

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

Dear Committee,

Aboriginal Women and Access to Justice

I am writing to draw the Committee's attention to the issue of Aboriginal women and access to justice. Aboriginal women are the most vulnerable and marginalised group in the Australian community. Decades of research, state and federal government reports have recognised this.¹ These reports, among many, frequently raise the issue of Aboriginal women's marginalization in the legal system and limited access to justice, especially when it comes to family violence. I draw the Committee's attention to Article 22 (2) in the *United Nations Declaration on the Rights of Indigenous Peoples*:

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

From the outset I would like to make that point that while I acknowledge the term *family violence* is intended to capture the complexity of violence in Aboriginal communities, its use runs the risk of obscuring the *interpersonal* nature of the violence that is committed against Aboriginal women especially when it comes to the justice system. Indeed in the Gordon report, it was found that many Aboriginal women prefer the term domestic violence to family violence because the latter 'makes it sound nice'.² I raise this as a salient point to the Committee because the reality is that the majority of the violence committed against Aboriginal women is perpetrated by Aboriginal men. Indeed it is Aboriginal women who bear the brunt of alcohol abuse and domestic violence. This presents a number of challenges for the Committee in terms of how to improve Aboriginal women's access to legal representation and why Aboriginal women should be given special attention by the Committee's inquiry.

Evidence of the obstacles Aboriginal women face in relation to equality before the law has been elicited before in Australian Law Reform Commission (ALRC) and Senate inquiries. The issues of representation

¹ See, eg, Audrey Bolger, *Aboriginal Women and Violence* (1991); Sue Gordon, Kay O'Hallahan and Darryl Henry, *Putting the picture together, Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* Department of Premier and Cabinet, Western Australia (2002), 29; Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys, *Violence in Indigenous Communities Final Report to Crime Prevention Branch of Attorney-General's Department* (2001); Boni Robertson, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* Queensland (2000); Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007); Australian Law Reform Commission, *Equality before the law: Justice for women*, Report 69 (1994), Chapter 5, Recommendation.

² Sue Gordon, Kay O'Hallahan and Darryl Henry, *Putting the picture together, Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* Department of Premier and Cabinet, Western Australia (2002), 29.

fall across Indigenous and non-Indigenous specific legal service providers; barriers in accessing legal aid; lack of appropriate counseling and support mechanisms for Aboriginal women and; lack of cultural sensitivity and awareness of professionals working in the law.

The Australian Law Reform Commission (ALRC) in its comprehensive report on *Equality before the Law* identified a 'lack of access to culturally accessible legal aid for Indigenous women' and found that 'Indigenous women are the most legally disadvantaged group in Australia'.³ The ALRC report also found that:

Aboriginal and Torres Strait Islander Legal Services do not currently benefit women and men equally. First most services implement a policy of not acting for either party in a matter between two Indigenous clients. Second, most legal services give priority to defending criminal cases over other matters. On the face these practices appear gender neutral but their effect is to indirectly discriminate against Indigenous women.⁴

The conundrum has been that Aboriginal and Torres Strait Islander Legal Services (ATSILS's) deal mostly with criminal law cases and frequently a conflict arises when one of the parties to a dispute contacts the legal service and thereby prevents the 'other party' from access to the service provider — the other party excluded almost always being an Aboriginal woman. As a consequence Family Violence Prevention Legal Services (FVPLS) were established by the federal government's Attorney General's Department to deal with this challenge.⁵ FVPLS are located in regional and remote areas (reflecting federal policy of privileging regional and remote areas). The establishment of FVPLS are an acknowledgement that the specialist legal service established for the legal representation of Aboriginal people in Australia privileges the legal representation of men. While an elementary rebuttal to this is that the Australian adversarial legal system requires that an accused is given appropriate access to legal representation — even so, Aboriginal women's continuing marginalisation in the legal system calls into question Australia's commitment to the rule of law.

I request the Committee members to consider and examine further the Family Violence Prevention Legal Services (FVPLS) as funded by Commonwealth Attorney General. My general submission on this point is that these services are severely underfunded and second, are predominantly located in remote and regional areas of Australia. At this time, I am aware that there is one city based FVPLS in Melbourne that services the city and remote communities. Nonetheless this does not diminish the argument that the legal needs of Aboriginal women in urban areas across Australia remain are unsatisfactorily met. The logic is that that Aboriginal women in urban areas access mainstream legal services and that some Aboriginal women preference external legal services (and most Aboriginal women simply want good legal representation). Nevertheless I make the point that this policy may fail to appreciate the hidden difficulties that Aboriginal women face in accessing those services or culturally appropriate services. The decision to only fund rural and remote services is supposedly evidence based. However I do not know on what methodological basis this decision is formulated but I would ask the Committee to investigate this further given the majority of Aboriginal people live in urban areas and given the evidence based reality of violence against Aboriginal women in urban areas.

Furthermore I would bring to the Committee's attention the decision to permit ATSIL's to auspice the

3 Australian Law Reform Commission, *Equality before the law: Justice for women*, Report 69 (1994), Chapter 5, Recommendation 5.2.; See Senate Legal and Constitutional Affairs Committee, *Inquiry into Legal Aid and Access to Justice*, Final Report (2004) at Chapter 5.

4 Australian Law Reform Commission *Equality before the law: Justice for women* Report 69 (1994).

5 Harry Blagg, *Audit of Family Violence Prevention Legal Services* (2007).

FVPLS. As I have already alluded to, because of the interpersonal nature of the violence and because it is almost always committed by men, the consequence is that Aboriginal women cannot be represented by ATSIL's. I would ask the Committee to examine any such auspice arrangements. I raise this as a relevant issue to this inquiry because previous Parliamentary inquiries and Australian Law Reform Commission inquiries have raised this as a serious concern in relation to *conflict of interest*.⁶ I also raise this because of the tendency of community discourse around violence to conflate or blur the perpetrator's interests and the victim's needs when discussing Aboriginal *family violence*. Thus how does this play out in practice? Also, I would raise a tangential issue about Aboriginal women's leadership in terms of Aboriginal people and the law and note that it is crucial that there is also Aboriginal women's leadership of these organisations.

Finally, I draw the attention of the Committee to the severe underfunding of ATSILs which critically inhibits the effective and efficient delivery of legal services to Aboriginal people. I argue that this seriously compromises the rule of law.

In concluding I reiterate that there is already substantial literature and inquiries into the problem of Aboriginal women's marginalisation and the Australian legal system. I urge the Committee to revisit these inquiries and relevant recommendations in order to interrogate why this remains an ongoing and unresolved problem for Aboriginal women.

Yours sincerely,

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⁶ *Equality before the Law* above n 5, [5.27]: *Specialised legal services for indigenous women should not be hindered by cultural alienation or by potential conflicts of interest from addressing the urgent legal needs of women survivors of violence*; See also, Joint Committee of Public Accounts and Audit, Inquiry into Indigenous Law and Justice, *Access of Indigenous Australians to Law and Justice Services*, Chapter 3: 'Indigenous Women and Access to Legal Services' available at <http://www.aph.gov.au/house/committee/jpaa/atsis/report/chapter3.pdf>