

The Secretary
 Senate Select Committee
 Regional & Remote Indigenous Communities
 Parliament House
 CANBERRA ACT 2600

Dear Secretary

Re: Submission by Women's Legal Service (SA) Inc.

The following submission by the Women's Legal Service (SA) Inc (WLSSA) addresses a few of the many complex issues that are of importance and concern to our organization and to clients of our organisation.

Introduction

The Women's Legal Service SA Inc, (WLSSA) provides a free and confidential service to women in South Australia. WLSSA aims to empower women to achieve justice at an individual, community and political level. We recognize that women's legal problems occur in a context of social, political, cultural and economic disadvantage and that without a global perspective to redress the gross inequality and injustice faced by Aboriginal and/ or Torres Strait Islander women in rural and remote communities in particular any reforms will be short lived.

WLSSA believes in the right of all women to justice and equality before the law. We therefore practice in ways that understand and validates the experiences of women, value and accept women as individuals, promote safety and respect for women as individuals and empowers women to make choices and take control over their lives. In so doing, the legal issues that WLSSA addresses are those affecting women and children and include domestic and family violence, sexual assault, human rights, family law and care and protection of children. This philosophy sits well with our belief that self determination in Aboriginal communities is crucial to the well being of communities and society as a whole. Aboriginal communities have been impacted upon by colonization, oppression and the impact of the introduction of a Westminster system of government that is ostensibly hierarchical and patriarchal.

We are pleased to have this opportunity to make a submission to the "Senate Select Committee on Regional and Remote Indigenous Communities" because we believe that the lack of available legal resources for Indigenous communities and for Aboriginal women in particular is an area of utmost concern for us. We make this submission, knowing full well that the best people to ask and advise on the issues are those women in Aboriginal

communities themselves. We do however make a submission based on our work with Aboriginal women in very remote areas, as clients, co-workers, advice from our Indigenous Women's Subcommittee and Management Committee members, and work with Aboriginal women in rural and remote communities, particularly on the Anangu Pitjantjatjarra Yankunytjatjarra (APY) Lands (the Lands) in remote South Australia. It is this work on the Lands and our continued representation of clients from the Lands in domestic violence, sexual assault, victims of crime, family law and care and protection matters that prompts our response to the Senate Select Committee. Although time, workloads and other constraints do not allow us to present a detailed submission, and indeed do this submission justice, the WLSSA believes that a response must be given in relation to the most vulnerable of our clients. That is, vulnerable in terms of isolation, access to services and resources, education and health services, transport, shelter, amongst others, and including impact from government policies.

Women's Legal Service (SA) Inc is extremely concerned about the safety of and conditions facing Aboriginal women in the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Lands and this will remain the focus of our submission.

Our service has regular and ongoing contact with Aboriginal women of the NPY Lands and more particularly communities on the APY Lands of SA. We are contracted by the NPY Women's Council on a yearly basis to provide legal services to women. Through our collaborative work with the NPY Women's Council we provide community legal education (CLE), Magistrate's Court circuit attendance and legal representation to women on the Anangu Pitjantjatjarra Yankunytjatjarra (APY) Lands in very remote SA. Since June 2007 we have attended on the APY Lands for 5 separate weeks of community legal education sessions in conjunction with the NPY Women's Council Domestic Violence worker and the co-ordinator, and 7 court circuits, of a weeks duration. Women in the communities have voiced many of their concerns to us. We represent women from this remote area in Criminal Injuries Compensation (Victims of Crime) matters, children's issues (Family Law), assistance with Restraining Orders, and others.

This remote outreach to the Lands works well as a adjunct to our office in Adelaide and particularly, our Rural Women's Outreach Program from our Port Augusta office. There has been some migration from the Lands both on a temporary basis and to relocate. The reasons for this is that there has always been migration in the December / January period to Port Augusta from the Lands and a return as the school year commences. People who require medical treatment may move closer to hospitals or to be closer to family members incarcerated in the jails at Port Augusta or Adelaide, or they may be in a position where they must flee communities because of fear of violence or retaliation from family or other community members. Women have fled to the south from communities for protection or north to Alice Springs and other communities in the NT. Safe houses and protection of Police can not be taken for granted in communities. Police numbers are too low, distances are too great, transport is not available and safe houses and shelters do not exist.

The incarceration rates for Indigenous Australians are well known to be well above the rest of Australia on a per capita basis. We do not need to reiterate those rates. We do know that Indigenous women are being incarcerated at appalling rates. Public nuisance crimes that are introduced in places like Port Augusta and alcohol free zones exacerbate the problems of unfairly discriminating against Indigenous people. "Dog Squads" in Ceduna and Port Augusta, and "curfews", again unfairly target Aboriginal youth especially to bring them unfairly within the criminal justice system. People from the Lands who may have English as the second, third or fourth language are vulnerable. Finding interpreters is often near impossible but it is crucial for people admitted to hospital or who have come into contact with Police and other authorities. Their future depends upon it. More often than not matters proceed through court in the absence of interpreters contrary to all notions of justice.

We advise our clients and the community that domestic violence is a criminal offence. However, the legal system has not protected women from violent partners. Assaults against women are frequently registered by society and indeed our legal system as a family altercation.

- Indigenous women are nearly 70 times more likely to require hospital treatment for head injuries than non-Indigenous women.
- In the 12 years to 2006, 10 NPY women were homicide victims.
- In the 17 months since May 2007, a further 6 NPY women were homicide victims.
- In 5 of these 6 homicides, head injuries were the cause of death and intimate partners are facing criminal proceedings in relation to the death.
- Women from the NPY region are 67 times more likely to be a domestic violence related homicide victim.

Since March 2008, a further 2 women from the APY Lands in contact with our services have been killed. The cause of death in both cases is head injuries and both intimate partners have been arrested and are facing criminal proceedings in relation to the death. Both women experienced severe violence with repeated incidents of head injuries prior to their deaths. There was also a long history of Police and court involvement with these women and their intimate partners, the perpetrators.

The deaths of these women, and other Aboriginal women, are preventable and would cause outrage if the figures in the general community matched those of deaths and severe injuries to women on the APY lands.

Our service sees that gaps exist in policing and community safety and in the criminal justice system on the APY lands. We are concerned by a lack of awareness amongst all stakeholders involved in the criminal justice process as to the needs, conditions and pressures facing Aboriginal women (and children) who are victims of ongoing intimate partner violence.

This recent spike in homicides of Aboriginal women leads inevitably to the conclusion that current protection and services are grossly inadequate. We

seek an urgent response to these deaths and decisive action by Government to ensure the prevention of future deaths.

On the 27th November 2008 we wrote to Federal and State politicians relaying our concerns and asking that Government support and implement the following:

1. A Review of the Magistrates Court Circuit on the APY Lands; with particular emphasis on processes to identify if these services meet the needs of the victims of violence and if not, what changes may be required and how may they be implemented.
2. An Inquiry into Violence against Women on the NPY Lands (giving consideration also to the impact of violence upon children);
3. A Death Review Panel to review deaths caused by Family Violence, with priority directed to deaths of Aboriginal women, particularly those living remotely.

We recognise that there have been many reports and inquiries. However, our concerns for the lives of women are such that we believe that the SA government in particular should follow the example of Victoria and other states and countries, and conduct a death review to identify patterns of behaviour, the gap in the application of protection to women, and most importantly, as a mechanism of understanding to reduce further deaths of women in similar circumstances. The starting point for such a Review should be the Lands.

As stated above these deaths are preventable and reflect a pattern of behaviour and the inability of the legal system to provide a clear indication that violence against women and children is unacceptable. It is important to ask the questions of who was murdered or injured and who perpetrated the crime to understand the complex issues and to identify the legal responsibility.

It is a human rights issue and a health issue of paramount importance. The Commonwealth Office For Women (formerly the Office for the Status of Women) has done comprehensive studies regarding the financial costs and economic burden of domestic violence. These costs run into the millions and we do not need to replicate these studies. We know already the financial costs, the emotional costs. In small communities the entire community carries the emotional burden from the deaths and assaults on women and the entire community grieves the loss. The way the victim dies matters.¹

Human Rights also matter and women's rights are human rights. Women and children have the right to live free of violence perpetrated upon them by intimate partners and family members. In communities on the APY Lands the voices of the women need to be heard. The effect on children matters. The generational effects matter.

¹ (See Australian Indigenous Law Review 2008 Vol 12 Special Edition at p28).

The horror and fear for the individual woman being attacked, the effect on children and other family in close communities, clinic staff, police and indeed the NPY workers and our workers is marked. In a conversation with a doctor who works at a community clinic the writer was told that he is “sick of the smell of burning flesh and head injuries”.

The injuries to women are horrific and include the following;

Burns

Facial injuries

Injuries deliberate to head, face and torso.²

Broken bones, broken legs, broken ankles, to immobilise the victim. In both cases and years after the attack the victims remains in pain on walking. Pins have had to be inserted due to the ferocity of the attack and the consequent breaks to bones. One woman was sent to Port Augusta hospital from a very remote area by buses with shattered bones to her ankle.

Scissor attack to sternum – where the woman was being a good citizen and attempted to prevent another older woman being attacked.

From May 2007 to November 2008 there were 6 DV related homicides, on average a homicide once every three months. Women were killed by husband or boyfriend. Fists, feet, iron bars, star pickets, sharp sticks, rocks, tyre rims and tyre levers used in 68% of cases. The offender delayed getting help for the victim in all cases.³

The Terms of Reference for the Senate Select Committee include the following;

(a) the effectiveness of Australian Government policies following the Northern Territory Emergency Response, specifically on the state of health, welfare, education and law and order in regional and remote Indigenous communities;

On 21 June 2007 the former Prime Minister John Howard and the then Minister for Indigenous Affairs Mal Brough declared a national emergency relating to widespread allegations of child abuse in the Northern Territory. That extreme measure was made in response to the Report of The Little Children are Sacred: *Ampe Akelyernemane Meke Mekarle*: (The Report) commissioned by the Northern Territory Government.

Following the Declaration of national emergency by the then Prime Minister, the Federal Parliament passed a package of legislation to enable the Government to put in place “Special Measures” to tackle the problems of child

² Jane Lloyd- Australian Crime Commission, formerly of NPY Women's Council DV section- paper presented at “Central Australia: Case studies of domestic violence homicides”, International Conference on Homicide – Domestic-related Homicide, Brisbane 3 Dec 2008.

³ Ibid.

abuse in remote communities in Northern Territory. These collection of legislations are called Northern Territory National Emergency Response Measures (NTNER Measure) They enable the Government to implement extreme measures with impact on basic human rights applying to all people residing in NT Aboriginal communities including the following;

- widespread alcohol restrictions
- welfare “reforms” (quarantining of welfare payments)
- enforced school attendances through linking income support and family assistance payments to school attendances, and provision of school meals for children at parent’s costs
- compulsory health checks for all Aboriginal children
- compulsory acquisition by the Commonwealth of 5-year leases over declared Aboriginal land, Aboriginal ‘community living areas’ and town camps
- increases in policing levels through secondments of officers from other states
- banning of possession of x rated material
- scrapping of permit systems for common areas, road corridors for prescribed communities
- denial of compensation equivalent to that to which another landholder in the NT would be entitled for compulsory acquisition;
- the exclusion of customary law and cultural practice as a factor relevant to sentencing and bail decisions;
- the application of income management to residents of prescribed (and other declared) areas;
- the denial of review by the Social Security Appeals Tribunal

In 2007 federal parliament declared that the laws giving effect to the ‘Northern Territory National Emergency Response’ and any acts done under those laws are ‘special measures’ for the purposes of the *Racial Discrimination Act 1975* (Cth) (‘the RDA’). At the core of this characterisation is the claim of a beneficial purpose to the laws, namely the protection and benefit of Aboriginal communities and particularly children living in them. There are a number of difficulties, however, with this characterisation as ‘special measures’. These include a lack of consultation with the relevant communities, the absence of consent to the measures by the ‘beneficiaries’, the negative impact upon the rights of Aboriginal people caused by the measures and the unnecessary nature of some of the measures when considered in view of the stated goals. The “special measures” ought not be used to promote policies that are negative, detrimental, and disadvantageous to the communities.

The Northern Territory Emergency Response failed Indigenous Australians. As so often occurs, this response pitted Aboriginal people against each other. It took away basic human rights and discriminated against one group of Australians. Aboriginal people were not consulted prior to the Emergency Response and subsequent policies have resulted in felt harms for many women in particular.⁴ The process used is disempowering and patronising and the harms again must be addressed before Aboriginal communities can come through yet another grief.

⁴ Paper given by Barbara Shaw at the NACLC Conference Darwin August 2008 identifies the problems in Alice Springs and NT communities. Interview ABC Radio National after a Centrelink error failed to make payments to those whose incomes had been quarantined thus leaving many people unable to purchase food.

Similarly, government policies of “mutual responsibility” have served to disempower entire communities. Such policies put the government in an all powerful position and individuals at a disadvantage. Mutual responsibility can work on a level playing field but not where there is an unequal “relationship” or a power imbalance between an all powerful government body and individuals who do not have access to the services and resources that we in cities and towns take for granted.

One year ago the newly elected federal Labour government gave an apology to Indigenous Australians. It is the role of leaders of government to provide a model of behaviour that is appropriate for all citizens. This occurred on that day and it was a turning point. The goodwill from that day must remain and be harnessed to redress the discrimination.

Recommendations;

That policies reflect that alcohol is a trigger for violence towards women and children and not the cause, in order to promote violent men taking responsibility for their actions.

Reinstate the Racial Discrimination Act

Engagement and consultation with Indigenous peoples.

Reverse the quarantining of incomes.

Continue to provide and increase resources to services related to safe communities, health and welfare, law and order, self determination, education, promotion of respect, and language and culture.

Bill of Rights be introduced

Cultural Awareness training for all service providers and government workers

Reintroduce permits in areas where the permit system has been abandoned.

Use the current laws and legal system to ensure that pornography and abuse are eradicated

National Reparation for Stolen Generations

(b) the impact of state and territory government policies on the wellbeing of regional and remote Indigenous communities;

The Overcoming Indigenous Disadvantage – Key Indicators – 2007 Report⁵ is comprehensive but for the lack of input into the “Things that Work” sections of the Report.

Many of our clients face challenges in receiving immediate police attention, reporting and following through with criminal prosecutions due to a number of

⁵ Steering Committee for the Review of Government Service Provision, Commonwealth of Australia 2007

constraints such as family pressures, fear of reprisals, particularly from the perpetrators' family and the perpetrator, lack of information about court processes and the length of time it takes for even minor matters to make it to trial. Similarly, Trials that are listed in communities make it extremely problematic for women who may be willing to testify at a location out of the community. These constraints combine to make it difficult for women to utilise legal protection for themselves and their children and unfortunately the task is often made more difficult by the failure of the legal system to give a clear indication to perpetrators of violence that their behaviour is not to be tolerated. Case Study 1 highlights some of the challenges in receiving police assistance in a remote community.

CASE STUDY 1

Marlina has a restraining order (RO) against Rob who assaulted Marlina causing severe injuries. NPY and WLSSA assisted Marlina to provide an affidavit for the RO. The RO says that Rob is not allowed to come to the community in which Marlina lives. Rob comes to the community after being released from prison and forces Marlina to sleep with him. Marlina is frightened and tells the police. The police tell Marlina that they are unable to do anything at the moment because Rob is too dangerous and they need reinforcements. Marlina has to put up with abuse from Rob for another month and a half before he is finally removed from the community.

Since this time 2 specialist domestic violence workers have been recruited by SAPOL to work from Marla to the Lands. This has been a positive introduction.

The Cross Border Intervention Program has been established to work with violent men on the NPY Lands. In some cases this is appropriate and the WLSSA believes that program is providing an invaluable service, particularly when working with young men. However, this program is inappropriate to work with some men where there has been ongoing and entrenched violence towards women. Such behaviours require years of intensive counselling work to change. It is not uncommon to find cases where the courts have sent the same perpetrators of violence to the intervention programs on 2 or 3 occasions. Case study 2 exemplifies a common occurrence within the criminal justice system and its failure to victims by clearly stating that assaults against the person are a criminal offence.

CASE STUDY 2

Charles has been recently released on bail for aggravated assault against his partner Hellie. Charles has been released on bail after being charged with aggravated assault, breach of a restraining order and breaching bail conditions. He has completed two perpetrator family violence programs. He was charged with these offences within 3 weeks of completing the 2nd perpetrator program.

In addition, for Indigenous women and children, who are victims of family violence, there are limited support services available to them in crisis situations on the Lands. Apart from NPY Women's Council who provide invaluable assistance to women through their Domestic Violence Service there are no other domestic/family violence services on the APY Lands or in many regional Indigenous communities to provide assistance with emergency & long term accommodation, and advocacy & support for women beyond court.

Furthermore, despite the avalanche of media coverage and the publication of the Mulligan report in 2008, surrounding the issue of sexual assault within Indigenous communities on the APY Lands, sexual assault has continued to be a problem within both remote and regional Indigenous communities. The South Australian state government has taken some steps to address the problem by increasing the number of police Lands, increasing the number of social workers, funding an intervention program for perpetrators of family violence, and the cross border justice project, more needs to be done to ensure that sexual assault and family violence within Indigenous communities in rural and remote areas are addressed appropriately and in a manner that ensures the safety of women and children. One of the ways that this can be done is by ensuring the removal of perpetrators from the community. In most cases it is the victim and her children who becomes dislocated from the community and their support structures. As in case study 3 below, victims of sexual assault who report to the police and have successful convictions often feel that they will never be allowed to return to their homes or be able to resume some semblance of the life that they lived before the sexual assault. The emotional and physical suffering of these survivors and sometimes even that of members of their immediate families are enormous.

CASE STUDY 3

Jennie was raped by two men. Jennie reported the rape to the police and the two were successfully convicted. Jennie had to leave her community and move to another community many kilometres away from her family and friends because she received threats from the perpetrator's family members and her parent's home was vandalised. Police were unable to protect Jennie from further harm if she continued to live in the community. Jennie feels that she will never be able to return home because of fears for her safety and this makes her feel very depressed. She is being supported by NPY Women's Council and WLSSA are assisting with Victims of Crime compensation.

(c) the health, welfare, education and security of children in regional and remote communities;

On 30 April 2008, Commissioner Ted Mullighan provided the South Australian Government with the final report of an Inquiry into Sexual Abuse on the APY Lands.

The Inquiry concluded that the incidence of child sexual abuse was "widespread" and that children on the APY Lands lived "in dysfunctional communities where there is considerable violence and fear, drug and alcohol abuse and a sense of hopelessness."⁶

In all, the Inquiry made 46 Recommendations aimed at addressing this situation. At the same time, it emphasised the critical importance of empowering Anangu to "participate in the solutions."⁷

For example, the report states:

It is fundamental to the success of any measure to prevent sexual abuse of children on the Lands that Anangu, particularly the women, be consulted and assisted so that they are empowered to make decisions about their children and keep them safe. No strategy or program can achieve the ultimate goal of eliminating or even reducing child sexual abuse without Anangu having a real sense of hope and relevance ... The problems on the Lands cannot be solved overnight. It will take time to find and implement solutions, but unnecessary delay must be avoided. Anangu must be empowered and resourced so that they provide the solutions.

The Inquiry's emphasis on the need for the Government to work in partnership with Anangu is consistent with the findings of other key reports including: the Productivity Commission's *Overcoming Indigenous Disadvantage: Key Indicators 2007* and the *Little Children are Sacred* report.

WLSSA supports this view.

The reasons that women and children are unlikely to report sexual abuse are complex and may include the following;

Fear of racism and shame;

Fear of reprisals from the perpetrator; perceived need to protect the perpetrator due to the high numbers of deaths in custody; fear of the police response

Absence of a trusted person to report to in remote communities; amongst others.

The South Australian government has responded in a number of ways to the recommendations of the Mulligan Inquiry and indeed there are some changes that are already visible on the Lands.

WLSSA has concerns about the government's response at Recommendation 37 below.

⁶ Mulligan, E, April 2008, Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands: abuse, pxiii.

⁷ Ibid, pv

Recommendation 37:

That a process of restorative justice for the resolution of disputes in communities on the Lands be developed, implemented and periodically assessed.

“The South Australian Government supports this recommendation in principle. In its response to recommendation 37 of the *Commission of Inquiry (Children in State Care) Report* (tabled in Parliament on 17 June 2008), the Government advised –

Restorative justice is a model of justice that focuses on the harms that are caused by offending conduct and seeks to restore or repair damage caused by the offender’s conduct. For example, one of the components of restorative justice may comprise a meeting between an abuser and a victim. There is considerable debate amongst experts and the community regarding the circumstances in which a restorative justice model may be appropriate, including whether it is appropriate at all in cases of child sexual offences.

At that time, the Government also committed to establish a panel of suitably qualified persons to consider the issue of restorative justice for victims of sexual abuse and the appropriateness of an arrangement of restorative justice for victims of sexual abuse (and if so in which cases and in what circumstances). The panel would *also address the possible extension of the scope of a restorative justice model to other cases of child sexual abuse and provide advice on a suitable model for restorative justice (if appropriate).*

The Government will request that the panel consider the issue of restorative justice for victims of child sexual abuse on the APY Lands, and will consider the report of the panel when it is presented.”⁸

WLSSA has worked closely with victims of violence, domestic violence and sexual abuse on the Lands and across SA. We are of the view that restorative justice techniques are not appropriate in domestic violence matters and sexual assault matters, and especially where children or young women or men are the victims. John Tregenza provided a report on restorative justice on the Lands and he rightly leaves the issue of domestic violence outside of the scope of restorative justice and his report.

It is essential that victims of violence are not further traumatised, fearful and disempowered by interaction with the legal system.

One area of great need is intervention programs centred towards positive parenting and early years parenting. Currently a significant number of Indigenous children within Indigenous communities in rural and remote areas

⁸ South Australian Government Response to the Mulligan Inquiry

are removed from the care of one or both parents due to issues of family violence, abuse or neglect. In some of these cases, particularly cases involving the neglect, the removal of child(ren) from the care of either the parent(s) and/or guardian(s) may not have been necessary if early intervention programs that focused on positive parenting or nutrition were readily available within the various remote and rural communities. The current system of welfare in South Australia is quite reactive instead of being proactive and preventative in its approach. It is often the case that it is very difficult for a family to receive assistance from the welfare department, despite requests or self referrals until the family has hit crisis level and removal of the child(ren) is warranted.

Whilst it must be acknowledged that the South Australian government has committed itself to increasing the number of social workers on the APY Lands, more needs to be done in all rural and remote Indigenous communities to provide adequate support services for families who may be facing difficulties or are struggling before they reach the attention of child protection agencies.

There is also a need within many Indigenous rural and remote communities outside of the APY Lands for services and resources to deal with the issues of violence and substance and alcohol misuse. These communities require the same amount of assistance as that currently being given to the APY Lands by the South Australian government.

Housing is also another major welfare issue in rural and remote Indigenous communities. Most of the current housing designs do not adequately meet the needs of many Indigenous families who have large families that may include members of the extended family. Proper well maintained housing is crucial in ensuring that adequate housing is provided to Indigenous communities. WLSSA welcomes the Federal Governments commitment to providing funds to the state for housing to communities on the Lands.

The costs to families and the community on the Lands for food, fuel and other essential items, is exorbitant. In some of the remote communities basic toiletry items such as deodorants and female hygiene products are twice the cost of similar items in regional areas. The overpricing of food items and basic necessities is a major impediment in ensuring that Indigenous communities in rural and remote areas have access to a decent standard of living.

(d) the employment and enterprise opportunities in regional and remote Indigenous communities.

There is a lack of employment opportunities in regional and remote communities.

In remote communities non- Indigenous people hold jobs in key positions.

In regional communities Aboriginal people hold positions in government and community service organisations. Aboriginal people are frequently

discriminated against by private enterprise and treated as second class citizens in their own towns.

The answer to the employment situation is in the communities themselves. Culture, creativity, art and language skills provide the basis for employment for Anangu and should be valued as a precious resource for the entire country. Apprenticeships should be encouraged in numerous areas, with priority to mechanics and carpenters, amongst others.

We thank you for the opportunity to respond in part to the very broad areas canvassed.

Yours faithfully

Women's Legal Service (SA) Inc

Marilyn Wright