



Family Law | Pre Mediation Advice | Child Support
Domestic Violence | False Allegations | Discrimination

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Community
Service Awards
2001, 2002,
2003, 2005,
2006 & 2007

Friday 28th January, 2011.

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email to legcon.sen@aph.gov.au

Re: The Australian Law Reform Commission (ALRC)

Recently, this organization found itself involved in protesting the bias displayed by the ALRC when conducting an inquiry into *Family violence: Improving Legal Frameworks*.

According to the ALRC Collated Summary Paper,

"on 17 July 2009, the Attorney-General of Australia, the Hon Robert McClelland MP, asked the Australian Law Reform Commission (ALRC) to conduct an Inquiry together with the New South Wales Law Reform Commission (NSWLRC) into particular questions in relation to family violence that had arisen from the March 2009 report, Time for Action, produced by the National Council to Reduce Violence against Women and their Children (the National Council)."

The pre-planned consultation process effectively locked out men/fathers and their representatives from being included in the initial and ongoing inquiry. The 1000 page plus Consultation paper containing questions and options for reform was produced without any consultation with men's organisations. It was only after considerable complaint that the ALRC agreed to a token brief telephone conference with a number of men's representative. We note very little of our collective commentary appeared in the final report. The time allowed to respond to the 1000 pages was only 34 days!

The inquiry focused purely on violence against women and children, whilst ignoring the violence committed against men and children.

Many in the community are coming to understand the misinformation presented in relation to domestic/family violence has limited the publication of the evidence showing

one in three victims of domestic violence are male¹ and children are predominantly abused by their mothers/mother's boyfriends². Mothers kill more children than biological fathers³.

On 1st June 2010, a subscriber to MRA asked the ALRC why were men's rights groups not consulted in the process of preparing the material and was advised that the '*Terms of Reference for this Inquiry*' come directly from the Attorney General, and the ALRC is not able to address issues that fall outside these Terms.

The commentary contained in the Parliament Inquiry into the ALRC 1994, Summary & Recommendations would leave one to believe otherwise.

28. The independence and objectivity of the Commission is founded in part in its statutory nature, and in part in the independent management and operations of the Commission. There is no power for the Attorney-General to be involved in the formulation of reports and recommendations. Nor is there a power for the Attorney-General to direct the Commission in connection with the performance of its functions or exercise of its powers.

The Member for Banks, Mr Melham, who was Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs at the time of the previous Law Reform Commission of Australia inquiry, advised the House during the second-reading speeches about the similarities of the roles of both the Attorney General and the ALRC.

*"The Attorney-General is there to provide proper advice in relation to the existing law. The Attorney-General has really the same role and function as the Australian Law Reform Commission, which is there to keep us all honest and **not to pander to prejudice in the community or to the lowest common denominator, nor to advise politically or in a partisan fashion.** It is there to assist us as law-makers and to provide the Attorney-General with independent and proper advice."*(Hansard 21/8/96 p.3454)

The ALRC's and the Attorney General's obligations and statutory responsibilities have clearly become confused:

The ALRC in denying responsibility for the biased and discriminatory focus of the *Family violence: Improving Legal Frameworks* inquiry is by default accusing the

¹ www.oneinthree.com.au website – a site presenting accurate statistical information about the victims and perpetrators of family violence.

² Ward K., 2006 CCSS snapshot nat2006 dated 4 September 2006, *Relationship of child to persons believed responsible for substantiated maltreatment 2005-06*, West Australian Department of Children

³ Australian Institute of Criminology, 2006-07 National Homicide Monitoring Program 2006-07 Annual Report, <http://www.aic.gov.au/publications/current%20series/mr/1-20/01.aspx>

Attorney General of issuing strict instructions which have, according to the ALRC, prevented them from interfering. Yet, the implicit findings of the previous parliamentary inquiry into the ALRC 1994, 'Summary & Recommendations' clearly states that the AG is prevented from being involved in the formulation of reports and recommendations and he has no power to direct the commission in the performance of its functions or exercise of its powers.

So, who is in the wrong or are both colluding to produce a report that is blatantly biased and contravenes the requirements of UN Conventions, to which Australia subscribes.

In 1996, Mr McClelland as the Federal Member for Barton, before his ascendency to the position of Attorney General, clearly identified his belief that three overriding principles for the government in terms of the legal system exist.

"Firstly, all Australians should have equality before the law. Secondly, regardless of their place of residence, should have similar rights and privileges and thirdly, Australian should have equal access to legal services. (Hansard 21/8/96 p.3456)

Mr McClelland thought it important to comment on three other issues i.e

"complementary laws between the Commonwealth, the states and Territories; to have regard to such of Australia's international treaty obligations as are relevant; and to take into account the implications of its recommendations on lowering the cost of justice."

He also mentioned that...

"... the High Court (of Australia) recognizes that Australia is part of an international community and that what happens in that international community will affect the very fabric of our own society and infrastructure of laws itself. That is, in my opinion, a highly desirable eventuality and trend. It is one which I believe will continue, largely irrespective of which government is in power."

We contend the ALRC should not have accepted any inquiry that ignored a substantial part of the population and should have advised the Attorney General of the requirements to abide by the UN requirements.

Their failure to do so is a breach of their responsibilities and has compromised the integrity of the organization.

Before any further funding is allocated, serious questions must be asked and answered as to why this organization has lost its independence and has become a tool to be used

to provide false validation of recommendations that cannot be considered to be in the best interest of all Australians.

The email I sent to Professor Croucher, much of which is included above, is reproduced below. I still have not received a response to the critical issues I raised.

Kind regards

Sue Price

Director – Men’s Rights Agency

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Copy of email sent to Professor R. Croucher

Subject: ALRC family violence inquiry.

To: 'rosalind.croucher@alrc.gov.au'

Sent: Tue 2010-06-29 16:43

Professor Rosalind Croucher,
Australian Law Reform Commission

Re Family violence: Improving Legal Frameworks consultation.

Dear Prof. Croucher,

I appreciated the opportunity to express the opinions of the stakeholders in Men’s Rights Agency during the telephone link up with those representing men’s/father’s points of view and the ALRC.

As I mentioned, we had already decided to “boycott” the inquiry because it is blatantly discriminatory towards “men and their children”. We did not come to this decision lightly, but after observing the methods employed by various government and quasi-government bodies to inquire into family (legal and social) policy issues it seems pointless to continue participating in processes that are designed to come to predetermined conclusions. We have also concluded that not only is there no point, but by contributing to such inquiries, we are in fact enabling those charged with conducting inquiries to claim they have consulted widely with all interested parties if we do participate.

So you will understand our view that the process of consultation that took place with a select group prior to the publication of the ALRC Consultation paper is unacceptable, particularly when a considerable proportion of those who were consulted are focused on elevating the issue of domestic violence in family law in order to negate the efforts to allow children maximum access to both parents. The Consultation paper contained more than a thousand pages of, presumably, carefully considered proposals, formulated after your initial consultations which you then

expected the rest of the interested, but not yet consulted stakeholders, to respond to within a thirty-four day time frame.

As I pointed out during our telephone conversation I feel the duty of the ALRC should have been to advise the Attorney General that the 'reference' is manifestly biased towards women and will disadvantage men and their children, contrary to our international obligations under the treaties and conventions we have signed. I refer to the submission from Roger Smith for the detail.

I also cannot understand the advice provided to another person who sought to comment on the biased nature of the inquiry. Mr Cannock originally advised the ALRC that he would not complete his online submission due to its biased nature. He asked the question in an email dated 1st June 2010, "Why were not men's rights groups consulted in the process of preparing the material" and was advised that the Terms of Reference for this Inquiry come directly from the Attorney General, and the ALRC is not able to address issues that fall outside these Terms."

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The Member for Banks, Mr Melham, who was Chair of the House of Representatives Standing Committee on Legal and Constitutional Affairs at the time of the Law Reform Commission of Australia inquiry, advised the House during the second-reading speeches about the similarities of the roles of both the Attorney General and the ALRC.

"The Attorney-General is there to provide proper advice in relation to the existing law.

The Attorney-General has really the same role and function as the Australian Law Reform Commission, which is there to keep us all honest and not to pander to prejudice in the community or to the lowest common denominator, nor to advise politically or in a partisan fashion. It is there to assist us as law-makers and to provide the Attorney-General with independent and proper advice." (Hansard 21/8/96 p.3454)

It would appear the ALRC is charged with providing the Attorney General with correct legal advice. I would question why this did not occur as the Attorney General was clearly proposing an agenda which contravenes not only our international agreements, but the Australian notion of fairness and equality for all? I do not see anything in the legislation or the Parliamentary commentary to render the ALRC mute on providing such advice.

Mr McClelland as the Federal Member for Barton identified the three overriding principles for the government in terms of the legal system.

"Firstly, all Australians should have equality before the law. Secondly, regardless of their place of residence, should have similar rights and privileges and thirdly, Australian should have equal access to legal services. (Hansard 21/8/96 p.3456)

Mr McClelland also thought it important to comment on three other issues i.e *"complementary laws between the Commonwealth, the states and Territories; to have regard to such of Australia's*

international treaty obligations as are relevant; and to take into account the implications of its recommendations on lowering the cost of justice.”

He also mentioned that *“the High Court (of Australia) recognizes that Australia is part of an international community and that what happens in that international community will affect the very fabric of our own society and infrastructure of laws itself. That is, in my opinion, a highly desirable eventuality and trend. It is one which I believe will continue, largely irrespective of which government is in power.”*

The ALRC was and still is duty bound to remind the same Mr McClelland in his position as Attorney General that the views he expressed in 1996 are still relevant today

If the calls of the National Council to Reduce Violence against Women and their Children are acceded to, and legislation is initiated favouring women and their children, I suggest we will be in breach of our international obligations; costs of justice will rise as it is a well known fact few men/fathers are successful in gaining Legal Aid to defend a domestic violence allegation or even to prosecute their own application as a victim; any sense of justice being seen to be done will be lost as the longstanding principle upon which our system of justice is built i.e. “innocent until proven guilty” is ignored.

I have attached the submission we made to the Chisholm inquiry as I indicated I would. The content is relevant to this inquiry though not specifically written in response to the ALRC discussion paper.

I do hope that after all I have said, I will not read that the ALRC has consulted widely with all interested stakeholders. It seems to me that the consultation with ‘men’s groups’ only took place after the release of the consultation paper and at the urging of Greg Andresen and Micheal Woods.

Regards
Sue Price
Director
Men’s Rights Agency