



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HumanRightsJDvk756372

18 July 2013

Mr Greg Smith SC MP
Attorney General
Department of Attorney General and Justice
DX 1227 SYDNEY

By email: office@smith.minister.nsw.gov.au

Dear Attorney General,

Review of female genital mutilation offences

I am writing to you on behalf of the Human Rights Committee of the Law Society of NSW ("Committee"), which has the responsibility to consider and monitor Australia's obligations under international law in respect of human rights; to consider reform proposals and draft legislation with respect to issues of human rights; and to advise the Law Society on any proposed changes.

The Committee refers to your letter dated 20 June 2013 seeking comments on proposed reforms to the female genital mutilation (FGM) offence provisions in NSW and thanks you for the opportunity to comment.

The Committee is concerned that reform to the *Crimes Act 1900* (NSW) at this point may unnecessarily increase the incarceration rate without actually addressing the reasons why FGM practices take place, and that there may be other more appropriate and effective measures that can be implemented to eradicate FGM practices.

For example, the Committee has been informed that since 1997 the NSW Health Department has funded the NSW Education Program on Female Genital Mutilation ("NSW FGM program"). The goals of the NSW FGM program are as follows:

- Promote the development of a consistent and holistic health approach in working with communities and facilitate support and access to the full range of services for women, girls and their families affected by, or at risk of, the practice
- Prevent the occurrence of FGM in NSW through an emphasis on community education, information and support
- Assist women, girls and their families living in NSW who have been affected by FGM to minimise the harmful effects
- Strengthen community ownership of the issues, and promote appropriate approaches to the prevention of FGM in NSW

The Program maintains that the practising communities, who are the custodians of the practice, can best achieve prevention of FGM.

The Program is based on the principles of community development, and the belief that community empowerment is at the core of community capacity building. The strategies developed empower the communities to build their capacities towards prevention of the practice.¹

The Committee understands also that the NSW FGM program brings together community development workers, NSW Police and Health Service workers in the Western Sydney area. The program is aimed at providing education and awareness to the community on FGM and the fact that it is a criminal offence under Australian law. The Committee understands from a community development worker involved with this program that this issue is a cultural, rather than criminal, issue which primarily affects the African community. If this is the case, the Committee's view is that it is appropriate to continue with the educative approach without recourse at this point to more stringent penalties.

The Committee's view is that the NSW FGM program's multi-disciplinary approach, without yet resorting to legislative reform, is consistent with the protection and promotion of the rights of women. The Committee notes that among the recommendations made by the UN Committee on the Elimination of Discrimination Against Women, State Parties are recommended to:

(a) Take appropriate and effective measures with a view to eradicating the practice of female circumcision. Such measures could include:

(i) The collection and dissemination by universities, medical or nursing associations, national women's organizations or other bodies of basic data about such traditional practices;

(ii) The support of women's organizations at the national and local levels working for the elimination of female circumcision and other practices harmful to women;

(iii) The encouragement of politicians, professionals, religious and community leaders at all levels, including the media and the arts, to co-operate in influencing attitudes towards the eradication of female circumcision;

(iv) The introduction of appropriate educational and training programmes and seminars based on research findings about the problems arising from female circumcision;

(b) Include in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care. Such strategies could include the special responsibility of health personnel, including traditional birth attendants, to explain the harmful effects of female circumcision.²

The Committee notes further that in NSW, the last conviction of a person of an FGM offence took place six years ago. In 2012, four people were charged with offences relating to FGM.

¹ *NSW Education Program on FGM* available at: <http://www.ag.gov.au/Publications/Pages/ReviewofAustraliasFemaleGenitalMutilationlegalframework-FinalReportPublicationandforms.aspx> (accessed 17 July 2013)

² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 14: Female Circumcision*, 1990, A/45/38 and Corrigendum, available at: <http://www.refworld.org/docid/453882a30.html> (accessed 17 July 2013)

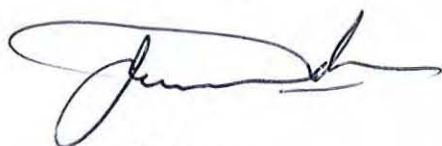
Given the above, the Committee submits that, unless there is evidence that the incidence of this practice high, or is on the rise, it may be more appropriate and effective to allow more time for further consultation and investigation to determine:

1. the extent of the phenomenon;
2. the reasons behind why FGM might still be occurring; and,
3. the most effective ways to eradicate the practice given the reasons why communities continue to engage in the practice.

The Committee submits that its view is consistent with recommendation 1 of the Commonwealth Attorney-General's Department Final Report on the *Review of Australia's Female Genital Mutilation legal framework* which recommends that the Commonwealth, State and Territory governments consider further consultation on this issue.³

Thank you once again for the opportunity to comment. If your office has any questions please contact Vicky Kuek, policy lawyer for the Committee on (02) 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,



John Dobson
President

³ Commonwealth Attorney-General's Department, *Final report of the Review of Australia's Female Genital Mutilation Legal Framework* available at: <http://www.ag.gov.au/Publications/Pages/ReviewofAustraliasFemaleGenitalMutilationlegalframework-FinalReportPublicationandforms.aspx> (accessed 17 July 2013).