

15 May 2023

First Assistant Secretary Sara Samios  
Administrative Review Taskforce  
Attorney General's Department

By email: [AATReformEnquiries@ag.gov.au](mailto:AATReformEnquiries@ag.gov.au)

Dear First Assistant Secretary Sara Samios,

**Re: Administrative Review Reform**

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited ('ALS') and thank you for the opportunity to provide a submission to the Administrative Review Taskforce on the development of a new federal administrative review body ('the Review').

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. More than 280 ALS staff members based at 26 offices across NSW and the ACT support Aboriginal and Torres Strait Islander people through the provision of legal advice, information and assistance, and court representation in criminal law, children's care and protection law, and family law. We also undertake policy work and advocacy for reform of systems which disproportionately impact Aboriginal and Torres Strait Islander communities.

In recent years we have expanded services to represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, provide a variety of discrete civil law services, including tenancy services, fines services and services in support of the Disability Royal Commission. In 2023 we are expanding our capacity to undertake work in civil jurisdictions. We will be building on our work with the Disability Royal Commission and providing general civil assistance to particular cohorts under specialist programs. We understand the challenges that face our clients living with disability and through our work have been able to rally behind the strength of our clients in sharing their stories with the Commission and addressing other civil issues. With an expanded civil law service, our future work may involve assisting clients with legal matters concerning the National Disability Insurance Scheme (NDIS) and social security issues – matters relevant to a new administrative review body.

**ALS Response to the Issues Paper**

The ALS welcomes the objectives of the reforms as set out in the *Administrative Review Reform: Issues Paper*. We note that one of the objectives is to "adopt a user-focused design with simple, accessible pathways for applicants, support for vulnerable cohorts, and a preference for non-adversarial practices and processes including the use of alternative dispute resolution." We also note that the Review is seeking input on how the new body can protect the safety and interests of applicants who are at risk of trauma or abuse,<sup>1</sup> and on whether any enabling legislation should contain a positive obligation to promote accessibility.<sup>2</sup>

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<sup>1</sup> Issues Paper, Questions 62 and 63.

<sup>2</sup> Issues Paper at pp 87–88.

The ALS' vision is for social justice and equity for Aboriginal and Torres Strait Islander people, families and communities and our mission is to deliver quality and culturally appropriate legal services that meet the needs of our client-base. We know that many of our ALS clients experience challenges when interacting with the legal system. This may be a result of the ongoing impacts of colonisation, dispossession and systemic discrimination, including poverty, disability and mental health issues.

The Issues Paper is largely silent on Aboriginal and Torres Strait Islander people, despite the increased likelihood of Aboriginal people experiencing civil law issues including those related to the National Disability Insurance Scheme (NDIS) and social security, and the known access to justice barriers faced by Aboriginal people.<sup>3</sup> Disability is far more common among Aboriginal and Torres Strait Islander peoples than the non-Aboriginal population – 38% compared to 18% of the adult population and 22% compared to 8% of children.<sup>4</sup> We also know that Aboriginal people with disability, often undiagnosed and unsupported, are significantly overrepresented in the criminal, juvenile justice and care and protection systems,<sup>5</sup> with research showing that this trajectory into the justice system could have been avoided had appropriate support, diagnosis and treatment been available.<sup>6</sup>

Most of the ALS' practice is in the criminal law jurisdiction, where many of our clients are drawn into the system through punitive policing which, in our experience, leads to a well-founded and profound lack of trust in justice institutions. We find that many Aboriginal and Torres Strait Islander people regard legal dispute resolution systems and institutions as culturally unsafe and inaccessible, and people may accordingly exclude themselves from seeking redress.<sup>7</sup> Outlined below is a number of factors that we consider will make the new body more accessible and culturally safe to Aboriginal and Torres Strait Islander people.

### **Embedding Closing the Gap**

The National Agreement on Closing the Gap (CTG) requires that all levels of government work in partnership with Aboriginal people to overcome the inequality experienced by Aboriginal and Torres Strait Islander people and to achieve life outcomes equal to all Australians.<sup>8</sup> CTG calls for a fundamental shift in the way Government works with Aboriginal communities. We submit that it is incumbent on this Review to take this opportunity to align the review of the AAT with CTG targets, Priority Reforms and the overall intention of the CTG Agreement.

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<sup>3</sup> Law and Justice Foundation of NSW (2015) "Indigenous people, multiple disadvantage and response to legal problems" [http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/\\$file/UJ\\_48\\_Indigenous\\_people\\_multi\\_disadvantage.pdf](http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_48_Indigenous_people_multi_disadvantage.pdf) (viewed May 2023)

<sup>4</sup> See, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability <https://disability.royalcommission.gov.au/system/files/2020-11/First%20Nations%20people%20with%20disability%20-%20Infographic.pdf>

<sup>5</sup> see First Peoples Disability Network, Submission to the United Nations Committee against Torture (October 2022) at [https://fpdn.org.au/wp-content/uploads/2022/10/FINAL-UNCAT-Submission\\_FPDN\\_3.10.2022.pdf](https://fpdn.org.au/wp-content/uploads/2022/10/FINAL-UNCAT-Submission_FPDN_3.10.2022.pdf)

<sup>6</sup> see Baldry et al A Predictable and Preventable Path: IAMHDCD (2015) at <https://www.mhdcd.unsw.edu.au/a-predictable-and-preventable-path-iamhdcd-report.html>

<sup>7</sup> see, for example, note 3; Productivity Commission, Access to Justice (2014) <https://www.pc.gov.au/inquiries/completed/access-justice/report> see p 326, p 789-99 and Chapter 22 generally (viewed May 2023)

<sup>8</sup> <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

## Specialist lists

This Review provides a timely opportunity to consider how a reformed body might provide specialised supports to Aboriginal and Torres Strait Islander applicants to increase accessibility. We note that increasingly, Courts and Tribunals are adopting specialist Indigenous lists or Courts that provide more equitable and accessible access to and procedures for dispute resolution for Aboriginal and Torres Strait Islander people. The Australian Law Reform Commission, in its *Pathways to Justice* Report, considered specialist courts which should be inclusive and culturally appropriate.<sup>9</sup> While many of these specialist courts operate in the criminal jurisdiction, there are also specialist Indigenous Lists operating in the family, care and protection and civil law jurisdictions. We note the Indigenous List at the Federal Circuit and Family Court of Australia (FCFCOA) which has developed special case management processes to accommodate Aboriginal and Torres Strait Islander litigants,<sup>10</sup> which includes employing specialist Aboriginal liaison officers to support parties to understand and engage with court processes and connects parties to legal and other support services. We understand the NSW Civil and Administrative Appeals Tribunal is currently developing an Indigenous List.

It appears that the AAT does not publish demographic data about applicants, but we would anticipate the percentage of Aboriginal applicants would not reflect the prevalence of disability in the community, or the increased prevalence of experiencing government, health and rights problems.<sup>11</sup> In response to Question 64 of the Issues Paper, we support an amendment to the current AAT Act that provides a positive obligation to promote accessibility which could include providing the kinds of case management and culturally safe support services as offered through specialist lists noted above.

## Appointments and staff

The Issues Paper refers to the Queensland Civil and Administrative Tribunal (QCAT) Act that requires the Minister relevant to appointments to have regard to the need for membership of the tribunal to include Aboriginal and Torres Strait Islanders. We support an inclusion of this nature into any amended legislation for a new Administrative review body. Further, employing specialist Aboriginal and Torres Strait Islander officers, conducting outreach and developing approaches that draw upon the National Agreement on Closing the Gap will improve accessibility for users.

## Funding Aboriginal and Torres Strait Islander Legal Services (ATSILS)

We note that any specific supports in courts and tribunals requires a reciprocal investment in ATSILS. It is vital that we ensure Aboriginal and Torres Strait Islander litigants are provided with culturally safe legal and wrap around support – and we require resources under the National Legal Assistance Partnership to do so.

The AGD would be aware of the call for emergency funding from the ALS in partnership with the National Aboriginal and Torres Strait Islander Legal Services to alleviate the current funding crisis.<sup>12</sup> Increasing core funding to ATSILS will increase ATSILS' capacity to provide civil law assistance, including supporting clients using a reformed AAT and supporting the development of a culturally safe and accessible Federal review body.

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<sup>9</sup> see, Australian Law Reform Commission *Pathways to Justice*, Report 130 at [https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)

<sup>10</sup> see <https://www.fcfcoba.gov.au/fl/indigenous-list> (viewed May 2023)

<sup>11</sup> See note 3

<sup>12</sup> <https://www.alsnswact.org.au/atsils-emergency-statement>

The ALS would welcome the opportunity to discuss our submission further. If you have any further questions, please contact Acting Policy and Advocacy Manager Jenny Lovric via email at [Jenny.Lovric@alsnswact.org.au](mailto:Jenny.Lovric@alsnswact.org.au) and our general policy inbox at [Policy@alsnswact.org.au](mailto:Policy@alsnswact.org.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Karly Warner', written in a cursive style.

Karly Warner

**Chief Executive Officer**

Aboriginal Legal Service (NSW/ACT) Limited