

The Senate

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## Committee of Privileges

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Possible interference with, or imposition of  
a penalty on, a witness before the Legal and  
Constitutional Affairs References  
Committee

141st Report

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# Possible interference with, or imposition of a penalty on, a witness before the Legal and Constitutional Affairs References Committee

## Background to the inquiry

**1.1** On 10 September 2009, the following matter was referred to the Committee of Privileges on the motion of the Chair of the Legal and Constitutional References Committee, Senator Barnett:

Having regard to the report of the Legal and Constitutional Affairs References Committee on a possible contempt in relation to a witness to the committee's inquiry into access to justice, whether there was any interference with, or imposition of a penalty on, a witness before that committee, or any threat or attempt to carry out those acts, and whether any contempt was committed in that regard.<sup>1</sup>

**1.2** The Legal and Constitutional Affairs References Committee ('the references committee') had presented a report to the Senate on 8 September 2009, entitled *A Possible Contempt in Relation to a Witness to the Committee's Inquiry into Access to Justice*.<sup>2</sup> In that report, the references committee gave an account of its dealings with a witness who made a submission to that committee's inquiry into access to justice, Ms Rowena Puertollano, and her then employer, the Aboriginal Legal Service of Western Australia Inc (ALSWA).

**1.3** After Ms Puertollano's submission was published on the references committee's website, her employer, through the person of her supervisor, Ms Katrina Carlisle, issued her with a written warning for serious misconduct in making a submission, signed by Ms Puertollano as Coordinator of the Broome Family Violence Prevention Legal Service (FVPLS), to the references committee.

**1.4** Ms Puertollano took the correct action for any person in her position, and contacted the references committee to report this consequence of her having made a submission. At the direction of the references committee, its secretary wrote to Ms Carlisle conveying the committee's view that this was a possible contempt of the Senate, as well as a potential criminal offence, recommending that the warning letter be withdrawn and seeking an assurance that Ms Puertollano would suffer no disadvantage for having made the submission.

**1.5** A response to this letter was provided by the Chief Executive Officer of the ALSWA, Mr Dennis Eggington, who challenged the references committee's

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<sup>1</sup> *Journals of the Senate*, 10 September 2009, p. 2444.

<sup>2</sup> *Journals of the Senate*, 8 September 2009, p. 2413.

conclusion that the warning letter could constitute a contempt but indicated that the organisation was prepared to withdraw the warning letter.

**1.6** A letter to Ms Puertollano withdrawing the warning letter was prepared, sent and copied to the references committee but was not received by Ms Puertollano who was no longer using the address to which it had been sent. This was rectified after Ms Puertollano again contacted the committee secretary to confirm what action the references committee had taken on her behalf. Unfortunately, however, Ms Puertollano also advised that she had tendered her resignation from ALSWA.

**1.7** The references committee resolved to raise a matter of privilege because it was not satisfied as to the acceptance by the ALSWA of its warning that a possible contempt had occurred. It was also concerned by the terms of the ALSWA's letter withdrawing the warning letter which continued to insist that Ms Puertollano was 'bound by the "Responsibility of Staff" provisions in the ALSWA Policy and Procedures Manual with respect to communications in your capacity as an employee of ALSWA', although no action would be taken against her as a consequence of evidence given to the references committee 'in a private capacity'.<sup>3</sup> According to the references committee, this qualification indicated that the ALSWA had 'not resiled from its original views about its rights to control the flow of information to the committee and to discipline staff members who give evidence to committees without authorisation'.<sup>4</sup>

**1.8** Accordingly, the chair of the references committee, Senator Barnett, raised a matter of privilege under standing order 81 with the President of the Senate, Senator the Hon. J Hogg, who gave precedence on 9 September 2009 to a notice of motion referring the matter to this committee.<sup>5</sup> In a statement to the Senate when giving precedence to the notice of motion, Senator Hogg referred to past declarations of this committee that:

... interference with and penalisation of witnesses are the most serious of all contempts, and the committee and the Senate have always regarded such actions as requiring rigorous investigation and firm remedial action. The committee has pointed out that actions which are otherwise lawful, such as the dismissal of an employee, may constitute contempts when taken against a witness in consequence of the witness's evidence.<sup>6</sup>

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<sup>3</sup> Legal and Constitutional References Committee, *A Possible Contempt in Relation to a Witness to the Committee's Inquiry into Access to Justice*, quoted on pp. 3–4.

<sup>4</sup> *Ibid.*, p. 4.

<sup>5</sup> *Journals of the Senate*, 9 September 2009, p. 2419.

<sup>6</sup> *Senate Debates*, 9 September 2009, p. 6045.



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## Conduct of the inquiry

**1.9** Following receipt of the reference, the committee wrote to Ms Puertollano and to the Chief Executive Officer of the ALSWA, Mr Dennis Eggington (also on behalf of Ms Katrina Carlisle), inviting them to respond to the terms of reference and seeking other particular information from each. Copies of these letters are published in Appendix 1.

**1.10** Both Ms Puertollano and Mr Eggington responded within the requested timeframe and copies of their responses are also published in Appendix 1.

**1.11** Mr Eggington's submission helpfully set out the history of the ALSWA and how the Broome Family Violence Prevention Legal Service had come under its auspices. The former 'auspicing' body had been the Kullari Indigenous Women's Aboriginal Corporation Committee of which Ms Puertollano had been the Chief Executive Officer. With the transfer of the Broome FVPLS to the ALSWA, Ms Puertollano became an employee of the ALSWA.

**1.12** Mr Eggington also gave an account of the issuing and withdrawal of the warning letter to Ms Puertollano, indicating that it was not intended to interfere with the evidence gathering function of the references committee or with Ms Puertollano's freedom to participate in the inquiry. There were concerns that Ms Puertollano's submission was critical of the new arrangements and that, although the references committee concluded that Ms Puertollano was not attempting to put forward her views as representing the FVPLS, there were nonetheless in her submission multiple references to her experience and position as coordinator with the Broome FVPLS.

**1.13** When the references committee raised the issue of possible contempt, the ALSWA:

... took issue with the fact that the warning letter constituted a contempt. However, we:-

- (a) stressed that the warning letter was in no way intended to inhibit the freedom of Ms Puertollano to express her personal views;
- (b) stressed that the letter was not intended to obstruct the LCARC [the references committee] in the performance of its functions;
- (c) apologised if the warning letter created an impression contrary to that referred to in (a) and (b) above;
- (d) stated that we proposed to withdraw the warning letter, and confirm in writing to Ms Puertollano that we in no way sought to inhibit her contributing to the Access to Justice Inquiry – but reminding her that she

should make clear that she was doing so based on her own views and not as a representative of ALSWA.<sup>7</sup>

**1.14** Mr Eggington then repeated the apology to this committee. In response to the references committee's concerns that the terms of the withdrawal letter did not sufficiently acknowledge the breadth of the Senate's Privilege Resolutions, Mr Eggington assured the committee that he had not sought to justify an erroneous position.

**1.15** In addressing the question whether the committee should find that a contempt had been committed on this occasion, Mr Eggington drew attention to the absence of any culpable intention on his or Ms Carlisle's part to interfere with the references committee's conduct of its inquiry. Rather, their concern was:

... to act in the best interests of ALSWA at a time when our auspicing of the Broome FVPLS (on request from the AGD) was in its infancy. We intended to act pursuant to and in accordance with the terms of an employee's contract of employment. Crucially, our concern was with the capacity in which Ms Puertollano made her submission, not the fact that she was contributing evidence per se.<sup>8</sup>

Mr Eggington concluded his submission by reiterating the references committee's view that there was a need for clearer guidance in this difficult area.

**1.16** It is apparent to the committee from Ms Puertollano's submission that she had experienced significant difficulties in adapting to the new arrangements which she attributed to the 'metro-centric' structure of the ALSWA compared with the Kimberly structure of the former arrangements. She listed numerous areas of difficulty in trying to ensure that appropriate services were delivered to female clients who had been victims of domestic violence or abuse.

**1.17** Ms Puertollano also informed the committee that she had not received any official induction about the ALSWA's employment policies until the telephone call from Ms Carlisle, preceding the warning letter, informed her of her alleged misconduct.

**1.18** It appears that Ms Puertollano felt that her continued employment with the ALSWA was untenable and that the warning letter brought to a head the tensions that Ms Puertollano had experienced under the new arrangements.<sup>9</sup>

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<sup>7</sup> Letter to the committee from Mr Dennis Eggington, CEO, ALSWA, dated 19 October 2009; see Appendix 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> Letter to the committee from Ms Rowena Puertollano, dated 3 October 2009; see Appendix 1.

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## Consideration of issues

**1.19** It is quite clear on the facts available to the committee that the ALSWA issued a warning letter to Ms Puertollano as a direct consequence of her submission to the references committee. This action by the ALSWA was wrong in all the circumstances. As noted by the references committee in its report, it is irrelevant whether Ms Puertollano's submission was made in a private or official capacity. The references committee went on to conclude:

When giving evidence to a Senate committee, an individual's employment conditions, policies and guidelines, including confidentiality agreements however described are of no effect and the witness must be able to assist the committee in complete freedom, and without suffering any disadvantage as a consequence, regardless of whether the evidence was given in an official or a private capacity. The committee felt that this essential principle has not been understood by the ALSWA and its universal application needs to be restated.<sup>10</sup>

**1.20** This committee concurs. Under the law of parliamentary privilege, proceedings in parliament ought not be questioned or impeached in any place outside parliament. These are the terms of Article 9 of the Bill of Rights 1689, incorporated into Commonwealth law by section 49 of the Constitution and further declared by section 16 of the *Parliamentary Privileges Act 1987*.

**1.21** A person who makes a submission to a committee is participating in proceedings in parliament and that participation therefore attracts all the protections conferred by Article 9 of the Bill of Rights and section 16 of the Parliamentary Privileges Act. Senate Privilege Resolution 6, made pursuant to section 50 of the Constitution, articulates conduct which may offend that protection by being intended to amount, or amounting or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions. Such conduct includes interference with witnesses or molestation of witnesses.<sup>11</sup>

**1.22** Time and again, this committee has declared that it regards the protection of witnesses as constituting the single most important duty of the Senate (and therefore of the committee as its delegate) in determining possible contempts.<sup>12</sup>

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<sup>10</sup> Legal and Constitutional References Committee, *A Possible Contempt in Relation to a Witness to the Committee's Inquiry into Access to Justice*, pp. 4–5.

<sup>11</sup> See Privilege Resolution 6, paragraphs (10) and (11) in *Standing Orders and Other orders of the Senate*, June 2009, p. 112 at [http://www.aph.gov.au/Senate/pubs/standing\\_orders/c00.pdf](http://www.aph.gov.au/Senate/pubs/standing_orders/c00.pdf).

<sup>12</sup> Committee of Privileges, 125<sup>th</sup> Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, p. 46. For an account of the committee's previous experience of such cases, see pp. 46–56.

**1.23** Unfortunately, this is not an isolated case and the committee agrees that it would be useful to set out clear guidance for any person who seeks to take action of any kind against another person as a consequence of their evidence to a Senate committee. **The committee's advice is that such action should not be taken in any circumstances.** If it is taken, such action may constitute a contempt of the Senate. A person's right to communicate with the parliament and its committees is an untrammelled right, overriding all other considerations.

**1.24** There is a very simple remedy available to any employer or professional organisation or any other body whose staff or members may make submissions to a parliamentary committee that do not accord with the official policy or practices of the organisation. The remedy is for that body to make its own submission to the committee in question, dissociating itself from the submission of the individual and indicating that the views expressed by the individual are not the official views of the organisation. Under no circumstances is it acceptable, as occurred in this case, for the organisation to take the matter up with the individual directly and threaten disciplinary action as a result of the individual's communication with the committee.

## **Conclusion**

**1.25** On the evidence before it, the committee concludes that the issuing of a warning letter by the ALSWA was a direct consequence of Ms Puertollano's submission to the references committee. However, the committee accepts that there was no culpable intention on the part of the ALSWA to interfere with the conduct by the references committee of its inquiry into access to justice. In these circumstances, the committee has **concluded that no contempt should be found.** The committee reiterates that Ms Puertollano was entitled to make a submission to the references committee and that she did the right thing in informing that committee of the actions her employer took as a consequence. It regrets that she found that she was unable to continue working for the ALSWA and resigned before this matter was concluded.

**1.26** The committee also makes the suggestion that the Chairs' Committee, established under standing order 25(10), may care to examine the standard information provided to persons intending to make submissions to Senate committees and to consider whether it adequately addresses this issue.

**Recommendation**

The committee recommends:

- (a) that the Senate endorse the finding in paragraph 1.25 of the report; and
- (b) that the Chairs' Committee established under standing order 25(10) consider the adequacy of information provided to witnesses on the subject of possible intimidation or imposition of a penalty in consequence of a witness's evidence to a senate committee.

Senator George Brandis

**Chair**



## Appendix 1

DOCUMENT	PAGE(S)
Extract from Senate Hansard, 9 September 2009, p.6045, Statement by The President	1
Extract from <i>Journals of the Senate</i> No. 88, 10 September 2009	2
Tabled paper – Letter to Senator the Hon. John Hogg, President of the Senate, dated 7 September 2009.	3
Submission , dated 3 October 2009, from Ms Rowena Puertollano	4
Submission, dated 19 October 2009, from Mr Dennis Eggington, Chief Executive Officer, Aboriginal Legal Service of WA (Inc), with attachments from Ms Leah Dolby, Chairperson, KIWAC Committee	6

*Wednesday, 9 September 2009*

The **PRESIDENT** (Senator the Hon. John Hogg) took the chair at 9.30 am and read prayers.

#### PRIVILEGE

The **PRESIDENT** (9.31 am)—The Senate Legal and Constitutional Affairs References Committee has raised a matter of privilege under standing order 81. The matter is set out in a report by the committee to the Senate, which recommends that the matter be referred to the Privileges Committee.

The issue relates to the treatment of a witness before the committee in the course of its inquiry into access to justice. After she gave her evidence, the witness received a written warning of disciplinary action from her employer. The committee pointed out to the employer that threatening a witness with action as a result of the witness's evidence constitutes interference with a witness and a possible contempt of the Senate. The employer subsequently withdrew the warning, but in correspondence with the committee appeared to reserve the right to discipline its employees in respect of evidence given to a Senate committee. The witness resigned from her employment and there is the possibility that she suffered loss of employment as a result of her evidence to the committee.

The Senate's privilege resolution No. 6, in paragraphs (10) and (11), declares that any interference with a witness, and any imposition of a penalty on a witness, in consequence of the witness's evidence, and any threat or attempt of such actions against a witness, may constitute a contempt of the Senate. Such treatment of a witness may also be a criminal offence under section 12 of the Parliamentary Privileges Act 1987.

The Senate Privileges Committee has declared in its past reports that interference

with and penalisation of witnesses are the most serious of all contempts, and the committee and the Senate have always regarded such actions as requiring rigorous investigation and firm remedial action. The committee has pointed out that actions which are otherwise lawful, such as the dismissal of an employee, may constitute contempts when taken against a witness in consequence of the witness's evidence.

The matter raised by the committee clearly meets the criteria I am required to consider. I therefore give precedence to a motion to refer the matter to the Privileges Committee.

I table the letter from the committee. Other relevant documents are included in the committee's report.

A notice of motion may now be given.

**Senator BARNETT** (Tasmania) (9.33 am)—I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Committee of Privileges:

Having regard to the report of the Legal and Constitutional Affairs References Committee on a possible contempt in relation to a witness to the committee's inquiry into access to justice, whether there was any interference with, or imposition of a penalty on, a witness before that committee, or any threat or attempt to carry out those acts, and whether any contempt was committed in that regard.

**Senator Ferguson**—Mr President, I rise on a point of order. For the past two mornings, at the commencement of our proceedings you have stood to make a statement in this chamber regarding a matter of privilege. I noticed that yesterday, while you were on your feet, a government minister walked over, talked to a colleague and walked out the door. Another senator walked up to the Clerk, asked questions and returned to their seat. If people read standing orders closely,

CHAMBER



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2008-09

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

## JOURNALS OF THE SENATE

No. 88

THURSDAY, 10 SEPTEMBER 2009

### 6 PRIVILEGES—STANDING COMMITTEE—REFERENCE

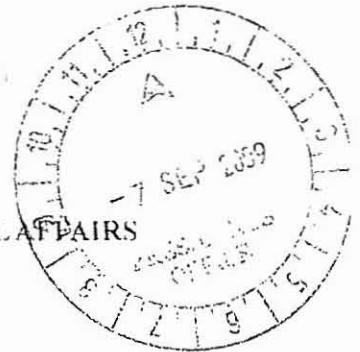
The Chair of the Legal and Constitutional Affairs References Committee (Senator Barnett), pursuant to notice of motion not objected to as a formal motion, moved matter of privilege notice of motion no. 1—That the following matter be referred to the Committee of Privileges:

Having regard to the report of the Legal and Constitutional Affairs References Committee on a possible contempt in relation to a witness to the committee's inquiry into access to justice, whether there was any interference with, or imposition of a penalty on, a witness before that committee, or any threat or attempt to carry out those acts, and whether any contempt was committed in that regard.

Question put and passed.



NB.



STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

7 September 2009

Senator the Hon. John Hogg  
President of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Mr President

Pursuant to Standing Order no. 81, I raise a matter of privilege on behalf of the Legal and Constitutional Affairs References Committee.

On 27 April 2009, Ms Rowena Puertollano of Broome, Western Australia, sent a submission to the committee's inquiry into Access to Justice. On 18 June, Ms Puertollano contacted the committee's secretary by phone and advised that she had received a "written warning" from her employer the Aboriginal Legal Service, Western Australia for having made the submission. Ms Puertollano supplied a copy of the written warning to the committee secretary by facsimile.

The Committee considers this matter to be a clear case of interference with a witness (Parliamentary Privilege Resolution 6(10)) and molestation of witness (Resolution 6(11)). The evidence of this is contained in a short written report on this matter, which is attached to this letter. The report also contains the key correspondence in relation to the matter.

I therefore request that the matter be referred to the Privileges Committee and dealt with urgently.

Yours sincerely

Senator Guy Barnett  
Senate Legal and Constitutional Affairs References Committee

3<sup>rd</sup> October, 2009



**PERSONAL and CONFIDENTIAL**

Secretary to the Privilege Committee  
Rosemary Laing,  
Parliament House  
Canberra, ACT 2600

Dear Ms Laing,

First I would like to thank the Committee for taking my case on board and, acknowledging the serious nature of this situation.

Since the lodging of my submission to the Senate Committee on Legal and Constitutional Affairs on 27<sup>th</sup> April, 2007 I had not had any cause for concern until I received a call from Katrina Carlisle on the Friday, 12<sup>th</sup> June 2009.

Katrina at the time, made me very aware that she felt she needed to call to inform of a process that was occurring after an agreement was made by all Senior Management within ALSWA in relation to disciplining me due to my involvement in submitting a letter to the Senate Committee as Coordinator of the FVPLS Unit.

During this point of the discussion, Katrina also made it quiet clear that, she had also tried to support me by seeking agreement to continue my employment with ALSWA/FVPLS and hold all responsibility in any actions undertaken by me through her direct involvement in the day to day processes.

To brief the Committee, a further insight and support to my case as to what has lead up to this situation and since coming under the umbrella of ALSWA.

Being the passionate, dedicated and committed woman who draws on past experience when dealing with domestic violence or abuse, have seen and gone through as Coordinator of the FVPLS Unit, nothing but difficulties when trying to raise concerns or have discussions in relation to the following processes between a Metro – centric structure and Kimberley structure,

- conflict in service delivery, and
- the risks associated in female clients accessibility to the service.

The difficulties include,

- being ignored by Senior Management in relation to discussions in 'processes and procedures' until senior management saw fit to discuss within the framework and structure on the local level.
- ' receive warning phone call's from Executive Officer, informing of misconduct in relation to questioning processes under taken by funding body
- Take undue stress leave from 4/11/08 – 29/11/08 to find alternative accommodation due to negotiation breakdown in transferring workplace agreement from previous employer
- Leave Without Pay between 31/3/09 – 30/4/09 due to request to CEO to investigate concern regarding processes and procedures within ALSWA/FVPLS Unit and concern for 'bullying' placing staff in unsafe work zone not being addressed through OH& S requirement
- Questioned reasoning for service delivery expenditure such as, training travel, office stationery and staff service delivery in educational outcomes.

When seeking support to implement policies and procedures on the ground level to deal with issues such as, work vehicle usage for personal use by staff to staff 'media' statements. Be advised that, need to let staff deliver service delivery.

Outcome from this process has now seen staff' resigning position due to,

- being caught 'driving under the influence in a work vehicle'
- loosing license and
- Taking vehicle without permission.

All this, has made me feel bullied into decisions, intimidated by being questioned about day to day management, stressed through constant 'warnings' and left to reflect on whether I was still in a 'violent' relationship.

In stating all this, I would like to reiterate, at no time was I officially inducted or informed of processes as an employee until management felt there was a need to inform me of any misconduct.

Receiving the phone call on Friday 12<sup>th</sup> June followed by the letter has increased my:

- Feeling even more penalized and victimized by Senior Management
- Self awareness in lack of self esteem as a local women,
- Awareness in being unsafe within my job, and penalized for doing my job in making the FVPLS Unit service delivery, accessible to the women, children victims & survivors of domestic violence and sexual abuse and
- Emotion in feeling threatened in wanting to leave my job
- And most importantly, made to feel, don't have a right to speak up or a freedom to speak.

Therefore, as a decent woman and human being, feel nothing but **penalized through** 'victimization in carrying others faults, discriminated against as a woman in a leadership role through 'bullying authorisation' and placed in a unwarranted predicament in seeking safety and job satisfaction in employment elsewhere for doing my job and doing it so well.

I hope this information will help in your inquiry into the allegation of improper treatment of a witness before the Senate committee. Should you require further information or clarification, I can be contacted on my mobile number **0450 776 913** or via email @ [rowena\\_ramirez@hotmail.com](mailto:rowena_ramirez@hotmail.com) (please be aware that there is an '\_' between rowena and ramirez).

Look forward to hopefully a positive outcome.

Sincerely,

Rowena Puertollano

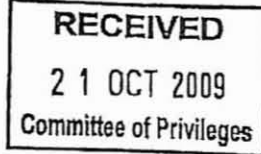


Your Ref:

Our Ref: PC:dr

19 October 2009

Dr Rosemary Laing  
Secretary  
Committee of Privileges  
Australian Senate  
Parliament House  
CANBERRA, ACT, 2600



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Dear Dr Laing,

**Legal and Constitutional Affairs References Committee Report, September 2009  
("LCARC report") and Senate referral of 10 September 2009.**

1. I refer to the letter addressed to me from the Honourable Senator George Brandis dated 10 September 2009. As requested in that letter I am forwarding this submission, on behalf of Ms Katrina Carlisle and myself, to you as Secretary of the Committee of Privileges ("the Committee").
2. Before addressing the specific matters raised by the LCARC report, we thought it might be of assistance to the Committee to be informed of something of the background and role of the Aboriginal Legal Service of Western Australia ("ALSWA") and the circumstances in which ALSWA took responsibility for the auspicing of Broome Family Violence Prevention Legal Service.

### ALSWA

3. ALSWA has a proud history and will soon commemorate 35 years of incorporation.

ALSWA has its origins in the Justice Committee of the New Era Aboriginal Fellowship (NEAF), an organisation established in 1969. The Justice Committee provided voluntary legal advisory services to Aboriginal people in Perth in the early 1970's.

ALSWA was established when members of the Aboriginal community and the NEAF Justice Committee recognised that the service needed to be an Aboriginal agency that was run by and for Aboriginal people.

With Commonwealth government funding, ALSWA opened its first office in 1973 with two full-time solicitors, three Aboriginal field officers and a secretary. The agency continued to operate from the Aboriginal Advancement Council building before moving to premises in Aberdeen Street and was incorporated in 1975.

Today, ALSWA is one of the largest community based Aboriginal and Torres Strait Islander legal organisations in Australia, providing legal aid services to Aboriginal and Torres Strait Islander peoples throughout Western Australia. ALSWA aims to empower Aboriginal and Torres Strait Islander peoples and advance their interests and aspirations through a comprehensive range of legal and support services in criminal, family, civil and human rights law. ALSWA has a head office in Perth and 17 regional offices across WA including, Kununurra, Halls Creek, Fitzroy Crossing, Derby, Broome, South Hedland, Roebourne, Newman, Carnarvon, Meekatharra, Geraldton, Northam, Kalgoorlie, Laverton, Warburton, Bunbury and Albany.

ALSWA also aims to ensure that Government and communities address the underlying issues that contribute to Aboriginal and Torres Strait Islander disadvantage on all social indicators. ALSWA works from an approach that the law and order system are to be used to bring about social justice for Aboriginal and Torres Strait Islander peoples as a whole. This requires that strategies be developed and used in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA currently employs 42 solicitors, including 12 Aboriginal solicitors. ALSWA also employs 26 Aboriginal court officers who, although they are not legally qualified, have a right of appearance in Western Australian courts.

Insofar as my background is concerned, I am a Nuyngar Aboriginal man from the south west of Western Australia. I have been the Chief Executive Officer of ALSWA since 1995. I have held numerous formal committee positions over the years whilst representing the Aboriginal community. For example, I have acted as Chairman of the WA Aboriginal Education Consultative Group and Chairman of the WA Aboriginal Language Conference. I have also served on the Perth ATSIC Regional Council and spent time on the board of various community controlled organisations including the WA Aboriginal Education Consultative Group, Derbarl Yerrigan Health Service, the Western Australian Aboriginal Media Association and the Manjimup Aboriginal Corporation. I was on the board of the Australian Academy of Race Relations and was treasurer for the Dumartung Aboriginal Corporation and also the Third Conference of the World's Indigenous Peoples. I was the founding member of the Coalition of Aboriginal Agencies, the peak body for Aboriginal agencies in Perth. Under their auspices, I helped establish the Indigenous Family Program with its key focus on keeping Aboriginal people out of the justice system. It has a holistic approach to Aboriginal family issues and deals with health, housing and justice, to name a few. In 2007, I was awarded the John Curtin Medal by Curtin University of Technology for my contribution to social justice for Aboriginal people based on fundamental human rights.

Katrina Carlisle is a Wongi Aboriginal woman from the Eastern Goldfields area of Western Australia. Ms Carlisle commenced employment with ALSWA in 1995. Since then she has occupied the positions of court officer, manager of the Perth court officers unit and Executive Officer. Ms Carlisle's commitment and dedication to her work and her community was

acknowledged in 2008 when she was named the inaugural Aboriginal and Torres Strait Islander Legal Services Employee of the Year which is an award sponsored by the AGD.

#### **ALSWA auspicing of Broome FVPLS**

4. ALSWA was approached by the Commonwealth Attorney General's Department ("AGD") in around June 2008 to see if it was prepared to auspice several Family Violence Prevention Legal Services ("FVPLS") in regional Western Australia. The Broome FVPLS was the first such service to be auspiced by ALSWA . Since then, ALSWA has taken responsibility for the auspicing of FVPLSs in Kalgoorlie, Kununurra, Port Hedland, Carnarvon and Geraldton.
5. Prior to the ALSWA auspicing the Broome FVPLS, the Kullari Indigenous Women's Aboriginal Corporation Committee ("KIWAC") was the auspicing body. Ms Rowena Puertollano was the Chief Executive Officer of KIWAC. KIWAC was in the process of being wound up at the time the AGD requested that ALSWA take over the auspicing role. As a result, the Broome FVPLS was in danger of being shut down. As we understand it, the AGD had not released funding to KIWAC for the 2008-2009 financial year.
6. One of the principal reasons for ALSWA agreeing to take an auspicing role for the Broome and then the other FVPLSs was a recognition by ALSWA of the importance of service delivery and access to justice for women, children and young persons who are victims of crime, especially family violence and sexual assault, and that improvements could be made through ALSWA to such service delivery.
7. From the outset, ALSWA was mindful of its obligations pursuant to the AGD FVPLS Operational Framework 2006 to exercise special care as an auspicing body to deal with conflict of interest issues. Prior to agreeing to an auspicing role for the Broome FVPLS, ALSWA sought the written advice of the WA Legal Practice Board as to the management of any conflict of interest issues. It was only after receiving the approval of the Legal Practice Board as to ALSWA's measures in relation to conflict of interest issues, that ALSWA indicated to the AGD that it was prepared to take on the auspicing role.
8. ALSWA commenced as the auspice body for the Broome FVPLS in September 2008. At this time the Chairperson of the KIWAC Committee wrote (in correspondence copied to the AGD) to Ms Carlisle thanking ALSWA for "...coming to the rescue as an 'Auspice Body' for the Broome FVPLS Unit." Attached and marked with letter "A" is a copy of this letter.
9. Ms Puertollano went from being the CEO of KIWAC, where she had the day to day management of a large corporation, to being employed by ALSWA as Coordinator of the Broome FVPLS.

**The written warning to Ms Rowena Puertollano dated 15 June 2009 (LCARC report, Attachment 2)**

10. Ms Carlisle first became aware of Ms Puertollano's letter to the LCARC (see LCARC report, Attachment 1) when she was informed it was published on the LCARC's website. Ms Carlisle had been on long service leave for a period of time in early 2009.
11. The warning was issued by Ms Carlisle to Ms Puertollano following consultation by Ms Carlisle with myself and other Senior Management. Prior to the written warning, letter, Ms Carlisle had a telephone conversation with Ms Puertollano on Friday 12 June 2009. This is referred to at point 4 of the written warning.
12. We made the decision to issue the written warning because we considered that Ms Puertollano had, in her submission, held herself out as a representative of ALSWA without permission from Senior Management. This conduct was contrary to a term of her employment contract, which is the same as that applying to all ALSWA employees. This was set out on the first page of the written warning. Of particular relevance is the third bullet point:-
 

*“Community and Political Involvement – Staff members wishing to participate in Aboriginal or Legal community activities (committees, projects, studies, etc) as an ALSWA representative must seek the prior approval of the Chief Executive Officer or the appropriate member of the Senior Management Committee. Individual staff are free to participate in political or Aboriginal or Legal Community activities in their private capacity but must not hold themselves out as a representative of ALSWA without permission from Senior Management.”* (emphasis added)
14. The warning was in no way intended to limit the freedom of Ms Puertollano to participate in the Access to Justice Inquiry being conducted by the LCARC.
15. We assure the Committee, and urge the Committee to accept, that the warning was in no way intended to interfere with the evidence gathering function of the LCARC.
16. We note that the LCARC report concludes that Ms Puertollano was not attempting to put forward her views as representing those of the FVPLS (para 1.14), that her submission shows she was in strong disagreement with the policies of ALSWA and that it is difficult to construe her submission as made in other than a private capacity (para 1.15). It is respectfully submitted that these matters are not so clear cut. Ms Puertollano's letter refers in five places to the fact that she was Coordinator and to her perspective from this position. The focus of her criticism is on the role of the AGD.
17. We ask that the Committee take account of the fact that ALSWA had only been involved in the auspicing of the Broome FVPLS for a short period of time, in the circumstances explained above. Our concern, as expanded on in point 4 of the written warning, was that vehement criticism of the AGD and



the auspice arrangements would jeopardise the arrangements that were in place for the Broome FVPLS. We honestly considered that as an employee Ms Puertollano ought to have sought approval of Senior Management before forwarding her submission in her capacity as Co-ordinator.

**LCARC letter of 29 June 2009 to Ms Katrina Carlisle (LCARC report, Attachments 3)**

18. The LCARC wrote to Ms Carlisle on 29 June 2009, advising that the written warning might constitute a contempt of Parliament and a criminal offence. It was strongly recommended that the written warning be withdrawn. Our assurance was sought that Ms Puertollano would not suffer any further disadvantage as a consequence of her having made a submission.

**ALSWA response to LCARC (LCARC report, Attachment 4)**

19. We responded to the LCARC promptly. By letter dated 10 July 2009, we took issue with the fact that the warning letter constituted a contempt. However, we:-
- (a) stressed that the warning letter was in no way intended to inhibit the freedom of Ms Puertollano to express her personal views;
  - (b) stressed that the letter was not intended to obstruct the LCARC in the performance of its functions;
  - (c) apologised if the warning letter created an impression contrary to that referred to in (a) and (b) above;
  - (d) stated that we proposed to withdraw the warning letter, and confirm in writing to Ms Puertollano that we in no way sought to inhibit her contributing to the Access to Justice Inquiry – but reminding her that she should make clear that she was doing so based on her own views and not as a representative of ALSWA.

**Apology and withdrawal of written warning**

20. We repeat the apology offered to the LCARC to the Committee.
21. The written warning by Ms Carlisle to Ms Puertollano was withdrawn by a letter from me dated 13 July 2009 (LCARC report, Attachment 6). This letter was posted three days after our initial response to the LCARC and on the same day that I was provided by hand with the further letter from the LCARC at Perth on 13 July 2009 (LCARC Report, Attachment 5).
22. Having determined to withdraw the written warning, we acted quickly. It is not the case that “[i]t was only after follow-up action by the [LCARC] that the ALSWA acted to withdraw the warning.”

23. The LCARC report acknowledges that ALSWA did intend to withdraw the warning, but notes that the communication of the letter may not have been immediately effective (para 1.18). We accept that this was the case. Unfortunately, the letter was sent to an incorrect postal address. When the LCARC drew the error to our attention, this was corrected (LCARC report, Attachment 9).
24. The LCARC report concludes (at paras 1.19 to 1.20) that the terms of the withdrawal of the warning letter are concerning and demonstrate a misunderstanding of the breadth of the Senate's resolutions. We assure the Committee that we have not sought to justify an erroneous position.
25. In fact, the contents of the letter withdrawing the warning were consistent with what was proposed in our initial response to the LCARC. (LCARC Report, Attachment 4, page 2). Specifically, Ms Puertollano was advised that ALSWA did not wish to inhibit her freedom to express her personal views to the LCARC. When the LCARC provided the further letter on 13 July 2009, they noted and did not disagree with this course of action (LCARC Report, Attachment 5, point 3). See further para 38 below.

**Impact of the warning letter on the conduct of the Access to Justice Inquiry**

26. The LCARC report considered that any interference with the conduct of the Access to Justice Inquiry "...was marginal, as the written evidence had already been given, and Ms Puertollano had not been selected to give further oral evidence." (para 1.21)
27. In the circumstances it is respectfully submitted that the Committee should find that there was in fact no (rather than "marginal") interference with the conduct of the Access to Justice Inquiry.

**Submission as to no contempt**

28. The Committee is to consider "...whether there was any interference with, or the imposition of a penalty on, a witness before that committee, or any threat or attempt to carry out those acts, and whether any contempt was committed in that regard."
29. We understand that 1988 Privileges Resolutions 6 (10) [interference with witnesses], 6 (11) [Molestation of witnesses] and 3 [Criteria to be taken into account when determining matters relating to contempt] will all be considered by the Committee.
30. Section 4 of the *Parliamentary Privileges Act* 1987 (Cth) provides, in part, that "Conduct...does not constitute an offence against a House unless it

amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions...”

31. A contempt of Parliament is a grave matter. A determination that it has been committed must only be made with great caution.
32. The Committee has accepted in respect of criterion 3 (c):  
 “...that only in the most exceptional circumstances should it contemplate making a finding of contempt in the absence of any intention on the part of a person or persons to commit any act which may be in contempt..  
 As a general principle, the Committee accepts that the damage to the Senate and its committees resulting from such acts would need to be of the most serious kind in order for the Committee to find that a contempt had been committed in the absence of intent.”<sup>1</sup>
33. The Committee regards a culpable intention on the part of the person concerned as essential for the establishment of a contempt.<sup>2</sup>
34. In our submission the Committee should find, in the circumstances we have set out above, that no contempt has been committed.
35. We had no culpable intention. On the contrary, we intended to act in the best interests of ALSWA at a time when our auspicing of the Broome FVPLS (on request from the AGD) was in its infancy. We intended to act pursuant to and in accordance with the terms of an employee’s contract of employment. Crucially, our concern was with the capacity in which Ms Puertollano made her submission, not the fact that she was contributing evidence per se.
36. Further, when the matter was raised with us by the LCARC, we apologised for any wrongful impression created, an apology we repeat to this Committee. We withdrew the written warning.

#### **Need for guidance**

37. Finally, we agree with the LCARC report – especially in light of this experience – that it would be useful for the Committee to consider providing some further guidance and restatement of principles on this matter for the benefit of prospective witnesses, employers and other associated persons, as well as committees who must deal with these potential issues in the course of their inquiries (para 1.24). We point out, however, that the fact that there is a

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<sup>1</sup> Senate Committee of Privileges, *Possible Adverse Treatment of a Witness Before the Corporations and Securities Committee*, 42<sup>nd</sup> report, May 1993 at [2.4] – [2.5].

<sup>2</sup> H Evans (ed), *Odgers’ Guide to Australian Senate Practice*, 11<sup>th</sup> ed, chapter 2, p 65

need for such guidance and clarification is at odds with the apparently clear-cut conclusions expressed elsewhere in the LCARC report.<sup>3</sup>

**Conclusion**

38. We note that the Committee has sought this submission as a first step and that we will receive notice and have the opportunity to make further submissions should any adverse findings be proposed. We assure you that this matter is being taken very seriously by us and that the Committee has our full co-operation.
39. Please do not hesitate to contact me if any of the above requires further explanation or clarification.

Yours faithfully



**DENNIS EGGINGTON**

Chief Executive Officer

Aboriginal Legal Service of WA (Inc)

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<sup>3</sup> For example, LCARC report at para 1.16 ("However, the issue of whether....submission was made in an official or a private capacity is irrelevant. The procedures for the protection of witnesses laid down by the Senate are unequivocal...").

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**Attention:** Katrina Carlisle Executive Officer ALSWA

Dear Katrina,

First, thank you for coming to the rescue as an 'Auspice Body' for the Broome FVPLS Unit. Inclusive in the thank you, I would also like to introduce myself.

My name is Leah Dolby and, I am the Chairperson of the KIWAC (Kullarri Indigenous Women's Aboriginal Corporation) Committee.

As you are no doubt aware of KIWAC'S financial and operational situation, as part of our final stages in closing and winding up the service delivery to the Women and Children within and around the Kullarri Region it is also with sadness that we not only have to deal with this but be left to acknowledge and recognize regretfully that, due to our previous management system not having the capacity to cope with the Administration process, has seen our Corporation become very fragile in its capabilities to deliver appropriate services as well as provide ongoing support to staff and clients.

Before we formally close our service and wind up the Corporation, the Committee would like to ensure that the FVPLS program, is handed over to its new 'Auspice Body' officially so that the victims and survivors of Domestic Violence and Sexual Abuse in the Kimberley region, are still being supported, kept safe and catered for .

The Corporation will officially wind its services up at the SGM (Special General Meeting) scheduled for the 12<sup>th</sup> September 2008.

In order to finalize all details and legal obligation, on behalf of the KIWAC Committee and its 100 members, do with great regret, relinquish all rights in the management of the Broome FVPLS Unit (Family Violence & Prevention Legal Service) as from the 12<sup>th</sup> September, 2008 and officially hand it over to ALSWA (Aboriginal Legal Service, WA).

Inclusive of this and once again on behalf of the Committee, wish to inform ALSWA Management Board that, all assets purchased under KIWAC including, staff housing leases, have been officially endorsed, passed and agreed upon at our Committee meeting held on the 12<sup>th</sup> August 2008, to be handed over to the Broome FVPLS Unit.

In closing, the KIWAC Committee would like to 'thank' ALSWA for its support in ensuring the doors are still open to the women and children by coming on board as the new 'Auspice Body' for the FVPLS Unit and would like to offer any support to the ALSWA Management team to ensure the needs of the victims and survivors of DV & SA are being looked after accordingly.

*Once again, thank you for your support and wish the Broome FVPLS Unit all the best in the future and hope that our paths can cross on a positive note, in the near future.*

*Yours sincerely,*

*Leah Dolby  
Chairperson  
KIWAC Committee  
September, 2008*

*CC: Glenn Phillips Attorney General's Department*