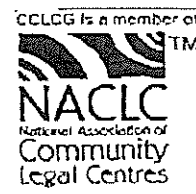


Submission
No 52

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

Organisation: Combined Community Legal Centres' Group (NSW) Inc

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NSW Legislative Council Inquiry into Overcoming Indigenous Disadvantage

Thank you for the opportunity to contribute to this inquiry by the NSW Legislative Council's Social Issues Committee on overcoming Indigenous disadvantage in NSW. The terms of reference for the inquiry focus on identifying strategies to address the lifetime expectancy gap between Aboriginal and non-Aboriginal people (currently estimated to be 17 years). In response this submission will address the following issues:

- Legal strategies for addressing sexual assault, family violence and child sexual abuse in Aboriginal communities, which are all key factors contributing to the current lifetime expectancy gap between Aboriginal and non-Aboriginal people in NSW.

Combined Community Legal Centres Group (NSW) Inc. (CCLCG) has 38 member Community Legal Centres (CLCs) that work for the public interest, particularly assisting people who, for a range of reasons, have difficulty in accessing the legal system, including people with disabilities, women, young people, Indigenous people and people from a non-English speaking background, among others. CLCs provide legal services including information, referral and advice, strategic casework, community legal education and law reform campaigns.

Assisting Aboriginal clients in cases of sexual assault, family violence and child sexual abuse is an important area of work for CLCs. CLCs have significant experience and understanding of the obstacles clients face, and what approaches within the legal system are most effective for addressing these issues. This submission is based on the experiences of Aboriginal clients who have engaged with the legal system to seek redress in such situations.

1. Sexual Assault, Family violence and Child Sexual Abuse Contributing to the Gap

The gap in life expectancy between Aboriginal and non-Aboriginal people in NSW has been widely documented in both government and academic sources. There are multiple and inter-related reasons for the gap including poverty and lack of access to appropriate and affordable health services, food, housing, and education.

There is also evidence that sexual assault, family violence and child sexual abuse also contribute to poor health and low-life expectancies in Aboriginal communities, both in terms of the immediate physical harm and the long term physical, emotional and psychological harm. The relationship between these issues was recognized in the following reports:

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1.1 Ampe Akelyernemane Meke Mekarle "Little Children are Sacred" - Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (2007) ("Little Children are Sacred Report")

The Inquiry found child sexual abuse in Aboriginal communities was serious, widespread and grossly under reported. It concluded the breakdown of traditional Aboriginal culture and society was largely responsible and identified alcohol abuse as the gravest and fastest growing threat to the safety of children. It also identified the protection of women and children, lack of formal education and poor and overcrowded housing as key issues.

As a result of sexual assault and child sexual abuse that had occurred during colonisation, during the stolen generation and in current times, the inquiry noted that many Aboriginal people are suffering from depression and a general lack of wellbeing. The Inquiry noted research on the link between this cumulative trauma and the suffering of physical and psychological symptoms that were consistent with post-traumatic stress (Little Children Are Sacred Report p 138-139).

In response to this, the Inquiry found there was a need to effect a widespread healing process aimed at dealing with "inter-generational" and present trauma and enhancing the general emotional and mental wellbeing of Aboriginal communities.

1.2 Breaking the Silence: Creating the Future - NSW report into child sexual assault in Aboriginal Communities ("Breaking the Silence Report")

The NSW Aboriginal Child Sexual Assault Taskforce presented its findings in its report "Breaking the Silence: Creating the Future" 2006

The Taskforce found child sexual assault was an enormous issue and was passed from one generation to another. The issue of child sexual assault was not well understood in the community, which led to a culture of silence and denial. Abuse was rarely reported with factors such as complex extended families, geographic isolation, and poor response from child protection agencies contributing to this.

Statistics show Aboriginal females were two and a half times more likely than non-Aboriginal females to be sexually assaulted. The figure is likely to be much higher than this given levels of under reporting.

The report noted that child sexual assault was linked with long-term intergenerational violence and the increasing alienation and behavioural issues and being involved in crime and other risk taking behaviour such as substance addiction and prostitution, experience of hopelessness and despair, all too often resulted in self-harm and suicide. The report cited similar findings in the Aboriginal Justice Advisory Council's 2002 research in which 70% of the Aboriginal women in custody who were interviewed for the study said that they were victims of child sexual assault and more than 40% also said that they had been sexually assaulted as adults. The AJAC study found that the women who had been sexually assaulted were more likely to use drugs, particularly heroin, and that drug-related crime was the main reason for their imprisonment (Breaking the Silence Report p55-57).

We also refer the Commission to the following articles:

- Rene Adams and Yasmin Hunter, 'Surviving Justice: Family Violence, Sexual Assault and Child Sexual Assault in Remote Aboriginal Communities in NSW', *Indigenous Law Bulletin*, Volume 7, Issue 1, November 2007
 - The article highlights the extent to which family violence and sexual assault are a problem for Aboriginal women in remote New South Wales, and the unfortunate disproportional assistance available in remote areas to address these issues.

- Natalie Taylor and Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia', *Trends and issues in crime and criminal justice*, No. 345, Canberra: Australian Institute of Criminology, September 2007 (<http://www.aic.gov.au/publications/tandi2/tandi345.html>)
 - The article highlights the specific barriers Aboriginal face that prevent them from addressing and seeking redress for sexual violence.

Thus it is well documented that, sexual assault, family violence and child abuse are key causes of the poor health and lack of safety and security experienced in Aboriginal communities. Addressing these both in terms of prevention and redress is a priority issue for NSW.

2. Legal strategies for addressing Sexual Assault, family violence and child sexual abuse

2.1 Sexual assault

Criminal justice outcomes for sexual assault prosecutions are extremely poor. Prosecutions for sexual assault offences have the lowest guilty pleas, lowest guilty verdict rate and highest appeal rate of any offence category. Many victims report that the trial process brings them further trauma and most victims would not encourage other victims to report sexual assault.

Recommendation 1

CCLCG calls on the NSW Government to implement all recommendations in the Criminal Justice Sexual Offences Taskforce Report (2005), including recommendations 7, 67 and 68 for further funding.

2.2 Family and domestic violence

It is important to develop and implement strategies around reducing deaths relating to family violence. This requires more institutionalised reviews of deaths of domestic violence, continued training for police on what is domestic violence (i.e. domestic violence is not limited to physical abuse, but also includes emotional, financial and other types of abuse, which are as serious and have long lasting effects upon the victim) and how to address it to prevent the abuse from reaching the stage where homicides are committed.

Existing services such as the Women's Domestic Violence Court Assistance Program and community legal centres continue to play an important and effective role in assisting women victims of domestic violence to seek redress in a timely and supported way.

However, many legal and support services for domestic violence victims, do not have adequate resources to support women with particular vulnerabilities, including Aboriginal women.

Recommendation 2

- a) Provide additional funding to legal services and other services that can assist in providing housing, counseling and other support services for domestic violence victims, particularly in terms of assisting women with specialist needs, including in rural regional and remote areas where there are large Aboriginal populations.
- b) Establish a Domestic Violence Homicide Review Team.
- c) Increase police training on responding to domestic violence cases.
- d) Improve the application processes and enforcement of Apprehended Domestic Violence Orders

(ADVOs).

- e) Implement with full funding the recommendations of the NSW Ombudsman's Report "Domestic violence: improving police practice" (December 2006).

2.3 Child Sexual Abuse

CLCs have found that there are significant barriers faced by Aboriginal children and families seeking redress for child sexual abuse. The Breaking the Silence Report substantiated this in its findings noting the following:

- Court processes are long and traumatic for Aboriginal children and their families
- Sentencing of offenders is inconsistent and perceived by some as too lenient
- Communities believe that Aboriginal input into sentencing of Aboriginal offenders of child sexual assault would make the sentence more appropriate and relevant to the offender and the community
- Many Aboriginal victims of crime are not aware of Victims Services and the counselling and compensation they can access from this service
- There is limited access to Aboriginal counsellors or counsellors experienced in counseling Aboriginal people
- It can be difficult for some Aboriginal people to physically get to counselling sessions as they may have to travel long distances and may not be able to access, or afford, transport
- The cap on counselling provided under Victims Services Approved Counselling Scheme (22 hours) is too low for some Aboriginal victims of crime
- The Victims Services Remote/Regional Coordinator positions are vacant and have been for some time
- There is little material about preparing for court and the court process that is relevant and accessible for Aboriginal people

The Breaking the Silence Report made 119 recommendations, which it recommended be implemented in consultation with Aboriginal communities.

The recommendations reflected the view that a holistic and coordinated response was needed to respond to child sexual assault. Some of these recommendations included:

- Establish an Aboriginal Child Sexual Assault Coordination unit
- Expand Family Violence Prevention Legal Services
- There should be a comprehensive education strategy in the community
- Establish policies that deal with family violence and child sexual assault in an holistic way
- Reported child abuse should be followed up within 48 hours of report
- Access to crisis accommodation to provide a safe place for women and children who disclose
- Develop community based sex offender programs for offenders aged between 10 and 17
- Comprehensive resourcing of health services

Similar recommendations were made under the Little Children are Sacred Report.

It is important to note that implementing these recommendation will put in place important measures for addressing and providing legal redress for child sexual assault, which in turn is an important means of ensuring both short and long term health of victims of child sexual assault. Further putting in place deterrent and prevention schemes will assist in ensuring that future children are not subject to these problems.

The NSW Government considered the recommendations and in January 2007 produced its response in the report "NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities (2006-2011)". Some, but not all of the recommendations of the Breaking the Silence Report were accepted.

It has been estimated the cost of implementing the report in full is between \$20 million and \$40 million. However, to date the NSW Government has indicated that no new funding is to be allocated for the implementation of the recommendations, despite many of the recommendations calling for new actions to be undertaken.

As the Breaking the Silence Report notes, if effectively implemented, the recommendations could result in:

- Court matters being dealt with efficiently
- Sentencing being consistent and effective for Aboriginal sex offenders
- Victims Services providing culturally effective counselling services to Aboriginal people
- Victim Services programs being easily accessed by Aboriginal people
- Culturally effective court preparation materials being available to all Aboriginal child sexual assault victims and their families

Recommendation 3

CLCs call on the NSW Government to provide new funding to implement the recommendations of the Breaking the Silence Report, as an important step in addressing the gap in life expectancy between Aboriginal and non-Aboriginal people in NSW.

3. Consulting affected communities

The Little Children are Sacred Report identified "effective and ongoing consultation and engagement" as an essential principle in reform. The report noted that government policies formulated without the active involvement of the very Aboriginal people whose lives and livelihoods are going to be affected by them, and whose support is needed for their success, fail to have the "on the ground" impact that is hoped for.

The Report further noted that to properly implement this principle requires an approach whereby the relevant community is not only consulted about and engaged and voluntarily involved in developing the policy, but there is at least majority community consent for the final policy developed. This consent needs to be informed consent.

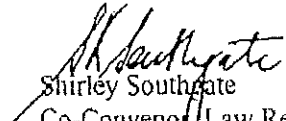
Recommendation 4

We recommend that the implementation of any recommendations be made with the full participation of affected Aboriginal communities, including ensuring Aboriginal staff are employed in relevant services, and all services are delivered in a culturally appropriate manner.

Finally, we also endorse the submission and recommendations by Wirringa Baiya Aboriginal Women's Legal Centre's (a member centre of CCLCG) made on 29 November 2007.

Should you require any further information on any of the above, please do not hesitate to contact Alison Aggarwal (Alison_aggarwal@clc.net.au / 9212 7333).

Yours sincerely


Shirley Southgate
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Combined Community Legal Centres Groups (NSW) Inc.

