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HUMAN RIGHTS

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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
By email: legcon.sen@aph.gov.au  
31 April 2009

Dear Inquiry Secretary  
**Inquiry into Access to Justice**

Please find attached a submission by Australian Lawyers for Human Rights for the consideration of the Committee.

We stand ready to give evidence at a hearing if required.

Kind regards

Susan Harris Rimmer  
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**AUSTRALIAN  
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HUMAN RIGHTS**

**Access to Justice**

**Submission to the  
Senate Standing Committee on Legal and Constitutional Affairs**

**30 April 2009**

**1 Australian Lawyers for Human Rights**

- 1.1 Australian Lawyers for Human Rights (ALHR) is a national network of Australian lawyers active in furthering awareness, understanding and recognition of human rights in Australia. It was established in 1993, and incorporated as an association in NSW in 1998.
- 1.2 ALHR has nearly 1,500 members nationally, most of whom are practising lawyers. Membership also includes non-practising layers, academics, policy makers and law students. ALHR is comprised of a National Committee with State and Territory committees.
- 1.3 ALHR promotes the practice of human rights law in Australia through training, publications and drawing attention to human rights standards. We work with Australian and international human rights organisations to achieve these aims. It is a member of the Australian Forum of Human Rights Organisations and is regularly consulted by government including through the Attorney-General and Department of Foreign Affairs and Trade NGO forums.
- 1.4 ALHR is grateful for the opportunity to present a submission to the Senate Standing Committee on Legal and Constitutional Affairs on Access to Justice.
- 1.5 The content of this submission will have specific reference to the following terms of reference, which ALHR is best placed to comment on:
- (A) The ability of people to access legal representation;
  - (B) The adequacy of legal aid;
  - (C) The need to resource human rights advocacy and casework;
  - (D) The need to pay attention to access to justice issues with regard to the new National Action Plan to Reduce Violence against Women and their Children;
  - (E) The need to remove fees to access the Refugee Review Tribunal;
  - (F) The adequacy of funding and resource arrangements for community legal centres; and most crucially;
  - (G) The ability of Indigenous people to access justice.
- 1.6 ALHR notes that on 30 April, the Council of Australian Governments (COAG) agreed on a plan to achieve national regulation of the Australian legal profession. It is not yet clear what impact this new plan will have on access to justice issues but some of ALHR's recommendations below will be relevant. ALHR would urge the Committee to call on Roger Wilkins AO in his capacity of head of the Taskforce, and the Hon Michael Lavarch, Chair of the Consultative Committee to brief the Committee on the process to lead to reform of the legal profession.

## 2 General Observations

2.1 ALHR commends the timeliness of the Senate's inquiry into access to justice. At a time when Australia is looking to expand its current protection and promotion of human rights in Australia, it is noteworthy that the adequacy of access to justice in Australia was very recently criticised by the United Nations Human Rights Committee.

2.2 In particular, the Committee expressed concern over:

*“the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens.”<sup>i</sup>*

2.3 The Committee has called upon Australia to provide improved services for marginalised and disadvantaged groups, as well as adequate funding for Aboriginal and Torres Strait Islander legal aid and interpreter services. This is the key recommendation of this submission, as explained further below.

## 3 The ability of people to access legal representation

*‘Laws were like cobwebs; where the small flies were caught, and the great break through.’  
Francis Bacon, *Apothegms* (no. 181)*

3.1 Australian Lawyers for Human Rights acknowledges that the Australian landscape has been irreversibly changed by the impacts of the global financial crisis and that in order to weather it as best we can the Australian Government needs to consider ways of addressing the challenges facing Australian society through a different budgetary lens. Australian Lawyers for Human Rights believes that that lens must necessarily be one of community support and service. Times of financial hardship whether at an individual, national or global level lead to uncertainty, fear and disadvantage. In considering Australians' access to justice Australian Lawyers for Human Rights urges the Government to take into account the current unmet demand for legal services and representation, the persistent underfunding of legal services as well as the prospect of increasing need in the wave of the global recession for “when legal assistance is not available to the economically and socially disadvantaged in our community, the integrity of the justice system is challenged.”<sup>ii</sup>

3.2 Australian Lawyers for Human Rights believes that access to justice is not simply about access to legal services. Equality before the law requires, at the most basic level, equal access to it, and equality of arms before the courts. In the case of vulnerable and disadvantaged communities, groups and individuals, leveling the playing field can require addressing a range of barriers including language, financial, cultural, health and education. Successfully overcoming these barriers does not simply contribute to the effectiveness and accessibility of the justice system but to society in general. There are a plethora of community legal services ostensibly available to Australians which cover a wide range of practice areas. However, where access is being hindered is in the ability of these services to meet the ever increasing demand for their time and skills.

3.3 The 2006 research report entitled *Study of the participation of private legal practitioners in the provision of legal aid services* commissioned by the Attorney-General's Department found that private practitioners were increasingly withdrawing from offering their services to legal aid due to a lack of adequate remuneration. Of firms that had provided legal aid in the past 33 per cent are no longer involved with 19 per cent having never provided it.<sup>iii</sup> In both cases remuneration was cited as the central reason which was established to be significantly below market rates.<sup>iv</sup>

3.4 The report also provided significant commentary on the shortage of lawyers in regional and remote areas. It found that there were 3 lawyers per 10,000 adult residents in remote Australia compared to 10.7 lawyers per 10,000 in Australia's capital cities.<sup>v</sup> Australian Lawyers for Human Rights encourages the Government to consider implementing tax and other financial incentives to encourage lawyers to train or establish a practice in rural and remote areas.

3.5 One of the most basic and necessary steps that can be taken in providing access to justice is to remove added financial barriers of engaging in the court system. Although most

jurisdictions provide for waivers of court fees and other filing charges in circumstances of established hardship they are generally discretionary and require specific application. The practice of the federal courts and the Administrative Appeals Tribunal should be implemented nation wide at every level of the judiciary. Not only would this increase individual access to the courts it would also free up time for legal practitioners to address the substance of the matter at hand rather than dealing with applications for waivers. This is particularly important in the Refugee Review Tribunal jurisdiction, as discussed further below.

- 3.6 The budgetary restraints on providers of free legal services cannot be overstated. Commonwealth funding for Community Legal Centres alone has reduced by 18% over the last 10 years even failing to keep pace with inflation.<sup>vi</sup> In January 2008 the National Association of Community Legal Centres updated its 2007 funding proposal and requested \$39 million in new funds. This was broken down as \$10.3 million to bring funding in line with inflation; \$13.7 million for rural, regional and remote Australia and specialist services for the most vulnerable; and \$15 million for Centres currently without any Government funding.<sup>vii</sup>
- 3.7 And yet Community Legal Centres are report an ever-increasing demand for their services as well as an increasing complexity of legal problems. The Australian Council of Social Services (ACOSS) Australian Community Sector Survey Report 2007 found that Community Legal Centres have one of the highest ‘turn away’ rates of the community services and are comparatively under-resourced relative to other community services.<sup>viii</sup> Coupled with a 600% increase in referral rates<sup>ix</sup> and funding that sees salaries 30% lower than equivalent government positions<sup>x</sup> access to justice is being compromised on all fronts.
- 3.8 A further barrier to the provision of adequate and responsive funding and resources to legal services is the impact of the changes to the legal aid funding guidelines in 1996 which saw the Commonwealth and States only provide funding for matters which fell under their direct jurisdiction. As ACOSS stated in their submission to the Senate Legal and Constitutional Committee inquiry into Access to Justice and Legal Aid: “people’s legal needs cannot always be neatly compartmentalised into distinct jurisdictions and people are not well served by a fractured funding system.”<sup>xi</sup> Although some State Governments made assurances of funding levels sufficient to preserve service levels, the Commonwealth Government has not. As a direct result services in Commonwealth law matters have reduced by 30 per cent.<sup>xii</sup>
- 3.9 There are many ways that vulnerable and disadvantaged people can access the legal system; all of them are declining in capacity and resources. To put it simply funding needs to be restructured and increased to all areas of legal services from Legal Aid, private practitioners engaged by legal aid to Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services. That funding needs to be targeted and provide for the various roles of legal services in the areas of casework and advice as well as policy, community education and awareness activities.
- 3.10 The Government must review the current funding structure with a view to ensuring that the Commonwealth’s funding contribution adequately supports that of the States and responds to needs of communities regardless of jurisdiction.
- 3.11 Furthermore the Australian Government must address the shortage of legal services in rural and remote areas with as much vigor as the shortage of medical practitioners was addressed and introduce incentives for rural, regional and remote practice.

### **Access for vulnerable groups**

#### *Counter-terrorism legislation*

- 3.12 In addition to the prohibitive costs of accessing legal representation, ALHR is concerned at the increase in institutional barriers to access to legal representation that are imposed by various legislative regimes and policies. In particular, ALHR has frequently called upon the Australian Government to remove the legislative and practical restrictions which prevent individuals held under counter-terrorism laws and asylum seekers held in

detention or ‘processing’ facilities and ensure that these groups have adequate and meaningful access to legal representation.

- 3.13 ALHR has made many submissions to the Australian Parliament regarding Australia’s suite of counter-terrorism measures over the past decade.<sup>xiii</sup> The theme of these reports is essentially that Australia’s current system of counter-terrorism measures has proven itself inherently and irredeemably problematic, and ultimately irreconcilable with basic human rights and respect for human dignity. One of the key failings of the current anti-terrorism regime is lack of basic legal rights. ALHR notes that the United Nations Human Rights Committee recently called on Australia to:

*“envisage to abrogate provisions providing Australian Security Intelligence Organisation (ASIO) the power to detain people without access to a lawyer and in conditions of secrecy for up to seven-day renewable periods”.*<sup>xiv</sup>

- 3.14 While ALHR supports moves to review the counter-terrorism legislation, it urges the Committee to adopt a tougher stance in respect to these submissions and make recommendations which call for amendments which ensure that individuals detained under counter-terrorism legislation have access to legal representation.

#### *Refugees and asylum seekers*

- 3.15 Similar institutionalized barriers to access to legal representation can also be seen in Australia’s legislative and policy regimes which apply to asylum seekers. ALHR welcomes recent initiatives by the Australian Government to minimize detention of asylum seekers in immigration detention centres in only limited circumstances, and the right to access funded legal aid on Christmas Island..

- 3.16 However, the continued use of facilities at remote locations such as Christmas Island prevents detainees from having any broader choice or access to legal representation, and asylum-seekers detained in the excision zone have no access to the Refugee Review Tribunal or the courts. The Australian Human Rights Commission has previously reported that the conditions of detention facilities contribute to the detainees’ lack of access to legal advice and information.<sup>xv</sup>

- 3.17 ALHR would urge the Committee to make a strong recommendation to the government to remove the fees to access the jurisdiction of the Refugee Review Tribunal. The fees are returned if the applicant is successful; however, the principle is still that an asylum-seeker should not have to pay an up-front fee to access merits review of their primary refugee decision.

#### *Domestic violence survivors*

- 3.18 ALHR welcomed the announcement of the National Action Plan to Reduce Violence against Women and their Children this week by the Prime Minister. The Report looks at access to justice issues from pages 96-97 of the report; *Time for Action*. ALHR would urge the Committee to take further evidence from the National Council and the Office for Women on how to improve access to justice for women dealing with intimate violence, especially Indigenous women, refugee and migrant women, and women with disabilities.

## **4 The adequacy of legal aid**

- 4.1 For many marginalised groups, the cost of legal representation is prohibitive and the only prospect of obtaining legal advice or representation is either from a community legal centre or via legal aid. Policies which have regard to the provision of legal aid to those who cannot afford legal representation should be informed by Australia’s obligations under the International Covenant on Civil and Political Rights, which provides at Article 14:

*“In the determination of any charge against him, everyone shall be entitled to the following minimum guarantees, in full equality...*

*(d) To be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any*

*case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;”*

- 4.2 In Australia, there is recognition and a long-standing expectation that in addition to having access to legal assistance in criminal proceedings, free or affordable legal assistance must be accessible for civil law matters, because of the very serious consequences on the quality of life that non-criminal legal matters can have on individuals.
- 4.3 In 2004, the Senate Legal and Constitutional Affairs Committee report on funding arrangements for legal aid and community legal centres and concluded:  
*“While some individuals may choose not to have a lawyer because, for example, they perceive they will have a tactical advantage, evidence to this inquiry suggests that reduced legal aid funding is directly responsible for the lack of legal representation for many others. This has potentially serious consequences for the enforcement of individual rights. The Committee also heard evidence of the adverse impact of self-represented litigants on other parties, court registries, judicial officers and the administration of justice generally.”<sup>xvi</sup>*
- 4.4 Despite that inquiry, the funding for legal aid across Australia continues to be inadequate and in a state of crisis. On 14 May 2008, the Law Institute of Victoria reported that the Commonwealth had failed to deliver the funding required for Legal Aid Victoria to sustain its current services and was set to cut key areas of funding, particularly in family law.<sup>xvii</sup> Legal Aid Victoria went on to report a deficit of more than \$20 million in its 2007-2008 annual report.<sup>xviii</sup>
- 4.5 Similarly, in New South Wales the Australian Domestic and Family Violence Clearinghouse reported in 2008 that:
- 4.5.1 There were major towns throughout the state which had no Domestic Violence Court Assistance to assist victims of domestic violence;
- 4.5.2 At some courts, the only available legal aid was via private solicitors who were frequently unable to act because they had already assisted the defendant or were unwilling to work at Legal Aid rates; and
- 4.5.3 That while funding available for family law matters (to those who met the strict eligibility criteria) was capped at \$12,000, the average cost of matters that went to a hearing was more than \$20,000.<sup>xix</sup>
- 4.6 A lack of funding threatens the ability of state legal aid commissions to continue existing services in family and criminal law. However, there has been a lack of funding for other critical services since legal aid funding was restructured in the 1990s. At the National Access to Justice conference held in November 2008, Hamish Gilmore, past Chair of National Legal Aid and Director of Legal Aid Services Commission of South Australia stated:  
*“Tenancy, consumer, employment and social security legal services, to name a few, are no longer core commission priorities although problems in these jurisdictions may equally have profound consequences on peoples lives. To a limited extent community legal centres and some pro bono services will pick up a few of these matters whilst the masses turn up at Civil Magistrates Court unrepresented.”<sup>xx</sup>*
- 4.7 There has long been a recognition of the fundamental purpose that legal aid plays in the Australian justice system, not only in ensuring that individuals have adequate representation before the courts, but also to ensure that our marginalised citizens are able to effectively participate in our judicial system and access the rights and remedies available to them in a variety of legal areas. The need for affordable legal services in a variety of areas, beyond the core areas of family and criminal law, is essential to an adequate justice system in a liberal democratic society and is a need which is currently in critical deficit in Australia.

## **5 The adequacy of funding and resource arrangements for community legal centres**

- 5.1 Many community legal centres are funded via contributions from the Commonwealth Community Legal Services Program and the state legal aid commissions. However, most centres also rely heavily on alternative funding from various other government departments (particularly at a State level) and from interest payable on solicitors' trust accounts (for example, the Public Purpose Fund (NSW) and the Legal Practitioner Interest on Trust Accounts Fund (Qld)).
- 5.2 In addition to these sources, most community legal centres are also dependent on funding from independent grants and donations, and on pro bono assistance from legal and non-legal professions.
- 5.3 According to the Queensland Association of Independent Legal Services Inc:  
*“many community legal centres support their recurrently funded activities through applying for project funds from a range of sources, including State and Commonwealth government, local government, donations and philanthropic trusts.”*
- 5.4 Community legal centres have become an essential part of Australia's justice landscape. They provide free legal services to individuals who would not otherwise be able to afford or access legal assistance and who are ineligible for legal aid. The number of individuals who are dependent upon community legal centres for assistance forms an increasingly large proportion of individuals involved in legal issues because of the steady withdrawal and lack of resources available via legal aid commissions.
- 5.5 Community legal centres are also invaluable to Australia's justice system, because they are able to identify and address systemic issues in their core area and work to find solutions in a holistic manner.
- 5.6 In 2006, it was found that there were as many community legal centres providing specialised assistance to specific marginalised groups of the community as there were generalist community legal centres.<sup>xxi</sup>
- 5.7 The proliferation of legal clinics targeted to meet the needs of homeless persons which have been established across Australia, and the diverse range of services that they provide, illustrate the ways in which community legal centres often go beyond the provision of discrete legal assistance and provide holistic solutions to marginalised groups. The United Nations Human Rights Commission recently criticised Australia's performance in addressing homelessness in Australia,<sup>xxii</sup> and it is critical that the government works to ensure that services such as these are adequately funded in the future.
- 5.8 A 2006 review into New South Wales community legal centres found that although community legal centres were well-administered and represented 'an effective use of public funds and should continue to be supported by the government.' However, the review also found that:  
*“With appropriate resources, Centres could improve the accessibility of their services to some particularly disadvantaged client groups, including Indigenous Australians, people from culturally and linguistically diverse backgrounds, people with a disability and older people.”<sup>xxiii</sup>*
- 5.9 ALHR supports the current Commonwealth Community Legal Services Program and the government's commitment to continued funding of the community legal sector. However, limited funding continues to reduce the ability of community legal centres to provide adequate legal services to Australia's marginalised groups.

### *Human rights work*

- 5.10 ALHR would make a special plea that the Committee consider recommending that the Australian Government pay special attention to the need to resource and support human rights legal work. Our organisation is completely voluntary, and is run on a shoe-string drawing on the talents and goodwill of our membership. As our main focus is advocacy, we have never been able to attract a favourable tax status, which also impacts on our ability to win general grants. There is no properly funded human rights law and advocacy organisation with a national focus (although the Law Council does have a

human rights section). The Human Rights Law Resource Centre in Victoria and the Public Interest Advocacy Centre in NSW are both excellent State based centres who do a mixture of case work and advocacy. They serve as a model for how much a national centre could achieve, especially as many human rights issues like national security, indigenous rights and immigration are federal issues. A mixture of reform to tax laws and grants policy would be required to create such a body.

### **Pro Bono**

- 5.11 ALHR supports The "Yes We Can Work Together" resolutions from the National Access to Justice and Pro Bono Conference held on 10 December 2008 (The "Yes We Can Work Together" Resolutions Collated).
- 5.12 ALHR welcomed the amendment to the Commonwealth Government Legal Services Directions in 18 September 2008. They now require each agency, when procuring ongoing legal services, to take into account the amount and type of pro bono work the law firm has carried out or will carry out, and whether the firm is a signatory to the National Pro Bono Aspirational Target.
- 5.13 ALHR would still like the Commonwealth go further into hard targets. We note that the Human Rights Law Resource Centre in Victoria has benefited from the pro bono requirements of the Victorian Government.

## **6 The ability of Indigenous people to access justice**

*"In some areas, particularly criminal justice, outcomes for Indigenous people have been deteriorating."*<sup>xxiv</sup>

- 6.1 Australian Lawyers for Human Rights draws the Committee's attention to the significant contribution made by Professor Chris Cunneen and Melanie Schwartz on exactly this issue in their article 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of equity and access'.<sup>xxv</sup> Australian Lawyers for Human Rights has drawn on significantly on this work in making the following comments.
- 6.2 The 2008 Evaluation of the Legal and Preventative Services Program conducted by the Attorney-General's Department acknowledged that several themes that were present in the earlier 2003 review continued to be relevant. These themes included lack of adequate support and remuneration, high turnover of staff and low morale in service providers.<sup>xxvi</sup>
- 6.3 Language and cultural barriers also impede the ability of Indigenous people to access legal representation and also of the ability of legal services to efficiently and effectively meet their needs. The prevalence of traditional language across Indigenous communities is high with English at time being a second, third or fourth language. Even in communities, including those in metropolitan areas, where English is predominantly spoken it can be in the form of Aboriginal English which can result in the loss of nuance and technicalities between lawyer and client.<sup>xxvii</sup>
- 6.4 Understanding of words, meaning and context are necessary to the effective provision of any form of community service however in the context of legal representation comprehensive and technical understanding is even more critical the lack of which can see an access to services without the added component of access to justice. The Office of Evaluation and Audit survey conducted in 2002 reported that 63% of ATSILS practitioners experienced difficulties in understanding their clients and some also having problems conveying their advice to clients.<sup>xxviii</sup>
- 6.5 These communication impediments are not simply language based but can also be the result of kinship relationships which can determine when a person can speak, who to and on what topics. Such cultural difference can also add to the complexity of providing legal services more broadly with the need to adhere to traditional customs such as those relating to "gratuitous concurrence, eye contact, and temporal and spatial definitions" when providing advice and representation.<sup>xxix</sup>
- 6.6 The broad social disadvantages facing Indigenous people also serve to not only affect their ability to access the justice system but also the ways in which practitioners provide legal assistance. Indigenous people are less likely to have the literacy and numeracy

skills of non-Indigenous people, they are more likely to have a disability, to have experienced high levels of psychosocial distress and have higher rates of drug and alcohol misuse.<sup>xxx</sup>

6.7 The geographical isolation of Indigenous communities also serves to inhibit their ability to access the legal system and markedly increases the cost of providing legal services in these regions. The average cost of servicing a case in the Northern Territory and Western Australia can be up to double that in other States.<sup>xxxii</sup> The result is that obtaining instructions from clients is very difficult with face to face meetings nigh on impossible, this makes the time period for preparing any case very limited. The end long term result is that an ATSILS client is more likely to plead guilty than a non-Indigenous accused which in some respects can be put down to the inability to obtain advice as opposed to the merits of the case.<sup>xxxiii</sup>

6.8 Despite Aboriginal and Torres Strait Islander peoples comprising only 2.4% of the total Australian population<sup>xxxiiii</sup> at 30 June 2006 they represented 24% of the total national prisoner population, with almost double to number of prisoners than in 1996.<sup>xxxv</sup> This over-representation is further complicated, from a legal representation perspective, by the fact that the many of the offences committed are of a serious nature. For example in 2004-2005 16% of homicide offenders were Indigenous.<sup>xxxvi</sup>

6.9 When the barriers faced by Indigenous communities are coupled with the difficulties being experienced internally by legal practitioners access to the justice system becomes even more uncertain. ATILS has calculated a funding loss since 1996 of just under 40% without accounting for the increased demand for their services.<sup>xxxvii</sup> Staff salaries are uncompetitive when compared with Legal Aid with a Level 1 and Level 2 solicitor at the Aboriginal Legal Rights Movement earning approximately \$41,000 - \$47,000 whilst equivalent Legal Aid positions are paid \$50 000 - \$65 000.<sup>xxxviii</sup> Considering these difficulties it is little wonder that there is a “chronic and increasingly acute inability to maintain expert legal staff”<sup>xxxix</sup> creating a distinct lack of continuity, institutional memory or community relationships.

#### 6.10 Recommendations

1. **The Committee should call on Roger Wilkins AO in his capacity of head of the Taskforce, and the Hon Michael Lavarch, Chair of the Consultative Committee to brief the Committee on the process to lead to reform of the legal profession.**
2. **That the Committee note in its report that the UN Human Rights Committee recently expressed concern over ‘the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens.**
3. **That the Committee should take further evidence from the National Council on Violence against Women and the Office for Women on how to improve access to justice for women dealing with intimate violence, especially Indigenous women, refugee and migrant women, and women with disabilities.**
4. **That the Committee should call upon the Australian Government to remove the legislative and practical restrictions which prevent individuals held under counter-terrorism laws and asylum seekers held in detention or ‘processing’ facilities and ensure that these groups have adequate and meaningful access to legal representation.**
5. **That the Committee encourages the Government to consider implementing tax and other financial incentives to encourage lawyers to train or establish a practice in rural and remote areas.**
6. **That the Committee supports the current Commonwealth Community Legal Services Program and the government’s commitment to continued funding of the community legal sector, but asks the Commonwealth to double its commitment, in light of the fact that limited funding continues to reduce the ability of community legal centres to provide adequate legal services to Australia’s marginalised groups.**
7. **That the Committee recommend the Government must review the current CLC funding structure with a view to ensuring that the Commonwealth’s funding contribution adequately supports that of the States and responds to needs of communities regardless of jurisdiction.**

8. That the Committee makes a strong recommendation to the government to remove the fees to access the jurisdiction of the Refugee Review Tribunal, and to review the fees of all other courts and tribunals.
9. That the Committee note the "Yes We Can Work Together" resolutions from the National Access to Justice and Pro Bono Conference held on 10 December 2008, and encourage the Commonwealth to adopt the same tender rules as the Victorian government.
10. That the Committee recommend that the Australian Government pay special attention to the need to resource and support human rights legal work.
11. That the Committee in its report and recommendations pay particular attention to Indigenous access to justice, and recommend the following measures:
  - a. Address the inadequacy of ATSILS funding by providing a level of funding comparable to that provided to the Legal Aid Commission as assessed relative to caseloads and added expenses inherent in providing complex services to remote areas. This increased funding should serve to:
  - b. Increase salaries to ATSILS solicitors to provide remuneration at least commensurate with LAC levels and reduce staff turnover and to make possible the employment of experienced practitioners.
  - c. Increase funding directed to civil and family law matters.
  - d. Increase funding directed towards community outreach and education.
  - e. Ensure that the needs of ATSILS practitioners in performing their roles, such as interpreters, transport, training and supervision, are sufficiently available and budgeted for.
  - f. Ensure that all ATSILS staff are adequately trained to deal with language and cross-cultural differences.
  - g. Ensure that adequate support services are available to assist ATSILS practitioners in dealing with both the high volume of work and the emotional commitment required. This may include the provision of locums and the services of psychologists.
  - h. Recognise that no attempts to address Indigenous access to justice can be effective without simultaneously addressing the over-representation of Indigenous people in the justice system and the social disadvantages that underpin this reality.

## Conclusion

6.11 ALHR thanks the Committee for this timely inquiry and stands ready to provide evidence if necessary.

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<sup>i</sup> United Nations Human Rights Committee, "Consider of the Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee", Ninety-Fifth session, 2 April 2009 (CCPR/C/AUS/CO/5).

<sup>ii</sup> The Law Council of Australia, "Legal Aid and Access to Justice Funding – 2009-10 Federal Budget", January 2009, p3

<sup>iii</sup> Attorney-General's Department, Study of the participation of private legal practitioners in the provision of legal aid services, December 2006, p39

<sup>iv</sup> Ibid. at p30

<sup>v</sup> Ibid. at p viii

<sup>vi</sup> National Association of Legal Centres, Submission to the Internal Review of the Commonwealth Community Legal Services Program, March 2007, p11

<sup>vii</sup> The Law Council of Australia, Op. Cit. at p7

<sup>viii</sup> Australian Council of Social Service, Australian Community Sector Survey – Report 2007, p11

<sup>ix</sup> National Pro Bono Resource Centre, Submission to the Senate Legal and Constitutional Committee inquiry into Access to Justice and Legal Aid, October 2003, p6

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- <sup>x</sup> National Association of Legal Centres, *Op. Cit.* at p11
- <sup>xi</sup> Australian Council of Social Service, Submission to the Senate Legal and Constitutional Committee inquiry into Access to Justice and Legal Aid, December 2003, p4
- <sup>xii</sup> The Law Council of Australia, *Op. Cit.* at p4
- <sup>xiii</sup> <http://www.alhr.asn.au/html/main/ALHRActionbySubjectArea.html#TerrorismWar> (accessed 15 September 2008).
- <sup>xiv</sup> United Nations Human Rights Committee, “Consider of the Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee”, Ninety-Fifth session, 2 April 2009 (CCPR/C/AUS/CO/5) at page 3.
- <sup>xv</sup> Human Rights and Equal Opportunity Commission, Summary of Observations following the Inspection of Mainland Immigration Detention Facilities 2007 (2007), available at [http://www.humanrights.gov.au/human\\_rights/immigration/ldc2007.html](http://www.humanrights.gov.au/human_rights/immigration/ldc2007.html).
- <sup>xvi</sup> The Australian Senate Legal and Constitutional References Committee, “Legal Aid and Access to Justice”, June 2004.
- <sup>xvii</sup> [http://www.liv.asn.au/media/releases/20080514\\_legalaid.html](http://www.liv.asn.au/media/releases/20080514_legalaid.html) (accessed 26 April 2009).
- <sup>xviii</sup> [http://www.lawyersweekly.com.au/blogs/editor\\_blog/archive/2008/12/05/cuts-to-legal-aid-leave-gap-in-our-infrastructure.aspx](http://www.lawyersweekly.com.au/blogs/editor_blog/archive/2008/12/05/cuts-to-legal-aid-leave-gap-in-our-infrastructure.aspx) (accessed 26 April 2009).
- <sup>xix</sup> Australian Domestic and Family Violence Clearinghouse, “Submission to Legal Aid NSW Review”, May 2008.
- <sup>xx</sup> [http://www.a2j08.com.au/papers/Gilmore\\_H.pdf](http://www.a2j08.com.au/papers/Gilmore_H.pdf) (accessed 26 April 2009).
- <sup>xxi</sup> Legal Aid Commission of NSW, “Review of the NSW Community Legal Centres Funding Program: Final Report”, February 2006.
- <sup>xxii</sup> United Nations Human Rights Committee, “Consider of the Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee”, Ninety-Fifth session, 2 April 2009 (CCPR/C/AUS/CO/5) at page 5.
- <sup>xxiii</sup> Legal Aid Commission of NSW, “Review of the NSW Community Legal Centres Funding Program: Final Report”, February 2006 at page 4.
- <sup>xxiv</sup> Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators*, 2007, p v
- <sup>xxv</sup> Cunneen and Schwartz, Funding Aboriginal and Torres Strait Islander Legal Services: Issues of equity and access, *Criminal Law Journal*, Vol. 32, 2008
- <sup>xxvi</sup> Office of Evaluation and Audit (Indigenous Programs), *Evaluation of the Legal Aid for Indigenous Australians Program*, July 2008 at 68
- <sup>xxvii</sup> Cunneen and Schwartz *Op. Cit.* at 41
- <sup>xxviii</sup> Office of Evaluation and Audit, *Evaluation of the Legal and Preventative Services Program*, Aboriginal and Torres Strait Islander Commission (2003) at 3.6.4.1
- <sup>xxix</sup> Cunneen and Schwartz *Op. Cit.* at 42
- <sup>xxx</sup> Cunneen and Schwartz *Op. Cit.* at 43
- <sup>xxxi</sup> Office of Evaluation and Audit, *Evaluation of the Legal and Preventative Services Program*, Aboriginal and Torres Strait Islander Commission (2003) at 3.3
- <sup>xxxii</sup> Cunneen and Schwartz *Op. Cit.* at 48
- <sup>xxxiii</sup> Australian Bureau of Statistics. *National Aboriginal and Torres Strait Islander Social Survey*, 2002
- <sup>xxxiv</sup> Australian Bureau of Statistics, *Prisoners in Australia*, 2006
- <sup>xxxv</sup> Cunneen and Schwartz *Op. Cit.* at 40
- <sup>xxxvi</sup> The Law Council of Australia, *Legal Aid and Access to Justice Funding – 2009-10 Federal Budget*, January 2009, p6
- <sup>xxxvii</sup> The Law Council of Australia, *Legal Aid and Access to Justice Funding – 2009-10 Federal Budget*, January 2009, p6
- <sup>xxxviii</sup> Cunneen and Schwartz *Op. Cit.* at 48