



**Aboriginal Legal Service of Western Australia Limited
Submission to the Standing Committee on Legislation: Inquiry
into the Criminal Procedures Amendment (Trial by Judge Alone)
Bill 2017**

About the Aboriginal Legal Service of Western Australia Limited (ALSWA)

ALSWA is a community-based organisation which was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout Western Australia.

ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples¹ throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the First Peoples of Australia;
- Ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators; and
- Create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

¹ In this submission, ALSWA uses the term 'Aboriginal peoples' to refer to Aboriginal and Torres Strait Islander peoples.

ALSWA is a public company limited by guarantee and is governed by an Aboriginal board. The board consists of five elected directors and two co-opted directors who commit time, cultural and business expertise to provide leadership and governance. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law and human rights law. ALSWA also provides support services to prisoners and incarcerated juveniles. Our services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth.

Submission

The Standing Committee on Legislation is inquiring into the *Criminal Procedure Amendment (Trial by Judge Alone) Bill 2017* (the Bill). The Bill amends s 118 of the *Criminal Procedure Act 2004* (WA). The proposed amendments will provide accused persons with a right to a trial by judge alone subject to the proviso that the court may refuse to make an order for a trial by judge alone if the court is satisfied that such an order is not in the interests of justice. Importantly, the proposed reforms retain the current provision that, upon an application by the prosecution, such an order cannot be made without the consent of the accused.

ALSWA supports the proposed reforms because they provide stronger protections for accused to choose between a trial by judge alone and a trial by jury. This is important to ensure that accused have access to a fair trial and the perception of a fair trial. Having said that, ALSWA does not expect that the number of trials by judge alone will increase substantially. As far as ALSWA is aware, this service has not been involved in any cases where a court has refused an application by an accused for a trial by judge alone.

Given the historical significance of jury trials, the proposed reforms (if implemented) should be reviewed after a period of between three to five years to determine if there are any unintended consequences, such as an erosion of trial by jury in practice or a lack of confidence in the justice system.

ALSWA does not wish to provide evidence to inquiry.


Peter Collins
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