



Aboriginal Family Violence Prevention & Legal Service Victoria

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

22 July 2009

Dear Committee,

Submission to Inquiry into Access to Justice

Further submission of the Aboriginal Family Violence Prevention and Legal Service Victoria (FVPLS Victoria) responding to issues arising at the Melbourne hearing on 15 July 2009

We wish to respond further to the Committee's questions with respect to our view on

- the approach to a broad strategic review of the provision of legal services to Indigenous women, and
- the possible introduction of an Indigenous Women's Legal Services program, whether it should be incorporated within mainstream Women's Legal Services or be funded as a dedicated Indigenous program, and where and how the Family Violence Prevention and Legal Service Program should sit within any such development

Here we note briefly some key issues we consider should be addressed in a broad strategic review, which over time we could amplify, and then focus specifically on the issues involved in the possible introduction of an Indigenous Women's Legal Services program.

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a) **Broad strategic review**

A broad strategic review should encompass at least:

i. **A reconsideration of the policy objectives in relation to the provision of legal services to Indigenous people, particularly women**

The current objective appears to be, at the broadest level

To provide limited services in number and type to Indigenous women in areas of highest need

This objective should be restructured as

To provide services needed by Indigenous women throughout Australia

The current objective drives programs counter to the full consideration of “closing the gap” and social inclusion policy.

This objective underlies the terms of reference of important reviews whose conclusions regarding implementation appear to have followed through more generally into an ongoing policy stance. For example

- The Commonwealth Grants Commission Report on Indigenous Funding 2001, which recommended a focus on remote areas as being those of greatest need
- The Expansion of Family Violence Prevention Legal Services Program Report, Crime Research Centre, University of Western Australia, December 2004 (Blagg Report), which recommended specific areas of location of an additional 13 services in non-urban areas

Both these reports indicated the limitations of their terms of reference:

- Commonwealth Grants Commission noted (p3):

8. *Most of the organisations and people who contributed to the Inquiry argued that addressing the large gap between Indigenous and non-Indigenous people is more important than redistributing existing funding by reference to differences in need between groups of Indigenous people. They thought we should estimate the total level of resources required to provide Indigenous people with services comparable to those received by non-Indigenous people.*

9. It is, however, clear that the terms of reference did not ask us to estimate the total resources required to remove Indigenous disadvantage. They asked us to 'determine the needs of groups of Indigenous Australians relative to one another'. By asking for relative need, they sought a ranking of groups of Indigenous people from highest to lowest need, and an indication of gaps between each group. This implied that achieving equity within the Indigenous community, interpreted broadly as the people in each region being rated equally and the more effective targeting of Commonwealth funds, should be guiding principles for the Inquiry.

- Similarly, the Blagg Report noted:

The objective of the project was, Australia-wide, to identify and rank areas of greatest need for Family Violence Prevention Legal Services (FVPLS) units for Indigenous Australians. A particular requirement was to identify at least 13 new locations for FVPLS units. (p1)

..and, after consideration of a wide range of areas:

*..within each state, local areas have been rated as either 1 or 2, based on their within-state priority and state level needs. Where an area has been rated '1', the researchers have judged that area as a strong national priority of need. Where an area has been rated '2', the case has been judged to be less convincing, **although there is no doubt that all of the areas identified in the report would be able to lay a claim for FVPLS unit services.** (p3, bold added)*

This policy objective supports an approach to provision of services through rationed, targeted implementation, rather than a holistic approach to meet the needs of all Indigenous people. Specifically, it leads to the exclusion of Indigenous women in urban areas from the benefits of legal service provision.

- ii. **The requirements for both service provision and advocacy for policy and law reform**
- iii. **The need to make sense of the wide range of legal needs, variations in geographic areas, and organisational structures available or which could be generated**

b) Possible introduction of an Indigenous Women's Legal Services program

1. In our initial submission and at hearing we emphasised the unacceptable gap in dedicated Indigenous women's law and justice policy in Australia and the lack of strategic planning and development in the area of law and justice service provision for Aboriginal women.
2. FVPLS Victoria therefore strongly supports the funding of Indigenous women's legal services across Australia. This measure would also go some way to address criticism by international human rights committees about the ongoing disadvantage of Indigenous women in Australia. In 2006 the CEDAW committee specifically urged special measures be taken by the Australian government to advance the human rights of Indigenous women. The recently released Productivity Commission report on Indigenous Disadvantage makes it clear that the situation is not improving.
3. Funding for Indigenous women's legal services should not be attached to mainstream Women's Legal Services. It is critical that Aboriginal women have ownership of and drive future initiatives to advance law and justice outcomes. This is the key to successful government engagement and will lead to real on the ground change. Locating program funding such as is proposed within mainstream Women's Legal Services will once again frustrate, disappoint and anger Aboriginal women. This is not the time to repeat the errors of the past.
4. The report of the Royal Commission into Aboriginal Deaths in Custody made the following pertinent comments in this regard...

... 27.4.18 On the Aboriginal side, it is quite clear that on those matters which are closest to specialist Aboriginal interest, such as legal rights, primary health care, child care, maintenance of languages, Aboriginal culture, arts and crafts, land ownership and lease, and many others, Aboriginal people as a whole greatly prefer their own organisations and services. This is very understandable given the treatment and relationship which Aboriginal people have had from departments in the past. Separate organisations in these areas are very close to Aboriginal conceptions of equality and self-determination (in some cases close to self-management).

... 27.4.19 However, in my opinion self-determination cannot be a reality if governments fail to recognise that Aboriginal people have clearly voiced their preference for using Aboriginal organisations; not only as their negotiators, but as the agents for delivering services. The Aboriginal organisations, when given

adequate funding and when placed in a position in which they are respected negotiators and service deliverers, have performed much more effectively than the majority of mainstream agencies have performed in relation to Aboriginal people. They are trusted, they know and respect Aboriginal society and culture and they enhance self-respect within the Aboriginal community as they fulfil their roles.

5. We refer to the United Nations Declaration on the Rights of Indigenous Peoples which Australia has now ratified and to Articles 22 and 23 in particular which clearly support development of dedicated programs for Indigenous women.

Article 22

1. *Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*
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.*

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

6. We also refer to the Social Justice Report 2004 p 22 which pertinently states the following ...

...One of the main findings of this research is confirmation that an approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination.

...Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender... The unique dimensions of

violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group.(49)

7. It is well established both in literature and through the experience of FVPLS Victoria that many Aboriginal women are reluctant to access to mainstream services and prefer culturally safe environments, particularly in relation to issues of family violence and sexual assault. In addition family violence and sexual assault impact broadly, including upon Aboriginal women's increasing imprisonment rates, child protection interventions and health and mental health issues. Given the significant complexity and sensitivity of the issues, Aboriginal women must have the option to access dedicated and holistically based Indigenous legal services.
8. The FVPLS program is not women specific, but the vast majority of victims/survivors of family violence and sexual assault, and therefore the vast majority of our clients are women. The FVPLS program nationally is a very significant provider of legal services to Indigenous women. It is well established that the Aboriginal Legal Services with their strong focus on criminal defence services and advocacy on criminal law issues are often conflicted and not accessible to Aboriginal women and children. It is the experience of FVPLS Victoria that women are more comfortable in accessing independent services, such as FVPLS Victoria provides, for reasons of safety, confidentiality and gender sensitivity
9. To strengthen legal services for Aboriginal women either the FVPLS program with its restricted geographic funding, weak structural base and absence of policy capacity must be dramatically strengthened, or a new program for Aboriginal women implemented, which better integrates law and justice services and provides a strong on the ground base to address the systemic disadvantage currently disproportionately experienced by Aboriginal women.
10. The FVPLS program could be subsumed within a national Indigenous Women's Legal Service program. The Indigenous Women's Legal Services would of course provide assistance in a broader range of legal matters than the areas currently stipulated within the FVPLS program. This would strengthen law and justice services to Aboriginal women significantly, would provide far greater flexibility and integration in service provision and vastly improve law and justice outcomes. One concrete example of this is that the majority of Aboriginal women in prison are

survivors of family violence and sexual assault, however these women are currently required to access separate legal services for these matters. Given the layers of complexity and entrenched barriers to Aboriginal people accessing the justice system, every attempt should be made to avoid constructing unnecessary new ones.

11. A more integrated and holistic approach in legal service provision for Aboriginal women (as opposed to the more confined family violence legal services) is also more consistent with social inclusion policy objectives.
12. Indigenous Women's Legal Services must be provided in urban, regional and remote areas to ensure equitable access to justice across States and Territories. The FVPLS Victoria model in which a head office in Melbourne provides specialist legal, administrative, program and policy development support to rural and remote units is one which may be considered. The model has proved successful in Victoria and has been developed by FVPLS Victoria in spite of Commonwealth AGD restricted funding policy.
13. It will be important that children are able to access Indigenous Women's Legal Services, including boys (perhaps only excluding boys who are offenders). Adult male victims of crime currently assisted through the FVPLS program would require referral to other services (ALS's or mainstream providers where conflicts arise)
14. Current Indigenous Women's Project funding would also be sensibly incorporated into the Indigenous Women's Legal Services program.
15. The Aboriginal Legal Services would continue to operate as they do now, however women currently accessing ALS's for matters outside of the FVPLS legal casework guidelines (e.g. criminal law, discrimination, welfare matters) would be able to choose which service to access for a particular matter. ALS's would not become men only services. In many cases, including family disputes and child protection proceedings, there are frequently multiple parties within the extended Aboriginal family requiring separate representation. Additional culturally appropriate Indigenous legal service options would strengthen legal equity and access to justice. MOU's between the services to clarify respective service guidelines and referral systems would strengthen overall service delivery.
16. In addition, under this model of operation much needed but under resourced civil law services would also be strengthened as a result of all Indigenous legal services having some capacity for this work.

17. Subsuming the Family Violence Prevention and Legal Service Program into an Indigenous Women's Legal Program and renaming the organizations, would also overcome broad community prejudice and stigma which is overtly perpetuated as a result of the direct association between the Aboriginal and Torres Strait Islander communities and family violence/sexual assault. For example, the Indigenous Women's Legal Service Mildura is a preferable title to the Aboriginal Family Violence Prevention and Legal Service Mildura. Women may access an Indigenous Women's Legal Service for any one of a range of legal issues which also provides more privacy and confidentiality to the broader community.
18. It is noted that the Committee commented on the 'myriad' of Indigenous legal services currently provided. It must be clarified however that the level and scope of funding within this is manifestly inadequate, particularly in relation to dedicated law and justice services for Aboriginal women. The fragmented and restricted funding approach adopted by the Commonwealth has in fact operated as a significant barrier to advancing access to justice for Aboriginal women. A strategic review as outlined above provides the opportunity to address these concerns. Collaboration between commonwealth and state governments within this review is of major importance.
19. The development of Indigenous Women's Legal Services in all states and territories, in accordance with the diverse Indigenous communities in each, would also support Indigenous Women's Law and Justice Advocacy activity. A national Indigenous Women's Law and Advocacy body could be attached to a National secretariat for Indigenous Women's Legal Services. To ensure critical state and territory advocacy bases for this work, policy/advocacy positions could be attached to a designated office in each state and territory. This would ensure connection between policy development and on the ground service provision. The National Advocacy body could have a steering committee which links broader community input and academic expertise to guide and oversee critical research activity. In 2008 FVPLS Victoria was engaged by the Commonwealth Attorney General's Department to produce a strategic plan for an Indigenous Women's Law and Advocacy body which might be informative on these matters. The document is currently with the AGD.
20. We encourage the Committee in the strongest terms, to recommend that legal services and law and justice policy for Indigenous women in Australia be reviewed in a timely manner aimed, in consultation with Indigenous women, to ensure as far as possible the following:

- Equitable access to Aboriginal community controlled legal services for Indigenous women across Australia regardless of location.
- Strategic development of a model for a national legal program for Indigenous women which best supports point 1. (The current FVPLS Victoria structural model with a Melbourne head office supporting rural units is put forward for consideration)
- A strong national and state and territory advocacy base with meaningful avenues for necessary government support and engagement

21. In conclusion we note that the National Indigenous Law and Justice Framework recently released by the Commonwealth AGD for comment does not include the strong focus on Indigenous women's law and justice as was contained in the 2007 draft National Law and Justice Strategy from which the framework was developed. FVPLS Victoria is both concerned and disappointed with this development.

We will be happy to answer any further queries.

Yours faithfully,



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Chief Executive Officer