

29 May 2009

The Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Sir / Madam,

### **Access to Justice Inquiry**

Women's Legal Services Australia (WLSA) welcomes the invitation to provide a submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into Access to Justice. Thank you for the extension of time to make submissions.

WLSA is a network of the National Association of Community Legal Centres (NACLC) and is made up of community legal centres specialising in women's legal issues. We represent women in every state and territory in Australia – in cities, regional centres, rural and remote areas.

WLSA members regularly provide advice, information, casework and legal education to women on a wide range of legal issues. A large proportion of our work is in the area of family law. We have a particular interest in ensuring that disadvantaged women, such as those from culturally and linguistically diverse backgrounds, Indigenous women, women with disabilities and rural women are not further disadvantaged in the process of negotiating the legal system.

We commend the Australian Legal Assistance Forum's submission to the Committee. We share the concerns raised in this submission, and highlight the critical need for further funding for legal assistance organisations to continue to provide existing services, and in order to meet unmet and increasing demand.

### **Aboriginal women's legal services**

There is particular need for legal services for Aboriginal women that are appropriate and accessible. Fundamental to any such service, is the need to ensure that Aboriginal women are centrally involved in the development, implementation, delivery and management of those services. Community based services run by Aboriginal women can ensure that this is achieved, as well as ensuring that Aboriginal women's perspectives are heard in consultations and policy development, providing women with access to advocacy resources as well as direct legal services.

WLSA recommends the expansion of the Family Violence Prevention Legal Services to the metropolitan and suburban areas of Australia, to complement the existing services in remote and regional Australia, or the creation of alternate funding for Aboriginal Women's Legal Services. This is of critical importance in cities where there is no Aboriginal women's legal service or program funded. Aboriginal women in the Perth metropolitan region have been without a dedicated legal service for the past decade, and Aboriginal women in Perth have raised this as a crucial service which needs to be funded. Similarly, there is a need for an Aboriginal Women's Legal Centre in Canberra.

The Aboriginal Legal Service is currently auspicing some FVPLS in Western Australia. WLSA does not support this auspicing model, as it does not ensure that the services are appropriate for Aboriginal women. The Aboriginal Legal Service has adopted a key focus on criminal law services, and as a result is defendant oriented in legal practice and organisational culture. This is in direct conflict with the aims of the FVPLS, which are to focus on the victims/survivors of domestic and family violence and sexual assault. The establishment of the FVPLS program was in part to address the specific legal needs of Aboriginal women, which were not being met by the Aboriginal Legal Service. To ensure that Aboriginal women have access to justice, the FVPLS and other Aboriginal women's legal services should be funded to be run by Aboriginal women.

**Recommendations:**

1. Aboriginal women's legal services should be appropriate, accessible and run by Aboriginal women
2. Expand Family Violence Prevention Legal Services to metropolitan and suburban areas
3. Dedicated Aboriginal women's legal services or programs should be funded in every state and territory
4. Family Violence Prevention Legal Services should not be auspiced by Aboriginal Legal Services

**Funding for Community legal centres**

Community legal centres have consistently demonstrated cost effective provision of high quality legal services. Centres have achieved these efficiencies through the use of a wide range of volunteers, which furthers the centres' aims of social inclusion and community connection.

However, community legal centres have faced rising costs for some time, and this has not been matched with increases in funding. The Australian Services Union has called for a 30% increase in funding for wages, across the community sector, having identified that the sector faces a sustainability crisis without further recurrent funding.

There remains much unmet legal need in Australia. Many people are proceeding through Courts, particularly the Family Court, without representation, not from an active choice to self represent, but because of a lack of available affordable representation. Other people opt to settle matters on unjust and potentially unsafe terms, to avoid proceeding to Court without representation. In Family Law matters this involves the unacceptable risk that women and children will be placed in situations at risk of violence or abuse.

The predicted economic downturn is set to significantly increase the demand for community legal services. Given the holistic and community development approach adopted by community legal centres, additional funding for community legal services will address not only unmet legal need, but also the government's priority concern for social inclusion.

**Recommendations:**

5. Increase funding to community legal centres

**Funding for civil matters**

There is very limited legal assistance available for civil matters. While some civil matters may result in compensation, and the possibility of deferred payment for private legal services, many civil matters seek other remedies, which are central to people's wellbeing. These priority matters include welfare rights matters, and discrimination at work (where a worker seeks to retain employment, rather than compensation). We urge that additional funding be provided for priority civil areas of law, to increase access to justice in these areas.

**Recommendations:**

6. Provide additional funding for priority civil areas of law

**Court proceedings and legislation**

Court proceedings, particularly in family law, are very lengthy. Matters frequently take over 18 months for final orders to be made. This length of time before the courts exacerbates already difficult situations for vulnerable families. This too is a factor which contributes to parents settling matters in unjust or unsafe terms, in order to have some finality. This is a significant barrier to access to justice.

Much Australian legislation is currently in complex, legalistic language. This means that it is largely inaccessible for many people in our community. We urge the government to adopt plain English drafting and simple structures for legislation, particularly for those Acts which effect people's daily lives – such as family law. Examples of plain English legislation can be seen in New Zealand's approach to restraining order legislation.

**Recommendations:**

7. Steps should be taken to reduce lengthy court procedures
8. Plain English drafting and simple structures should be used in legislation

If you would like to discuss any aspect of this submission, please contact Kate Davis at the Women's Law Centre of WA on (08) 9272 8800 or [kate@wlcwa.org.au](mailto:kate@wlcwa.org.au) or WLSA's Law Reform Coordinator, Edwina MacDonald, on (02) 9749 7700 or [Edwina\\_MacDonald@clc.net.au](mailto:Edwina_MacDonald@clc.net.au).

Yours faithfully,

Kate Davis  
Committee Member