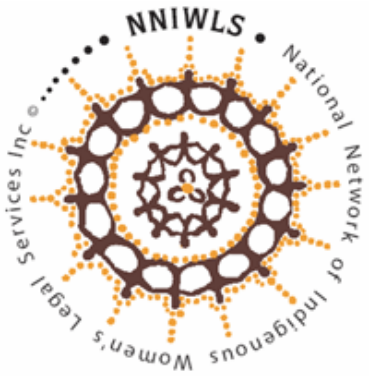
NATIONAL NETWORK OF INDIGENOUS WOMEN'S LEGAL SERVICES Inc.



SUBMISSION:

TO THE STANDING COMMITTEE
ON LEGAL & CONSTITUTIONAL AFFAIRS

INQUIRY into the
FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL 2005

BACKGROUND

The National Network of Indigenous Women's Legal Services Inc. (NNIWLS) is the peak body for Indigenous women's legal services and programs. It is a network promoting social justice by and for Indigenous women.

The Network promotes quality service delivery and access to law and justice for Indigenous women, children and families through advocacy, lobbying and education.

The aim of the NNIWLS is:

"To empower and promote social justice for Indigenous women and Indigenous people with particular emphasis on law and justice issues; with a focus on addressing areas of disadvantage experienced by Indigenous women particularly in legal issues. The NNIWLS and its members are the experts in legal issues that affect Indigenous women.

The Network was formed by, and has a membership that consists of:

- Indigenous Women's Projects (IWP's) (legal services), funded by the Commonwealth Attorney General's Department,
- Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Queensland, funded by Commonwealth Attorney General's Department,
- Wirringa Baiya Aboriginal Women's Legal Centre funded by the NSW Attorney General's Department,
- Family Violence Prevention Legal Services, funded by ATSIS,
- Aboriginal Legal Access Project with Hawkesbury Nepean Community Legal Centre funded privately
- Mirrung Ngu Wanjarri Project with Northern Rivers Community Legal Centre funded by the NSW Department of Gaming and Racing
- Individual Indigenous women who have a commitment to social justice for Indigenous women.

All these services provide legal assistance and advice to Indigenous women, children and families. Every day these service providers see the effects of communities in pain and hurt that goes very deep that leaves many of our women and children at risk. Whilst the services provide legal help, the main aim is healing and working with women and children and often with men.

The National Network Indigenous Women's Legal Services Inc. (NNIWLS) lodged a Submission – A Legal Presumption of Joint Residence –Indigenous women, children and families in response to A Legal Parliamentary Inquiry into Joint Residency Arrangements in the Event of Family Separation in 2003 and a Response to the government A New Approach to the Family Law System, Implementation of Reforms Discussion Paper in 2004. The NNIWLS was also consulted by representatives from the Attorney-General's Department in Perth in December 2004. In July 2005 the NNIWLS lodged another submission Inquiry Into Exposure Draft Of The *Family Law Amendment (Shared Parental Responsibility) Bill* 2005.

While the NNIWLS recognizes that the Committee has attempted to address the key issues for Aboriginal and Torres Strait Islander children and families the NNIWLS is still very concerned about the implementation and operations of this Bill and how far it will go in the best interests of the Aboriginal and Torres Strait Islander child.

NNIWLS Main Concerns

1. The best interest of the Aboriginal and Torres Strait Islander child.

The NNIWLS made recommendations in it's submission to the Inquiry into the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005 in relation to Indigenous people providing the service to Indigenous clients.

RECOMMENDATION 1

A budget allocation is made available to train Indigenous people as family counsellors.

Indigenous people are employed in the family counselling services.

Indigenous organisations are provided with the resources to provide the family counselling service in urban, regional, and remote areas where there is a high percentage of Indigenous people

Three hundred and ninety-seven million dollars ($397) have been made available over four years however none have been identified to employ Indigenous people as counsellors or mediators in the centres or allocated to Indigenous organisations particularly in the regional towns where there are a high percentage of Indigenous people.

How can it be in the best interests of an Indigenous child and its parents who will be responsible to develop plans when they are serviced by non-Indigenous people only?

Given the governments change to mainstreaming services for Indigenous people and opening up the tendering processes to mainstream services this is the least that should be provided in the choice of options to access the service and who will provide that service.

Recommendation

That a budget is allocated to train and employ Indigenous practitioners in the Family Centres so that Aboriginal and Torres Strait Islander people and children will have access to the service and a choice on the best person to provide that service with particular emphasis on where there is a high percentage of Indigenous people within urban, rural and regional areas.

2. Culturally Appropriate Mediation

There is no provision for the mediation required in the family dispute resolution process for Indigenous mediators to be engaged. When the situation is very volatile with a history of family violence and child abuse this requires specialist and expert Indigenous mediators to facilitate an

agreement that is effective and in the best interest of the child in a culturally appropriate manner taking into considerations Aboriginal culture and tradition customary law.

To justify opposed decision making, within the Family Law Act and (SPR) Bill 2005. Indigenous Women's Projects - par. 2, p, 11 states that:

"Indigenous Women's Projects provide court assistance, counseling, education, police referrals, legal advice, support, representation, advocacy, family support, mediation, tenancy advice, financial counseling, child protection/custody information, outreach community legal education to services and Aboriginal communities, solicitor interviews referrals, visiting solicitor service to rural areas, resources, state conferences, community development, casework and a 24 hour telephone advice line. IWPs work on issues of anti-discrimination, workplace relations, custody of children, prisons, law reform, and victims' compensation, civil and family law."

Those Indigenous Women are the Healers. The Women's Network Booklet 2005. Viewing the Services Objectives spells it out on page, 11; in clear order of priority from 1 to 8.

Case Work Study Scenario reflection: as a Social Worker 1996 - 1998.

Case Study: Pregnant Young Mother, Rich Jealous defacto (elderly white man) and young Indigenous Male lover (father of the unborn baby); living side by side in duplex flats. Jealous defacto bashed-up pregnant mother; father of baby came to her rescue. Defacto in a jealous rage; up and shot the Young Mother point blank. Police came, escorted defacto away. Magistrate Court charged the defacto with manslaughter; sentenced him to prison for seven years. Defacto's solicitor appealed for asylum clemency and reduced his sentence. Defacto is walking free today. The Indigenous lover is getting treatment for Mental Health.

<u>Recommendation</u>

That the Legal and Constitutional Committee amends the Family Law Amendment (Shared Parental Responsibility) Bill 2005 to include a clause that will provide a choice of options of service delivery in relation to specialist mediators and counselors for Aboriginal and Torres Strait Islander children and families to include Indigenous practitioners.

In conclusion the NNIWLS strongly encourages the Committee to seriously consider the recommendations in it's last two submissions and the recommendations in this submission. For this new way of working and the Bill 2005 to deal with family law matters by the government it is vital that service delivery to Aboriginal and Torres Strait Islander people is effective and more importantly that they have **choice** on the professional Indigenous practitioners of which there are many in the legal services and the wider Indigenous communities across Australia. Many of these practitioners have received training and information through many leadership programs by government and non-government organizations which can be enhanced and developed further with specific training in mediation and service delivery in the area of family law.

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See further below for attachments

ATTACHMENT 1

National Network of **Indigenous** Women's Legal **Services Inc**

www.nwjc.org.au/awlsn

Submission:

- A Legal Presumption of Joint Residence –

Indigenous women, children and families.

Inquiry into child custody arrangements

in the event of family separation

Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

National Network of **Indigenous** Women's Legal **Services Inc**

- A Legal Presumption of Joint Residence -

Indigenous women, children and families.

Purpose of this Briefing Paper

The National Network Indigenous Women's Legal Services Inc. (NNIWLS) became aware of the Federal Government announcing a Parliamentary Inquiry into Joint Residency Arrangements in the Event of Family Separation, and that the Inquiry will be conducted by the Committee on Family and Community Affairs.

The NNIWLS maintains that the current legislative framework already encourages parents to decide on residence, it is only when disputes arise between parents that they seek assistance from the Family Law Court in relation to intervention. The NNIWLS believes the powers afforded to the Court under the *Family Law Act* are adequate, and that judges/magistrates need to be able to evaluate each case on its merits.

The factors taken into account should remain in 'the best interest' of the child. Changes to the *Family Law Act* should not be driven by one parent's demands superseding the rights of the child.

The NNIWLS have concerns about the proposed legislation as it relates to:

1) *Section 68F* of the Family Law Act 1975 (Cth), as it relates to Indigenous children and families;

2) Where any family violence has occurred;

3) The likely effects of any changes in the child's circumstances;

4) The practical difficulty and expense of a child having contact with a parent;

5) The capacity of each parent to provide for the needs of the child with strong reference to *s.68F*;

6) The need to protect the child from physical or psychological harm.

1. Section 68.F of the Family Law Act 1975 (Cth)

The NNIWLS strongly supports the commitments of both parents in playing an active role in the child's upbringing, as long as it is not at the detriment of the child/ren's cultural identity and well-being.

Section *68F* should direct the judges and magistrates to recognize an Indigenous child's need to maintain a connection to his or her culture, and not simply invite them to decide whether the particular child has that need[1] when dealing with disputes between Indigenous and non-Indigenous parents.

Numerous complaints from Indigenous women throughout Australia were received by the NNIWLS, in instances where the child/ren were granted residency to the non-Indigenous father or father's parents. Indigenous women complained that discriminatory remarks where often made about her Aboriginality or about Aboriginal people in general, and that in these instances the child/ren adopted racists attitudes, which then impaired their relationship from being a strong happy and healthy one between mother and child/ren.

Case 1. Identity and Aboriginal children

A couple, an Aboriginal mother and a Non-Aboriginal father have separated after a 15 year relationship. They have 3 children between the ages of 8 – 14 years.

Throughout the relationship and during arguments the father often resorted to racial abuse of the mother, by calling her a "black slut" and "useless black cunt". When the mother attempted to separate from the relationship the father physically abused her and emotionally manipulated her.

The father would denigrate Aboriginal people and culture openly in front of the mother and children as a means of enforcing control on relationships and family dynamics.

The mother eventually left with the children. However, the father refused to return the children after a period of contact. The father told the mother that 'if she left no Court would ever let her keep the children once he had finished with her'.

The mother was so scared to attempt to apply to the Court of intervention that she eventually considered returning to the relationship.

The children exhibit symptoms of cultural identity crisis, low self-esteem and maternal alienation.

[1] Bringing them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission 1997, p - 483.

The NNIWLS supports the recommendations of the Bringing Them Home Report[2] (BTHR) and the decision of the Full Court in the matter of *B and R*, which held that 'the Aboriginality of a child is a matter which is relevant to the welfare [now best interests] of the child'.

The court summarized a wide range of research on the subject:

a) *In Australia a child whose ancestry is wholly or partly Indigenous is treated by the dominant white society as 'black', a circumstance which carries with it widely accepted connotations of an interior social position. Racism still remains a marked aspect of Australian society;*

b) *The removal of an Aboriginal child from his/her environment to a white environment is likely to have a devastating effect upon that child, particularly if it is coupled with a long term upbringing in that environment, and especially if it results in exclusion from contact with his/her family and culture;*

c) *Generally an Aboriginal child is better able to cope with that discrimination from within the Aboriginal community because usually that community actively reinforces identity, self-esteem and appropriate responses;*

d) *Aboriginal children often suffer acutely from an identity crisis in adolescence, especially if brought up in ignorance of or in circumstances, which deny or belittle their Aboriginality. This is likely to have significant impact upon their self-esteem and self-identity into adult life.* [3]

The NNIWLS concur with the recommendations set out that the Family Court should order the appointment of a special 'separate representative' for every Indigenous child involved in a parenting dispute. The role of the separate representative (that is, separate from the legal representatives for the mother and father or other family" would include 'to examine these issues and ensure that all relevant evidence and submissions are placed before the court', [That article 30 of the *Convention of the Rights of the Child]*, be implemented into the Family Law Act to include that the child's right, 'in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language'.

Even though Indigenous representatives have been employed in some Family Law Courts this practice is still not happening in all Family Law Courts or in every State.

Convention on the Elimination of All Forms of Racial Discrimination

The NNIWLS also recommends that the Federal Government should ensure that all appropriate means to combat and eliminate racism against Indigenous people as set out in the Convention on the Elimination of All Forms of Racial Discrimination, in

[2] Bringing them home' Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission, 1997, pgs.484-485.
[3] 'Ibid, pgs 484-485.

particular "ensure that members of Indigenous people are free and equal in dignity and rights and free from discrimination, in particular that based on Indigenous identity".[4]

The NNIWLS could not support any changes to the *Family Law Act* allowing equal residency with each parent until all discriminatory measures are eradicated in all family law proceedings, not only discriminatory views held by non-Indigenous parents but racist assumption that may be held by judges/magistrates which would then led to a ill-informed decision, that in turn will have a detrimental consequent upon the child when making a decision in the 'best interests' of the child.

Racial and gender stereotyping of Aboriginal mothers.

It is the experience of the NNIWLS that Non-Aboriginal fathers regularly degrade the Aboriginal mother with the use of derogatory racial and gender stereotyping in Affidavit's which support his application to the Court. If the mother has no access to legal assistance as is often the case, she is unable to respond to such overtly derogatory stereotyping and as the Court bases its decisions of the 'evidence' before them, the best interest and cultural identity of Aboriginal children are placed in an un-nurturing environment.

Indigenous family structures and child rearing practices

Indigenous family structures are unlike the stereotypical nuclear family structures consisting of a mother, a father and 2 children, they are complex and consist of an extended family structure. Indigenous families living in a single residence or community often consist of 4 generations.

It is a traditional practice and role of Grandparents or Aunties and Uncles to also care for and raise children. The care of grandchildren by Grandparents is a common daily occurrence within Indigenous communities. These arrangements are seen as informal under legislation until formalized by the Family Court.

Recognition of Indigenous child rearing practices must occur and the proposed legislation of a presumption of joint residence by only a mother and father fails to do this. Such legislation will further erode traditional care arrangements and have ramifications for the care, welfare and development of Indigenous children.

[4] Social Justice Report 2002, Report No.2/2003, Aboriginal & Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, p 188.

2. Where Family Violence Has Occurred.

Bringing Them Home Report and the *Family Law Act (Cth) 1975*.

Violence to Indigenous women is 45 times higher than for non-Indigenous women. Twenty-three percent of these women need hospital treatment for their injuries compared to 6.6% of non-Indigenous violence victims. The rate of assault of women is such that about one-third of Northern Territory's Indigenous female population is assaulted each year. Weapons are reported to be used in around 50-60% of Indigenous attacks between spouses (Memmott 2001).[5]

Research has proven that in the majority cases where Indigenous women who were removed as children in turn as adults became disempowered and are in many instances unable to negotiate on equal terms. The BTHR noted:

The effects of forcible removal and institutionalization persist into adulthood, appearing indeed to be life long.

> *…the individuals I have seen lack a sense of personal identity, personal worth and trust in others. Many have formed multiple unstable relationships, are extremely susceptible to depression, and use drugs and alcohol as a way of masking their pain. They see themselves as so worthless that they are easily exploited, laying themselves open to be recruited into prostitution and other forms of victimization* (Dr Brent Waters submission 532 page2). *The women who functioned well in spite of their disadvantageous upbringing were most likely those who enjoyed the 'emotional support of a nondeviant spouse with whom '[they] had a close, confiding, and harmonious relationship.*[6]

Indigenous women in many instances trying to escape violence find they are continually pursued by the former partner, feel disempowered and give into his pleas and enter back into a violent relationship. Some Indigenous women victims of violence have spoken about how police have dealt with their pleas for protection inappropriately by charging them with aiding and abetting, as they have succumbed to their ex-partners pleas only to be violated. Many of these women were not informed of a legal remedy available to them, such as tailoring a Restraining Order (AVO, VRO); to inform him that he is not allowed to come near her while he is under the influence of alcohol, or when she is aware of what will trigger his violence.

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[5] Child Sexual Abuse in Indigenous Communities by Janet Stanely, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

[6] 'Bringing Them Home' Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families, 1997, Human Rights & Equal Opportunity Commission, p.187.

Those who are already disempowered or disconnected from others, and particularly those who are already troubled or have experienced multiple traumas, are most at risk when traumatized (Herman 1992). The implications for Indigenous communities is that some Indigenous women may be powerless because of what has happened to them as a child and previous (and on-going) trauma may be a barrier to change.[7]

Dr Williams Jonas AM stated:

> "Indigenous family violence is also an abuse of the fundamental human rights of Indigenous women and children – such as to security of the person. And it cannot be tolerated under any circumstances.
>
> *Aboriginal women often do not have the luxury of choosing between asserting their rights as women as opposed to their rights as Indigenous people. This national debate has put into sharp focus the unacceptable choice that many Indigenous women face between having to prioritize between issues of race and gender. And it was clear that issues of race would almost always hold dominance over issues of gender."*[8]

The NNIWLS have serious concerns about Indigenous women attempting to negotiating joint residency with violent partners after they have separated, as it will place Indigenous women and children at further risk.

Case 2: Family Violence and the presumption of joint residence

Young Aboriginal mother has separated from her Aboriginal partner.

She is aged 20 years old and has three small children under the age of 4 years. The relationship was extremely abusive and the mother experienced repeated and ongoing physical violence and intimidation from her partner. The abuse included regular beatings with sticks, having boiling water poured on her as she lay on the floor, blows to her body and head, and broken ribs. The beatings and violence have happened so often the mother has difficulty remembering just how many times this has happened. The children have witnessed the abuse of their mother. They have witnessed the control and intimidation of their mother by their father.

[7] Child Sexual Abuse in Indigenous Communities by Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

[8] 'Family Violence in Indigenous Communities: Breaking the Silence? Opening remarks at the launch of UNSW Law Journal Forum 8(1) delivered by Dr William Jonas AM, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sydney, July 25, 2002.

The mother attempted to the leave the relationship several times and was physically forced to return, once being dragged by the hair along a road and forced into a vehicle. Additionally, financial abuse existed with the father using the majority of income for the purchase of marijuana and alcohol.

The mother was only able to leave the relationship when she had to travel to the nearest capital city for medical treatment and the birth of her 3rd child. They live in a remote region and the nearest city was over 1000 km away.

After the mother left the relationship she had to apply to the Court for a child recovery order and child residence.

She has left her own mother and her own community, as this is the only way she will be safe from the children's father.

This case example is not unusual, it is not out of the ordinary for many Aboriginal women it has a common thread that is experienced by extremely high numbers of Aboriginal women throughout Australia.

Presumption of legal joint residence:

- How does the Government intend legislating around matters such as these?

- How will an Aboriginal mother and children be protected given the history and level of violence that exists in many Aboriginal communities and the level of disadvantage already experienced by Aboriginal women?

The connection between violence and crime and Incarceration of Indigenous women.

Recent research conducted, 'Indigenous women and corrections – A Landscape of Risk', cited that Indigenous women face an unacceptably high risk of incarceration in prisons across Australia, and that Indigenous women are currently incarcerated at a rate higher than any other group in Australia[9]. The rising rate of over-representation of Indigenous women is occurring in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty.
Categories of criminal behaviour included fraud where Indigenous women had omitted to inform Centrelink of a de-facto relationship while claiming a supporting parent's pension.[10]
Numerous Indigenous women who find they are not able to resist his pleas enter back into dysfunctional relationships after going on the sole parent pension. They find they

[9] 'Indigenous women and corrections – A Landscape of Risk', Social Justice Report, 2002, Aboriginal & Torres Strait Islander Social Justice Commissioner, Human Rights & Equal Opportunity Commission, p.135
[10] Ibid, p.142.

cannot make or force him to be responsible for supporting her and the children so they continued to receive the pension as a means of survival, only to be caught out by the Department of Social Security. The Commonwealth Government in turn charges these women with fraud, recover the debt, but then impose a prison sentence. Many Indigenous women did not see themselves as breaking the law but trying to provide for their children on a minimum income.

Indigenous women are victims of a complex frame of dynamics upon their lives including violence, poverty, trauma, grief, cultural and spiritual breakdown. Research has proven there are consistent patterns indicating that incarcerated Indigenous women have been victims of assault and sexual assault at some time in their lives.[11]

Recent trends in incarceration also indicate that Indigenous women are increasingly goaled for violent assaults, and some commentators suggest there is a relationship between violent behaviour and victim of violence. Carlo La Prairie's investigations of similar statistics in Canada suggest that there are three ways Indigenous women living in violent situations may end up convicted of violent offences: 'they may retaliate with violence against abusive family members; they may resort to drug and alcohol abuse to escape abuse; or their victimization may lead to the abuse or neglect of others[12].

Given these circumstances the NNIWLS would only see that equal joint residency would not only further exacerbate the violence, but further disadvantage Indigenous women who may not able to negotiate a safe outcome, as they will have to continuously live and revisit past violent relationships.

Positive Indigenous Role Models.

Exposure to overtly 'macho' behaviour and violence may be the only understanding of mainstream culture experienced by remote Indigenous youth.[13] Children can only grow into responsible non-violent adults if they learn not only from both parents that violence will not be tolerated, but if they know laws will not support any forms of violence.

The NNIWLS also recognizes Indigenous children need positive role models and children need to know that the law will protect them from violence. The NNIWLS believes that the cycle of violence has to stop and that children do not need destructive male role models playing an active part in their lives. By giving fathers joint residence arrangement if they have perpetrated violence will send out mixed messages to children, that the Government, laws and society tolerates violence.

[11] Ibid p.149.
[12] Ibid p.150.
[13] Child Sexual Abuse in Indigenous Communities by Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

The NNIWLS strongly supports and advocates the traditional role and place of Indigenous men in the raising of children. Family Violence and sexual abuse is not a part of our traditional cultures and the roles of Indigenous men as fathers has been eroded as a direct result of and effects of colonisation, dispossession of land and past government policies.

Aboriginal peoples and their families and communities view, violence and sexual assault as being an issue that effects the very fabric of our society. This society is made up of individuals, families, and communities, all linked by inter-relationships to land and family. As such Aboriginal society does not take the view that the issues that touch and pull at the fabric of our society is exclusive to women only. Indeed Men, and young boys
are a part of this bigger picture, our relationship is mutual, and not mutually exclusive.

Indigenous communities have many strong, non-violent Indigenous male role models from whom children can learn and gain strength and wisdom from. 'Men's business', traditional values and skills are being passed on to male children who in turn will teach their children and grandchildren. It is to these men that the many of the communities burdens fall.

Case 3 : Indigenous male role models and family violence

My father started being violent towards my mother when I was about 5 years old. I loved my father deeply but the abuse continued throughout my childhood and eventually my brothers and I also suffered emotional and physical violence from my father.

The consequences of these years of trauma have been great. My relationship with my father suffered terribly and we were often 'at each other', particularly where my mother was concerned. It reached a point where I started being violent in retaliation towards my father, my brothers experiences have been the same.

My mother remained in the relationship for over 30 years, we were all adults by the time my parents eventually separated. The violence stopped when my parents separated and my father became ostracised from us as a family unit.

I have since healed in my relationship with my father. I love and care from him deeply. My father never really has understood the gravity of his actions nor ever really taken any responsibility for his violence. Alcohol was often an excuse for his actions, but this was a smoke screen to many of his own childhood traumas and ghosts within his spirit.

My brothers haven't been so lucky. I am my fathers only daughter so I had a different upbringing to my brothers in the real sense of the words. My father was their male role model and his violence and attitude towards raising boys to be men was unrealistic and detrimental to them as whole people.

My brothers although adults and fathers themselves still bear the scars of my fathers physical and emotional violence. Their self-esteem has suffered, they question and worry about their own parenting skills and negative stereotyping of Indigenous fathers. They have tackled the consequences of alcohol and drug use, relationship breakdown and separation from their own children.

I know that my mother stayed with my father for very real reasons and the consequences of her separating from my father when we were children would have been horrific and a greater burden for our family to bear.

Women and children need to know that they can be protected if they leave an abusive relationship. The presumption of joint residency will not give Indigenous children the opportunity to heal from the violence they have witnessed or experienced at the hands of those who they love. Non-violent fathers need to be supported in raising children and violent fathers need to take responsibility for their actions.

Men need to stop using violence against our women and children, the consequences for families is insurmountable.

The cost to our men is immeasurable.

The NNIWLS supports and encourages Indigenous men to continue to advocate against violence and abuse within our communities.

Sexual assault

It is the experience of the NNIWLS that there is a gross under estimate of the level of sexual abuse that exist for Aboriginal children. Findings have indicated that the majority of sexual abuse of children still remains unreported and no clear data is available.

The extent of Child Sexual Assault in Indigenous communities is not recognized as it should be, partly because of a failure to report, and a failure to respond, to many assaults. There is a failure to report for many reasons, including:

- a fear of racism and due to reasons of shame;
- a fear of reprisal from the perpetrator in small, closed communities, or pay-back from relatives;

- a perceived need to protect the perpetrator due to reasons such as the high number of Indigenous deaths in custody. Fitzgerald (2001) writes that this is a realistic fear, particularly in Cape York communities where a death in custody would be seen as the women's (victim's) fault;
- a fear of the police response;
- difficulties in communicating with legal staff. It is difficult for some Indigenous people to translate their experience into terminology required for legal processes;
- the absence of someone to report to in remote communities. There may be no means of reporting in remote communities where poverty, isolation and the relatively small size of the community means there is no public transport and no private vehicles to provide access to support and secure shelter; and;
- lack of trust of the 'white' system.

Due to the high level of sexual assault in Indigenous communities and lack of reporting, by the Federal Government giving sweeping powers of joint residency arrangements will certainly place Indigenous children at risk of further abuse[14].

3.The likely effects of any changes in the child's circumstances.

Indigenous people are the most disadvantaged socio-economical groups. The Government made a commitment through its policy document *Health Throughout Life* to encourage breastfeeding awareness, with the aim of increasing Australia's rate of breastfeeding, particularly for babies up to 6 months of age.

Whilst Government and the Office of Aboriginal and Torres Strait Islander Health Service are promoting breastfeeding in Indigenous communities, joint residency would complicate or disrupt mother and baby, and create further health problems around infant health issues.[15]

It is also a child rearing practice in many Indigenous communities to breast feed children up until the 5-6 years of age. Given the issues surrounding the effects of colonization and child rearing practices in the general community it is important that the health and wellbeing of Indigenous children are considered by the Court and every opportunity given for such Indigenous practices to be recognized in the best interest of Indigenous children.

4. The practical difficulty and expense of a child having contact with a parent.

Given the fact that single families mainly consist of mothers, and they are still the most socio-economical group in Australia, where single mothers are meant to

[14] Ibid, p.2.
[15] Population Health, Australia Department of Health & Ageing, cited: website: www.health.gov.au/pubhlth.4/08/03.

commute to and from to pick the child/ren up when it is her turn for joint residency will place further financial hardships upon the family. The money going out on public transport, airfares, or petrol regularly, especially in cases where the separated parents may not live in close proximity, not to mention the time that may wasted in traveling which could be going into more productive areas.

Case 4: Difficulties for Indigenous families

Aboriginal mother of 5, separated from her second partner who is the father of the 3 youngest children. The mother and children have returned to the mothers 'country' and the father has remained in his 'country'. They live over 800kms apart.

The relationship was volatile and the separation difficult. There are current residence order in place and the children have regular contact by telephone with their father and stay with him during school holiday periods.

The mother has had to apply for child recovery orders on 2 occasions as the father has refused to return the children at the cessation of contact and has failed to notify the mother of his address.

The children have eventually been returned to the mother and resumed a routine

and stable life-style including attending school regularly.

The mother has a position under a CDEP and has a low income, the father is unemployed. The financial strain on the parent's is extreme, given that they each must pay the costs of the travel associated with contact. Costs of the children's fares are high and the children need to be accompanied by an adult on the bus which is the only mode of transport available to them.

Presumption of joint residence;

- How will the government legislate in relation to the issues for mixed families and separation of siblings under the joint residence legislation?
- How will the government provide assistance to low income families suffering as a result of the increase in costs associated with joint residence?
- What priority does the government place on the best interests of the children?

5. The capacity of each parent to provide for the needs of the child with strong reference to *s.68F*.

As recommended in no.1 in regards to Section 68.F of the *Family Law Act 1975 (Cth),* with strong reference to Justice Chisholm comments:

> *'[It] covers a wide range of matters. It 'is not to be measured by money only, nor by physical comfort only…the moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded'…[It includes] ' all factors which affect the future of the child'…It includes the child's happiness…It includes both the immediate well-being of the child and matters relevant to the child's healthy development'.*

The fact that the child's best interest are paramount means that the court's orders will seek to secure those best interests even if this seems unfair to one of the parents.[16]

6. The need to protect the child from physical or psychological harm.

This also refers to no.1 & 2. Based on child abuse and neglect, which was notified (or reported) to child protection departments around Australia in 2001-02, 3,254 Indigenous children under 17 years had some form of abuse substantiated (i.e. The statutory protection authority believed that physical abuse, psychological abuse, sexual and/or neglect, had occurred). This rate of substantiation was disproportionately higher (4.3 times higher on average) in the Indigenous population, than in the non-Indigenous population. Substantiation varied across states, from two Indigenous children in Tasmania to a rate of nearly eight times higher for Indigenous children in Victoria and Western Australia.

The Roberson Report (1999, internet edition) says that:

> *Violence is now overt; murders, bashing and rapes, including sexual violence against children, have reached epidemic proportions with both Indigenous and non-Indigenous people being perpetrators.*

Police reports in WA say that, in 2000, the rate of reports to police of sexual assault of Indigenous girls was approximately double that of non-Indigenous girls (Gordon, Hallahan & Henry 2002). However, only 10%-15% of sexual assaults are reports to police and this reporting rate is lower in Indigenous communities (Gordon, Hallahan & Henry 2002). The Robertson Report (1999) says that 88% of rapes in Indigenous communities go unreported. So, although there are proportionately more reported sexual assault of Indigenous girls than non-Indigenous girls, a lower proportion is reported.[17]

Conclusion

[16] Ibid, p.482.

[17] Child Sexual Abuse in Indigenous Communities By Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 102 May, Adelaide.

All services in the National Network of Indigenous Legal Services Inc. are providing legal help to Indigenous women and children. One of the most important points about the services is that they are provided by Indigenous women for Indigenous people. All of the services cover huge geographical areas and many of them are in rural and remote areas.

NNIWLS does support ongoing contact with children after separation as long as is not at the detriment of the child/ren.

The NNIWLS could not support any changes to the *Family Law Act* allowing equal residency with each parent until all discriminatory measures are eradicated in all family law proceedings, not only discriminatory views held by non-Indigenous parents but racist assumption that may be held by judges/magistrates which would then led to a ill-informed decision, that in turn will have a detrimental consequent upon the child when making a decision in the 'best interests' of the child.

Recognition of Indigenous child rearing practices must occur and the proposed legislation of a presumption of joint residence by only a mother and father fails to do this. Such legislation will further erode traditional care arrangements and have ramifications for the care, welfare and development of Indigenous children.

The NNIWLS strongly supports and advocates the traditional role and place of Indigenous men in the raising of children. Family Violence and sexual abuse is not a part of our traditional cultures and the roles of Indigenous men as fathers has been eroded as a direct result of and effects of colonisation, dispossession of land and past government policies.

Alcohol must stop being used as an excuse for violence and abuse against women and children. Non-violent fathers need to be supported in raising children and violent fathers need to take responsibility for their actions. The NNIWLS supports and encourages Indigenous men to continue to advocate against violence and abuse within our communities.

The NNIWLS has serious concerns about Indigenous women attempting to negotiating joint residency with violent partners after they have separated, as it will place Indigenous women and children at further risk. Given the evidence researched the NNIWLS could not support any legislation that would further place Indigenous women and children at risk of ongoing violence.

Additionally, due to the high level of sexual assault in Indigenous communities and lack of reporting, the Federal Government by giving sweeping powers of joint residency arrangements will certainly place Indigenous children at risk of further abuse[18].
The NNIWLS resources and workers are already stretched to the limit trying to meet the needs of their communities and with the Government proposing 'the presumption of joint residence' it will further disadvantage Indigenous women and children.

The proposal would create a revolving door process, not only dealing with old clients, new clients but Services will have clients permanently on their books, as it will not create any relief for Indigenous women confronting violence. The proposed

[18] Ibid, p.2.

legislation has the capacity to perpetuate an additional cycle of abuse and disempowerment on the most disadvantaged people in our community.

The 'equal child residence' debate should not be about the Government imposing sweeping legislation to advance the 'few', but ask questions in regards to why one parent is denied access by the Family Court on a case by case basis. It is only then that Government will have an understanding of the decisions made by the Family Court, in the best interest of the children, instead of creating untenable laws that will place Indigenous women and children at risk of continuing violence and exacerbate their social and legal disadvantage.

National Network of Indigenous Women's Legal Service Inc.

A Legal Presumption of Joint Residence Committee:

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ATTACHMENT 2

National Network of **Indigenous** Women's Legal **Services Inc**

www.nniwls.org.au

NNIWLS Submission

In response to:

A New Approach to the Family Law System

Implementation of Reforms

Discussion Paper

Consultation Secretariat
Family Law and Legal Assistance Division
Attorney-General's Department
Robert Garran Offices
National Circuit
Barton ACT 2600

Introduction

The National Network Indigenous Women's Legal Services Inc. (NNIWLS) lodged a Submission – A Legal Presumption of Joint Residence –Indigenous women, children and families in response to A Legal Parliamentary Inquiry into Joint Residency Arrangements in the Event of Family Separation in 2003 (attached).

The NNIWLS's submission raised concerns on the proposed legislation as it relates to:

7) *Section 68F* of the Family Law Act 1975 (Cth), as it relates to Indigenous children and families;

8) Where any family violence has occurred;

9) The likely effects of any changes in the child's circumstances;

10) The practical difficulty and expense of a child having contact with a parent;

11) The capacity of each parent to provide for the needs of the child with strong reference to *s.68F*;

12) The need to protect the child from physical or psychological harm.

Case studies identified the issues for Indigenous women, children and families and recommendations were made in the submission to the Standing Committee. Consultations were carried out across Australia however the NNIWLS was not consulted further, to the submission.

In response to the Discussion Paper – A New Approach to the Family Law System, Implementation of Reforms, which proposes reforms as a result of the consultation, the NNIWLS submission raises concerns on the following points:

1. NNIWLS recommendations – a Legal Presumption of Joint Residence – Indigenous women, children and families.

2. Delivery of service to Indigenous people

    - The lack of reference to addressing issues for Indigenous peoples from an Indigenous perspective
    - The lack of service for Indigenous people living in remote areas.

3. Cultural issues

4. The inclusion of grandparents in the development of the plans

5. Preliminary preparations prior to parents and families consenting to plans

1. NNIWLS Submission – A Legal Presumption – Indigenous women, children and families

The NNIWLS strongly supports the commitments of both parents in playing an active role in the child's upbringing, as long as it is not at the detriment of the child/ren's cultural identity and well-being.

Section *68F* should direct the judges and magistrates to recognize an Indigenous child's need to maintain a connection to his or her culture, and not simply invite them to decide whether the particular child has that need[19] when dealing with disputes between Indigenous and non-Indigenous parents.

Numerous complaints from Indigenous women throughout Australia were received by the NNIWLS, in instances where the child/ren were granted residency to the non-Indigenous father or father's parents. Indigenous women complained that discriminatory remarks where often made about her Aboriginality or about Aboriginal people in general, and that in these instances the child/ren adopted racists attitudes, which then impaired their relationship from being a strong happy and healthy one between mother and child/ren.

Case 1. Identity and Aboriginal children

A couple, an Aboriginal mother and a Non-Aboriginal father have separated after a 15 year relationship. They have 3 children between the ages of 8 – 14 years.

Throughout the relationship and during arguments the father often resorted to racial abuse of the mother, by calling her a "black slut" and "useless black cunt". When the mother attempted to separate from the relationship the father physically abused her and emotionally manipulated her.

The father would denigrate Aboriginal people and culture openly in front of the mother and children as a means of enforcing control on relationships and family dynamics.

The mother eventually left with the children. However, the father refused to return the children after a period of contact. The father told the mother that 'if she left no Court would ever let her keep the children once he had finished with her'.

The mother was so scared to attempt to apply to the Court of intervention that she eventually considered returning to the relationship.

The children exhibit symptoms of cultural identity crisis, low self-esteem and maternal alienation.

[19] Bringing them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission 1997, p - 483.

The NNIWLS supports the recommendations of the Bringing Them Home Report[20] (BTHR) and the decision of the Full Court in the matter of *B and R*, which held that 'the Aboriginality of a child is a matter which is relevant to the welfare [now best interests] of the child'.

The court summarized a wide range of research on the subject:

e) In Australia a child whose ancestry is wholly or partly Indigenous is treated by the dominant white society as 'black', a circumstance which carries with it widely accepted connotations of an interior social position. Racism still remains a marked aspect of Australian society;

f) The removal of an Aboriginal child from his/her environment to a white environment is likely to have a devastating effect upon that child, particularly if it is coupled with a long term upbringing in that environment, and especially if it results in exclusion from contact with his/her family and culture;

g) Generally an Aboriginal child is better able to cope with that discrimination from within the Aboriginal community because usually that community actively reinforces identity, self-esteem and appropriate responses;

h) Aboriginal children often suffer acutely from an identity crisis in adolescence, especially if brought up in ignorance of or in circumstances, which deny or belittle their Aboriginality. This is likely to have significant impact upon their self-esteem and self-identity into adult life. [21]

The NNIWLS concur with the recommendations set out that the Family Court should order the appointment of a special 'separate representative' for every Indigenous child involved in a parenting dispute. The role of the separate representative (that is, separate from the legal representatives for the mother and father or other family" would include 'to examine these issues and ensure that all relevant evidence and submissions are placed before the court', [That article 30 of the *Convention of the Rights of the Child]*, be implemented into the Family Law Act to include that the child's right, 'in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language'.

Even though Indigenous representatives have been employed in some Family Law Courts this practice is still not happening in all Family Law Courts or in every State.

Convention on the Elimination of All Forms of Racial Discrimination

The NNIWLS also recommends that the Federal Government should ensure that all appropriate means to combat and eliminate racism against Indigenous people as set out in the Convention on the Elimination of All Forms of Racial Discrimination, in

[20] Bringing them home' Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, Human Rights and Equal Opportunity Commission, 1997, pgs.484-485.
[21] 'Ibid, pgs 484-485.

particular "ensure that members of Indigenous people are free and equal in dignity and rights and free from discrimination, in particular that based on Indigenous identity".[22]

The NNIWLS could not support any changes to the *Family Law Act* allowing equal residency with each parent until all discriminatory measures are eradicated in all family law proceedings, not only discriminatory views held by non-Indigenous parents but racist assumption that may be held by judges/magistrates which would then led to a ill-informed decision, that in turn will have a detrimental consequent upon the child when making a decision in the 'best interests' of the child.

Racial and gender stereotyping of Aboriginal mothers.

It is the experience of the NNIWLS that Non-Aboriginal fathers regularly degrade the Aboriginal mother with the use of derogatory racial and gender stereotyping in Affidavit's which support his application to the Court. If the mother has no access to legal assistance as is often the case, she is unable to respond to such overtly derogatory stereotyping and as the Court bases its decisions of the 'evidence' before them, the best interest and cultural identity of Aboriginal children are placed in an un-nurturing environment.

Indigenous family structures and child rearing practices

Indigenous family structures are unlike the stereotypical nuclear family structures consisting of a mother, a father and 2 children, they are complex and consist of an extended family structure. Indigenous families living in a single residence or community often consist of 4 generations.

It is a traditional practice and role of Grandparents or Aunties and Uncles to also care for and raise children. The care of grandchildren by Grandparents is a common daily occurrence within Indigenous communities. These arrangements are seen as informal under legislation until formalized by the Family Court.

Recognition of Indigenous child rearing practices must occur and the proposed legislation of a presumption of joint residence by only a mother and father fails to do this. Such legislation will further erode traditional care arrangements and have ramifications for the care, welfare and development of Indigenous children.

[22] Social Justice Report 2002, Report No.2/2003, Aboriginal & Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, p 188.

2. Where Family Violence Has Occurred.

Bringing Them Home Report and the *Family Law Act (Cth) 1975*.

Violence to Indigenous women is 45 times higher than for non-Indigenous women. Twenty-three percent of these women need hospital treatment for their injuries compared to 6.6% of non-Indigenous violence victims. The rate of assault of women is such that about one-third of Northern Territory's Indigenous female population is assaulted each year. Weapons are reported to be used in around 50-60% of Indigenous attacks between spouses (Memmott 2001).[23]

Research has proven that in the majority cases where Indigenous women who were removed as children in turn as adults became disempowered and are in many instances unable to negotiate on equal terms. The BTHR noted:

The effects of forcible removal and institutionalization persist into adulthood, appearing indeed to be life long.

> *…the individuals I have seen lack a sense of personal identity, personal worth and trust in others. Many have formed multiple unstable relationships, are extremely susceptible to depression, and use drugs and alcohol as a way of masking their pain. They see themselves as so worthless that they are easily exploited, laying themselves open to be recruited into prostitution and other forms of victimization* (Dr Brent Waters submission 532 page2). *The women who functioned well in spite of their disadvantageous upbringing were most likely those who enjoyed the 'emotional support of a nondeviant spouse with whom '[they] had a close, confiding, and harmonious relationship.*[24]

Indigenous women in many instances trying to escape violence find they are continually pursued by the former partner, feel disempowered and give into his pleas and enter back into a violent relationship. Some Indigenous women victims of violence have spoken about how police have dealt with their pleas for protection inappropriately by charging them with aiding and abetting, as they have succumbed to their ex-partners pleas only to be violated. Many of these women were not informed of a legal remedy available to them, such as tailoring a Restraining Order (AVO, VRO); to inform him that he is not allowed to come near her while he is under the influence of alcohol, or when she is aware of what will trigger his violence.

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[23] Child Sexual Abuse in Indigenous Communities by Janet Stanely, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

[24] 'Bringing Them Home' Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children From Their Families, 1997, Human Rights & Equal Opportunity Commission, p.187.

Those who are already disempowered or disconnected from others, and particularly those who are already troubled or have experienced multiple traumas, are most at risk when traumatized (Herman 1992). The implications for Indigenous communities is that some Indigenous women may be powerless because of what has happened to them as a child and previous (and on-going) trauma may be a barrier to change.[25]

Dr Williams Jonas AM stated:

> "Indigenous family violence is also an abuse of the fundamental human rights of Indigenous women and children – such as to security of the person. And it cannot be tolerated under any circumstances.
>
> *Aboriginal women often do not have the luxury of choosing between asserting their rights as women as opposed to their rights as Indigenous people. This national debate has put into sharp focus the unacceptable choice that many Indigenous women face between having to prioritize between issues of race and gender. And it was clear that issues of race would almost always hold dominance over issues of gender."*[26]

The NNIWLS have serious concerns about Indigenous women attempting to negotiating joint residency with violent partners after they have separated, as it will place Indigenous women and children at further risk.

Case 2: Family Violence and the presumption of joint residence

Young Aboriginal mother has separated from her Aboriginal partner.

She is aged 20 years old and has three small children under the age of 4 years. The relationship was extremely abusive and the mother experienced repeated and ongoing physical violence and intimidation from her partner. The abuse included regular beatings with sticks, having boiling water poured on her as she lay on the floor, blows to her body and head, and broken ribs. The beatings and violence have happened so often the mother has difficulty remembering just how many times this has happened. The children have witnessed the abuse of their mother. They have witnessed the control and intimidation of their mother by their father.

[25] Child Sexual Abuse in Indigenous Communities by Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

[26] 'Family Violence in Indigenous Communities: Breaking the Silence? Opening remarks at the launch of UNSW Law Journal Forum 8(1) delivered by Dr William Jonas AM, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Sydney, July 25, 2002.

The mother attempted to the leave the relationship several times and was physically forced to return, once being dragged by the hair along a road and forced into a vehicle. Additionally, financial abuse existed with the father using the majority of income for the purchase of marijuana and alcohol.

The mother was only able to leave the relationship when she had to travel to the nearest capital city for medical treatment and the birth of her 3rd child. They live in a remote region and the nearest city was over 1000 km away.

After the mother left the relationship she had to apply to the Court for a child recovery order and child residence.

She has left her own mother and her own community, as this is the only way she will be safe from the children's father.

This case example is not unusual, it is not out of the ordinary for many Aboriginal women it has a common thread that is experienced by extremely high numbers of Aboriginal women throughout Australia.

Presumption of legal joint residence:

- How does the Government intend legislating around matters such as these?

- How will an Aboriginal mother and children be protected given the history and level of violence that exists in many Aboriginal communities and the level of disadvantage already experienced by Aboriginal women?

The connection between violence and crime and Incarceration of Indigenous women.

Recent research conducted, 'Indigenous women and corrections – A Landscape of Risk', cited that Indigenous women face an unacceptably high risk of incarceration in prisons across Australia, and that Indigenous women are currently incarcerated at a rate higher than any other group in Australia[27]. The rising rate of over-representation of Indigenous women is occurring in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty.
Categories of criminal behaviour included fraud where Indigenous women had omitted to inform Centrelink of a de-facto relationship while claiming a supporting parent's pension.[28]
Numerous Indigenous women who find they are not able to resist his pleas enter back into dysfunctional relationships after going on the sole parent pension. They find they

[27] 'Indigenous women and corrections – A Landscape of Risk', Social Justice Report, 2002, Aboriginal & Torres Strait Islander Social Justice Commissioner, Human Rights & Equal Opportunity Commission, p.135
[28] Ibid, p.142.

cannot make or force him to be responsible for supporting her and the children so they continued to receive the pension as a means of survival, only to be caught out by the Department of Social Security. The Commonwealth Government in turn charges these women with fraud, recover the debt, but then impose a prison sentence. Many Indigenous women did not see themselves as breaking the law but trying to provide for their children on a minimum income.

Indigenous women are victims of a complex frame of dynamics upon their lives including violence, poverty, trauma, grief, cultural and spiritual breakdown. Research has proven there are consistent patterns indicating that incarcerated Indigenous women have been victims of assault and sexual assault at some time in their lives.[29]

Recent trends in incarceration also indicate that Indigenous women are increasingly goaled for violent assaults, and some commentators suggest there is a relationship between violent behaviour and victim of violence. Carlo La Prairie's investigations of similar statistics in Canada suggest that there are three ways Indigenous women living in violent situations may end up convicted of violent offences: 'they may retaliate with violence against abusive family members; they may resort to drug and alcohol abuse to escape abuse; or their victimization may lead to the abuse or neglect of others[30].

Given these circumstances the NNIWLS would only see that equal joint residency would not only further exacerbate the violence, but further disadvantage Indigenous women who may not able to negotiate a safe outcome, as they will have to continuously live and revisit past violent relationships.

Positive Indigenous Role Models.

Exposure to overtly 'macho' behaviour and violence may be the only understanding of mainstream culture experienced by remote Indigenous youth.[31] Children can only grow into responsible non-violent adults if they learn not only from both parents that violence will not be tolerated, but if they know laws will not support any forms of violence.

The NNIWLS also recognizes Indigenous children need positive role models and children need to know that the law will protect them from violence. The NNIWLS believes that the cycle of violence has to stop and that children do not need destructive male role models playing an active part in their lives. By giving fathers joint residence arrangement if they have perpetrated violence will send out mixed messages to children, that the Government, laws and society tolerates violence.

[29] Ibid p.149.
[30] Ibid p.150.
[31] Child Sexual Abuse in Indigenous Communities by Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 1-2 May, Adelaide.

The NNIWLS strongly supports and advocates the traditional role and place of Indigenous men in the raising of children. Family Violence and sexual abuse is not a part of our traditional cultures and the roles of Indigenous men as fathers has been eroded as a direct result of and effects of colonisation, dispossession of land and past government policies.

Aboriginal peoples and their families and communities view, violence and sexual assault as being an issue that effects the very fabric of our society. This society is made up of individuals, families, and communities, all linked by inter-relationships to land and family. As such Aboriginal society does not take the view that the issues that touch and pull at the fabric of our society is exclusive to women only. Indeed Men, and young boys
are a part of this bigger picture, our relationship is mutual, and not mutually exclusive.

Indigenous communities have many strong, non-violent Indigenous male role models from whom children can learn and gain strength and wisdom from. 'Men's business', traditional values and skills are being passed on to male children who in turn will teach their children and grandchildren. It is to these men that the many of the communities burdens fall.

Case 3 : Indigenous male role models and family violence

My father started being violent towards my mother when I was about 5 years old. I loved my father deeply but the abuse continued throughout my childhood and eventually my brothers and I also suffered emotional and physical violence from my father.

The consequences of these years of trauma have been great. My relationship with my father suffered terribly and we were often 'at each other', particularly where my mother was concerned. It reached a point where I started being violent in retaliation towards my father, my brothers experiences have been the same.

My mother remained in the relationship for over 30 years, we were all adults by the time my parents eventually separated. The violence stopped when my parents separated and my father became ostracised from us as a family unit.

I have since healed in my relationship with my father. I love and care from him deeply. My father never really has understood the gravity of his actions nor ever really taken any responsibility for his violence. Alcohol was often an excuse for his actions, but this was a smoke screen to many of his own childhood traumas and ghosts within his spirit.

My brothers haven't been so lucky. I am my fathers only daughter so I had a different upbringing to my brothers in the real sense of the words. My father was their male role model and his violence and attitude towards raising boys to be men was unrealistic and detrimental to them as whole people.

My brothers although adults and fathers themselves still bear the scars of my fathers physical and emotional violence. Their self-esteem has suffered, they question and worry about their own parenting skills and negative stereotyping of Indigenous fathers. They have tackled the consequences of alcohol and drug use, relationship breakdown and separation from their own children.

I know that my mother stayed with my father for very real reasons and the consequences of her separating from my father when we were children would have been horrific and a greater burden for our family to bear.

Women and children need to know that they can be protected if they leave an abusive relationship. The presumption of joint residency will not give Indigenous children the opportunity to heal from the violence they have witnessed or experienced at the hands of those who they love. Non-violent fathers need to be supported in raising children and violent fathers need to take responsibility for their actions.

Men need to stop using violence against our women and children, the consequences for families is insurmountable.

The cost to our men is immeasurable.

The NNIWLS supports and encourages Indigenous men to continue to advocate against violence and abuse within our communities.

Sexual assault

It is the experience of the NNIWLS that there is a gross under estimate of the level of sexual abuse that exist for Aboriginal children. Findings have indicated that the majority of sexual abuse of children still remains unreported and no clear data is available.

The extent of Child Sexual Assault in Indigenous communities is not recognized as it should be, partly because of a failure to report, and a failure to respond, to many assaults. There is a failure to report for many reasons, including:

- a fear of racism and due to reasons of shame;
- a fear of reprisal from the perpetrator in small, closed communities, or pay-back from relatives;

- a perceived need to protect the perpetrator due to reasons such as the high number of Indigenous deaths in custody. Fitzgerald (2001) writes that this is a realistic fear, particularly in Cape York communities where a death in custody would be seen as the women's (victim's) fault;
- a fear of the police response;
- difficulties in communicating with legal staff. It is difficult for some Indigenous people to translate their experience into terminology required for legal processes;
- the absence of someone to report to in remote communities. There may be no means of reporting in remote communities where poverty, isolation and the relatively small size of the community means there is no public transport and no private vehicles to provide access to support and secure shelter; and;
- lack of trust of the 'white' system.

Due to the high level of sexual assault in Indigenous communities and lack of reporting, by the Federal Government giving sweeping powers of joint residency arrangements will certainly place Indigenous children at risk of further abuse[32].

3.The likely effects of any changes in the child's circumstances.

Indigenous people are the most disadvantaged socio-economical groups. The Government made a commitment through its policy document *Health Throughout Life* to encourage breastfeeding awareness, with the aim of increasing Australia's rate of breastfeeding, particularly for babies up to 6 months of age.

Whilst Government and the Office of Aboriginal and Torres Strait Islander Health Service are promoting breastfeeding in Indigenous communities, joint residency would complicate or disrupt mother and baby, and create further health problems around infant health issues.[33]

It is also a child rearing practice in many Indigenous communities to breast feed children up until the 5-6 years of age. Given the issues surrounding the effects of colonization and child rearing practices in the general community it is important that the health and wellbeing of Indigenous children are considered by the Court and every opportunity given for such Indigenous practices to be recognized in the best interest of Indigenous children.

4. The practical difficulty and expense of a child having contact with a parent.

Given the fact that single families mainly consist of mothers, and they are still the most socio-economical group in Australia, where single mothers are meant to

[32] Ibid, p.2.
[33] Population Health, Australia Department of Health & Ageing, cited: website: www.health.gov.au/pubhlth.4/08/03.

commute to and from to pick the child/ren up when it is her turn for joint residency will place further financial hardships upon the family. The money going out on public transport, airfares, or petrol regularly, especially in cases where the separated parents may not live in close proximity, not to mention the time that may wasted in traveling which could be going into more productive areas.

Case 4: Difficulties for Indigenous families

Aboriginal mother of 5, separated from her second partner who is the father of the 3 youngest children. The mother and children have returned to the mothers 'country' and the father has remained in his 'country'. They live over 800kms apart.

The relationship was volatile and the separation difficult. There are current residence order in place and the children have regular contact by telephone with their father and stay with him during school holiday periods.

The mother has had to apply for child recovery orders on 2 occasions as the father has refused to return the children at the cessation of contact and has failed to notify the mother of his address.

The children have eventually been returned to the mother and resumed a routine

and stable life-style including attending school regularly.

The mother has a position under a CDEP and has a low income, the father is unemployed. The financial strain on the parent's is extreme, given that they each must pay the costs of the travel associated with contact. Costs of the children's fares are high and the children need to be accompanied by an adult on the bus which is the only mode of transport available to them.

Presumption of joint residence;

- How will the government legislate in relation to the issues for mixed families and separation of siblings under the joint residence legislation?
- How will the government provide assistance to low income families suffering as a result of the increase in costs associated with joint residence?
- What priority does the government place on the best interests of the children?

5. The capacity of each parent to provide for the needs of the child with strong reference to *s.68F*.

As recommended in no.1 in regards to Section 68.F of the *Family Law Act 1975 (Cth),* with strong reference to Justice Chisholm comments:

> *'[It] covers a wide range of matters. It 'is not to be measured by money only, nor by physical comfort only…the moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded'…[It includes] ' all factors which affect the future of the child'…It includes the child's happiness…It includes both the immediate well-being of the child and matters relevant to the child's healthy development'.*

The fact that the child's best interest are paramount means that the court's orders will seek to secure those best interests even if this seems unfair to one of the parents.[34]

6. The need to protect the child from physical or psychological harm.

This also refers to no.1 & 2. Based on child abuse and neglect, which was notified (or reported) to child protection departments around Australia in 2001-02, 3,254 Indigenous children under 17 years had some form of abuse substantiated (i.e. The statutory protection authority believed that physical abuse, psychological abuse, sexual and/or neglect, had occurred). This rate of substantiation was disproportionately higher (4.3 times higher on average) in the Indigenous population, than in the non-Indigenous population. Substantiation varied across states, from two Indigenous children in Tasmania to a rate of nearly eight times higher for Indigenous children in Victoria and Western Australia.

The Roberson Report (1999, internet edition) says that:

> *Violence is now overt; murders, bashing and rapes, including sexual violence against children, have reached epidemic proportions with both Indigenous and non-Indigenous people being perpetrators.*

Police reports in WA say that, in 2000, the rate of reports to police of sexual assault of Indigenous girls was approximately double that of non-Indigenous girls (Gordon, Hallahan & Henry 2002). However, only 10%-15% of sexual assaults are reports to police and this reporting rate is lower in Indigenous communities (Gordon, Hallahan & Henry 2002). The Robertson Report (1999) says that 88% of rapes in Indigenous communities go unreported. So, although there are proportionately more reported sexual assault of Indigenous girls than non-Indigenous girls, a lower proportion is reported.[35]

Conclusion

[34] Ibid, p.482.

[35] Child Sexual Abuse in Indigenous Communities By Janet Stanley, National Child Protection Clearinghouse, Australian Institute of Family Studies with assistance from Muriel Cadd and Julian Pocock Secretariat of National Aboriginal and Islander Child Care Presented at the Conference, Child Sexual Abuse: Justice Response or Alternative Resolution, 102 May, Adelaide.

All services in the National Network of Indigenous Legal Services Inc. are providing legal help to Indigenous women and children. One of the most important points about the services is that they are provided by Indigenous women for Indigenous people. All of the services cover huge geographical areas and many of them are in rural and remote areas.

NNIWLS does support ongoing contact with children after separation as long as is not at the detriment of the child/ren.

The NNIWLS could not support any changes to the *Family Law Act* allowing equal residency with each parent until all discriminatory measures are eradicated in all family law proceedings, not only discriminatory views held by non-Indigenous parents but racist assumption that may be held by judges/magistrates which would then led to a ill-informed decision, that in turn will have a detrimental consequent upon the child when making a decision in the 'best interests' of the child.

Recognition of Indigenous child rearing practices must occur and the proposed legislation of a presumption of joint residence by only a mother and father fails to do this. Such legislation will further erode traditional care arrangements and have ramifications for the care, welfare and development of Indigenous children.

The NNIWLS strongly supports and advocates the traditional role and place of Indigenous men in the raising of children. Family Violence and sexual abuse is not a part of our traditional cultures and the roles of Indigenous men as fathers has been eroded as a direct result of and effects of colonisation, dispossession of land and past government policies.

Alcohol must stop being used as an excuse for violence and abuse against women and children. Non-violent fathers need to be supported in raising children and violent fathers need to take responsibility for their actions. The NNIWLS supports and encourages Indigenous men to continue to advocate against violence and abuse within our communities.

The NNIWLS has serious concerns about Indigenous women attempting to negotiating joint residency with violent partners after they have separated, as it will place Indigenous women and children at further risk. Given the evidence researched the NNIWLS could not support any legislation that would further place Indigenous women and children at risk of ongoing violence.

Additionally, due to the high level of sexual assault in Indigenous communities and lack of reporting, the Federal Government by giving sweeping powers of joint residency arrangements will certainly place Indigenous children at risk of further abuse[36].
The NNIWLS resources and workers are already stretched to the limit trying to meet the needs of their communities and with the Government proposing 'the presumption of joint residence' it will further disadvantage Indigenous women and children.

The proposal would create a revolving door process, not only dealing with old clients, new clients but Services will have clients permanently on their books, as it will not create any relief for Indigenous women confronting violence. The proposed

[36] Ibid, p.2.

legislation has the capacity to perpetuate an additional cycle of abuse and disempowerment on the most disadvantaged people in our community.

The 'equal child residence' debate should not be about the Government imposing sweeping legislation to advance the 'few', but ask questions in regards to why one parent is denied access by the Family Court on a case by case basis. It is only then that Government will have an understanding of the decisions made by the Family Court, in the best interest of the children, instead of creating untenable laws that will place Indigenous women and children at risk of continuing violence and exacerbate their social and legal disadvantage.

National Network of Indigenous Women's Legal Service Inc.

A Legal Presumption of Joint Residence Committee:

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ATTACHMENT 3

NATIONAL NETWORK OF INDIGENOUS WOMEN'S LEGAL SERVICES Inc.

SUBMISSION:

TO THE STANDING COMMITTEE
ON LEGAL & CONSTITUTIONAL AFFAIRS

INQUIRY INTO
EXPOSURE DRAFT OF THE *FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) BILL* 2005

BACKGROUND

The National Network of Indigenous Women's Legal Services Inc. (NNIWLS) is a national peak body for Indigenous women's legal services and programs. It is a network promoting social justice by and for Indigenous women.

The Network promotes quality service delivery and access to law and justice for Indigenous women, children and families through advocacy, lobbying and education.

The aim of the NNIWLS is:

"to empower and promote social justice for Indigenous women and Indigenous people with particular emphasis on law and justice issues"

so its focus is on addressing the disadvantage experienced by Indigenous women particularly in legal issues. The NNIWLS and its members are the experts in legal issues that affect Indigenous women.

The Network was formed by, and has a membership that consists of:

- Indigenous Women's Projects (IWP's) (legal services), funded by the Commonwealth Attorney General's Department,
- Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service, Queensland, funded by Commonwealth Attorney General's Department,
- Wirringa Baiya Aboriginal Women's Legal Centre funded by the NSW Attorney General's Department,
- Family Violence Prevention Legal Services, funded by ATSIS,
- Aboriginal Legal Access Project with Hawkesbury Nepean Community Legal Centre funded privately
- Mirrung Ngu Wanjarri Project with Northern Rivers Community Legal Centre funded by the NSW Department of Gaming and Racing
- individual Indigenous women who have a commitment to social justice for Indigenous women.

All these services provide legal help to Indigenous women, children and families. Every day these services see the effects of communities in pain; hurt that goes very deep that leaves many of our women and children at risk. Whilst the services provide legal help, the main aim is healing and working with women and children and often with men.

The NNIWLS is regularly invited to respond to government inquiries and has a reputation for providing relevant and appropriate responses which incorporate a specific view from Indigenous women.

The National Network Indigenous Women's Legal Services Inc. (NNIWLS) lodged a Submission – A Legal Presumption of Joint Residence –Indigenous women, children and families in response to A Legal Parliamentary Inquiry into Joint Residency Arrangements in the Event of Family Separation in 2003 and a Response to the government A New Approach to the Family Law System, Implementation of Reforms Discussion Paper in 2004. The NNIWLS

was also consulted by representatives from the Attorney-General's Department in Perth in December 2004.

These documents are available on request should the Committee require them.

INTRODUCTION

Terms of Reference

The NNIWLS notes that the Committee is asked to consider whether the provisions of the Exposure Draft of the *Family Law Amendment (Shared Parental Responsibility) Bill* 2005 ('the Exposure Draft') are drafted to implement the measures in the Government's response to the Every Picture Tells a Story report, namely to:

a) encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate;

b) promote the benefit to the child of both parents having a meaningful role in their lives;

c) recognise the need to protect children from family violence and abuse, and

d) ensure that the court process is easier to navigate and less traumatic for the parties and children.

('the Government's measures')

Shared Responsibility/Care

It is recognised and acknowledged that the presumption of 50% shared residency is not present in the amendments and that the presumption is about sharing in the long term arrangements for children. This is a good thing.

However it's important that where family violence is present the best interest of the child is paramount over the sharing.

Where family violence is present there is going to be an issue of getting both parties to the table to talk, and then agree on matters of importance for the best interest of the child/children.

There is a risk that shared responsibility will take priority. In New Zealand there is the possibility of a two year cooling off period. This maybe an option in cases of family violence in Australia especially if at some stage parents are expected to sit out and work things out together for their children. This would give mothers and children time to get over what they've been through and find

stability and strength and confidence to deal with any emotions, feelings that will arise when they are faced with the prospect of meeting their father/spouse.

Children are murdered by their fathers after the parents separate. An article in the Daily Telegraph "Police seek new posers on-the-spot-AVO's" mentions a case where two children were murdered by their father as well as the father of the mother.

1. *Consultation Timeframe*

The NNIWLS supports the National Network of Women's Legal Services concern in relation to the timeframe given to consult, i.e.

"The NNWLS welcomes the Government's decision not to re-open discussions on the proposal of 50/50 custody, this proposal having been thoroughly examined and rejected by the Parliamentary Inquiry into Child Custody Arrangements in the Event of Family Separation. However, we note that the Exposure Draft still makes very significant changes to family law – according to the Government, 'the most significant changes to the family law

system in 30 years'.[37] *We believe that the three week timeframe for consultation on these changes is patently inadequate and are concerned that there is insufficient time for carefully considered input to be obtained from the range of stakeholders who should be engaged in this process."*

The timeframe provided effects the ability of the NNIWLS to seek feedback widely from its member services and Indigenous women. Many of the Indigenous women work in legal services, community organisations and provide outreach to regional and remote community locations. As a consequence their time is valuable and to be given the opportunity to response effectively it is vital that sufficient and appropriate timeframes are provided by the Minister.

2. Changes to give greater recognition to Indigenous family structures and culture

Overall the NNIWLS is pleased that the Standing Committee has recognised that Aboriginal and Torres Strait Islander children need to still have connection to their culture in a positive way after separation.

This is welcomed but if the Australian Government is serious about addressing the issues faced by Indigenous people in family law arrangements in a manner that is appropriate, taking into consideration cultural ways

[37] Attorney General's Department Media Release 116/2005, *Government Responds to 'Watershed' Child Custody Report*, 23 June 2005.

Indigenous people have to be provided with the training, employment, information, community legal education in the family counselling services.

Funding has to be provided to allow this to happen.

Consideration should also be given to how Family Law is treated in remote areas. The recommendations in this submission are crucial to dealing with family law under the Shared Parental Responsibility amendments.

RECOMMENDATION 1

Funding is available to train Indigenous people as family counsellors.

Indigenous people are employed in the family counselling services.

Indigenous organisations are provided with the resources to provide the family counselling service in urban, regional, and remote areas where there is a high percentage of Indigenous people.

In the NNIWLS original submission – A Legal Presumption of Joint Residence a number of case studies were presented on the experience of Indigenous women and Indigenous children in relation to discrimination and racial issues after separation from a Non-Indigenous spouse and father. The amendments have clearly dealt with many of these issues. However there needs to be information provided on the process if there is a breach of the amendments.

To demonstrate the importance of the issues faced by Indigenous women and children here is a case study from the first submission:

Case 1. Identity and Aboriginal children

A couple, an Aboriginal mother and a Non-Aboriginal father have separated after a 15 year relationship. They have 3 children between the ages of 8 – 14 years.

Throughout the relationship and during arguments the father often resorted to racial abuse of the mother, by calling her a "black slut" and "useless black cunt". When the mother attempted to separate from the relationship the father physically abused her and emotionally manipulated her.

The father would denigrate Aboriginal people and culture openly in front of the mother and children as a means of enforcing control on relationships and family dynamics.

The mother eventually left with the children. However, the father refused to return the children after a period of contact. The father told the mother that 'if she left no Court would ever let her keep the children once he had finished with her'.

The mother was so scared to attempt to apply to the Court of intervention that she eventually considered returning to the relationship.

The children exhibit symptoms of cultural identity crisis, low self-esteem and maternal alienation.

Even though the amendments are being made to the Family Law Act to take into consideration the importance of children still being able to maintain their culture and connections this will not change how Indigenous women and children are treated in an relationship with a Non-Indigenous parent and family.

How is the Minister intending to deal with this when it continues to happen?

RECOMMENDATION 2

The Minister explores ways and puts into place processes to deal with the continuing violence and abuse against Indigenous women and children and their culture after separation.

Information and education is provided and available for Indigenous people to show clearly what steps can be taken is to deal with any breach of the amendments.

3. Contact over Safety

The NNIWLS acknowledges there are issues of conflict in relation to contact over safety as raised by the National Network of Women's Legal Services Response to the Amendments and supports their recommendation.

NNWLS Recommendation 1

That s60B(1)(c) not be introduced.

Alternatively, at a minimum, that s60B(1)(c) be redrafted by removing the reference to 'maximum extent' and to focus more clearly on children's rights (eg wording similar to that proposed for s68F(1A)(a) is preferable) AND that this provision and s60B(2)(b) should be located together in either the Objects sub-section (1) or the Principles sub-section (2) AND NNWLS Recommendation 12 should be adopted.

NNWLS Recommendation 2

That s60B(2)(a) be redrafted to read 'The principles underlying these objects are that, if it is in the best interests of the child:
(i) etc

4. Part II - Non-court based family services, Division 1 - Family Counselling under 10A Definition of a Family counsellor and Family Counselling.

Family counselling is a process in which a family counsellor helps:

(a) one or more persons to deal with personal and interpersonal issues in relation to marriage; or

(b) one or more persons (including children) who are affected, or likely to be affected, by separation or divorce to deal with either or both of the following:

(i) personal and interpersonal issues;

(ii) issues relating to the care of children.

NNIWLS Response

In the case of Aboriginal and Torres Strait Islander person/s, an Aboriginal or Torres Strait Islander Counsellor or Counselling service is to be approved/provided, if an Aboriginal or Torres Strait Counsellor or Counselling service can not be provided then an non-Indigenous culturally appropriate Family counselling services should be considered, and that all Family Counsellors undertake cultural awareness training.

RECOMMENDATION 3

The Minister to provide specific resources to employ Aboriginal and Torres Strait Islander people as Family Counsellors.

Non-Indigenous Family Counsellors undertake cultural awareness training relevant for the particular group/s in the region that the service is provided.

5. 10J Definition of family dispute resolution practitioner

A family dispute resolution practitioner is a person who is:

(a) authorised by an approved family dispute resolution organisation to offer family dispute resolutions on behalf of the organisation; or

(b) engaged under section 38R to perform family dispute resolution services under this Act; or

(c) an officer or staff member of the Family Court authorised by the Chief Executive Officer to provide family dispute resolution under this Act; or

(d) an officer or staff member of the Federal Magistrates Court authorised by the Chief Executive Officer of that court to provide family dispute resolution under this ACT; or

(e) appointed under a law of a State as a dispute resolution practitioner in relation to the Family Court of that State; or

(f) a person, other than a person mentioned in paragraph (a), (b), (c), (d) or (e), who meets the requirements specified in the regulations.

RECOMMENDATION 4

The Minister allocate funding for Aboriginal people to undertake training as family dispute resolution practitioners.

6. Subdivision B - Approval of family counselling organisation.

10E Approval of family counselling organisations

(1) The Minister may, by notice in writing to an organisation, approve the organisation as a family counselling organisation if, and only if, the Minister is satisfied that:

(c) the organisation is currently receiving, or has been approved to receive, funding under a program or part of a program designated by the Minister under subsection (2); and
(d) the organisation is receiving, or has been approved to receive, that funding in order to provide services that include family counselling.

Note: If an organisation meets the requirements for approval under both this section and section 10N, the Minister may approve the organisation as both a family counselling organisation and a family dispute resolution organisation.

NNIWLS Response

It has been proven and acknowledged time and again that the most effective services for Indigenous people are those that are provided by Indigenous organisations and indigenous people. There are no Aboriginal or Torres Strait Islander specific family counselling organisation funded to provide appropriate services to Indigenous people.

A clause is added to take into consideration Aboriginal and Torres Strait organisations that have the infrastructure to be an identified service provider to offer family counselling to Aboriginal and Torres Strait Islander people.

RECOMMENDATION 5

That the Minister provide funding to an appropriate Aboriginal organisation in order for them to provide family counselling.

7. 11B Definition of family child specialist

A family and child specialist is a person who is:

(a) appointed as a family and child specialist under section 38N; or

(b) appointed as a family and child specialist in relation to the Federal Magistrates Court under the Federal Magistrates Act 1999; or

(c) appointed as a family and child specialist under the regulations; or

(d) appointed under a law of a State as a familyu and child specialist in relation to a Family Court of that State.

Note: The Chief Executive Officers of the Family Court and the Federal Magistrates Court have all of the functions and powers of family and child specialists, and may direct specialists in the performance of their functions. See Division 1A

NNIWLS Response
In case of an Aboriginal or Torres Strait Islander child that the Aboriginal Children's Service and Secretariat of National Aboriginal & Islander Child Care receive funding and provide family child specialists.

RECOMMENDATION 6

The Minister allocate funding to the SNAICC to provide family child specialists.

7. Family Relationship Centres

Sixty-five centres will be set-up across Australia over a number of years. How will the distribution of the centres be worked out? Will it be by population basis?

Concern: The rural, regional and remote communities will not have access to the relationship centres. Access to lawyers currently is very limited in these regions.

The family relationship centres are only for those who are able communicate and agree if there is no presence of family violence. Where there is family violence/abuse present it is unlikely that Indigenous people will attend to mediation and parenting planning sessions.

The family relationship centres are set-up to reach out to both parties to come together and agree on a parenting plan. If this outcome is not reached what happens then?

Recommendation 7

Consideration is given when identifying the location of the Family Relationship Centres to communities/towns 1) that have a large percentage of Indigenous people and 2) that Indigenous people can access the centres.

8. Interpretation of Family Violence

If a resolution is not satisfactorily reached in the mediation through the family relationship centres how will family violence/abuse be interpreted and who will interpret it? Will the family relationship centre family counsellor be trained to interpret FV especially taking into consideration the experience and meaning by Aboriginal people.

Concern: Family/violence and abuse is experienced in different ways. A supposed victim may not see being abused in a certain way to mean family violence is being perpetrated. Who makes the decision on what family violence means?

This is important if a certificate has to be issued by the family relationship centre if mediation is not successful and the parents have to attend court.

Recommendation 8

Training is provided to the family counsellors to recognise the different forms of abuse and particularly in relation for Indigenous people.

9. Family Violence

It has been the experience of lawyers in family violence prevention legal services that Aboriginal parents have a problem in communication because of the issue of family violence so how are they going to attend mediation at the family relationship centres to start with given the expectation of the Attorney-General that parents will come together to discuss parenting plans without the need to go to court.
A lack of willingness to participate in dialogue plus a history of conflict and dominance by one party over another tends to hinder attempts to reach agreement through mediation. In cases of extreme subjugation or violence it

is not only unsuitable but also unachievable to get the parties to discuss issues without support of a government based system.

It is known that where mediation has been attempted in cases of family violence that the perpetrator has only to growl and the victim is intimidated immediately and withdraws from the discussions and any further attempts to sort out the issues.

It is very rare to have parties come together to mediate when family violence is present. However, even when parties are not involved in family violence the fact that the parties need to seek an independent facilitator in order to deal with issues relating to children is suggestive of an unwillingness or ability to cooperate regardless of services available to mediate.

However it is fair to say that Indigenous people attend mediation when a court order is issued for them to come together and sit down to come to an agreement on family law matters. It is the experience of Indigenous legal centres that most couples in dispute (those needing the help of agencies such as the legal centres) will not mediate unless ordered by a court, regardless of previous attempts to seek mediation.

Conclusion

The National Network of Indigenous Women's Legal Services Inc. calls on the Minister and the Standing Committee to consider seriously the recommendations in this submission. The NNIWLS is available if the Minister or Standing Committee wishes to discuss anything further.

NATIONAL NETWORK OF INDIGENOUS WOMEN'S LEGAL SERVICES
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