

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

21 April 2009

Dear Committee Members,

Aboriginal Women's Access to Justice

Aboriginal women's legal needs as victims of family violence is recognised by the Commonwealth Attorney General's (AG) Department through the funding of 31 Family Violence Prevention Legal Services (FVPLS) throughout Australia. These services are located solely in remote and regional Australia, as it has been determined by the AG's that Aboriginal women living in urban areas can access mainstream services and therefore do not have the same needs as Aboriginal women in remote and regional Australia. This reasoning is flawed as it fails to acknowledge that mainstream services are often not accessible to Aboriginal women, in that they fail to adopt policies and practices that ensure equitable access by Aboriginal women. While some Women's Law Services may be working well with Aboriginal women, others have little or no relationship and Aboriginal women in need of legal assistance may not even know of their existence.

In light of the exceedingly high rate of family violence (including homicide) experienced by Aboriginal women (See *'Risk factors in Indigenous violent victimisation'*, by Colleen Bryant and Matthew Willis, Canberra: Australian Institute of Criminology, 2008) and the high population of Aboriginal in city areas, the AG's should reverse its decision not to fund the establishment of FVPLS in the Australian capital cities. The decision not to locate services in city areas also negates the very important role that the services are acknowledged to undertake, that is, to ensure strong leadership against family violence in Aboriginal communities. We also need to

see this strong leadership and stand against violence within the highly populated city areas. The Government's recent commitment to a National Plan of Action against violence to women must ensure that all Aboriginal women receive appropriate legal support and assistance, and that leadership against violence is promoted in all regions.

Furthermore, it is of concern to note the recent trend of the funding body to allow the Aboriginal and Torres Strait Islander Legal Services (ATSIL's) to auspice the FVPLS under their umbrella organisation. While some services such as the Aboriginal Legal Rights Movement (ALRM) of South Australia have in place protocols to ensure that victims are not unduly disadvantaged and re-victimised through the court processes, others have not considered such measures at all and indeed, have taken very adversarial legal attitude against Aboriginal victims. Although the AG's FVPLS Operational Framework (2006 at p21) provides that special care must be taken where a service is auspiced by an Aboriginal Legal Service provider to ensure that no conflict of interest exists, and that advice should be taken from State or Territory Law Societies, it is unclear whether such advice is even being obtained.

The Aboriginal Legal Services have come to be recognised through their priority of criminal matters as defendant oriented (or perpetrator focussed) and consequently many Aboriginal women who have been victims of violence will not confidently feel that they could access a service located under the ALS umbrella. Although the auspice body for an FVPLS is required to ensure that no member is associated with family violence, it is not clear that ALS's have such policies in place. In 2007 a board member of the WA Aboriginal Legal Service upon being charged with indecent dealing was not required to stand down from the board pending the court case but was instead actively supported by the organisation (receiving priority legal representation). Please find attached confidential notes I made in 2008 in relation to these concerns.

Also, in West Australia, the police taskforce into child sexual abuse in the Kimberly area (and resulting in over 600 charges) has been publicly attacked through the media by the WA Aboriginal Legal Service who now auspice several of the FVPLS. The question needs to be asked: How can the Kimberly victims of child sexual assault confidently access the FVPLS while knowing that the parent organisation (the

WAALS) has acted against their interests in both the court, the Aboriginal community and wider public arena?

Some FVPLS's, such as Broome (which is now under the Aboriginal Legal Service umbrella), currently employ no women solicitors. This is highly problematic in view of the traditional Aboriginal culture and separation of genders, and particularly the notion of 'shame' that is strongly associated with sexual abuse. Overwhelmingly the victims of family violence are women and girls and a lack of women lawyers can mean that the services are inaccessible to victims. Similarly, the increasing employment of Aboriginal men in the service co-ordinator role also raises issues of gender and accessibility.

Aboriginal women's distinct legal needs were recognised by the Australian Law Reform Commission in their 1994 Inquiry *'Equality Before the Law: Justice for Women'*. The importance of separate legal services staffed and managed by Aboriginal and Torres Strait Islander women, with support from the communities intended to be served, was fully recognised through the recommendations of the ALRC. It is disconcerting that these important findings and recommendations are seemingly not being acknowledged today in the service delivery of the FVPLS. Family Violence Prevention Legal Services are critical services that should not be compromised by service delivery models that impede access to justice by Aboriginal women, children and young people who are overwhelmingly represented as victims of family violence.

Yours sincerely,

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