



TOP END WOMEN'S LEGAL SERVICE INC.

FREE LEGAL ADVICE FOR WOMEN

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Ms Jane Vasey
Director
Royal Commission into Violence, Abuse, Neglect
and Exploitation of People with Disability

By email to jane.vasey@royalcommission.gov.au

Dear Commissioners,

Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission)

The Top End Women's Legal Service Inc. (**TEWLS**) welcomes the opportunity to make a submission to the Disability Royal Commission having regard to the broad terms of reference and their intersection with the work of TEWLS.

In May 2020, TEWLS had the opportunity to meet with representatives of the Disability Royal Commission. We make this submission in support of the matters raised during that consultation and note that our submission is focussed on the experiences of our clients, particularly Aboriginal and Torres Strait Islander women in the Greater Darwin region of the Northern Territory (**NT**).

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We provide high quality, responsive, and culturally appropriate free legal advice, information, casework and representation services, community legal education and advocacy in civil and family law to women living in the Greater Darwin region.

TEWLS' service area and targeted outreach services include Darwin, Palmerston, Dawn House Women's Shelter, six Indigenous communities in the Greater Darwin region, at Adult Migrant English Programs, and women incarcerated at the Darwin Correctional Centre (**DCC**). We provide advice and representation services for civil and family law matters, with the most frequently requested areas of assistance being family law, domestic and family violence (**DFV**), housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, employment law, compensation for victims of crime, and complaints.

TEWLS primarily delivers services to women who are financially disadvantaged, at risk of or experiencing domestic and family violence, homelessness and or disability, where a large number of our clients do not speak English as their main language. On review of our 2018/2019 statistical data, around 30 per cent of TEWLS clients identify as being of Aboriginal or Torres Strait Islander descent. TEWLS is the only service to provide a face-to-face civil and family law clinic for women incarcerated at the DCC.

Noting the vision of our service – a community in which women enjoy and are entitled to legal and social justice – TEWLS continues to advocate for holistic, culturally safe and specialist responses, particularly responses that aim to redress inequalities experienced by women.

Our submission

During our May 2020 meeting, representatives from the Disability Royal Commission expressed a particular interest in what TEWLS, as a frontline service, identifies as priority concerns for First Nations clients with disability. As reported in the TEWLS Annual Report of 2018-19, 20% of our clients identify as having a disability or mental health indicators; this percentage increases substantially upon narrowing to particular cohorts within our client base, such as those experiencing incarceration. In addition to those presenting to the service with an already diagnosed and identified disability and/or mental illness, TEWLS also provides representation in victims of crime compensation matters, where such assistance can lead to the identification of physical and psychological disabilities and subsequent treatment.

In this submission, the terms “Indigenous” and “Aboriginal and Torres Strait Islander” will be used interchangeably depending on the source of information.

In line with the broad scope of the Disability Royal Commission, our submission will focus on Violence, Abuse, Neglect and Exploitation of People with a Disability in the following contexts:

- Part I – Women incarcerated at the DCC;
- Part II – Aboriginal and Torres Strait Islander women in the community; and
- Part III – Recently arrived and culturally and linguistically diverse (**CALD**) women in the community.

Part I – Women incarcerated at the DCC

Over the last decade, the rate of women incarcerated in Darwin has doubled; a growing rate of incarceration consistent with national and international trends. Notably, within the growing rates of incarcerated women lies the marked rise of incarcerated Aboriginal women – the fastest growing segment of the prisoner population in Australia.¹ In the NT, there is a significant over-representation of Aboriginal women compared with non-Aboriginal women, where between 2008 and 2017, the rate of incarceration of Aboriginal women in the NT more than doubled, increasing by 109 per cent.²

A – The Legal Health Check Project

TEWLS provides the only face-to-face civil legal advice service within the women’s sector at DCC. We attend every third week, in accordance with available resources. and have over 100 open legal matters. As part of that service, TEWLS undertook a legal health check (**LHC**) project commencing in late 2019.

The LHC is a legal screening tool adapted by TEWLS to ‘diagnose’ the precursors to incarceration and to identify the multiple legal needs of women incarcerated in Darwin. It employs structured interview questions in a conversational context with the objective of

¹ Law Council of Australia, “The Justice Project Part 1 - Aboriginal and Torres Strait Islander People” (2018).

² Derived from Australian Bureau of Statistics, Prisoners in Australia, 2017 (2017) cat. no. 4517.0 <https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/7B1DF284B985CDE1CA25835A0010FCD7?opendocument>.

identifying and capturing unaddressed legal needs. During the LHC project, TEWLS undertook and analysed 50 LHCs.

By way of a statistical snapshot, of the 50 LHC participants:

- 76% identified as being of Aboriginal and/or Torres Strait Islander descent;
- 76% had experienced DFV either as a child or adult;
- 76% had received an injury from a violent act;
- 74% had issues with alcohol and/or other drugs;
- 53% of those who chose to answer had a pre-existing mental health condition;
- 52% were either receiving treatment or had medical concerns; and
- 78% were mothers, with 30% having had prior involvement with Child Welfare authorities.

To provide further context to the above statistics, TEWLS provides the following de-identified case example arising from TEWLS' civil and family law clinic at the DCC.

Josie's story

Josie* is young woman who was in a relationship with Peter for three years. During their relationship, Josie was physically, sexually and psychologically abused by Peter, and sought to escape the relationship on multiple occasions.

While Josie's past experiences meant that a referral to Ruby Gaea for specialist sexual assault counselling services whilst incarcerated was possible, Josie has been unable to access counselling and related support services in respect of her DFV related experiences. Of note, when being sentenced in respect of her criminal matters, the judge indicated that Josie's past trauma from DFV was a contributing factor to her offending and that in order to break the cycle of recidivism, Josie should seek specialist assistance.

B – Mental health / DFV counselling at the DCC

Over the past few years, TEWLS has been particularly advocating for the engagement of an external, specialist mental health / DFV counsellor at the DCC. Currently at the DCC, women are unable to access mental health or DFV counselling services as well as external generalist counselling services, with available services in-line only with criminal sentencing, such as alcohol and other drug counselling. In our view, the current service levels at the DCC fail to holistically address the needs of incarcerated women so as to address their cycle of recidivism. Risk factors for offending in women are different to those of their male counterparts with the predominant risk factors grounded in past experiences of abuse and trauma. Notably, in 2015, the Australian Medical Association noted the connection between health issues experienced by Aboriginal and Torres Strait Islander peoples – including poor mental health, physical disability, cognitive disability and substance abuse – and high incarceration rates.³

The current situation stands in contrast with numerous reports regarding issues in custody, including a 2005 Victorian study which found that female prisoners identified mental health /

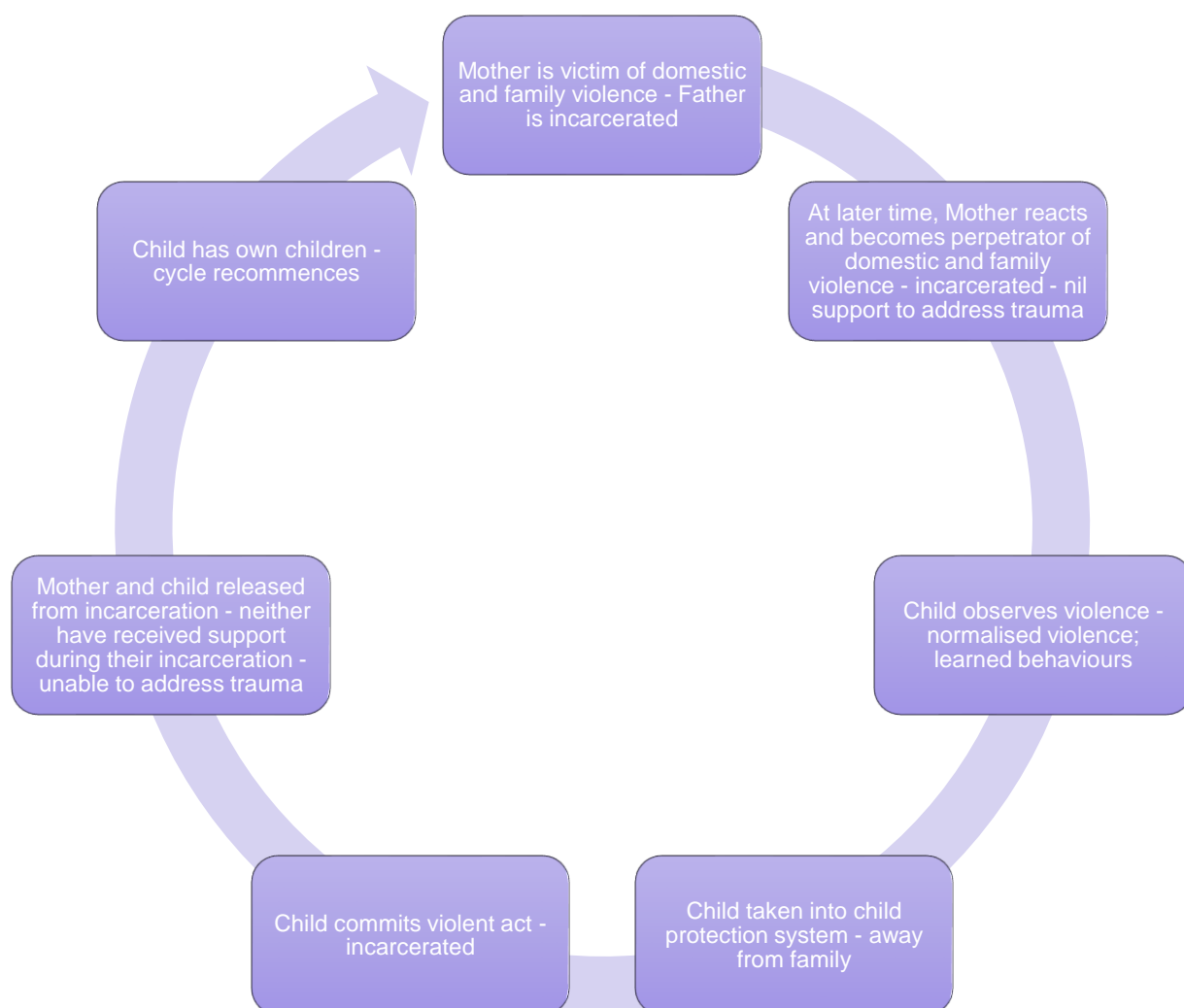
³ "Pathways to Justice - Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples", Australian Law Reform Commission (2018).

well-being as being the single biggest issue they faced in prison, and mental health as inextricably linked with other issues such as DFV, sexual abuse and addiction.⁴ By failing to provide therapeutic assistance to the women at DCC, noting the high levels who identify as being mentally and/or physically unwell, it is our view that there is not only a lost opportunity but a failure of the duty of care owed to the women by the department tasked with their custody.

In 2016, TEWLS facilitated the introduction of sexual assault counselling services for women incarcerated at the DCC through local service provider, Ruby Gaea. This service need was identified through TEWLS' DCC clinic and actioned after the service received requests for same. Whilst servicing an important and identified need, it is needed in addition to a specialist domestic violence counselling service.

In October 2016, as part of its advocacy efforts, TEWLS made a submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory.⁵ In that submission, TEWLS referenced cycles of detention and recidivism, identifying key factors as domestic and family violence, inequality and lack of access to appropriate support services.

Diagram A: Example of an abridged cycle of incarcerated women



⁴ “Indigenous women’s offending patterns: A literature review”, Australian Institute of Criminology Reports: Research and Public Policy Series: Report 107, AIC (2010).

⁵ Top End Women’s Legal Service, Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory 2016 (2016).

The cycle presents a picture of the knock-on effect of the incarceration of women on other statutory systems such as the child protection system and youth justice systems. It also identifies the knock-on effect of the failure to holistically care for women during their incarceration. Notably, the children of women prisoners are at increased risk of criminalisation, with one study finding that the children of prisoners are five times more likely to end up in prison than other children.⁶ This, in part, is likely due to the number of children taken into care as a result of their mother's (even brief) imprisonment and the associated increased risk of youth and adult criminalisation.⁷

Aboriginal and Torres Strait Islander people experience health-related risk factors such as substance abuse and cognitive disability at higher rates than the general population, yet have significantly lower access to appropriate health and support services when these additional health service needs are taken into account.⁸ The adequate resourcing of services to manage the needs of those Aboriginal and Torres Strait Islander women experiencing incarceration could make, even small inroads, in bridging some of that gap.

Despite the passage of time since our submission to the Northern Territory Royal Commission, the current counselling and mental health gap at DCC remains. TEWLS submits that this is not only a lost opportunity to service a cohort that is otherwise out of reach but an ongoing systemic failure to acknowledge and address the underlying causal factors to the women's offending. In not providing holistic, wrap-around servicing, women are unable to address their own trauma and mental health, meaning that upon their return to the community, they are consequently unable to break out of their own cycle of detention.

In our submission, holistic servicing, including culturally safe and appropriate mental health services, is a critical step in breaking the cycle of recidivism. By denying the women such treatment, their mental health and wellbeing is continuously neglected resulting in the ongoing criminalisation of abuse victims.

Part II – Aboriginal and Torres Strait Islander women in the community

TEWLS provides services to both urban Aboriginal women as well as those living on community within its Top End service area. Additionally, as many remote women require regular trips to Darwin in respect of medical appointments, family commitments, the impact of the wet season or for reasons linked with escaping DFV violence and/or familial pressures, TEWLS is also fortunate to provide services to women from remote and regional communities across the NT. In order to demonstrate the broad scope of our clients' experiences, we provide the following de-identified client stories to draw the Commission's attention to the broad and complex issues faced by our client's with relevance to the terms of reference of the Royal Commission.

Sophie's story

Sophie* was referred into TEWLS' health justice partnership while receiving medical treatment in Darwin. Sophie instructed that a few years earlier, she had been diagnosed with a degenerative health condition and that the impacts of this condition were worsening and impairing her physical capacity. She normally resided in a remote region of the NT with her long-time husband and teenage children and that as a consequence of her condition and corresponding vulnerability, her husband was perpetrating domestic, family and sexual violence

⁶ Shine for Kids (Children of Prisoners Support Group) cited in Aboriginal and Torres Strait Islander Justice Commissioner (2009) Social Justice Report 2009, Australian Human Rights Commission, Sydney at www.hreoc.gov.au/Social_Justice/sj_report/sjreport09/index.html.

⁷ "Women in prison in Australia" Current Issues in Sentencing Conference, Debbie Kilroy (2016).

⁸ "Pathways to Justice- Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples", Australian Law Reform Commission (2018).

against her. Sophie gave instructions that this abuse had previously been disclosed to her psychologist, who had subsequently made a mandatory report to Police. She said that the violence had escalated whilst her physical condition deteriorated, where Sophie's husband was at that time her appointed carer, due to their geographical remoteness.

With holistic support, Sophie relocated to Darwin and currently resides in accommodation supported by her NDIS entitlements. TEWLS continues to act on Sophie's behalf in respect of victims of crime compensation proceedings, having already obtained orders for divorce on Sophie's behalf. Following the grant of divorce order, Sophie became emotionally overwhelmed, telling her TEWLS lawyer that she was finally "free".

Lorraine's story

Lorraine* is an Aboriginal woman aged in her 60's residing in a regional Indigenous community. She is the mother of six adult children, speaks English as a third language and is in receipt of Disability Support Pension benefits as a consequence of a physical disability.

Lorraine attended TEWLS' fortnightly legal clinic at her community after initially engaging with TEWLS in respect of tenancy matters. She gave instructions to TEWLS that she was feeling great worry and stress over some of her children using her Basics Card without her consent, leaving her with no money to buy food for herself and her husband (also suffering from a physical disability). Lorraine told TEWLS that this problem had started in recent months after her movement became slower and she felt unable to confront her children, noting cultural expectations in respect of sharing.

TEWLS assisted Lorraine to liaise directly with Centrelink to put in place protections over her Basics Card. TEWLS also assisted Lorraine to identify that the problem was often exacerbated by alcohol, resulting in TEWLS further assisting Lorraine to have "no alcohol" signs installed at her rented premises. With the support of TEWLS' Indigenous Community and Project Officer, Lorraine told TEWLS that she felt able to call Police if people were at her house and drunk without her permission, assisting to resolve the issue.

Talia's story

Talia* is an Aboriginal woman aged in her 60's residing in a regional Indigenous community. She speaks basic English as a second language and is receipt of Disability Support Pension benefits as a consequence of a physical disability. In recent years, Talia has been supported by her adult daughter, Rachael, who has been appointed as Talia's carer.

In 2011, representatives of a local consumer lease company attended Talia at her house, uninvited. The representatives told Talia that she could purchase a fridge and chest freezer on that day and that relevant money would be deducted from her pension. The representatives did not tell Talia that she was entering into consumer lease agreement in respect of the items; how much the agreements would be over the life of same; and did not provide copies of the agreements.

In 2015, Talia received copies of the agreements. Talia attended TEWLS' fortnightly legal clinic at her community and told TEWLS that she had not understood the agreements before signing them, including the total costs of the agreements and that she would not own the goods at the end of the agreements.

TEWLS assisted Talia to make a complaint to the consumer lease company, alleging breaches of responsible lending obligations under the National Consumer Credit Protection Act 2009 (Cth), as well as unconscionable conduct per the Australian Consumer Law. After failing to make agreement, TEWLS assisted Talia to make complaint to the Credit and Investments

Ombudsman (now Australian Financial Complaints Authority) in respect of the consumer lease company. The CIO made a decision in Talia's favour, particularly noting the representative's unconscionable conduct in respect of Talia as a vulnerable person (due to her age, limited capacity to read and comprehend English, and limited means), with Talia refunded all monies paid under the agreements.

Although census data shows that Aboriginal and Torres Strait Islander people have higher rates of disability than non-Indigenous people across all age groups, TEWLS' experience of providing services to Aboriginal and Torres Strait Islander women supports the position that anecdotally and statistically, there seems to be an under-representation of Aboriginal people with a disability accessing services.⁹ Indigenous peoples with a disability make up 5.4% of NDIS participants (or about 9,000 people), despite around 60,000 Indigenous peoples in Australia having a severe or profound disability.¹⁰

Some of the responsibility for poor access rates lies with a service system that relies on processes and procedures impractical to the realities of a remote Aboriginal lifestyle or are difficult to navigate for Aboriginal people with disability due to language and other reasons. In our experience, these other reasons may include clients being absent from a community when service providers visit, as well as Aboriginal clients not seeking supports or identifying themselves to service providers until they need immediate help or removal from communities.

In respect of the latter, this may be because prospective clients:

- are unaware of what supports (including entitlements) exist;
- speak a language other than English as their primary language;
- do not trust service providers;
- are not connected with a culturally safe 'two way' health service = meaningful engagement + informed decision making; or
- the relevant health issue may not be seen as a priority.

The relationship between a person with a disability and their community can also complicate service provision. This may include anything from abuse and neglect, to the appropriation of equipment and funding provided to a person with disability. For example, resources can be used by other community members or the intended recipient may be expected through familial obligations to provide money or food (a practice colloquially known as 'humbugging').¹¹ This familial exploitation may not always be overt or even intentional, however, the realities of community life can leave some persons with a disability without the resources or support necessary to adequately manage their disability and ensure an acceptable standard of living.

As is evident from the case studies provided above, Aboriginal women with a disability are susceptible to being exploited across many levels, including at the hands of commercial enterprises, family and community. Vulnerabilities as a result of their disability are compounded by issues of disadvantage, language and cultural disconnects from the world of service provision. Given the difficulties in service provision and access to services for these women, the need for advocacy such as that undertaken by TEWLS is crucial.

⁹ "Remote service provision in the Northern Territory", Centre for Applied Disability Research (2014).

¹⁰ "The Status of Women and Girls with Disability in Australia", Joint Position Paper to the Commission on the Status of Women (CSW) from Disabled People's Organisations Australia and the National Women's Alliances (2019).

¹¹ See above, n 5.

Part III – Recently arrived and CALD women

In 2019/20, 26.5% of TEWLS clients were born overseas, with many speaking a language other than English at home. The cohort shares similarities to those detailed above in the context of Aboriginal women when considering access to service provision and service engagement. Difficulties due to cultural and linguistic barriers also exist within the CALD community, where women are sometimes unable to seek out services as a consequence of same. Much like our Indigenous clients, it is evident from the work undertaken by TEWLS that our advocacy in the context of CALD women with disability is of import. This includes advocating for women to ensure access to services, but additionally, once accessing those services, to ensure that they are provided in a culturally safe and holistic way. By way of example, TEWLS provides the following de-identified story of Amara.

Amara's story

Amara* is a CALD woman of African descent. She migrated to Australia as a refugee when she was 28 with her partner and 6 children. Amara speaks English as a third language. An interpreter is required for significant matters. As a consequence of childhood illness Amara has a significant and visual physical disability. Amara instructed this rendered her vulnerable and subject to ongoing prejudicial treatment within her original cultural context. She further explained that cultural beliefs within her first community, meant that as a woman she was denied agency, including with respect to bodily integrity, decision making and separating from her partner.

Amara attended TEWLS initially seeking advice and assistance in respect of a domestic violence order, separation, housing and victims of crime compensation. She instructed of longstanding domestic violence by her partner that included over 40 police attendances, his belief she was not permitted to separate from him, and his continual breaching of her police initiated non-contact Domestic Violence Order. As a consequence of Amara's lived experience, and particularly the high-level domestic violence, Amara now also experiences a high-level psychological disability.

TEWLS has assisted Amara with all identified legal matters. This has included a complaint to the Northern Territory Ombudsman regarding a government agencies inaction, and to an Interpreting service. Relevantly, the interpreter complaint arose following engagement of an interpreter by a medical service provider. During the specialist appointment regarding Amara's new-born child, who was diagnosed with Down Syndrome, the interpreter 'translated' part of the medical advice as 'the child would grow up eating from bins'. Further discriminatory and exclusionary communications also occurred during the medical consultation, with the medical specialist unaware.

As a consequence of Amara's English, together with her knowledge of prevalent disability attitudes within her original cultural context, Amara understood the interpreter had been both unprofessional and discriminatory. The complaint resulted in additional cultural and disability training but failed to identify the interpreter due to the delay between the appointment and the complaint, being several years.

In reality, difficulties may arise in promoting acceptance of a disability / disabilities by CALD women themselves. This is largely due to the often-prejudicial behaviours experienced by this group of women. In our experience, people with disability, and families who have members with disability, may have their visa applications denied because they are unable to meet the strict health requirement under the *Migration Act 1958* (Cth). An individual or family could have been living in Australia for many years, contributing to the economic and social life of the community, but be deported because of a failure to meet the health requirement. The shame and fear that this creates contributes to those with a disability becoming even further marginalised.

Another complicating factor is the lack of access to government services by recently arrived CALD women. Notably, for those on temporary visas, Medicare is inaccessible, often creating an untenable reality for a non-resident woman living with disability. Asylum seekers and/or people with disability living in Australia on non-permanent visas are also ineligible to access the National Disability Insurance Scheme as they do not meet residency requirements. The Age and Disability Support Pensions have a 10-year qualifying residence period, leaving migrants with disability at an increased risk of a range of human rights violations.¹²

In our experience, CALD women experiencing DFV and/or sexual violence present with high-level concerns in respect of their visa and familial status, compounding existing complex issues. For these women, often the assumption in their respective community is that, if they were to leave a partner upon whom they are relying for a right of residence in Australia, they would no longer be allowed to remain here. Although in reality it is unlikely to lead to any issues for the women, TEWLS understands that it is an ongoing matter requiring information sharing and education, in conjunction with our close stakeholders to ensure that no woman remains in an unsafe situation on this basis. Many of the women presenting to TEWLS with such concerns are experiencing acute mental health issues and are extremely vulnerable.

As is evident from Amara's story, even when accessing the system and services, greater efforts are required to ensure that that experience is a positive one, sufficiently supported and does not perpetuate discriminatory behaviours. Poor service experiences can compound lived trauma and have a hugely detrimental effect on already vulnerable women. This again comes back to the need for holistic, culturally safe and specialist responses to these women.

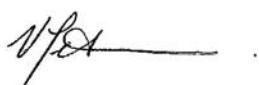
Conclusion

We appreciate the opportunity to make this submission and affirm our support for the positive work and focus of the Disability Royal Commission.

Should you wish to discuss this submission further, please contact TEWLS by phone on (08) 8982 3000 or email to admin@tewls.org.au

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

¹² See above, n 6.