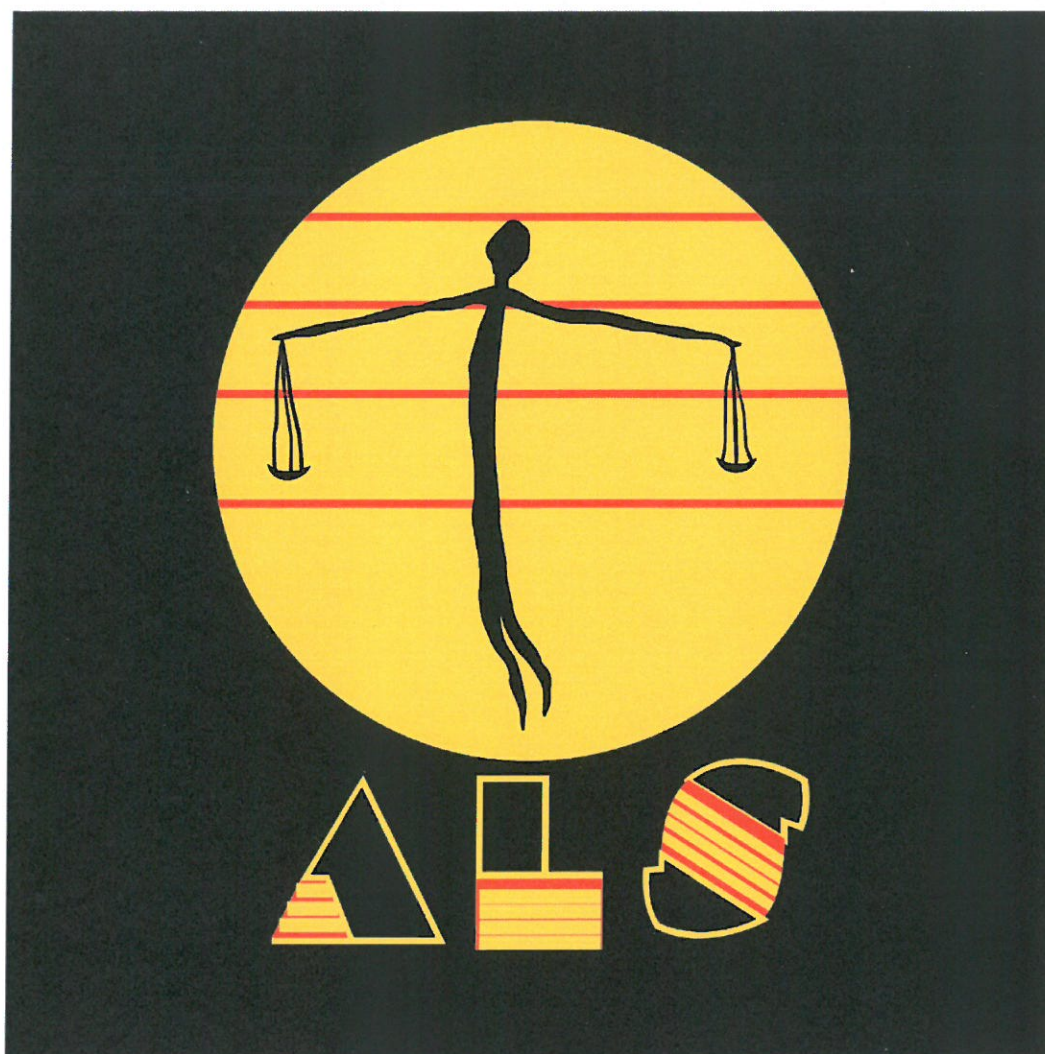


Aboriginal Legal Service of Western Australia Limited



Submission to the Australian Law Reform Commission's Consultation Paper
on *Judicial Impartiality* April 2021

25 June 2021

ABOUT THE ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA

The Aboriginal Legal Service of WA Limited (ALSWA) is a not-for-profit organisation which provides legal representation and support services for Aboriginal and Torres Strait Islander Peoples in Western Australia. ALSWA plays a vital role within Western Australia's justice system, working in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of Western Australia's First Peoples. ALSWA is governed by a Board of Directors who are all Aboriginal people.

Established in 1975, ALSWA has been striving for justice for First Nations Peoples for over 45 years. ALSWA is proud of its long history in striving for justice and is guided by the principles of Human Rights, Lore, Leadership, Integrity, Diversity and Unity. The growth and development of ALSWA would not have been possible without the commitment and dedication of countless community members and supporters since the late 1960's. ALSWA remains indebted to the tireless work of the Justice Committee of the New Era Aboriginal Fellowship Inc during this time.

BACKGROUND – SCOPE OF THE REFERENCE

The Australian Law Reform Commission (ALRC) Consultation Paper sets out 25 consultation questions in relation to issues arising in the Commonwealth's judiciary and courts. This submission very briefly addresses three issues which ALSWA considers impact significantly upon judicial impartiality for matters involving Aboriginal and Torres Strait Islander people.

ALSWA'S SUBMISSION

Consultation Proposal 14: "The Australian Government should commit to a more transparent process for appointing federal judicial officers that involves a call for expressions of interest, publication of criteria for appointment, and explicitly aims for a suitably-qualified pool of candidates who reflect the diversity of the community."

ALSWA agrees with this proposal and also submits that an essential precondition for appointment should be demonstrated experience, knowledge and/or understanding of Aboriginal culture and Aboriginal history. Experience of Aboriginal and Torres Strait Islander people in the legal system should be highly desirable.

Consultation Proposal 18: "Each Commonwealth court (excluding the High Court) should circulate annually a list of core judicial education courses or other training that judges are encouraged to attend at specified stages of their judicial career, and ensure sufficient time is set aside for judges to attend them. Core courses in the early stages of every judicial career should comprehensively cover (i) the psychology of decision-making, (ii) diversity, intersectionality, and comprehensive cultural competency, and, specifically (iii) cultural competency in relation to Aboriginal and Torres Strait Islander peoples."

ALSWA agrees with this proposal. ALSWA considers that Aboriginal and Torres Strait Islander cultural competency training for judicial officers is essential and must be delivered by Aboriginal people, communities and organisations. It should be comprehensive and regular and must be trauma-informed. Such training must be for a sufficient length of time to ensure that attendees can be immersed into the course and gain a full understanding of all relevant issues that are likely to impact on their judicial role. For example, judicial officers dealing with family law matters will need more specific training about how Aboriginal culture impacts family decision making and responsibilities and the importance of ongoing connection to culture, community and country.

Consultation Proposal 23: "Commonwealth courts should introduce methodologically sound processes to seek structured feedback from court users, including litigants and practitioners, about their satisfaction with the court process, in a way that allows any concerns about experiences of a lack of judicial impartiality to be raised."

ALSWA also agrees with this Proposal and highlights that any process developed to obtain feedback from litigants needs to be accessible and appropriate for Aboriginal and Torres Strait Islander people. Consideration should be given to enabling practitioners or other support persons to assist Aboriginal and Torres Strait Islander litigants to provide their feedback including the provision of interpreters for people who speak English as a second or subsequent language. Processes should be considered which facilitate verbal rather than written feedback if preferred.



Peter Collins
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