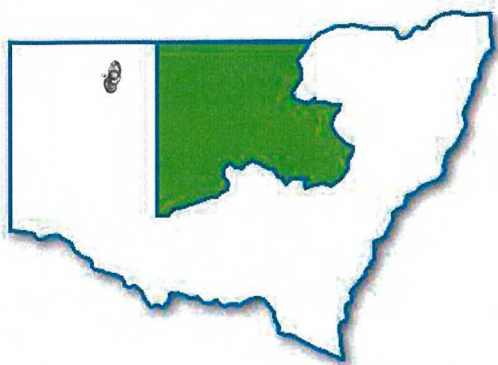


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Western NSW Community Legal Centre Inc

Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission
Level 3, 175 Pitt Street
SYDNEY NSW 2000

2 September 2019

Dear President

Free and equal: An Australian Conversation on Human Rights

Western NSW Community Legal Centre ('**Western NSW CLC**') is proud to join this important conversation on human rights.

We welcome the invitation to meaningfully engage with the Australian Human Rights Commission ('**AHRC**') as it identifies what makes an effective system of human rights protection for 21st century Australia.

Introduction

Western NSW CLC is a community-based, not-for-profit organisation that provides free legal services to local people in need. We are based in Dubbo NSW and cover the Greater Western NSW region. We outreach to the following areas:

- Nyngan
- Cobar
- Bourke
- Brewarrina
- Lightning Ridge
- Walgett
- Coonamble
- Coonabarabran
- Mudgee
- Wellington
- Gilgandra
- Narromine
- Warren

Our services include the provision of early legal assistance, law reform and community legal education. We are committed to the issue of access equality and we lobby government to improve access to the legal system and to reform the law.

Although Western NSW CLC operates a generalist practice, we champion two key focus areas which account for the vast majority of our work: Domestic Violence and Indigenous Rights.

1. Domestic Violence

Domestic violence has become a worrying trend for regional areas. For instance, the Central West has some of the highest rates of domestic assault per capita in NSW.¹

About 60% of our clients are women and of those, 40% are experiencing domestic violence in one of its many forms. To respond to the needs of the community, Western NSW CLC has developed a dedicated domestic violence service called Western Women's Legal Support (**WWLS**). Our team provides specialist domestic and family violence legal advice to women in rural and remote areas of Western NSW. The service currently receives approximately 20 referrals per month for women seeking emergency domestic violence assistance. We travel approximately 20,100 kilometres per year, conducting more than 55 outreach visits.

2. Indigenous Rights

Almost 40% of our clients identify as Aboriginal and many of our outreach destinations comprise of large Aboriginal communities. We employ two Aboriginal Support Workers who help ensure that our service is culturally appropriate.

It is important to note that these areas are not mutually exclusive.

Consultation questions

Our responses to consultation questions 1, 6, 7 & 9 are set out below.

Question 1 – What human rights matter to you?

Western NSW CLC encourages the protection of all human rights. In particular, in the context of the services we provide, the protection of the following human rights is crucial:

- Equality before the law & right to legal assistance – as a Community Legal Centre we are wholly committed to access to justice. People should have access to legal services irrespective of their resources or geographical location.

¹ NSW Bureau of Crime Statistics and Research, NSW Crime Tool: Incidents of Assault (Domestic assault) from April 2018 to March 2019, <http://crimetool.bocsar.nsw.gov.au/bocsar/>.

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- Right to self-determination – People have a right to know, retain and practice their culture. For Indigenous Australians this includes the right to maintain their identity, education, political and legal systems, as well as the right to remain on country. The government should assist in providing for a deeper recognition of ancestral or tribal authorities and should give Indigenous communities the right to own, design and control the decisions that affect their lives and wellbeing.
- Protection of the family as the fundamental unit of society - People have a right to live free from violence and to raise their families in a safe environment. Family and community benefits should be freely available.
- Right to adequate standard of living - People in remote and rural communities should have access to appropriate community services, including high quality health care, social security schemes, affordable housing, employment opportunities, education and other forms of financial assistance.

These human rights are fundamental to the work Western NSW CLC undertakes. In our view, they should be enshrined in any proposed human rights bill that Australia seeks to pass.

Question 6 – What can the community do to protect human rights? How should the government support this?

Western NSW CLC calls upon the community and the government to challenge their understanding of domestic violence and Indigenous rights in rural and remote communities.

Many people assume that all people have access to transport, telephones and internet services, whereas in reality, some people living in rural NSW do not have cars, cannot afford phone credit and do not receive internet services in their home town.

The unavailability of these services contributes to a wider social disadvantage and significantly constrains access to other important community services, including the **right to legal assistance**. For example, some prospective clients of the Western NSW CLC who are victims of financial abuse simply do not have the means to commute to Dubbo (or another regional hub) to receive vital services. Moreover, some Aboriginal communities do not have access to the internet and therefore experience difficulty interacting with the family law courts, which are predominantly case managed using an online court.

The government needs to take a holistic approach to community services - one that appropriately recognises the interplay between legal and non-legal services - and the combined effect they have on furthering the **right to an adequate standard of living**. For instance, in both the areas of domestic violence and Indigenous rights, the need for safe emergency accommodation looms large. Such accommodation may provide an escape

pathway for victims of domestic violence who are otherwise trapped. It could equally provide a protective shelter for an Aboriginal parent to care for their child.

Essential non-legal community services include: the provision of women refuges (including those that take children and young males under the age of 18); readily available face-to-face counselling services; transport services; financial assistance; the availability of interpreters and culturally appropriate community workers.

The importance of the interplay between legal and non-legal services cannot be overstated. That is because a person's inability to access non-legal services can often lead to them experiencing future legal troubles. For example, in our experience, often the reason women do not leave violent relationships is because they do not have the financial support to do so. Often there is nowhere for them to go as there are only limited shelters in and around the Dubbo area.

Non-legal services should be implemented by the community for the community and must be enhanced to accommodate the specific needs of clients. This includes revisiting existing services to assess ways they can be improved. For example, the placement of Aboriginal children in out-of-home care facilities may in fact increase their chances of interacting with the criminal justice system later in life. Instead, it is our view that community-based programs which acknowledge the importance of remaining 'on-country' as an exercise of one's right to **self-determination** would be more effective.

Crucially, these services must be accessible and available at no or very low cost. An accessible service means, for example, that in the case of community-based programs, transport will be arranged and childcare available while the parent or primary caregiver attends the program. These services must be culturally safe, trauma-informed, disability-aware and strengths-based. They should also be extended to offenders to properly address the root causes of their offending behaviour.

Question 7 – How should individuals, businesses, community organisations and others be encouraged and supported to meet their responsibility to respect human rights?

Community organisations should actively collaborate to build a framework that supports the protection of human rights. In particular, there must be a greater focus on measures of prevention and early intervention and to ensure that services are accessible in a timely manner. For example, Western NSW CLC, in recognising that legal problems often lead to health problems, strives to foster relationships with local healthcare providers to establish a more streamlined referral system.

Western NSW CLC would encourage and support the following initiatives:

Domestic Violence

- Educate police – Further education and police officer training surrounding the definition and forms of domestic violence (particularly financial abuse) is recommended. Western NSW CLC is aware of many examples of women having sought help from the police only to be told that what they are experiencing is not 'domestic violence'. In some cases, an apprehended domestic violence order is a burdensome prerequisite to accessing help.
- Empower parents to protect their children - Establish accountability mechanisms to ensure that Family and Community Services and non-government child protection workers must inform parents in a timely manner if there are issues that may lead to the removal of their children and provide culturally safe and appropriate support to them to address those issues. Parents must have a say in what is realistic and achievable when entering any agreement. They must be able to choose which service they engage with, for example, a service they know to be culturally safe, on or as close to country as possible and trauma informed.
- Prioritise social housing initiatives - Better promotion and implementation of the Housing Pathways platform² which prioritises access to social housing if a parent can provide evidence which demonstrates that the lack of appropriate accommodation is impacting their ability to have children restored to their care.

Aboriginal Rights

- Be culturally aware - NSW Police should ensure that Aboriginal cultural awareness content is included in all domestic violence training and that appropriate consultation with Aboriginal community representatives, especially women, endorses such content. Additionally, police should ensure the placement of the appropriate number of Aboriginal family violence workers (including female designated Aboriginal Community Liaison Officers) in local area commands with significant Aboriginal populations (having regard to the local area commands identified in the Aboriginal Strategic Direction plan³).
- Respect differences - Recognise that Aboriginal families may operate differently to non-Aboriginal families and this needs to be reflected in the way that we handle care and protection matters in the court. The court needs to understand the role of grandparents and extended families and of course the need for children to stay 'on-country'. Care

² Housing Pathways is a partnership between Family & Community Services and participating housing providers. It is the platform through which applications for housing assistance are managed in NSW:
<https://www.facs.nsw.gov.au/housing/help/applying-assistance/housing-pathways>.

³ The Aboriginal Strategic Direction 2018 - 23 guides the NSW Police Force in its management of Aboriginal issues:
https://www.police.nsw.gov.au/safety_and_prevention/your_community/aboriginal_persons_and_communities/aboriginal_issues/aboriginal_strategic_direction.

matters involving Aboriginal families should be dealt with in a court process that is culturally safe and appropriate; which means transferring these matters out of the mainstream Children's Court list to a more therapeutic process.

Question 9 – What actions are needed to ensure that the government meets its obligation to fulfil human rights – for example, in addressing longstanding inequalities in the community?

The Western NSW CLC calls upon the government to:

- Recognise the past - Acknowledge and 'owning' our history of dispossession and violence towards Aboriginal and Torres Straight Island people.
- Take a holistic approach – Recognise the interplay between legal and non-legal community services and reject any notion of a 'one-size-fits-all' approach to community service initiatives in rural and remote communities.
- Foster meaningful consultation – Proactively engage with community stakeholders about community initiatives. For example, Indigenous communities need to be consulted with regards to what kind of services will be offered and how they will operate. Consultation is equally applicable with the community on a grass-roots level to develop community-lead solutions on the issue of domestic violence.
- Provide adequate funding – Additional funding is required to meet the demand for services. For example, WWLS currently receives 20 referrals per month with funding for one full-time solicitor and one part-time solicitor. Under the current restraints the service is only able to visit each outreach location once per month. Additional funding for solicitors would enhance the consistency and quality of care the centre is able to provide and means that more clients will receive more immediate access to justice.

Funding should extend to non-legal services, including:

- Community based support services particularly in shelters. Rental shortages and inability to pay rent mean women are often forced to return to violent situations.
- Community-led, culturally-safe, strengths-based and trauma-informed parenting and other support programs, such as integrated social and legal services, to help parents address issues that may lead to the removal of their children.
- Review the judicial framework – Consider the current court framework and encourage initiatives to make it more effective, for example, with the possible introduction of the following:

- Indigenous list courts that recognise and support the Indigenous legal system, particularly for family law and children's matters. Culturally appropriate judicial process include grandparents and extended family in the care process, or assessing options for children to remain 'on-country' if removed.
- Specialist domestic violence courts to hear matters which may otherwise be economically unviable to pursue. For example, for victims of domestic violence whose dispute revolves around a relatively small marital asset pool.

Western NSW CLC looks forward to further engaging with the AHRC in this important conversation.

Yours faithfully
Patrick O'Callaghan
Principal Solicitor
Western NSW CLC



