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Note: The Financial Counselling Service does **not** give legal advice.

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SUBMISSION TO THE NATIONAL HUMAN RIGHTS CONSULTATION

REFERENCE NO: AGWW-7T29JJ

These are our written submissions in relation to the above inquiry.

Background

The Western NSW Community Legal Centre ("the Centre") was established in the financial year 1995/1996, under the then Government's Justice Statement. The Centre was given specific funding to set up a Women's Outreach Service along with the Generalist Legal Service. We were initially required to provide assistance to people from Mudgee to the South Australian border. That is 42% of the State. The regional area we cover was thankfully reduced in 2000 when the Far West CLC based in Broken Hill commenced operations and services Broken Hill and Wilcannia. As no legal centre is funded to service Orange, Forbes & Parkes we also provide telephone advice services to them.

The Centre aims to meet the legal needs of our far-reaching community by providing community legal education, law reform activities and media comment on issues of importance to that community. The provision of a professional casework service in areas of law where there is a wider community need, the client is disadvantaged and legal resources from other sources are inaccessible or inadequate is also an important part of our work. The most common, but by no means the only areas of law in which the service assists are Family Law, Domestic Violence, Child Support, Child Protection, Credit and Debt, AVO's, Discrimination, Victims Compensation, Social Security and Employment.

In reference to the ambit of the review, we would like to make the following submissions:

Term of Reference 1: WHICH HUMAN RIGHTS (INCLUDING CORRESPONDING RESPONSIBILITIES) SHOULD BE PROTECTED AND PROMOTED?

It is pleasing to see the Australian Government discussing this topic and inviting requests from the public canvassing such an important issue.

The core ethos surrounding the work that the Centre does is helping socially, economically and culturally disadvantaged groups within society. By their very nature, people who fall into these groups are already at a significant disadvantage when trying to access, protect and enforce their basic human rights, simply because they have considerably less power than others within the community. For example, an adult person who speaks English as a second language (if at all) and lives in Lightning Ridge, will face barriers when trying to access education due to distance, isolation, lack of resources and literacy which disadvantages them far greater than someone who is living in Sydney and speaks English as a first language.

The Centre deals with people of varying nationalities, including indigenous clients who make up approximately 29% of our total clients. As a result of the extensive work that we conduct in communities and towns such as Walgett, Bourke, Brewarrina, Coonamble, Dubbo, Cobar, Nyngan, Wellington, Mudgee and Warren, it is evident to us that the following human rights must be protected if people in rural and regional communities are to have equal rights:

- The right to free education.
- The right to freedom from discrimination (including racial, gender, sexual, disability and age discrimination).
- The right to freedom of speech.
- The right to adequate and secure housing.
- The right to qualitative, sustainable medical and mental health facilities located in a nearby proximity.
- The right to personal safety and security (including freedom from violence and assault).
- The right to sufficient living standards and conditions.

The Centre is committed to assisting people within our service area to accessing their rights within the framework of our legal and parliamentary systems. In a framework where the abovementioned human rights are not afforded express and clearly stated protection from derision by stronger groups within society, fundamental human rights are necessarily oppressed. Accordingly, not everyone is able to access, let alone enforce, such rights.

It is important and, we submit, mandatory, that Australia takes all necessary steps to protect the human rights of its people; that becoming a signatory to the following International Conventions is not, of itself, sufficient:

- *Convention on the Elimination of all Forms of Discrimination Against Women*
- *International Convention on the Elimination of all Forms of Racial Discrimination*
- *International Covenant on Civil and Political Rights (ICCPR)*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*
- *Convention on the Rights of the Child (CROC)*
- *Convention on the Rights of Persons with Disabilities*

- *Convention Against Torture*
- *Convention Relating to the Status of Refugees (and Optional Protocol)*
- *United Nations Declaration on the Rights of Indigenous Peoples*

Without protecting, on a domestic level, the rights specified under these conventions and the groups they are aimed at, Australia faces falling behind the rest of the world in this respect. As a nation which has traditionally prided itself on leading the way in areas such as science, research, sport, healthcare and economically, we are at the back of the field in the western world when it comes to giving full protection to people so that basic, fundamental human rights cannot be violated. This is unacceptable and must be changed.

Term of Reference 2: ARE THESE HUMAN RIGHTS CURRENTLY SUFFICIENTLY PROTECTED AND PROMOTED?

On the face it people may believe, and it may seem, that human rights are sufficiently protected and promoted in Australia. After all, we are signatories to the International Conventions outlined earlier in this paper, and we have Federal and State laws, common law and regulatory bodies established to govern the protection of such rights (for example the Australian Human Rights Commission and, in NSW, the Anti-Discrimination Board).

Despite these measures that have been put in place, the Centre does not believe that human rights are sufficiently protected or promoted within Australia. There is, at best, an ad hoc system in place across the Federal and State parliamentary systems which sees the extent to which peoples fundamental rights are protected dependant upon things such as which State they happen to live in. There are no minimum standards set out in any Bill, Charter or statement of rights across Australia as to what human rights must be protected, the extent to which they are protected or how they are to be promoted.

Australians often take it for granted, and as a given, that basic human rights such as the right to vote or freedom of expression (across all areas) are protected. It is imperative to ensure all groups within society are protected and that they are protected equally across Australia.

Opportunities for indigenous people in Australia to access services such as medical facilities are significantly lower than for those of non-indigenous groups. For example, "Indigenous Australians experience lower levels of access to health services than the general population, attributed to factors such as proximity, availability and cultural appropriateness of health services, transport availability, health insurance and health services affordability and proficiency in English."¹

Furthermore, the availability of the types of health services, such as specialist doctors, is significant lower. This is due to a combination of factors such as the high number of Aborigines living in remote areas and the lack of doctors, hospitals and transport within these areas. The Aboriginal and Torres Strait Islander Health and Welfare Unit ("AIHW") says the following on this point:

¹ Aboriginal and Torres Strait Islander Health and Welfare Unit website: <http://www.aihw.gov.au/indigenous/health/access.cfm>
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“One measure of accessibility is taken by gauging where people live in relation to health services. Approximately 26% of Indigenous Australians live in remote or very remote areas of Australia compared to only 2% of non-Indigenous Australians. Aboriginal and Torres Strait Islander people are therefore more likely, as a population, to live further from health services than other Australians.

In 2002 there were 281 medical practitioners per 100,000 population employed in 'remote and very remote' areas compared with 312 per 100,000 in major cities. The most significant shortage of health professionals in 'remote and very remote' areas is of specialist clinicians where there were only 29 per 100,000 compared to 114 per 100,000 in major cities.

In 2001, 78% of discrete Indigenous communities were located more than 50km from the nearest hospital, and 50% were located more than 25km from the nearest community health centre.”²

When this information is viewed in light of the fact that Indigenous people make up approximately 3% of Australia’s overall population, there is a significant discrepancy between the opportunity and availability of services to Indigenous and non-indigenous people. There must be a mandatory and set minimum standard that is available, as a right, to ALL people accessing fundamental human services, such as health facilities.

Term of Reference 3: HOW COULD AUSTRALIA BETTER PROTECT AND PROMOTE HUMAN RIGHTS?

The Centre is mindful of our target group and client base – Indigenous people, mentally ill people, uneducated people, disabled people and low socio economic people – when proposing suggested strategies and protections.

The Centre is supportive of a system that does the following:

- Recognises that everyone in society is equal.
- Promotes and achieves the protection of all basic fundamental human rights.
- Improves protections for marginally and disadvantaged groups within Australia.

Human rights in Australia can be better protected and promoted through the following measures:

- Uniform legislation across all States and Territories.
- Adopting a Bill/Charter of Rights at a Federal level.
- Constitutional changes to protect the rights of indigenous people.
- Use of a uniform system of complaint across Australia.
- Accountability and transparency of governmental processes.
- Redefined human rights culture within Australia.

² website: <http://www.aihw.gov.au/indigenous/health/access.cfm> 15th June 2009

- Provision of better services across Australia to address the inequality faced by minority groups in accessing fundamental services such as medical and legal.

The Centre appreciates and recognises that the incorporation and provision of the proposed changes would take some time to implement. However, it is important to the future of Australia that such changes occur and that stringent timelines be put in place to ensure the protection of those groups within society who are inherently discriminated against by virtue of their race, location, health status or financial situation.

If you would to discuss any aspect of these submissions do not hesitate to contact the writer. We look forward to learning of the outcome of this review.

Yours Faithfully

Western NSW Community Legal Centre Inc.

Per:

Patrick O'Callaghan
Principal Solicitor