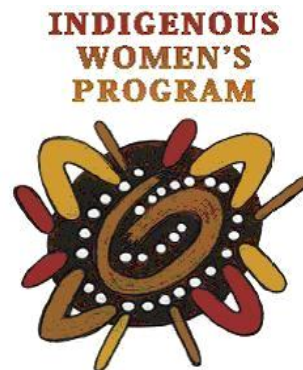
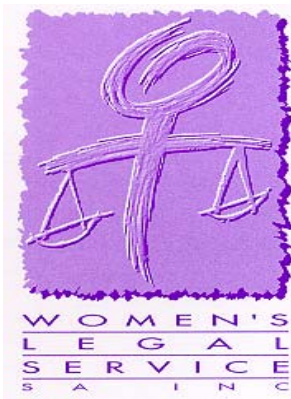


WOMEN'S LEGAL SERVICE (SA) Inc.



COMMENTS TO: 'STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS'

Date: 9 June 2009

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INQUIRY INTO ACCESS TO JUSTICE

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 organisation and to clients of our service throughout South Australia.

Introduction

The WLSSA provides a free and confidential service to women in South Australia. WLSSA aims to empower women to achieve justice on an individual, community and political level. We recognise that women's legal problems occur in a context of social, political, cultural and economic disadvantage. We also firmly believe in the right of all women to justice and equality before the law. We therefore practise in ways that understand and validate the experiences of women, values and accept women as individuals, promoting safety and respect for women 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.

We are pleased to have this opportunity to make a submission to the "Senate Standing Committee on Legal and Constitutional Affairs" because we believe that there remains a gap in the provision of legal services to many of the most vulnerable members of our society. There is also a gap in the provision of resources and services to woman and victims of crime, particularly in remote areas and indeed there has been a distribution of wealth in times of economic prosperity to those who are already "well placed" in our society, consequently leaving already vulnerable members of society desperate in a time of global economic crisis and confusion.

The WLSSA was established in 1996 in Adelaide. Currently, we are funded by the Commonwealth Attorney General's Department to provide direct legal services, Community Legal Education and Law Reform activities. Within our service we have 3 programs, namely, a generalist program, a Rural Women's Outreach Program and an Indigenous Women's Program. We are also contracted by the NPY Women's Council Domestic Violence Section in Alice Springs to provide legal services to the South Australian arm of their cross border service for the Magistrate's Court circuit (SA) in particular. We provide advice, representation, and ongoing follow up where required.

WLSSA was the auspicing body for the Aboriginal Family Violence Legal Service in Port Augusta in 2000 and some 6 months later that service rightly became incorporated in it's own right.

The WLSSA remained co-located for 2 years with the Aboriginal Family Violence Legal Service and in 2003 we found our own premises and managed to maintain our Rural Women's Outreach Program in Port Augusta with funding of some \$80,000.00 per annum for that program. Today, we have 2 solicitors in this office along with an Indigenous Community Worker. Our funding for that program has not increased however demand for the service is such that we secured a one off grant that has allowed us to provide services in areas of high need.

Our Indigenous Women's Program¹ in the Adelaide office allows the employ of another Indigenous paralegal / community worker who runs programs for Aboriginal women in the Adelaide Women's Prison and connects with the Indigenous community to provide community education and referrals to our service. Aboriginal women often come to us as there is a conflict as ALRM and Aboriginal Family Violence Legal Services' (Port Augusta, Port Lincoln and Ceduna) in SA have previously seen the other party, (most frequently the man) when a family law matter arises. Many of our clients in Family Court matters are

¹ A Review was undertaken of Indigenous Women's Programs by the Cth in ?

grandmothers and aunts. The nature of family relationships is such that there are not only multiple issues for our clients but also, multiple parties to a dispute. WLSSA provides an option to represent, to advocate, or to assist our clients with settling a dispute where the other parties are also enabled by being represented by an appropriate service.

WLSSAS prioritises our work with Aboriginal women, and we work particularly hard to ensure that we can provide a service in very remote areas such as the APY Lands because there are no other solicitors providing this type of service to women in this vast area.

The above is an account of the fraction of the services provided by WLSSA on a fraction of the funding received by other organisations. We are proud of the work we have undertaken and we have maintained a record of obtaining positive outcomes for our clients. Half of our workers are Indigenous women.

As the Committee is aware, there have been a number of Parliamentary Inquiries on the issues of "... access to justice and funding, and the funding programs of legal aid commissions, community legal centres and other community legal services providers, some with similar or overlapping terms of reference."² Many of the issues raised in relation to these Inquiries have not changed. Community Legal Centre's (CLC's) continue to face ongoing funding challenges and the demand for our service far outweighs our ability to meet demand.

We refer in particular to the terms of reference and Report Recommendations of the Senate Legal and Constitutional Affairs Committee's Inquiry into Access to Justice and Legal Aid tabled on 8 June 2004, and the Joint Committee of Public Accounts and Audit's Inquiry into Access of Indigenous Australians to Legal Services tabled in Parliament on 22 June 2005. WLSSA provided submissions to both Inquiries.

² NACLCL Submission to this Inquiry.

(a) THE ABILITY OF PEOPLE TO ACCESS LEGAL REPRESENTATION;

The issue of access to legal representation is highly complex due to the intersections between different factors such as socioeconomic status, culture, language and geographic location. That is, if you are an Aboriginal woman living in a very remote community, on the APY Lands for example, speaker of Pitjantjatjara / Yankunytjatjara (and others), your ability to know of services available outside of the community is limited often to word of mouth from other family members. Services within the community are limited and do not extend to police or legal services but for the periods when court sits in that particular community or when police can be called in from outside the community. WLSSA has provided a free call number for women to contact us but this is not useful if the clinic or community centre is closed and all public telephones are pulled from their fixtures.

For many of the clients assisted by WLSSA, access to legal aid³ is a crucial issue. Many of our clients have complex needs because they tend to be from a lower socio-economic background, and have issues such as housing problems, mental health or substance abuse in addition to their legal needs. In addition, where none of the above issues are relevant there may still be issues regarding ongoing domestic/family violence or torture, English may not be the first (or second) language, and there may be a significant power imbalance by the nature of the legal problem.

The reality is that many of the clients who have come to WLSSA via private solicitors and the Legal Services Commission (LSC) have been unable to access legal representation for a number of different reasons that include the following:

1. Lack of available legal aid and the 'means test';
2. Lack of legal services in rural and remote areas; &

³ Unless stated "legal aid" has the broad/ global meaning here of referring to access to legal services from Legal Service Commission, Community Legal Services and ATSILS.

3. Lack of appropriate legal services for disadvantaged groups.

1. Lack of available legal aid and the 'means test'

Private legal representation is prohibitively expensive, particularly in Family Law matters that run to trial. As a result many litigants who can't afford private representation are only left with two viable options to obtain legal representation one of which is to obtain legal aid funding from the Legal Services Commission or to obtain assistance from Community Legal Centres (CLC) like WLSSA. Unfortunately due to demand and limited financial resources within both the Legal Services Commission for civil matters and the very inadequate funding overall of CLCs many people are finding that they are in a position where they must represent themselves.

As suggested above, many women who access services at WLSSA come to see us in relation to civil law matters such as family law, restraining orders, child protection, employment and criminal injuries compensation. Increasingly, we are providing outreach services to remote areas to ensure that women who are unaware that they have a remedy to a particular legal problem are clear that they too can access legal aid.

Increasingly we finding that as the costs of providing legal services increase that the legal aid 'merits test' and 'financial means test' are working to disadvantage women. At WLSSA we are being approached frequently by many women who are on a low income, (perhaps working 10 hours per week) and have been denied legal aid or have been asked to pay contributions fees which they cannot realistically afford. The Case Study below highlights an increasingly common situation for many women who access our service.

Case Study 1

Catherine is a sole parent with one child and lives in a rural town. She has no savings and is in rental accommodation. She works casually as a cleaner. Over the past two weeks Catherine has worked 20 hours per week as one of the permanent workers was sick but her hours will drop back down to four hours a week.

Catherine applies for legal aid to assist her with responding to an application by the father of her child for the current living situation of her child to be overturned. The Legal Services Commission has requested that she pay a \$2,000.00 contribution fee. Catherine is unable to make the contribution and as she has been the victim of threats and harassment by the father she would find it difficult to self represent. The father is able to afford private legal representation. Catherine approaches WLSSA.

The way the legal aid financial means test is assessed does not accurately reflect the financial reality of many of the women who seek assistance from our service. Research has shown a significant income difference between those who met the means test and those who were able to afford private representation. Those eligible for legal aid earned less than \$25,000.00 p.a. after tax, yet people are only able to afford private representation once they earned over \$45,000.00 per annum after tax.⁴ We feel that it is unacceptable for clients like Catherine to be placed in the predicament of having to self represent in situations where there is a likelihood of a profound change to their lives.

The legal aid 'merits test' also serves to further discriminate against women by making assumptions that the legal needs of women involving civil and human rights legal issues are not as significant as those of their male counterparts facing criminal charges. Civil and human rights can have a profound influence on the lives of women and children particularly when issues of domestic and/or

⁴ R Hunter, J Giddings & A Chrzanowski, *Legal Aid and Self-Representation in the Family Court of Australia*, Social Legal Research Centre, School of Law, Griffith University, May 2003.

family violence are involved. The next Case Study provides an example of a situation that we see on a regular basis.

Case Study 2

Patricia is a single mother with two young children aged 3 and 5. She has had to flee the matrimonial home after suffering years of physical and emotional violence at the hands of her husband. Patricia was hospitalised for five days after her husband Paul assaulted her with a crowbar. Patricia is staying in a woman's refuge with the two children. She is afraid to allow the children to attend childcare and school because the father has threatened to remove the children and stop her from seeing the children. Following a brief separation in the past the father had withheld the children from Patricia and she felt compelled to go back to him so that she could see her children. She did not know that she had a legal remedy through the court to have her children returned. The police are assisting Patricia with obtaining a restraining order that will protect her and the children. The Police are hoping that the restraining order will allow them to remove the father from the family home so that Patricia and the children can return there. However the Police are not sure if will be successful and have been unable to convince Patricia to press charges against Paul for assault. Patricia then seeks assistance from WLSSA's Port Augusta office.

Despite's Patricia's valid concerns for the safety of her children, Patricia will be unable to apply for legal aid to formalise living arrangements regarding the two children from the relationship because she will fail the legal aid 'merits test'. Patricia will be denied legal aid on the basis that as long as the children are in her care there is no urgency in making an application to the Court despite the abuse suffered by Patricia and the children.

Patricia may have to wait until the father applied to the Family Law Courts to spend time with the children or if abducts the children. Furthermore, Patricia will need to either find funds to hire a private solicitor to initiate property proceedings

which are not covered by legal aid. This is the case even though there may be a small amount of property or merely a redistribution of debt.

Given the obstacles in the path of many women who have stories similar to Patricia, many women often do not obtain legal representation and either make agreements that are detrimental to their safety and/or that of the children or continue to live in fear waiting for the other party to remove the children from her care. It is ironic that in situations such as that in Case Study 2, the husband will obtain legal aid for the criminal charges against him if he meets the “financial” test.

A further problem for many is that during court proceedings a person may reach the legal aid funding “cap” at a crucial time, especially just prior to Trial. This leaves vulnerable women without representation at trial. Furthermore, if an unfavourable Family Assessment Report is provided then a litigant will have their funding cut to pursue an order that the child “lives with” that litigant for example, or any order contrary to the Report.

2. Lack of available legal aid in rural and remote areas

In many rural, regional and remote (RRR) areas the issue of access to legal representation is of major concern. We are all too aware of the lack of medical staff in rural and remote areas. This has a huge impact on the health of a community and costs associated with adequately diagnosing illness that can be prevented or easily cured. Without access to well timed and clear legal advice this can have ramifications that can impact negatively on women’s lives. Community Legal Education and access to solicitors with expertise in the particular area of concern is critical. There are a very limited number of private practitioners who practice in RRR areas. Where there are practitioners women are often told that there is a conflict of interest because the husband has already accessed the legal services in the town in relation to other matters.

For clients, there are difficulties in accessing courts, interpreters, telephones, public transport, facsimile machines among others. The possibility of self representing is limited when you live in a RRR area.

Apart from the problem of accessing legal representation in RRR areas, many women who live in RRR areas do not always have access to other support services that are taken for granted in metropolitan areas such as women's shelters or safe houses. Women in isolated towns or communities do not have facilities such as women's shelters or safe houses. The problem of women's shelters and safe houses are also compounded by the fact that in small communities people generally know the location of these homes, therefore reducing the level of security for women and children. In remote areas the problem of accessing services particularly police attendance is further compounded by the issue of distance. In some areas it may be impossible for women to get police to attend domestic violence incidents, or even talk directly to the police in their local area.

On the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands where WLSSA provides a service in conjunction with the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council to women and children who are victims of domestic and/or family violence it can take many hours or even days for police to attend. Victims of violence in these areas face basic human rights issues along with facing the issues of violence perpetrated against them. Therefore women in RRR areas face distinct disadvantages and obstacles not faced by others living in metropolitan areas.

Case Study 3

Palya is a woman with 5 children living in a very remote community. She met with WLSSA workers, NPY domestic violence workers and an interpreter in 2008. She had been seriously wounded in an assault almost 10 years ago and had ongoing health problems as a result. Palya was acting as a good citizen and trying to stop the perpetrator hitting an older woman when she was stabbed with a rusty metal object. At trial the perpetrators family refused to speak against him and prosecution had not adequately put their case. The assailant was not convicted of any charges and a claim could not be made for Criminal Injuries Compensation. Palya has had to travel to Adelaide for ongoing medical treatment. WLSSA was successful in obtaining an ex gratia payment from the SA AG's on Palya's behalf to go some way towards the costs that she incurred as a result of this assault.

Had WLSSA solicitors not been working with victims of violence on the Lands Palya would still be entirely out of pocket and viewing the legal system as unjust and unable to listen to the truth about the violence women are experiencing.

3. lack of appropriate legal services for disadvantaged groups

The problems of access to legal representation is further compounded for disadvantaged groups such as Indigenous people, people from culturally and linguistically diverse backgrounds and people with disability. Indigenous women, women from non-English speaking backgrounds and women with disabilities are chronically marginalised in terms of access to legal services and face significant disadvantage in relation to awareness and exercise of their legal rights, and support in areas such as family law and domestic violence. A common barrier to accessing representation is language and cultural barriers. Literacy rates may also be low amongst clients who are socially and economically marginalised. The issue of lack of appropriate interpreters for Indigenous people and in particular for Indigenous women can easily translate to an issue of denial of justice.

Women who are new arrivals, refugees from worn torn countries are also disadvantaged in accessing appropriate legal aid.

(b) THE ADEQUACY OF LEGAL AID

The legal aid system has a central role to play in improving the access that our clients, namely women and children have to equality and justice. However, the current levels of legal aid through LSC's and the way that it is administered pose significant barriers to the realisation of equality and justice for many women.

Firstly, the types of family law matters that can be funded by legal aid are severely limited. In family law matters there is the additional obstacle of an overall "cap" on funding which currently is approximately \$10,000.00. Many more men than women receive grants of aid and there are fewer limitations on grants made in criminal law proceedings than family law. This creates gender inequality as the 'cap' in criminal and other civil law matters is greater than the 'cap' in family law matters. In criminal law matters, the minimum available 'cap' is approx \$15,000.00 with a maximum 'cap' of around \$60,000.00. The 'cap' in family law matters is approx \$10,000.00 and there is a \$15,000.00 'cap' for Independent Children's Lawyers.⁵ The use of legal aid 'caps' in this way creates a bias in favour of criminal law at the expense of civil and human rights law.

The use of such a low funding "cap" further discriminates against women in that women whose ex-partners use violence are typically faced with responding to the violent person's repeated applications to the court. This uses up legal aid funding, often resulting in women being left without representation. The exhaustion of legal aid funding by this method severely limits the capacity of women to protect themselves and their children from a violent partner. The cap on legal aid is unrealistic and quickly exhausted and the problem is worsened by the fact that the Family Court seems to be reluctant to declare someone a vexatious litigant. Case Study 4 highlights how the inadequacy of legal aid

⁵ Legal & Constitutional Reference Committee "*Legal Aid and Access to Justice*" Commonwealth of Australia, Canberra, June 2004, p.46

funding and the use of the cap can further serve to severely disadvantage women, especially if the other side is well resourced.

Case Study 4

Trisha is the mother of one child. She separated from her partner Bob. The child lives with Trisha. Both Bob and Trisha have been in and out of the Family Law Courts for a number of years because of numerous applications made by Bob for contravention and to have the child live with him. The Contravention applications came to naught. Bob has recently filed another application. Trisha has utilised her 'cap' and is finding it increasingly difficult to cope with the pressures of being in and out the courts. Trisha is beginning to question whether it is worth going back and forth to the courts. She knows that if she does not participate she risks the child going to Bob who previously subjected Trisha to abusive, demeaning and controlling behaviour and continues to do so.

It is nothing new to state that there is inadequate funding for legal aid. The importance of Community Legal Services, Aboriginal & Torres Strait Islander

Legal Services, among others is crucial to filling the very real and pronounced gap in services to the most vulnerable members of our society. CLC's provide numerous services and representation on matters that are not funded in our state by the LSC. These include property matters, consumer credit law, sexual assault and victim assistance, domestic violence – restraining order assistance, Family Court matters regarding children where the cap has been reached (and others), victims of crime matters where women live remotely and can't access private solicitors, amongst others. Many CLC's have become specialised and have responded to the legal issues of the communities that they work with. CLC's are definitely the "poor cousins" in terms of funding and it must be a priority to adequately fund these services.

(C) THE COST OF DELIVERING JUSTICE

Successive Inquiries and Reports such as the Legal Aid and Access to Justice Report (2004) have all demonstrated that the cost of delivering justice through legal aid services and CLC's in particular is minimal in comparison to the amount

of work and benefits they provide to the whole community. For example, when considering the value for funding dollar, CLC's have been able to gather more than \$23 million worth of free legal assistance each year through volunteers and pro bono relationships. More than 2,200 lawyers around Australia volunteer in CLC's. More than 1600 non-lawyers (law students, other professionals and members of the community) volunteer in Australian CLC's.⁶

CLC's act as pathways to legal representation through referral and pro bono work. CLC's offer a range of representative services especially where there are significant gaps in service elsewhere. They provide services for disadvantaged groups, services to remote, regional and rural areas and for Indigenous communities.⁷ They undertake important preventative work through Community Legal Education programs and are instrumental in social advocacy work on behalf of their clients and communities. As such CLCs and legal aid providers should be adequately funded to continue providing services to the community.

⁶ NACLC "Why Community Legal Centres are Good Value" 2008.

⁷ Federal Attorney General's Department 'Review of the Commonwealth Community Legal Services Program' Commonwealth of Australia, March 2008, p. 29

***(d) MEASURES TO REDUCE THE LENGTH AND COMPLEXITY OF LITIGATION
AND IMPROVE EFFICIENCY***

The Federal Attorney General's Department has recognised that CLCs offer a range of services and referral paths that recognise the inter-relationship between legal and non-legal problems and aim to provide clients with assistance to resolve problems at their root cause, reducing the likelihood of further involvement with the legal system.⁸ The fact that CLCs deliver services in this manner is crucial in reducing the length and complexity of litigation and improve efficiencies in delivering access to justice and equality by ensuring clients of CLCs receive a holistic approach to their problems. This is particularly the case when we have clients with more than one problem and who have needs that are complicated and multifaceted including mental health issues, housing or medical needs. We believe that CLCs have a key role to play in legal service delivery complementing other services.

⁸ Ibid p. 34.

(e) ALTERNATIVE MEANS OF DELIVERING JUSTICE

WLSSA encourages the use of alternative means of delivering service in situations where it is appropriate to do so. Many referrals are made from our service to Family Relationship Centres (and vice versa) and local counselling and mediation services where possible. We also encourage clients if possible to amicably resolve any disputes and that court proceedings should be considered the last resort. It must not be at the expense of legal advice however and mediation should be in conjunction with legal advice, especially when participants in mediation are signing agreements. Without knowing one's legal rights it is a difficult road to "delivering justice" and often can become more costly and time consuming if "wrong" decisions were made initially. It has been our overwhelming experience that on the whole, many of our clients only seek legal redress where other alternatives have failed or where it is the appropriate response to the circumstances. In situations where there has been a serious history of domestic and/or family violence that alternative dispute resolution mechanisms may replicate or exacerbate the trauma felt by women and children. An example of a situation where mediation is not feasible is provided below in Case Study 5.

Case Study 5

Harriet and Tom lived in a small town. Tom was respected and well liked in the community but at home Tom would belittle Harriet and hit her in areas of her body that were not visible, such as on her scull or back where her clothing hid the marks. None of the incidents of violence was reported because Harriet felt that she could not call the police as some of the officers at the local police station were friends with Tom. After separation both Tom and Harriet attend mediation to talk about their two children. When Harriet arrived at the mediation Tom is laughing and chatting with the mediator. Harriet feels uncomfortable but proceeds with the mediation. She feels during the mediation that she has to agree to the proposal put forward by Tom. Tom wants to spend every weekend with the children. The agreement is to be reviewed within six months. The six months elapse and Harriet wants to amend the parenting plan because she feels that she is unable to spend weekend time with the children as Tom has them every weekend. Harriet feels that she spends a minimal amount of relaxation time with the children on the weekdays as she is responsible for getting the children ready for school and helps them with homework in the evenings. She has been invited to family occasions with the children on weekends but Tom refuses to negotiate to allow the children to attend. Tom is refusing to come to mediation and Harriet is now becoming stressed and agitated wondering what she is going to do.

In the above scenario, the power imbalance inherent in the relationship suggests that mediation is not the most appropriate method of resolving this dispute. Solicitor assisted mediation would probably have worked better in this situation to redress the power imbalance between the parties and to ensure that both parties arrive at a solution that was workable for the long term.

The situation above highlights the fact that the power imbalance present in matters involving domestic and family violence make it extremely difficult for victims to articulate their needs or arrive at solutions that protect them and/or the children. In situations where domestic or family violence is alleged alternative methods of dispute resolution should only be used with extreme caution. In a report written by John Tregenza who was commissioned by Aboriginal Legal Rights Movement and the government of South Australia to do a report on restorative justice on the APY Lands in remote South Australia the issue of domestic violence was seen to be outside the scope of the report on restorative justice. Restorative Justice methods may continue the abuse towards victims of violence and sexual assault.

(f) ***THE ADEQUACY OF FUNDING AND RESOURCE ARRANGEMENTS FOR COMMUNITY LEGAL CENTRES;***

The Report by the Federal Attorney General's Department titled "Review of the Commonwealth Community Legal Services Program" (March 2008) highlights the benefits of having a well funded and functioning system of CLCs in Australia. Whilst we acknowledge the support provided by the current Federal Attorney General's Department by providing one off funding to services over the past two years, for many CLCs such as WLSSA it has not been possible to assist all who seek representation from our service due to inadequate funding. This is particularly true for our RWOP and IWP programs where we work in RRR communities, and at the Adelaide Women's Prison, among others. CLC's have the benefit of being creative towards and responsive to the needs of their client base and community.

Inadequate funding has led to a dramatic decrease in the ability of CLCs such as the WLSSA to cope with demand for our services. We have had to prioritise our service delivery so that only the most needy and disadvantaged of clients can be assisted. This client base is itself expanding.

The hiring and retention of staff has been an issue that has impacted on CLCs for a considerable length of time, particularly in remote areas. Many CLCs such as WLSSA are unable to pay remuneration that is commensurate with Legal Aid practitioners, ATSILS practitioners, or government legal officers. In the 2004 to 2007 period the average wage for CLC employed principal solicitors with more than five years experience was less than \$50,000.00.⁹ On reviewing wages, NACLC's submission to this Inquiry states that in NSW there was a wage disparity of between 29 to 38 per cent below their equivalent public counterparts.¹⁰ Such low levels of remuneration have meant that in effect

⁹ Ibid, p. 49

¹⁰ NACLC 'DRAFT: Submission to the Inquiry into Access to Justice' 2009, p.6

committed and dedicated lawyers have been subsidising the legal aid system in Australia for decades. While we love our job and work with commitment for our clients the situation of low pay for our employees cannot continue.

The problem of inadequate funding is further exacerbated in RRR areas because of the large areas of unmet needs and the importance of having experienced practitioners working in these areas. . Some of the specific problems faced by CLCs in RRR areas are:

- difficulties in recruiting and retaining experienced staff
- a small 'pool' of volunteers from which to draw
- resource allocations which do not include adequate consideration of the additional costs of running outreach programs and
- An expectation that CLCs with regional responsibilities will service their region with local level funding.

In our Port Augusta office these resource limitations are felt acutely as the funding received for the program is only sufficient to engage the services of one employee and pay rental on the premises. The Rural Women's Outreach Program has always been supported by additional funding from the Indigenous Women's Program and general funding. These resource limitations have seriously hampered our ability to meet the demand within Port Augusta and surrounding regions in the north west of South Australia. Over the past 2 years we have received one off funding that we immediately put towards our RWOP program as we urgently required another solicitor in that office because of the level of client need and requests for assistance. WLSSA has had less trouble recruiting good staff but we are restricted by the lack of certainty surrounding one off funding grants, and the lack of funding for undertaking regular and consistent outreach to Coober Pedy, Oodnadatta, Nepabunna and other remote areas.

(g) THE ABILITY OF INDIGENOUS PEOPLE TO ACCESS JUSTICE

WLSSA has always prioritised the provision of legal services to Indigenous women living in RRR. From 1997 until NPY Women's Council secured appropriate funding for domestic violence services on the APY Lands, WLSSA provided a yearly grant to sustain that service. Currently, NPY contracts WLSSA to provide a legal service on the APY Lands. Our discussion of this question will focus on the issues faced by Aboriginal women living in remote areas of South Australia because the provision of legal service and hence access to justice is complicated by issues of remoteness, resources, safety, telephone access, lack of interpreters, among others. Our focus on Aboriginal women living in remote areas of South Australia should not be viewed as conveying the message that Aboriginal women living in metropolitan areas do not face the same level of disadvantage in their access to justice.

Unlike many states on the eastern seaboard, South Australia does not have an Indigenous Women's Legal Service. The funding of an Indigenous Women's Legal Service in South Australia would ensure that Aboriginal women in this state have greater access to a service that is culturally appropriate and reflects the needs of women from diverse language groups and cultures.

Through our collaborative work with the NPY Women's Council in Alice Springs WLSSA has been able to have 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 to provide legal services to women. We provide community legal education (CLE), Magistrate's Court circuit attendance and legal representation to women on the APY Lands. Since June 2007 we have attended on the APY Lands for 6 separate weeks of community legal education sessions in conjunction with the NPY Women's Council Domestic Violence worker and the co-ordinator, and 21 court circuits, of one week's 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.

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 to Port Augusta and Adelaide. The reasons for this are 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 proceeds through court in the absence of interpreters contrary to all notions of justice.

In our work on the APY Lands 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.
- Indigenous People were 15.1 per cent of all homicide victims, where cultural identity was known; and 15.7 per cent of the homicide offenders where cultural identity was known despite accounting for approximately 2 per cent of the total population.¹¹
- 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.

¹¹ Mouzos, J. (2001) "Indigenous and Non-Indigenous Homicides in Australia: A comparative analysis" *Trends & Issues in Crime and Criminal Justice* No.210, Australian Institute of Criminology, Canberra at <http://www.aic.gov.au/publications/tandi/ti210.pdf>

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.¹²

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. 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 horrendous. 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

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

- Deliberate injuries to the head, face and torso.¹³
- Broken bones, &
- Broken legs, broken ankles, to immobilise the victim.

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.¹⁴

In RRR areas many of our clients face challenges in receiving immediate police attention, reporting and following through with criminal prosecutions due to a number of 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 6

Marlina has a restraining order (RO) against Rob who assaulted Marlina causing severe injuries. NPY and WLSSA assisted Marlina to provide an affidavit for a 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.

¹⁴ Ibid.

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 7 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 7

Charles has been recently released on bail for aggravated assault against his partner, Hailey. 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.

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 on the 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 become dislocated from the community and their support structures. As in case study 8 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 7

Jennie was raped and beaten by two men. Jennie reported the rape to the police and the two were in this instance 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 she fears for her safety and this makes her feel very depressed. She is being supported by NPY Women's Council and WLSSA were successful in obtaining Victims of Crime compensation.

Recommendations

1. That Government take steps to implement the outstanding recommendations from the earlier Access to Justice Inquiry.
2. That legal services for Indigenous women be prioritised to redress the inequality and human rights abuses sustained by many Indigenous women and children. Expansion of the RWOP and IWP Programs where services have met their targets in providing services to target groups.
3. That alternative dispute resolution mechanisms not be utilised in cases involving domestic and/or family violence, sexual abuse and other violent crime.
4. That adequate funding is provided to CLCs to ensure that they are able to meet increased demand and ensure wage parity for their employees.
5. That an Aboriginal Women's Legal Service be funded in South Australia.

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

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