of multiple bank and employment or social security records, All applications for the grant of legal aid may take up to two weeks.

By contrast ALRM determines the cultural, political, personal implications if legal aid is not granted in a criminal matter. ALRM conducts Bail applications, Bail Reviews, Appeals, Trials, submissions in mitigation of penalty on a guilty plea, in all jurisdictions on a regular basis. In addition, ALRM is heavily represented in all of the Aboriginal Courts of the state and Aboriginal sentencing conferences. These are very time and labour intensive.

Example 1

On Friday 8/9/23, ALRM had a young client (19 years old) who came up in custody at Port Adelaide for a Major Indictable Charge. ALRM Lawyer successfully made submissions which saw the client released on very strict simple bail conditions. The DPP instructed Port Prosecution to seek a Stay of Release to allow them to lodge an Application for Review in the Supreme Court of the bail decision.

The matter was heard before His Honour Kourakis CJ in the Supreme Court Monday 11/9/23. CJ Kourakis upheld the presiding Magistrates decision of granting simple bail. The client was released from custody.

Example 2

Ms W Trial was transferred to LSC as a Murray Bridge matter. The file was returned to ALRM as her matter was considered by LSC as of no merit nor risk of imprisonment. The charge was “fail to truly answer”. A minor summary offence.

ALRM Lawyer attended Murray Bridge. Pressure was placed on Lawyer and client to plead guilty, but we stood our ground. Prosecution indicated that if Ms W was found guilty at Trial that they would seek imprisonment as the charge carries 3 months imprisonment as penalty.

The trial was run and Ms W was found not guilty. Costs were awarded to ALRM.

This has many repercussions including Prosecution reconsidering laying charges against Aboriginal people. This is one of the many reasons why ALRM needs to have funding to provide culturally appropriate services in all parts of South Australia where Aboriginal people live, and beyond the coverage provided for under the current NLAP arrangements.

In addition, it is important to note that ALRM criminal client need the reassurance of knowing who their lawyer is immediately so that they can get in touch if they need to whether via a field officer or through phone contact. ALRM is concerned that the hiatus between completing a legal aid form and being granted LSC legal aid, is problematic for our clients.

ALRM simply applies the NLAP priority client criteria. ALRM applies a much broader test and provides legal aid to Aboriginal people in most criminal matters, except those where in our experience, the assistance of a legal practitioner would not make any difference to the outcome. As to means testing, ALRM lawyers make a quick assessment whether from their own resources, an Aboriginal person should be able to fund their own representation. In practical terms, this usually only applies to fly in fly out workers on mining sites, who are often better paid than our lawyers.

Otherwise, we grant legal aid, since the vast majority of our clients subsist on social service benefits. As to merits and prospect of imprisonment, we recognise that summary offences, – Street offences are particularly important for Aboriginal people and their fundamental liberties, and that road traffic offences often need to be defended if they can be defended. That is because conviction for traffic offences very frequently leads to orders for disqualification of drivers licence and the offence of driving whilst disqualified, for which Aboriginal people are particularly vulnerable, carries immediate imprisonment.

CUSTODY NOTIFICATION SERVICE

1. The Custody Notification Service was introduced in South Australia in October 2021. Despite some initial teething problems, it is working well and recent changes to the CNS regulations, which commence in November 23 should ensure that it can be used to provide an effective initial legal advice service and de facto after-hours legal service to all Aboriginal people in police custody in South Australia. In a very real sense, the CNS operates as an effective early intervention for Aboriginal people in the criminal justice system by ensuring that their rights upon arrest are effectively upheld and maintained.
2. ALRM regards the Custody Notification Service as a fundamental and core legal service and early intervention to protect the rights of Aboriginal people in police custody. It is intimately connected to the proper implementation of the RCIADIC. It provides very important referral pathways for our clients, both in terms of immediate welfare services and in terms of post release legal services in court. It is a central and core ALRM service. It should be considered a central NLAP service for Aboriginal people.
3. ALRM submits that because it is such an inherently important part of the provision of legal services and is so closely connected to the provision of wraparound welfare services for Aboriginal people in custody, it should not be subject to debates about Commonwealth and state funding responsibilities.

ABORIGINAL FIELD OFFICERS

There have been multiple matters in which the field officers and PCP provide valuable assistance to lawyers in assisting their clients. Historically, Aboriginal Field officers have always had the task of being the intermediary between the lawyers, the legal system and the clients. Their role is vital, the need for training and progressive career path is also vital. Corresponding to the anticipated need to dramatically increase the size of the criminal section in terms of lawyers, a proportionate near doubling of the size of the field officer complement will also be necessary. Where ALRM proposes to open a new office, such as in the south-east and Christies Beach, a Field officers, position will be as is necessary as the provision of a new solicitors position. Field officer positions could not be made the subject of salary increases arising from the AGD extra subventions for 23 – 24. It was confined to lawyers.

Consistent with the table above for statewide coverage of criminal courts. ALRM suggests that further field officers positions will also be needed.

- South-east of the state-- one field officer for civil and criminal matters.
- Christies Beach magistrates Court-- one criminal field officer.
- River land and Murray Bridge--- one criminal field officer to be resident in Murray Bridge and work at the re-established Murray Bridge ALRM office
- Adelaide magistrates Court- one criminal field officer
- Port Adelaide magistrates Court -one criminal field officer
- Adelaide Youth Court-one field officer who would also need to do liaison and visits to the youth detention centre.
- Elizabeth magistrates Court – one criminal field officer
- Coober Pedy – one field officer to be a resident of Coober Pedy for the ALRM office which should be established there.
- Port Augusta office has two field officers, but when ALRM returns to full service, one field officer would be needed for Whyalla, one for Port Augusta magistrates' courts and one field officer to deal with walk-in enquiries at the Port Augusta office, a total of three field officers over the present complement of two.
- Ceduna, the office has two field officer positions which should be sufficient.

Our present complement consists of four field officers based in the Adelaide office, two in Port Augusta and two in Ceduna. Thus, the total of new positions required would be five positions.

Anangu Pitjantjatjara Yankunytjatjara (APY) Lands and Yalata

Field Officers frequently assist lawyers to avoid warrants being issued on remote circuits.

On remote circuits, Field Officers can use local networks to learn of an absent client's whereabouts. When the Court is informed that cultural, family, or medical obligations have prevented a client attending, that client will often be excused.

Even when a client's whereabouts are unknown, an undertaking by counsel to the Court to have a Field Officer make enquiries is often sufficient to avoid a warrant being issued for the first non-appearance (or two)!

Less warrants issued means less people arrested. A competent Field Officer therefore has a direct impact on the number of Aboriginal people taken into custody.

Field officers training opportunities

ALRM desires to increase the number of field officers working both in Adelaide and in the regional offices. Much more training and educational assistance needs to be given to our field officers. TAFE South Australia provides a Certificate IV course in legal studies which, when it has been successfully completed enables the graduates to enter directly into the Adelaide University Law School. ALRM needs the resources to enable it to make the TAFE course available to all field officers and other Aboriginal workers. That may mean employing more people, so as to enable study time to be available for all.

ALRM also submits that it should be provided with the resources to enable it to offer cadet ships to Aboriginal TAFE graduates to enable them to become legal practitioners by attending law school and the graduate diploma in legal practice course. The 2 successful Aboriginal lawyers who have recently become magistrates in South Australia went through such cadet ships at the Legal Services Commission.

A current senior employee of ALRM commenced legal studies at Adelaide University in the 1990s but was forced to withdraw on account of poverty.

ALRM CIVIL SECTION – WRAP AROUND SERVICES AND EXPANSION OF SERVICES

Core Civil, Family And Child Protection work currently undertaken from the Adelaide office of ALRM

Pursuant to NLAP, as amended by the provision of extra funding through the Family Law Pilot Program, (FLP) The Women’s Legal Assistance Program (WLA), The Sexual Harassment Training Program, and the core NLAP funding (core NLAP), ALRM operates an enhanced civil and family law program for the State of South Australia.

The fact that there are three programs involved with basic service delivery – FLP, WLA and core NLAP creates considerable inefficiencies in reporting and recording of work. That is so because each individual subprogram has separate quantitative and qualitative reporting requirements and KPIs. At present ALRM solicitors are working across programs, and this requires allocation of each file to an individual program, so no solicitor can be confined to one program. However, ALRM considers that it would be both impossible and ludicrously inefficient to require individual tasks within a given file load to be attributed to separate programs and we do not do this.

All of these considerations lead to the conclusion that, consistent with this principle of self-determination: ALRM should be given wider discretion as to the use of funding streams, and they should not be so prescriptively tied to separate KPIs, and reporting requirements.

In terms of these extra NLAP programs, it should be mentioned that the JPP data enhancement program, whilst not directly connected to the civil section, has enabled ALRM to employ a data officer who works with the IT manager. This has meant improved capacity and facility in the creation of accurate data. Nevertheless, this position runs out in June 2024, and it is obviously vital that it be made more permanent. The need remains regardless of the funding.

But ALRM remains concerned that some of the data requirements of the Commonwealth data standards manual (DSM). are irrelevant to ALRM work, and that others of the criteria do not adequately reflect the amount of work done or the value to our clients of the work done, and that the CMS data management program is both cumbersome and difficult to operate. Again, it does not adequately reflect the work done and it needs to be the subject of complex training for all staff who use it.

In relation to the Justice Policy Partnership, the only further funding assistance that ALRM received was in relation to the data officer. Much more is needed. ALRM further submits, that, consistent with what is been said in the section about law reform and advocacy work, that more resources need to be made available to ALRM to enable it to operate effectively in the Justice Policy Partnership by the appointment of more law reform and advocacy officers and state government departments must be encouraged to engage with ALRM.

ALRM remains concerned at the lack of engagement by the Department of Child Protection in relation to ALRM submissions for reform of *the Children and Young People’s Safety Act* and the practices of the Department in implementing it.

The government's Review Report in relation to the said Act handed down in March 2023 is tokenistic and does not make any genuine proposals for reform despite the escalation of numbers of Aboriginal children in out of home care. ALRM regrets that it considers that its very detailed submissions to the review were not given sufficient weight. ALRM will continue to advocate for the Government to take meaningful action to recognise the needs of ATSI families within the child protection system as they relate to culture, community, child rearing, kinship and the right to self-determination.

Core Work of the Civil And Family Law Section

ALRM provides a specialist service delivering culturally proficient and trauma informed legal and non-legal assistance in the following areas, under the 3 existing funding programs:

- Family law
- Child protection
- Abuse in care
- Personal injury / negligence claims
- Police complaints
- Victims of Crime
- SACAT (housing, guardianship & DCP decisions)
- Worker's Compensation
- Coronial inquests.

-Service Delivery:

Family Support Practitioners also help with other issues connected to the legal situation such as:

- access to the right service where there is presence of family violence, mental illness, substance abuse, cognitive impairment, and homelessness.
- provide narrative therapy & court support to clients.

-Community Legal Education is offered by way of:

- Creating awareness of legal rights and responsibilities.
- Reducing social isolation/vulnerability by accessing services.
- Creating awareness of red flags & promoting safety and wellbeing.
- Providing community legal education written materials at all regional and remote courts which ALRM attends on criminal circuits, so as to provide some level of civil outreach. This is being done in collaboration with the Legal Services Commission and includes the rebadging of LSC materials to include references to ALRM.
- Members of the civil section travel to Port Augusta for outreach services from time to time, and this becomes more possible when a full complement of solicitors have been recruited.

Development & Improvement

ALRM needs to develop Community Legal Education activities by facilitating workshops that cater to different needs in community i.e. (family violence) bringing Aboriginal women &

children together in culturally safe and supportive environments. We need to organize “Safety Day Out” wellbeing workshops in regional communities where women support one another and get information about legal rights and options from lawyers and Aboriginal family practitioners.

ALRM recognises that such need to be done workshops to be in collaboration with the Aboriginal Family Violence Prevention Legal Service AND general workshops (close and open environment) together with LSC informing community on their rights how to make complaints i.e., against SAPOL, government departments such as assistance with Centrelink / Housing SA. and general assistance governing adult guardianship, Power of Attorney, tenancy issues and personal injury matters including Victims of Crime.

ALRM also participates in the FCCFCA roadshow. The judiciary and senior Aboriginal staff of the FCC FCA have conducted Aboriginal community meetings throughout Adelaide which are intended to point out to Aboriginal community members the potential use of the Adelaide Indigenous List to get effective supports and orders of the court to protect Aboriginal children. In this way, the operation of the state child protection system may be forestalled.

ALRM EMPLOYMENT AND INCREASED RESOURCES FOR THE CIVIL AND FAMILY LAW SECTION

The increase in Lawyers wage levels to LSC has been a major leap in ensuring continuity and retention of staff. Nevertheless, it was done as a one-off from the further subventions from the AGD for financial year 23-24 only. But only lawyers’ salaries were increased, all ancillary staff remain at earlier levels.

Other major issues to consider:

1. Increase in wages for Administrative Staff and increased numbers and training for administrative staff to reflect new and enhanced duties. The recent introduction of ECMS data system in South Australian courts requires considerably more resources for the conduct of every civil file electronically, as well as the production of more forms for applications to the court.
2. All correspondence is carried out electronically, and law clerks are employed to assist the solicitors with drafting and preparing documentation for family law proceedings pertaining to Notice of Risk applications subpoenas and case outlines. Such measures also apply to complex personal injuries matters when preparing chronologies and summaries in relation to medical and departmental records.
3. Law clerks also do basic intake assessments for new clients by taking initial very basic instructions depending on the matter type, and these are transmitted to do the duty solicitor for consideration.
4. Thus, new work evaluations need to be carried out and new classification systems for law clerks and legal secretaries in the civil section.
5. There will be new demands for IT services, as all civil files become electronic, it will be vital that all ALRM lawyers have their own laptops, which are able to be taken to court.
6. A new general data management system is required for these electronic files, and also for the purposes of allocation of workloads and measurement of workloads of lawyers. The IT platforms which have been used in the past have proven inadequate and more development needs to be done for the civil section.

7. Performance Reviews with positive outcomes and incremental wage increase
8. Maternity Leave
9. Permanency
10. An increase in the numbers of ALRM civil lawyers in order to provide an extensive and effective statewide service and to provide also, for reasonable and not excessive workloads for individual practitioners.
11. The constant struggle in recruiting experienced and culturally proficient solicitors/support staff can be addressed by maintaining LSC equivalent salaries, improved employment conditions for country practitioners, including perhaps, extended annual leave to 6 weeks per annum together with adequate cultural and mental health care training/support biannually.

These matters are raised by the civil section, in parallel to similar concerns of the criminal section. Whether they are achievable, will depend upon the outcome of the Enterprise Bargaining Agreement negotiations currently undertaken by ALRM, and that in turn will very much depend on the outcome of this review.

UNMET LEGAL NEED IN CIVIL MATTERS IN THE RURAL, REGIONAL AND REMOTE PARTS OF SOUTH AUSTRALIA.

In referring to unmet legal need in civil matters we are referring to the panoply of potential civil remedies and forms of civil legal advice and assistance to Aboriginal people and Aboriginal organisations which might have the effect of relieving their poverty and suffering and the effects of dispossession as well as advancing their legitimate interests in participating on a more equitable basis with the economic and social life of South Australia. That, is consistent with the achievement of the objectives of ALRM, as found in our Constitution. Expansion of civil legal services to the country via a Port Augusta hub needs to be done thoughtfully and carefully.

ALRM proposes to develop a scope of service document setting out the rationale for taking on new kinds of work against various criteria such as:

1. is it work that is best done by ALRM as opposed to private practice?
2. But for ALRM doing the work would it remain undone?
3. Does the work enhance the rights of Aboriginal people?
4. Does the work address social disadvantage?
5. Is it work that we are impliedly required to do under current NLAP arrangements? Or is it new work that has been identified as needed for these communities?
6. Is it work that might attract new funding?
7. Is it work that might become self-supporting by way of costs?
8. Is it work that gives our staff satisfaction?
9. Is it work that might attract new staff or work that existing staff might want to learn about and practice?
10. Are there good policy grounds for practical reasons why we should not be involved in such work or that the board might not wish ALRM to be involved in it?

When a scope of service document will have been prepared and agreed, a marketing strategy will be developed which will also be incorporated with the community legal education materials distributed at remote court circuits.

Nevertheless, there seems little doubt that were a properly considered scope of service document and marketing strategy established, that a general Civil practice based in Port Augusta would succeed. The kinds of work that might be contemplated includes:

1. personal injuries compensation claims generally including, personal injuries from road accidents, public liability and medical negligence cases.
2. Wills and Estates and powers of attorney and advanced care directives. It would be a very limited scope of service. It would not be practicable for ALRM to have a probate practice just involved in proving wills, seeking grants of probate and distributing estates. But we can prepare wills, but not store them, and this would be useful particularly for the purpose of having a testator declare their intentions as to their place of burial. This in itself could eventually stop the sad process of contested funerals between factions of families and the expensive but ultimately futile litigation which follows.
3. Sexual abuse compensation cases and sexual harassment and bullying cases.
4. Equal opportunity and racial discrimination cases.
5. Workplace accidents, and workers compensation. It is noted in that regard that the Commonwealth Administrative Appeals Tribunal has a jurisdiction in relation to Com Care Appeals, which historically, ALRM has very occasionally been involved in.
6. Criminal Injuries Compensation refers to injuries sustained by victims at the hands of offenders prior to 2001. Criminal Injury Compensation claims are becoming increasingly rare due to the passage of time which means we now mainly have clients that have Victims of Crime Applications.
7. Legal advice to Aboriginal corporations on incorporation, and minor business dealings, but not to the extent of a full commercial law practice.
8. Some industrial issues but being careful to have policies which prevent ATSILS becoming too heavily involved in potentially unmeritorious disputes within Aboriginal community organisations. ALRM would not want its services used to exacerbate existing conflicts.
9. There is a huge unmet need for mediation of civil disputes in rural regional and remote areas and ALRM should be involved in closing that gap.
10. Assisting and acting in Ombudsman's complaints in relation to police, prisons, and the conduct of child protection officers. (Note that police complaints are dealt with under different legislation, but the necessity for involvement in police complaints is a strong as it ever was. ALRM notes in that regard that the RCIADIC recommendations for independent police complaints process have never been implemented.)

ALRM is aware of the unmet need for representation in wills and estates in Port Lincoln because we have been approached by the Port Lincoln Aboriginal Community Organisation on that topic, but we have not been able to assist. We are aware that the 10 topics listed above are important because of public discussions which took place in Port Augusta during 2023 Each of these areas of practice are well known to the ALRM to be areas of unmet legal need in the north of the state. Port Augusta office of ALRM is very important because it serves as a hub, for the whole of the north of the state, including is the Flinders Ranges. Aboriginal communities, the iron triangle of Port Augusta and Whyalla and Port Pirie and all of the hinterland up and beyond Coober Pedy into the APY lands.

Two other areas of civil practice which ALRM regards as important, but which are not currently provided for are:

1. Legal advice to Aboriginal communities on public interest litigation, for example, the cases which ALRM took in the Licensing Court of South Australia on behalf of remote communities trying to stop takeaway liquor getting into their community in the 1990s and up to 2013. Public interest litigation. Generally, as it relates to the denial of human rights to Aboriginal communities, such as rights to clean water, housing et cetera. ALRM's case with the state Ombudsman over the supply of electricity by the Coober Pedy Council is an example. (Still ongoing)
2. Public interest litigation on behalf of Aboriginal prisoners in relation to prison conditions and related issues⁴. OPCAT implementation in Australia is by no means complete or satisfactory and the example set by ALSWA in WA could be applied by ALRM in appropriate cases.

The need for the expansion of general civil law practice, for Port Augusta and its hinterland, including the iron triangle is discussed above.

ALRM is acutely aware that there are also significant numbers of Aboriginal women in those areas who are subject to family and sexual violence and its sequelae, including child protection cases, and there is an urgent need for family law remedies and enhanced representation of victims in Magistrates Court, family violence cases. This is in itself a very important area of unmet legal need. But again, considerable policy work will need to be done in coordination with the courts, police prosecutions and other legal aid bodies; it is not something which could be commenced overnight.

The civil section also recognises that to establish a viable family law and child protection practice in regional areas it is essential to partner with LSC and FVPLS to accommodate this. ALRM is working with the regional, rural and remote subcommittee set up by the state AGD.

ALRM suggests that this review should recommend the closer coordination of the work of ALRM and FVPLS in South Australia. They are the two indigenous legal services in South Australia. Much more policy work should be done with government to ensure effective wraparound services for Aboriginal women and children and victims of violence throughout the state.

It is also noted that 'estimated female experiences of violence among Aboriginal people' are excluded from the need's component under the funding allocation model for ATSIILS⁵. This is a very serious omission, and should be remedied, as a recommendation from the review.

To meet unmet civil need in the hinterland of Port Augusta, ALRM also considers that as well, as a civil solicitor's position for general civil remedies, there needs to be successful recruitment for family law and child protection solicitor's position in Port Augusta. This was envisaged by the family law pilot project, however our attempts at recruitment have not hitherto been successful. Attached to any expansion of services by solicitors, there would need to be a corresponding expansion of other supports including secretarial, IT, family support workers and inevitably offers accommodation.

Case Study (1)

⁴ Sae *Bromley and Karpny v State of SA* [1990]SASC2067

⁵ ACIL Allen addendum 1 funding distribution models, at page 3.

Coronial Inquest

ALRM is representing a family with respect to a Coronial Inquest concerning a deceased family member. This inquest is complex as the death occurred whilst the deceased was in custody and in psychiatric care. ALRM have been able to provide this family with both legal and emotional support by linking them with a team that consists of a solicitor with extensive experience working with Aboriginal families, a barrister with extensive experience and sound knowledge of the health care system in SA and an Aboriginal mental health practitioner who is equipped and skilled dealing with Aboriginal families who are experiencing trauma and grief.

The team has been able to collaborate in order to support the family through the legal process. Non legal assistance by the mental health practitioner has involved making referrals on behalf of the family for therapeutic support and accompanying the family to the court throughout the inquest.

ALRM have been able to bring to the forefront of this inquest the importance of family and culture to Aboriginal people experiencing mental health crisis. ALRM is advocating for mental health professionals to consult and incorporate families into treatment plans as well as promoting the critical role of Aboriginal Liaison Officers within Hospitals who are able provide a level of cultural support that is essential to a patient's recovery.

The Inquest is continuing.

Case Study (2)

Intersection Child Protection & Family Law

ALRM initially represented a mother in Child Protection proceedings whereby her (2) year old was removed from her care by the Department for Child Protection (DCP) due to substance misuse, homelessness and violence perpetrated by the father.

DCP applied for a long-term order guardianship until the child turned (18). ALRM successfully advocated for a 12-month guardianship as it was able to demonstrate to the court that the mother was addressing the child protection concerns by engaging relevant services. The referrals for services were made following an intake assessment conducted by our Aboriginal Family Practitioner (AFSP). The AFSP identified the risk factors and immediately referred the mother to Drug and Alcohol Service (DSSA) for counselling, Nunku Warrin Yunti for a mental health plan which referred the mother to a psychologist to deal with the trauma she sustained as a child and the trauma she sustained regarding her violent relationships with men in the past. The AFSP prepared a letter of support for priority housing which was granted (8) months into the 12-month guardianship order. In addition, applied for the Escaping Violence Payment program offered by Uniting Communities that provided financial assistance to the mother for furniture and clothing. The AFSP also accompanied the client to the Reunification Court and prepared progress reports for the court on her behalf. Based on the reports and feedback by service providers the child was reunified with the mother before the 12-month guardianship order expired.

Following the reunification between the mother and child ALRM filed an application to the Family Court before the Indigenous List seeking parenting orders and an injunction against the father.

Case Study (3)

Child Protection -Working with Interstate Agencies

ALRM is representing a Pitjantjatjara/Arrernte woman in relation to Care and Protection proceedings concerning her (3) children. The client lives at Pukatja on APY Lands. The client

was referred to ALRM by the NPY Women's Council, Domestic and Family Violence Service (NPYWC DFVS) following the Department for Child Protection (DCP's) intervention. DCP removed the client's children from her care due to family violence perpetrated by the father. DCP sought long term guardianship until the children turn 18. ALRM challenged DCP's application.

ALRM and NPYWC DFVS have worked closely together to navigate the mother through her legal matter. The matter has proceeded to trial and was eventually compromised to the advantage of our client.

NPYWC DFVS provided case management support i.e. arrange legal appointments with ALRM on behalf of the client and ensure an interpreter is booked for the appointments. In addition, they provided ALRM reports pertaining to the mother's engagement and progress in addressing the issues of violence.

ALRM provided legal representation and non-legal support with travel arrangements to Adelaide for the trial, i.e., the Aboriginal Family Practitioner picking up the client and her sister from the bus terminal, took them to the hotel, arranged for an interpreter and provided court support by accompanying the client to the trial.

UNMET LEGAL NEED IN CHILD PROTECTION CASES IN SOUTH AUSTRALIA

1. Similar to the statistics provided by the state Courts Administration Authority in relation to criminal matters, ALRM has obtained statistics in relation to the number of child protection cases commenced in the Adelaide Youth Court. The Adelaide Youth Court is the only court in the state, which handles such cases.
2. The statistics reveal that for 2021 – 22 there was a total of 278 originating application support care and protection orders with identified Aboriginal families involved. For 22 – 23, the number was 261. The total for the state was 824 for year 21 – 22 and 817 for year 22 – 23. Approximately 32% of the cases involved Aboriginal families and the rate of overrepresentation is manifest, having regard to the fact that Aboriginal people represent a little over 2% of the population of the state.
3. ALRM has also been informed that for the period from 29/08/2022 – 30/06/2023, there were 481 cases where at least one parent was represented, and of those, 41 cases where at least one parent was represented by ALRM. This looks at the start date of the representation on the case, therefore the representation could have commenced sometime after the lodgement of the referral. Thus, the ALRM representation rate up until 30 June 23 is compared against the total, not the total number of Aboriginal cases.
4. It should be borne in mind that there is no direct comparison between representation in child protection, and for example criminal representation. An application is lodged by the Department for Child Protection (DCP), the matter comes before the court and there is a three-month adjournment for the preparation of the final case, and potentially for it to be compromised. Much of the work for ALRM occurs in that period, with the need to obtain reports, arrange for wraparound services to assist the family to meet the concerns of DCP, and then negotiations with the Crown solicitor who acts for DCP. This could lead to a case being compromised, or the matter referred to a reunification court, or it could go to trial. Then the court makes a decision as to which of the many orders open to it pursuant to section 53 of the CYPs Act should be made. Even if those orders are adverse, ALRM's work may not be finished, because the various potential remedies available in relation to access may need to be considered.
5. Nevertheless, it is apparent that if in excess of 260 Aboriginal cases are commenced every year, the proportion represented by ALRM in the 9 months up to 30th of June 23, namely 41

cases, is a fraction of the total number of Aboriginal cases. ALRM is aware that only three or four private practitioners appear in the court care and protection jurisdiction, and they would receive no more than a dozen conflict referrals from ALRM every year. The Legal Services Commission of South Australia funds those practitioners, but does not through its own lawyers appear for families in child protection proceedings. LSC represents children as the separate representative.

6. It should be borne in mind that the ALRM case rate of say 50 cases a year constitutes the work of nearly 2 ALRM lawyers. And they receive assistance from law clerks, secretaries, and family practitioners. A conservative estimate would be that at least 200 Aboriginal child protection cases per year go through the Youth Court unrepresented. We cover perhaps 20% to 25% of the cases. This is both alarming and distressful. A significant number of the cases arise from families living in regional, rural and remote communities who have great difficulty in accessing the Adelaide Youth Court, or ALRM. We rely upon regional organisations such as NPY Women's Council for referrals, but many cases are not referred.
7. ALRM representing the bulk of the unrepresented Aboriginal families in child protection proceedings would require a considerable increase in the number of lawyers and support workers. Probably the number of lawyers would need to be doubled or trebled.
8. ALRM is now considering using unexpended funding to establish a further child protection duty solicitor position. Such a lawyer would be constantly present at the Adelaide Youth Court to pick up further child protection cases, on behalf of Aboriginal families, as they come to court through DCP and the Crown solicitor. The duty solicitor would then need to contact the families in rural regional and remote areas for instructions and legal aid Grants if sought. At present our presence in the court is haphazard, depending upon individual clients and their cases.
9. ALRM is concerned that we are unable to meet the unmet need and we are somewhat surprised that there are so many cases where we are not instructed. ALRM would wish to partner with another suitable Aboriginal community controlled legal service on a marketing strategy to ensure that more Aboriginal families involved in the child protection system were able to instruct an Aboriginal specific legal service.
10. Apart from child protection applications, simpliciter, ALRM does considerable work supporting Aboriginal families in other ways, including through work before the reunification court, Access Review Panel (CARP), the South Australian Civil and Administrative Tribunal (SACAT) and the State Ombudsman in relation to broader child protection issues on behalf of Aboriginal families. Particularly as they relate to access after court orders have been made. The Youth Court has no jurisdiction to make orders with respect to access to biological parents, it is decided by public servants. And that is one of ALRM's major criticisms of the CYPS Act.

LAW REFORM, POLICY AND LEGAL ADVOCACY SERVICES AND THE REVIEW OF NLAP

It must be made clear that the current NLAP Agreement does not provide funding for policy and advocacy work for ALRM. The current policy and advocacy work undertaken by ALRM is funded by a separate discrete funding agreement with the South Australian Attorney-General's Department and is limited to "justice" issues. This 4-year funding agreement commenced in 2021, and ALRM has not been provided with any assurance that the funding for this work will be ongoing past June 2025. As set out above, the NLAP Agreement should ensure it includes funding to address systemic barriers to access to justice for Aboriginal people in South Australia by properly funding policy and advocacy work to address the big picture issues our frontline workers deal with. It should also be connected with the work on the development of the Justice Policy Partnership in South Australia.

ALRM has always taken the view concerning law reform and legal policy advocacy that practice without theory is impotent, but that theory without practice is blind. Accordingly, ALRM always ensures that the advocacy work that we do is intimately connected to the day-to-day work of our lawyers and field officers in addressing the problems, difficulties and dilemmas that they see in attempting to represent the interests of Aboriginal people. That principle is reflected in this submission.

A significantly expanded injection of funding is needed to ensure ALRM can undertake the policy and advocacy activities needed to properly serve Aboriginal people in South Australia. The Advocacy and Policy sections of ATSILS are vitally important as they should work at the beginning of the access to justice trajectory developing the “playing field” from which individual legal practitioners and associated wrap around services operate.

For instance, it is the role of Policy and Advocacy to advocate to government officials to create the playing field – what behaviour is an offence?, what are the appropriate penalties that flow from that offence?, what is the standard to apply the Aboriginal Child Placement Principle required of all DCP workers?, what should the provision of health care in prisons look like? If these questions can be answered favourably, by means of reforms, then the work of our lawyers with their clients will be more successful. On the other hand, our advocacy offices need to know from our lawyers and from the clients, what changes are needed and can viably be advocated for?

Removing the systemic barriers to justice and wellbeing is the only way our clients face any chance of successful life outcomes and experiences, and yet the resources needed to address these issues remain significantly underfunded and undervalued. The overincarceration and over representation of removals of children that our client facing lawyers constantly face will not change – the gap will not close – if the upstream playing field and the rule book they are working within does not change.

There is also a fundamental difference between the way funding for client facing lawyers and the way funding for policy and advocacy needs should be calculated. While it is understandable that funding for client facing legal work is based around population size and associated legal need, addressing the systemic barriers to justice in SA is not a population driven metric.

The systemic issues remain as broad, varied, and ongoing in SA as they do in other jurisdictions. The policy issues and the advocacy activities needed to address these systemic issues are not lowered by SA’s smaller population, however, we appear to receive significantly less funding than other more populous jurisdictions. We are each battling the same issues at the same level and yet SA is expected to do so with (soon to be) 1.6 FTE, while other jurisdictions have 5 or more FTE that can work on dedicated subject matter – crime policy, child protection policy, closing the gap policy. Dividing the Policy and Advocacy staff resources across all the subject matters that require our attention means we are often reactive, limited in our advocacy follow-up, and it ultimately hampers our efficacy.

- The Policy and Advocacy Section subject matter should include:
 - o All criminal justice facing issues including:
 - Youth justice – police and youth justice
 - Adult justice – men and women specific – criminal legislation, police powers, police interactions, bail, remand, recidivism, access to justice

- Prisoner advocacy to address systemic issues in prisons and address rates of recidivism.
 - Child protection and family law issues
 - All work undertaken within the Closing the Gap Framework
 - All systemic Access to Justice issues – including reforms needed to access interpreters and access to on Country hearings.
 - Broader law reform – incoming Ministerial requests for comment on a variety of law reform matters impacting SA’s Aboriginal population.
- roles and duties of the section should include:
 - Detailed advocacy submissions to State and Federal government Ministers and Departments, Statutory Office Holders, other independent reviews and inquiries.
 - In depth research projects addressing ongoing systemic issues – e.g., non-implementation of Royal Commission and Coronial Inquiry recommendations, major law reform priorities such as raising the age of minimum criminal responsibility and associated youth justice and youth services issues.
 - Monitoring the use and efficacy of controversial practices that may disproportionately impact Aboriginal people in SA – i.e., expanded police powers in the expanded Declared Public Precinct, police “blitzes” in Port Augusta which disproportionately impact Aboriginal youth, holding children in adult police stations and watch houses.
 - Responses to all Ministerial requests for consultation on legislative, policy or program reform – there is currently no funding for a role to undertake this very necessary task, unless the reforms fall under “justice” issues. ALRM has been questioned by funders as to its current Policy and Advocacy Section and as to why that section is responding to requests for consultation on subject matter such as Aboriginal Heritage laws, Residential Tenancies reform, Family Law amendments and child protection reform. We have stated that there is no other person within ALRM to respond to Ministerial requests for ALRM’s views on broader law reform issues impacting Aboriginal people in South Australia. If the current section does not do so, the voice of Aboriginal people in South Australia is not heard by Ministers and Departments. They make their decisions about areas of law and policy that directly and disproportionately affect Aboriginal people.

The recent recruitment for a new Policy and Advocacy Officer shows there are experienced and qualified applicants ready to do the work the section needs. It is exciting to think what the section could achieve if we were able to onboard a number of them. However, we only have the resources to hire one person part time. While the efficacy of the section will obviously be improved with an additional staff member, we need many more to achieve results across the number of policy subject matter areas needing attention and advocacy to improve outcomes for Aboriginal people in our state.

ASSESSMENT OF PRO BONO ASSISTANCE TO ALRM, ITS LACK OF MONETISED VALUE AND ITS IMPORTANCE.

ALRM receives considerable pro bono assistance from legal practitioners concerned to assist with the cause of Aboriginal emancipation through ALRM. We don’t keep accurate records of the work of lawyers acting pro bono have helped us with. Nevertheless, we have attempted to estimate its value for 2022-23.

The value of the work done pro bono by an Adelaide commercial law firm LKLaw, in working with ALRM over the Coober Pedy Ombudsman's report, and associated litigation against the Coober Pedy District Council is considerable and ultimately may extend to 5 figures. Indeed, ALRM would not have been able to take these matters beyond the Ombudsman report but for that assistance.

For the 2022-2023 financial year alone, we have relied upon pro-bono work by external industrial and commercial law experts, solicitors to the tune of approximately 163.5 hours valued at between \$57,225 and \$73,575.

Furthermore, we are unable to quantify the amount of discounts we have been able to negotiate as a result of our good standing with other legal practices who support ALRM's cause.

One example resulted in an almost \$50k reduction in barristers fees from a highly regarded Adelaide Kings Counsel for a South Australian Court of Appeal civil appeal.

Approximately 20 hours at a rate of \$350 per hour for the review of the civil section carried out in 2023 by 2 Adelaide lawyers.

Since the second half of 2023, ALRM has had the services of a general practitioner who visits the office on a regular monthly basis to provide assistance to ALRM lawyers in relation to the interpretation of medical reports, and general understanding of medicolegal issues that arise in their casework. The general practitioner concerned has provided this service pro bono on a monthly basis.

ALRM corporate reliance upon pro bono assistance is very much dependent on context. For example, when in 2016-7 funding requirements indicated that ALRM could no longer remain as an incorporated association under South Australian law, KWM gave enormous pro bono assistance to ALRM in setting up the company limited by guarantee, transferring the registration of the incorporated association, and dissolving the incorporated association, obtaining status under ACNC as a charity and public benevolent Institution. They also assisted us later in drafting and having passed appropriate amendments to the Constitution as originally set up in 2017. ALRM is unaware of the monetised value of that work, but it would have been considerable.

All of this work was done, pro bono publico.

FUNDING ALLOCATION MODELS

In the course of this submission, and in correspondence to the State and Federal Attorneys General, ALRM has pointed to the deficiencies in the funding allocation model as applied to ALRM.

1. A fixed fee which required maximum allocation to front-line services at the expense of infrastructure and adequate wages.
2. ALRM was never funded or provided sufficient infrastructure to provide a genuinely statewide service, notwithstanding the self-evident need in areas we do not service.
3. As a result, ALRM has inadequate infrastructure with only three established offices throughout the state in Adelaide, Port Augusta and Ceduna.

4. Insufficient allowance was made for the enormous cost of providing legal aid services for rural and remote locations, particularly APY and Yalata. Because we could never comply with RCIADIC recommendation 108 we have been obliged to send 3 and sometimes 4 lawyers on those circuits in 2 vehicles at a cost of approximately \$25,000 per circuit.
5. ALRM visits remote courts from Port Augusta. The APY circuit takes place monthly except in summertime. The round-trip from Port Augusta to Marla bore is 1544 km with up to another thousand kilometres on dirt roads, depending on how far west the circuit goes in the course of one week. The Coober Pedy circuits are also monthly but on a different week in each month and involve an 1100 km round-trip by road.
6. Our Port Lincoln lawyer travels 800 km round-trip to attend the Ceduna monthly Court circuit together with a further 400 km round-trip to attend the magistrates court at Yalata..
7. Our Port Augusta office does occasional trips to Roxby Downs 500 km round trip and very occasionally to Leigh Creek 600 km.
8. When services are restored to the Riverland, the round-trip from Adelaide to Berri is 486 km, to Murray Bridge 150 km and to Kadina 300 km, and to Maitland 320 km.
9. A significant proportion of our client base speak English as a second language and require specific cultural training for our lawyers, as well as training in the use of interpreters, if they are available.
10. Consistent with point 5 above the comparatively greater disadvantage that such clients suffer in their dealings with the justice system on account of the effects of cultural and social dislocation, intergenerational trauma, and the effects of substance abuse, as demonstrated in the inquests referred to above. But such effects are not confined to traditional people, rather they apply to most of the ALRM clientele. Points 5 and 6 are however indicative indicators of severe disadvantage for traditional people in South Australia.
11. ALRM has never been funded to provide for proper leave payments for employees having families. Although this is becoming mandatory, under fair work legislation, ALRM is aware that it has never had this component built into its funding and we have lost significant numbers of female lawyers for this reason. Most other ATSILS do have this built into their funding, as well as in some cases six weeks annual leave and return airfares. ALRM submits that the cost factor component should treat equally and fairly between all ATSILS to ensure equivalence between ATSILS on these basic cost factor components. Similarly, comparisons can be made between equivalent public sector lawyer, salary, wages and conditions that apply in each state.
12. Each ATSILS is obliged to pay less than those equivalents, however the cost factor component should operate to ensure that each ATSILS is able to meet comparable state public sector lawyers' salaries, wages and conditions. Intimately connected to the question of wage parity is the question of work parity. Work, Health And Safety requirements cannot allow ATSILS lawyers and field officers to carry the excessive workload that they have carried for years and which are much in excess of those of their public sector counterparts.
13. Furthermore, the review should recommend that this salary and conditions equivalence is maintainable over time. There needs to be a clear connection to CPI increases built into the funding model, as well as Fair Work Commission wage increases. There are regular pay increases for public sector lawyers in South Australia. ALRM lost pace with such equivalence after the demise of ATSIC in 2005.
14. Having regard to what has been set above, in paragraphs 1 to 6. ALRM submits that the cost factor component for South Australia at 0.981 is too low and that the operational

component, and percentages of needs component for South Australia referred to in the table 1.4 of Addendum 1, the ACIL Allen's paper on funding allocation is much too low for South Australia.

15. Funding allocation models generally need to be built upon a needs basis.

PSYCHOSOCIAL SAFETY AND THE LIVED EXPERIENCE OF ALRM STAFF DEALING WITH VICARIOUS TRAUMA FROM THEIR CLIENTS

An important further consideration for funding allocation for ATSILS generally is the experience of vicarious trauma. Lawyers experience it, field officers experience it, Family Practitioners, Mental Health Workers, Prisoner Care Program workers, all experience vicarious trauma through their interaction with their clients and the appalling circumstances of their lives.

People who work for ALRM, do so out of an ethic of commitment; they are constantly in danger of overextending their capacity and burning out. They may also be scarred by working with and working for clients who are themselves extremely traumatised, or brutally treated, or subject themselves to extremities of violence and distress.

Yet arguably it is not taken into account. Substantial funding allocations need to be made for effective and appropriate respite for distressed workers, as well as psychological counselling and treatment as it is required. ALRM suggests that failing to deal with this issue constitutes a lacuna in the funding allocation formula.

Occupational work, health and safety legislation is being changed in South Australia to refer to psychosocial safety, yet no provision is made, as far as we are aware in the budgets of any ATSILS for meeting these requirements. Yet it may be anticipated that they will become the more acute and the experiences of our staff at ALRM confirm this.

ALRM 23 October 23