



Ref:SG:2009/0058

20 November 2009

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To whom it may concern,

**Comments on the Concluding Observations of the United Nations
Human Rights Committee on Australia's compliance with the ICCPR**

We refer to the above matter **enclose** our comments for your consideration.

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) is a community based organisation that was established in 1973 to provide legal advice and representation to Aboriginal and Torres Strait Islander peoples in WA in a wide range of practice areas including criminal law, civil law, family law as well as human rights law and policy. ALSWA's services are available throughout WA via 17 regional and remote offices and one head office in Perth. ALSWA is a legal service provider solely for Aboriginal and Torres Strait Islander peoples living in WA and makes submissions on that basis.

ALSWA welcomes the opportunity to make this submission and contribute to the implementation of the concluding observations to better protect and promote human rights.

If you would like to discuss this further, please contact our international human rights law solicitor, Ms. Seranie Gamble on (08) 9265 6650.

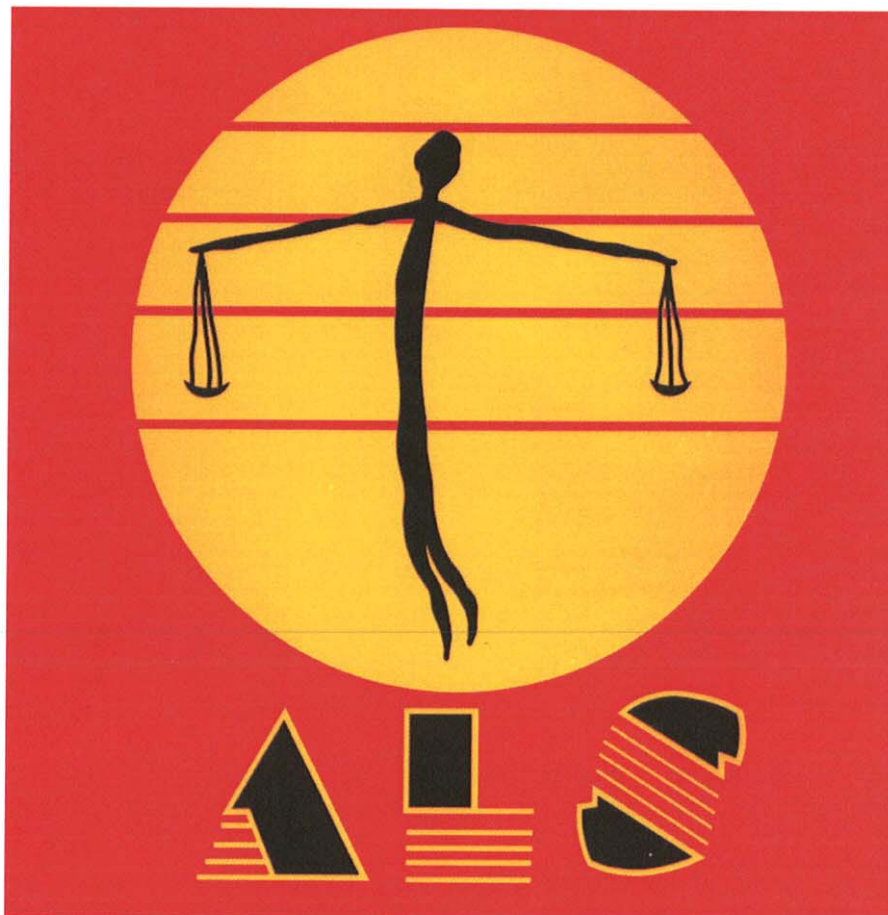
Yours faithfully,

JOHN BEDFORD
Executive Officer
For the Chief Executive Officer

**ABORIGINAL LEGAL SERVICE OF
WESTERN AUSTRALIA (INC.)**

**SUBMISSION TO THE
COMMONWEALTH
ATTORNEY-GENERAL'S DEPARTMENT**

**COMMENTS ON THE CONCLUDING
OBSERVATIONS OF THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE
95TH SESSION MARCH-APRIL 2009**



NOVEMBER 2009

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1. Introduction and scope of the submission

The Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) prepared this submission in response to the Australian Government Attorney-General's Department invitation to the public to submit comments on the Concluding Observations of the United Nations Human Rights Committee (UNHRC). The Concluding Observations were made in response to Australia's appearance before the UNHRC on 23 and 24 March 2009, for consideration of its Fifth Report under the International Convention on Civil and Political Rights (ICCPR).

The Concluding Observations can be found at:

<http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>

The Concluding Observations identify principle areas of concern in relation to Australia's compliance with its obligations under the ICCPR and makes various recommendations for the Australian Government to address these concerns. ALSWA supports each recommendation made by the UNHRC and recommends the Australian Government act to implement each of the recommendations in full.

It is not the intention of ALSWA to comment on each observation and recommendation made by the UNHRC. ALSWA need only look to its archive of submissions and media releases that refer to specific issues raised by the UNHRC, which make countless recommendations to both state and federal governments to improve the treatment of Aboriginal peoples ('Aboriginal peoples') and their contact with the justice system. The key issues raised by the UNHRC that relate directly to the current work of ALSWA include:

- establishment of a National Indigenous Representative Body;
- providing adequate reparations to victims of the Stolen Generations;
- reducing homelessness;
- improved mechanisms for police complaints;
- improved treatment of juveniles in the justice system; and
- access to justice.

These issues have been the subject of many recommendations made by ALSWA in its 30 years of operation. The Australian Government must act immediately on these recommendations to achieve better outcomes for Aboriginal peoples in the justice system and improve the protection of their human rights.

ALSWA recommends the Australian Government work more collaboratively through effective consultation based on the 'Principles That Constitute Genuine Consultation' identified by the Aboriginal and Torres Strait Islander Social Justice Commissioner and **attached as Annexure 1**,¹ and the provision of increased funding for Aboriginal and Torres Strait Islander Legal Services (ATSILS) to enable ATSILS to continue providing culturally appropriate services and build on existing expertise and understanding of these issues to improve the protection and promotion Aboriginal peoples' human rights.

This submission will begin by providing brief information about ALSWA and the work it does, then summarise the key issues of concern raised by the UNHRC that relate

¹ Tom Calma, Comments on the Government's discussion paper – possible housing and infrastructure native title amendments, Appendix A.

to the work of ALSWA, as indicated above, and refer to the numerous recommendations ALSWA has made in the past, which are yet to be implemented, to provide useful steps for the Australian Government in performing its obligations under the ICCPR to better protect the rights of Aboriginal peoples. This submission will then briefly refer to several other general issues arising from the UNHRC's government in relation to broader human rights protection in Australia.

2. About ALSWA

ALSWA is a community based organisation that was established in 1973. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law as well as human rights law and policy. Its service is available throughout WA via 17 regional and remote offices and one head office in Perth.

ALSWA is a representative body with 16 executive officers² elected by Aboriginal and peoples from their local regions to speak for them on law and justice issues.

ALSWA is a legal service provider solely for Aboriginal peoples living in WA and makes submissions on that basis.

Submissions are prepared by ALSWA in consultation with the Chief Executive Officer, Executive Officers, Lawyers and Court Officers for their invaluable contribution. All Court Officers are Aboriginal and represent Aboriginal peoples in the Magistrates Courts and the Children's Court under section 48 of the *Aboriginal Affairs Planning Authority Act 1972* (WA). Each regional office also has a Court Officer who provides an understanding of local issues. In more remote areas, Court Officers are often the only local permanent legal service dealing with all aspects of the legal system.

3. Principle subjects of concern

This section will focus on key areas of concern that were raised by the UNHRC and relate directly to the current work of ALSWA.

3.1 *Establishment of a National Indigenous Representative Body*

UNHRC Comment [at para. 13]:

While acknowledging the consultation process initiated by the State party to establish a national indigenous representative body to replace the Aboriginal and Torres Islander Commission abolished in 2004, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights. (arts. 2, 25, 26 and 27)

UNHRC Recommendation:

The State party should increase its efforts for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights and establish an adequately resourced national indigenous representative body.

² There are two Executive Officers for each of the former 8 ATSIC regions (Metropolitan, Central Desert Region, Murchison/Gascoyne Region, Southern Region, Pilbara Region, Goldfields Region, West Kimberley Region and East Kimberley Region). They are elected by the Indigenous public every three years.

ALSWA made a submission in 2008 in relation to a National Indigenous Representative Body, which stated, 'the current method of Commonwealth government consultation is inadequate and demonstrates ignorance by the Government about the processes and necessities of consultation with Aboriginal people.' ALSWA recommended that a working group be established to develop a model of a First Nations Parliament as the most effective way for the Australian Government to take action to ensure sufficient consultation with Aboriginal peoples in decision-making with respect to issues affecting their rights.

A copy of ALSWA's submission in relation to a National Indigenous Representative Body is **attached as Annexure 2**.

The Australian Government created a Steering Committee to hold consultations with Aboriginal peoples to identify a model for a new national representative body. ALSWA notes the Steering Committee report, 'Our future in our hands' was provided to the Australian Government on 27 August 2009. ALSWA recommends that action be taken to establish a national representative body for Aboriginal peoples as a matter of urgency and that any such organisation is adequately funded and resourced to perform its functions.

ALSWA further recommends the Australian Government follow the 'Principles that Constitute Genuine Consultation' contained in Annexure 1 for all consultation with Aboriginal peoples.

3.2 Providing adequate reparations to victims of the Stolen Generations

UNHRC Comment [at para. 15]:

While taking note with satisfaction that the State party has implemented some of the recommendations of the Human Rights and Equal Opportunity Commission's "Bringing Them Home" report, the Committee regrets that it has not granted reparation, including compensation, to the victims of the Stolen Generation policies. (arts. 2, 24, 26 and 27)

UNHRC Recommendation:

The State party should adopt a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.

ALSWA prepared a report in 1995 entitled 'Telling Our Story' as the first public research report that examined the effect of government policies that saw thousands of Aboriginal children removed from their families and reared in missions, orphanages, reserves and foster homes.

ALSWA used 'Telling Our Story' as the basis for a submission in 1996 called 'After the Removal', to the National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families. It was made on behalf of the 710 Aboriginal clients who provided personal histories of their removal, or the removal of members of their families.

The submission included, additional to those histories, an historical framework, empirical analysis of the effects of removal, and discussion on reparation and legal issues. Those issues included causes of action (including genocide) and international law obligations in regard to restitution, compensation and rehabilitation.

'After the Removal' also included chapters on housing, health, aged care, education, local government, over-representation of adult Aboriginal peoples within the criminal justice system, child welfare and juvenile justice.

The submission made 166 recommendations on how governments could address the wrongs of the past, provide justice, and improve the socio-economic and cultural conditions of Aboriginal peoples today.

The submissions are available for download at:

<http://www.als.org.au/Publications/index.html>

ALSWA made the following key recommendation in relation to compensation:

That the Commonwealth and State governments commit to proper and substantial levels of monetary compensation to be paid to all individuals, families and communities affected by the removal of Aboriginal children from their families under the assimilation policies.

A summary list of the recommendations made in After the Removal is **attached as Annexure 3**.

In 2007, more than 10 years after ALSWA's submissions on the removal of Aboriginal children, the Western Australian government announced a scheme, "Redress WA" to compensate all children who had been abused in Western Australian State Care up to 1 March 2006, which included the 'Stolen Generations'. Although the scheme is a step in the right direction for the Western Australian government, the Western Australian 'Stolen Generations' have still not received an apology, nor have their parents and families from which they were taken. The scheme focuses on abuse and lumps the 'Stolen Generations' in with all other West Australian children who were abused in state care, including child migrants.

ALSWA is further concerned about the Western Australian government's recent decision to reduce the amount of compensation to be paid to Redress applicants from a maximum of \$80,000 to \$45,000.

ALSWA supports the UNHRC recommendation that a national scheme for reparations be provided to the victims of the Stolen Generations policies to adequately address the issue of reparations and begin a meaningful process of reconciliation to Aboriginal peoples who have suffered as a result of these racist policies.

3.3 Reducing homelessness

UNHRC Comment [at para 18]:

The Committee is concerned at the situation of homeless persons, in particular indigenous people, who as a result of that condition are not able to fully exercise the rights enshrined in the Covenant. (arts. 2, 26 and 27)

UNHRC Recommendation:

The State party should increase its efforts in order to ensure that social, economic and other conditions do not deprive homeless persons of the full enjoyment of the rights enshrined in the Covenant.

ALSWA made a submission in relation to the House Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation in August 2009. The submission outlined the principles that should underpin the provision of services to Australians who are homeless or at risk of homelessness, then made recommendations in relation to the scope and role of legislation with respect to related government initiatives in the areas of social inclusion and rights.

A copy of ALSWA's submission to the House Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation is **attached** as **Annexure 4**.

ALSWA recommended the following principles should underpin the provision of services to Australians who are homeless or at risk of homelessness:

1. Access to safe and secure housing is a human right which is fundamental to the principles of social inclusion.
2. International human rights instruments which entrench this right should underpin any homelessness legislation. We acknowledge that the current *Supported Accommodation Assistance Act 1994* (Cth) already acknowledges a number of international instruments in the preamble including:
 - (a) the ratification of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights;
 - (b) the ratification of the Conventions on the Elimination of all Forms of Racial Discrimination, on the Elimination of all Forms of Discrimination against Women and on the Rights of the Child;
 - (c) the acceptance of the Universal Declaration of Human Rights and of the Declaration on the Elimination of Violence Against Women; and
 - (d) the enactment of legislation such as the *Australian Human Rights Commission Act 1986*.

In addition to this, we recommend that specific articles which articulate housing as a human right be noted including:

- Article 24 of the Universal Declaration of Human Rights (UDHR);
- Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Article 27(3) of the Convention of the Rights of a Child (CROC);
- Article 5(e)(iii) of the International Convention on Elimination of All Forms of Racial Discrimination (ICERD); and
- Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

We further recommend that Articles 21 and 23 of the Declaration on the Rights of Indigenous People be specifically referred to, including the need for culturally appropriate housing.

3. The right to housing for homeless people should be complimented with, but not conditional upon compliance with other support programs.
4. Aboriginal peoples should be acknowledged in the preamble as the traditional owners of Australia.
5. There should also be an acknowledgement in the preamble that dispossession and successive governmental policy has contributed to Aboriginal homelessness and that due to Aboriginal diversity, Aboriginal homelessness is complex and unique.
6. A broad definition of Aboriginal homelessness in the interpretation section should be

included which considers spiritual homelessness and other contributing factors such as overcrowding and the cultural obligation to house immediate and extended family members.

7. Eviction of people who are homeless or face homelessness should only ever be a last resort for homelessness service providers and that as part of their funding, they should be required to satisfactorily explain all evictions and that this information should be regularly reviewed and monitored with a view of addressing identified gaps and issues.

ALSWA recommended the scope of the new housing legislation be extended to:

1. Include the principles and international instruments noted above in the introduction / objectives of the legislation.
2. Set out funding arrangements with State and Territory governments and service providers and develop, in consultation with Aboriginal peoples, guidelines as to how the funds are spent.
3. Create a Central Commonwealth Government Agency which is responsible for administering the Act, providing guidance, support and expertise for homelessness service providers including training, networking and collaborative project opportunities and to encourage and foster research and innovation in the homelessness sector. We recommend that within this agency, a special unit for Aboriginal homelessness issues be developed. We note that although a National Council on Homelessness has recently been created, our submission is that this agency be in addition to the Council.
4. Provide accessible and culturally appropriate dispute resolution services, which provide remedies for clients of homelessness service providers who are unhappy with decisions made.
5. Set out minimum standards (including monitoring and evaluation) that are required for homelessness service providers to administer homelessness housing programs.
6. Provide legislative funding and entrenchment for Aboriginal specific homelessness service providers that cover metropolitan, regional and remote areas of each State and Territory and provide opportunities for these providers to work in collaboration with each other to encourage culturally appropriate housing options for Aboriginal peoples.

ALSWA recommended that the development of any homelessness legislation consider recent changes regarding housing management and the specific measures that are currently being taken to address overcrowding and poor housing standards in regional and remote Western Australia.³

ALSWA then highlighted some of the issues with the current housing regime in Western Australia that has involved poor relations and lack of communication between service providers and Aboriginal peoples and how this often leads to evictions and homelessness.

ALSWA then referred to the lack of housing advocacy bodies in Western Australia who are resources to provide expert legal advice or write submissions about Aboriginal housing issues, including homelessness.

³ *Aboriginal Affairs Planning Authority Act 1972 (WA)*, the *Residential Tenancies Act 1987 (WA)*, the *Housing Act 1980 (WA)*, the *Residential Tenancies Act 1987 (WA)* and the *Native Title Act 1995 (Cth)*

ALSWA finally recommended in the submission that consideration be given to create and fund a peak Aboriginal housing advocacy body, either centrally or one for each State and Territory, so that the special needs of Aboriginal peoples are met and considered in relation to housing and homelessness. This body will provide expert advice to individuals, organisations and service providers in relation to housing for Aboriginal peoples.

3.4 Improved mechanisms for police complaints

UNHRC Comment [at para. 21]:

The Committee expresses concern at reports of excessive use of force by law enforcement officials against groups, such as indigenous people, racial minorities, persons with disabilities, as well as young people; and regrets that the investigations of allegations of police misconduct are carried out by the police itself. The Committee is concerned by reports of the excessive use of the electro-muscular disruption devices (EMDs) "TASERs" by police forces in certain Australian states and territories. (arts. 6 and 7)

UNHRC Recommendation:

The State party should take firm measures to eradicate all forms of excessive use of force by law enforcement officials. It should in particular: (a) establish a mechanism to carry out independent investigations of complaints concerning excessive use of force by law enforcement officials; (b) initiate proceedings against alleged perpetrators; (c) increase its efforts to provide training to law enforcement officers with regard to excessive use of force, as well as on the principle of proportionality when using force; (d) ensure that restraint devices, including TASERs, are only used in situations where greater or lethal force would otherwise have been justified; (e) bring its legislative provisions and policies for the use of force into line with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and (e) provide adequate reparation to the victims.

ALSWA is extremely concerned by the excessive use of force used by the police and transit guards against Aboriginal peoples in Western Australia, and the lack of an effective mechanism to carry out independent investigations of complaints about police.

In February 2007 ALSWA made a submission in relation to the police complaints process, which stated "the police complaints process is overwhelmingly ineffective in identifying and rectifying problems." The submission outlined ALSWA's grave concerns about the lack of procedural fairness in the current model of police investigating police. ALSWA referred at length to the Royal Commission into Aboriginal Deaths in Custody and its many recommendations that have still not been implemented.

ALSWA made the following recommendations:

1. That the Local Complaint Resolution process be retained on the condition that its procedure and implementation is thoroughly reviewed by the Ombudsman's office.
2. That the Ombudsman be notified of all police complaints.
3. That the Crime and Corruption Commission be split into two independent bodies
4. That an Aboriginal Complaints Unit be implemented within the Ombudsman office

5. That all changes to the police complaints handling process should follow the principles defined in Recommendation 226 of the Royal Commission into Aboriginal Deaths in Custody, which included:

That complaints against police should be made to, be investigated by or on behalf of and adjudicated upon by a body or bodies totally independent of Police Services.

A copy of ALSWA's submission on the Police Complaint Process is **attached** as **Annexure 5**.

ALSWA has also repeatedly called for a review of taser gun usage in Western Australia and for an immediate ban on their use after several alarming incidents involving the use of tasers against Aboriginal peoples.

3.5 Improved treatment of juveniles in the justice system

UNHRC Comment [at para. 24]:

The Committee express concern at the notable gaps in the protection of children and juveniles in the criminal justice system, and that children and juveniles can be detained in adult facilities or held in immigration detention facilities, where they are sometimes subject to abuse. (arts. 9, 14 and 24)

UNHRC Recommendation:

The State party should ensure that children in conflict with the law, including those in detention, are treated in consistence with the Covenant and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The State party should implement the recommendations of the Human Rights and Equal Opportunity Commission in this regard. The situation of children in detention should be addressed within the State party's proposed new child protection framework.

The disparate treatment of juvenile Aboriginal peoples in Western Australia is disturbing. These disparities are illustrated through examples of Aboriginal juveniles placed in adult custody in remote areas, and the increasing overrepresentation of young Aboriginal people in the Western Australian juvenile justice system more generally. This overrepresentation is often based on the failure of the police to use their discretion to issue cautions or refer young Aboriginal peoples to the Juvenile Justice Team (JJT) as a diversionary mechanism from the court system.

A recent example of this treatment of young Aboriginal peoples in Western Australia is the 12 year old boy who was criminally charged with receiving a stolen freddo frog to the value of 70 cents and novelty sign to the value of about two dollars. The police failed to divert this young boy from the criminal justice system by charging him with an offence and requiring him to appear in the Children's Court. ALSWA described this treatment of the young boy as scandalous. Police have responded to this criticism and negative media attention by dropping the charges and referring the boy to the JJT. The case demonstrates that police are more interested in their public perception than the well-being and future of a young Aboriginal boy who allegedly received confectionary from a friend to the value of a couple of dollars.

ALSWA made a comprehensive submission on the Overrepresentation of Young Aboriginal people in the Western Australian Juvenile Justice system in January 2008.

The submission outlined the unnecessary arrest of young Aboriginal people, issues concerning bail, remand of juveniles in country areas and juveniles being detained for non imprisonable offences. ALSWA provided a list of 26 recommendations for the Western Australian Government to take action to address these issues. None of these recommendations have been acted upon.

A copy of ALSWA's submission is **attached** as **Annexure 6**.

ALSWA made the following recommendations in its submission:

Recommendation 1

A Police Cautioning and Youth Diversion Pilot Project should be implemented in WA similar to that which has been implemented in Victoria. Extensive consultation with the Aboriginal community and relevant stakeholders should be done on a state-wide basis to develop a WA version of the Pilot Project.

Recommendation 2

An extensive session on diversionary options for young people should be reinstated as a compulsory part of police training. The instruction provided at police training level should involve the Western Australian Police Service and JJT. Input from other related agencies such as ALSWA should also be invited.

Recommendation 3

The Western Australian Police Service should be adequately resourced so as to make participation in the JJT process a priority. In regional areas, particular consideration should be given to issuing a specialized police officer to the JJT's.

Recommendation 4

The Outcome Based Management framework of WA Police Service be changed so that the number of juveniles diverted from the criminal justice system is inserted as a main performance indicator for Outcome 2.

Recommendation 5

Section 29 of the Young Offenders Act 1994 should be amended to provide that, subject to the young person's consent and acceptance of responsibility for the offence, a police officer must refer a young person to a JJT for a non-scheduled offence if the young person has not previously offended against the law.

This section only applies if the police officer has first determined that it is not appropriate to take no action or to administer a caution pursuant to a s22B of the *Young Offenders Act 1994 (WA)*

Recommendation 6

The categories of offences in Schedule 1 and Schedule 2 of the *Young Offenders Act 1994 (WA)* be changed to enhance the availability of the police cautioning option and diversion to JJT's. The following offences should be removed:

Schedule 1

Criminal Code

s.317A – Assault with intent to resist or prevent arrest or detention

Misuse of Drug Act 1981

s.6(1)(a) – Having in possession drug with intent to sell or supply it to another

s.6(1)(c) – selling or supplying, or offering to sell or supply drug to another

s.7(1)(a) – Having in possession or cultivating prohibited plant with intent to sell or supply it, or drug obtainable there from, to another

s.7(1)(b) – Selling or supplying, or offering to sell or supply, prohibited plant to another

Road Traffic Act 1974

s.49 – driving without the appropriate license
s.60 – Reckless driving

Schedule 2
Criminal Code
s.444 – Criminal damage

Recommendation 7

The JJT Aboriginal support workers should be employed on a full time basis.

Recommendation 8

A JJT Aboriginal support worker should be employed at each Regional Community Justice Services office in WA on a full time basis.

Recommendation 9

The State government should fund an independent consultant to complete a statewide evidence based evaluation of services that exist whose primary function is to assist young people.

Recommendation 10

That JJT's should be funded to run appropriate programs as identified through consultation with JJT staff, Aboriginal and non-Aboriginal clients and other relevant stakeholders. ALSWA recommends that the development of these programs be done by community development workers who are employed as part of JJT.

Recommendation 11

Section 42 of the *Young Offenders Act 1994* should be amended to provide that if the issuing of a caution or referral to JJT is inappropriate then a notice to attend court should be given and that arrest should be the option of last resort.

Recommendation 12

The *Young Offenders Act 1994* should be amended to provide that children aged 12 years and under cannot be remanded in custody unless police can demonstrate exceptional circumstances as to why the child is not granted bail.

Recommendation 13

The *Bail Act 1982* (WA) Sch 1, Pt C, cl 2 should be amended to provide that bail must not be refused on the sole ground that the child does not have any or, any adequate, accommodation or that a responsible adult cannot be located.

Recommendation 14

The State government should hold a forum with all relevant government and non-government agencies with the objective of developing a state-side interagency policy on how to best provide bail assistance to young people.

Recommendation 15

All regional and remote Aboriginal communities should have adequate technologies to facilitate telephone conferencing and video link up with the nearest regional centre. The Cops Manual should be amended to provide that in remote communities the police officer must consider the accused's case for bail in the community where the arrest took place. If the officer does not have the power to grant the accused bail they should use video linkup to bring the accused before an authorized officer who shall consider the accused's case for bail as soon as practicable.

Recommendation 16

The *Bail Act* should be amended to provide that where an adult or child has been refused bail by police, JP or authorized community services officer or the accused is unable to meet the bail conditions of bail that have been set, the accused is entitled to apply to a magistrate for bail by telephone application if he or she could not otherwise be brought before the court (either in person or by video or audio link) by 4.00pm the following day.

Recommendation 17

Legislation should be introduced in WA that allows the appointment of Bail Justices similar to that outlined in s 120 of the *Magistrates' Court Act 1977* (NSW).

Recommendation 18

The practice of issuing curfew as a bail condition to young people should be reviewed by both the Courts and the Police and other alternatives should be considered.

Recommendation 19

The administrative process by which police records are updated when bail conditions are changed by the courts should be reviewed and improved.

Recommendation 20

The *Bail Act* should be amended to include that Part C 3A of the Act does not apply to young people.

Recommendation 21

The allocation and expenditure of funds allocated to police for the purpose of transporting juveniles from country areas should be reviewed.

Recommendation 22

The Commissioner for Children and Young People should investigate and review the transportation and lockup conditions of young people from country areas on an annual basis.

Recommendation 23

The State Government should initiate and resource policy with a similar operational framework to the Young People in Northbridge Policy (not including the curfew) that aims to keep young people out of the juvenile justice system. The development of such policy should occur on a statewide basis and should be developed in full consultation with the local community and the relevant local government and non-government agencies.

Recommendation 24

The Children's Court policy on early listing should be reviewed. The impact that it has on young people from regional and remote areas should be particularly investigated.

Recommendation 25

The time frame, mode of transport and conditions of transport for young people being taken from country areas to Rangeview Remand Centre needs urgent review. Improved procedures should be implemented as identified through consultation with the police, ALSWA, Aboriginal Visitor Services and the young people transported.

Recommendation 26

Legislation should be amended so that young people cannot be remanded for non-imprisonable offences.

3.6 Access to justice

UNHRC Comment [at para. 25]:

The Committee notes with concern the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens. (arts. 2 and 14)

UNHRC Recommendation:

The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people,

including indigenous people and aliens. The State party should provide adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.

ALSWA made a submission to the Australian Government Senate Standing Committee on Legal and Constitutional Affairs inquiry into Access to Justice in July 2009. ALSWA noted that previous inquiries⁴ have explored the issue of access to justice and made recommendations regarding the provision of legal services for Aboriginal peoples, including that funding for these services are increased.

ALSWA's recent submission highlighted that the main issue of underfunding has not changed. The funding of ALSWA has not been increased to match the rising demand for its services and is now even more inadequate than in the past. ALSWA suggested that "[t]he need for additional funding of ATSILS is critical and should be one of the highest priorities of the Australian Government."

ALSWA made the following recommendations in its submission:

ALSWA urges the Committee to recognise the special role of court officers in providing accessible legal representation and to consider additional funding for court officer positions as a strategy to ensure access to justice for Aboriginal peoples.

The Inquiry should consider ways of increasing the availability of the number of university enrolment places for Aboriginal students in law school programs throughout Australia.

Additional funding should be made available to ATSILS to provide supportive professional pathways for Aboriginal law students and graduates.

An interpreter service for Aboriginal peoples should be supported to enable Aboriginal people to access and participate in the legal system on an equal footing with other Australians.

Funding should be made available to ATSILS to provide civil, human rights and family law services in regional and remote areas, based on the real costs associated with providing a high quality legal service.

Funding should be provided to appropriately remunerate staff working in regional and remote areas.

ALSWA urges the Inquiry to consider how the Aboriginal community courts model may be developed more fully as an alternative to the mainstream legal system and consider how fully this might increase Aboriginal access to justice.

Funding of ASTILS must at minimum, be on parity with mainstream legal aid services so as to provide substantive equality and ensure access to justice for Aboriginal people.

Consideration be given to ensuring that principles and strategies are identified to ensure that Aboriginal women are able to access justice from a range of culturally appropriate legal service providers covering a range of areas of law (in addition to family violence and family law).

A copy of ALSWA's submission on Access to Justice is **attached as Annexure 7**.

⁴ The Senate Legal and Constitutional Affairs Committee's *Inquiry into Access to Justice and Legal Aid* in June 2004, and the Joint Committee of Public Accounts and Audit's *Inquiry into Access of Indigenous Australians to Legal Services* in June 2005.

4. Other comments and recommendations

ALSWA notes that a number of other issues that were raised by the UNHRC in its Concluding Observations that impact on the work of ALSWA and are important to the broad protection and promotion of human rights for all Australians. In particular ALSWA is concerned about the lack of a comprehensive legal framework for the protection of human rights (at para. 8), the suspension of the *Racial Discrimination Act* 1995 and measures contained in the Northern Territory Emergency Response (NTER) (at para. , the disturbing levels of domestic violence in Australia (at para. 17), and the need for improved education about human rights in Australia (at para. 27).

The recent National Human Rights Consultation has now furnished a report on its findings to the Australian Government, including the adoption of a national Human Rights Act. ALSWA carried out a number of activities to promote and participate in the consultation by conducting workshops for Aboriginal peoples to ensure their participation in the consultation, and writing a joint submission with other ATSILS.

The submission stated:

“ATSILS support the adoption of a Commonwealth Human Rights Act that is binding on all States and Territories. However, it is important to recognise that this model, as opposed to Constitutional reform, is vulnerable to the whims of successive governments such as the recent suspension of the Racial Discrimination Act (RDA) in the Northern Territory (NT) in order to enact the NT Emergency Response legislation (NTER). In the future, serious consideration needs to be given to constitutional reform.

If a Human Rights Act is adopted, the Act should provide for a preamble or some other special acknowledgment of Aboriginal and Torres Strait Islander peoples as the First Nations peoples of Australia. In determining how this acknowledgement is worded and to ensure that the Act adequately protects Aboriginal and Torres Strait Islander people, Aboriginal and Torres Strait Islander individuals and organisations must be sufficiently consulted in ways that are culturally appropriate and accessible to the most disadvantaged and remote sections of the Aboriginal and Torres Strait Islander community.”

ALSWA supports the adoption of a national Human Rights Act as an important step in improving a culture of respect and understanding of human rights in Australia, increasing government accountability and ensuring there are adequate remedies for breaches of human rights. ALSWA recommends that any proposed Human Rights Act be the subject of ongoing consultation, particularly with Aboriginal peoples to ensure the appropriateness of any model that is ultimately adopted.

ALSWA recommends another important measure to protect the rights of Aboriginal peoples be through more effective implementation of the Declaration on the Rights of Indigenous Peoples.

ALSWA supports the UNHRC recommendation in relation to the NTER measures to make it consistent with the *Racial Discrimination Act* 1995 and the ICCPR. ALSWA recommends the Australian Government immediately reinstate the *Racial Discrimination Act* 1995. ALSWA further recommends the Constitution be amended so that the ‘Race Power’ may only be used to the benefit, and not to the detriment, of persons of a particular race to ensure greater protection from racial discrimination.

ALSWA supports the UNHRC recommendation that efforts should be strengthened to eliminate violence against Aboriginal women. ALSWA recommends that increased funding for ATSILS and Family Violence Prevention Legal Services to provide education and other services to Aboriginal women who are experiencing domestic or other types of violence.

ALSWA supports the recommendations made in the Human Rights Consultation Report in regards to improving education about human rights.

5. Conclusion

This submission has demonstrated the ongoing work and commitment of ALSWA to protect and promote the rights of Aboriginal peoples, who as a group are recognised by the UNHRC as requiring improved measures by the Australian Government to address inequalities Aboriginal peoples face in many aspects of life, including the justice system.

ALSWA has unique expertise and experience in understanding these issues from the provision of culturally appropriate legal services to Aboriginal peoples in Western Australia for more than 30 years. ALSWA provides these services through representation in and out of court, and draws on this expertise to make submissions about how to improve the experience of Aboriginal peoples in the justice system and ensure their rights are protected.

It is with great frustration that ALSWA refers to the above mentioned existing submissions and recommendations for the state and federal governments. If implemented, our advice would improve the situation of Aboriginal peoples in Western Australia.

Governments at both state and federal level have not been acting on recommendations that ALSWA has made and continues to make in regards to the human rights of Aboriginal peoples. ALSWA urges the Australian Government act now to implement these recommendations, which would lead to an improvement of Australia's compliance with its obligations under the ICCPR.

ALSWA appreciates the invitation of the Australian Government to comment on the observations and recommendations made by the UNHRC and hopes this will lead to a more positive collaboration in addressing human rights issues in the future.

6. List of Annexures

1	Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, Australian Human Rights Commission, Comments on the Government's discussion paper – possible housing and infrastructure native title amendments, see Appendix A: 'Principles that Constitute Genuine Consultation.'
2	ALSWA submission in relation to a National Indigenous Representative Body (2008)
3	ALSWA submission, 'After the Removal', to the National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from their Families (1996) – summary list of recommendations
4	ALSWA submission in relation to the House Standing Committee on Family, Community, Housing and Youth Inquiry into homelessness legislation (August 2009)
5	ALSWA submission on the Police Complaint Process (February 2007)
6	ALSWA submission on the Overrepresentation of Young Aboriginal people in the Western Australian Juvenile Justice System (January 2008)
7	ALSWA submission to the Australian Government Senate Standing Committee on Legal and Constitutional Affairs inquiry into Access to Justice (July 2009)