

NATIONAL FAMILY VIOLENCE PREVENTION
LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Submission to the Special Rapporteur on Violence
against Women

January 2017

The National FVPLS Forum recognises the important work done by your office and would like to take the opportunity to highlight a number of key points concerning Aboriginal and Torres Strait Islander (hereafter 'Aboriginal') women for your consideration. Specifically, this submission details:

1. Overrepresentation of Aboriginal women in rates of family violence;
2. Causes of the disproportionate impact of family violence against Aboriginal women;
3. Interrelated nature of socio-legal issues experienced by Aboriginal women;
4. Barriers to accessing justice faced by Aboriginal women, including systemic failures in the State's response to violence against Aboriginal women; and
5. The role and resourcing of Aboriginal Community Controlled Organisations as a key mechanism for eliminating violence and advancing the rights of Aboriginal women and their communities.

Overrepresentation of Aboriginal women in rates of family violence

Aboriginal women experience family violence at vastly higher levels than other Australian women. In comparison with other Australian women, Aboriginal women are 34 times more likely to be hospitalised from family violence¹ and 10 times more likely to be killed as a result of violent assault.²

Studies indicate that approximately 90% of violence is not disclosed or reported by Aboriginal women³. This is due in large part to a profound mistrust of the justice system influenced by the impact of colonisation and historic forms of State oppression, together with current forms of systemic discrimination which drive ongoing fear of police and of child removal by the State, as discussed further below. The silencing of Aboriginal women's voices through the dual experiences of racial and gender discrimination contributes to the disproportionate impact of family violence.

Violence against Aboriginal women devastates communities and destroys families. This disproportionate impact of family violence on Aboriginal women also leads to over-representation of child removal and incarceration experienced by Aboriginal women, and Aboriginal communities more broadly.

Through our casework with Aboriginal victims/survivors, Family Violence Prevention Legal Services (FVPLSs) see the multi-generational impacts of family violence on a daily basis.

Aboriginal women experiencing family violence are among the most marginalised and disadvantaged group in Australian society. The causes of over-representation of Aboriginal women in rates of family violence are complex and intersectional. A holistic approach to addressing family violence is therefore essential and Aboriginal-led solutions that amplify the voices of Aboriginal women must be supported and appropriately resourced by the State.

Causes of the disproportionate impact of family violence on Aboriginal women

There are numerous complex and diverse factors contributing to the high levels of family violence against Aboriginal women. It must be clearly understood that the causes of this violence do not derive from Aboriginal culture and Aboriginal women experience violence at the hands of men from

¹ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage – Key Indicators 2014*, 2014, page 4.93, table 4A.11.22 available at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>

² Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, page 66 available at <http://www.aihw.gov.au/publication-detail/?id=6442467912>.

³ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage – Key Indicators 2014*, 2014, page 4.91 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf>; and Willis, M. 2011, *Non-disclosure of violence in Australian Indigenous communities*, January, *Trends & issues in crime and criminal justice*, No. 405, Australian Institute of Criminology, Canberra, available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>.

multiple backgrounds. However, the disadvantage, dispossession and attempted destruction of Aboriginal cultures since colonisation has meant that family violence has been allowed to proliferate in Aboriginal communities, with Aboriginal women and their children at most risk.

Due to this history of colonisation and contemporary experiences of discrimination, Aboriginal women have deeply ingrained distrust of Government related services. This is perpetuated by poor, and discriminatory, police, Court and child protection responses in instances of family violence (as discussed in further detail below).

Case Study

An Aboriginal woman, Ms X, sought support from one of our member organisations following an incident whereby she was kicked in the face by her ex-partner resulting in the loss of two teeth.

Immediately following the incident, she flagged down a passing police car and reported the assault. The police officer quickly scanned the area and, failing to locate the offender, accused Ms X of being drunk, of falling over and knocking her own teeth out and of lying to police. The police officer refused to take her statement.

When Ms X attended the FVPLS service the following morning, they assisted her to attend the police station to make her statement. In front of general public in the reception, the same police officer from the night before stated that he remembered Ms X, called her a liar and refused to take her statement. The FVPLS service then complained to the Head of the Domestic Violence Unit who agreed to take Ms X's statement. When police finally questioned the offender about the assault, he made a full confession.

Aboriginal women face multiple and intersecting forms of discrimination on the grounds of gender and race, which act to compound each other and increase vulnerability to violence.

Two cases featured in the media in 2016, demonstrate the challenges Aboriginal victims/survivors of family violence face in accessing justice. The following cases represent serious and systemic failures on behalf of the State.

- I. The case of Ms Dhu (Western Australia) who died in police custody due to an untreated broken rib caused from family violence.

Ms Dhu was being held in custody due to unpaid fines. Despite repeated requests for medical assistance, she was not provided adequate care and she subsequently passed away in a police cell due to her injuries. The coronial inquiry found that police were "inhumane and unprofessional"¹ but despite graphic CCTV footage released exposing the mistreatment, the police officers involved faced no consequences. The gross negligence of duty of care clearly demonstrates that discrimination is deeply embedded in police culture.

- II. The case of Ms Daly (New South Wales) who was denied justice when those responsible for her brutal death, including her partner, were not prosecuted.

Ms Daly died of horrific internal and external injuries resulting from an act of violent sexual assault. Despite clear evidence and charges being laid, the perpetrators were never prosecuted. It was only following an independent investigative journalist report that exposed the concerns with the handling of the matter that police re-opened the case.

These two cases highlight key failures in the justice system that result in poor and unjust outcomes for Aboriginal women. While these cases received media, FVPLSs observe that far too often media representation is absent or plays into harmful stereotypes with regard to violence against Aboriginal women.

Interrelated nature of socio-legal issues experienced by Aboriginal women

Through our member's frontline experience with Aboriginal victims/survivors of family violence, we see a multitude of socio-legal issues and disadvantage that increase Aboriginal women's vulnerability to violence and exacerbate the effects. Family violence is a leading contributor to Aboriginal women's homelessness, poverty, criminalisation, incarceration, mental and physical ill health, drug and alcohol abuse and removal of Aboriginal children⁴.

Family violence and child removal are intrinsically linked. Family violence is one of the greatest drivers of Aboriginal child removal, for example in Victoria 90% of Aboriginal children have been placed in statutory out-of-home-care due to family violence⁵.

The extraordinary rates of contemporary Aboriginal child removal and child protection intervention in Aboriginal families act as a significant deterrent for Aboriginal victims/survivors to disclose family violence and seek assistance from services.

FVPLSs frontline experience informs us that the State, through its Child Protection authorities, often adopts an excessive and inappropriately punitive and judgmental approach towards Aboriginal victims/survivors of family violence that blames victims for exposing their children to violence, rather than supporting them to safely care for their children and live free from violence. Across Australia, Aboriginal children now account for almost 35% of all children in care despite comprising only 4.4% of the nation's child population. On this current trajectory, these rates are predicted to triple by 2035⁶.

⁴ National Mental Health Commission, *The Mental and Social and Emotional Wellbeing of Aboriginal and Torres Strait Islander Peoples, Families and Communities* (2013) 17; Australian Institute of Health and Welfare, *Specialist Homelessness Services 2011-2012* (2012) 13, 38. <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542529>; Data drawn from a 2004 study. See Smart Justice,

⁵ Commission for Children and Young People, 2016, 'Always Always was always will be Koori children - systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria, p 47, available at <http://www.ccp.vic.gov.au/downloads/always-was-always-will-bekoori-children-inquiry-report-oct16.pdf>

⁶ Family Matters Report 2016 "Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal" Available: http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf

Case Study

Ms X lives in a remote Aboriginal community. Ms X's child was removed following multiple independent notifications concerning the child's exposure to domestic violence and unsafe impacts of alcohol use by both of the child's parents. The event directly preceding the removal of the child was a sustained and horrific assault on the child's mother perpetrated by the child's father where the child's physical safety was at immediate risk.

The child protection agency had previously conducted joint safety planning exercises detailing what Ms X could do to protect the child in the face of the father's violence. In the aftermath of the removal, the mother was assured by child protection practitioners that the best place for the child was with her, and that she would be provided support to ensure she was safe. Her FVPLS lawyer successfully negotiated that the resulting protection order was of a two year duration only. Constant advocacy was required by the FVPLS member organisation to ensure Ms X's parental rights were upheld. The FVPLS member organisation ensured that requests made of Ms X by child protection workers were reasonable and consistent and that child protection workers did not inappropriately attribute accountability to the mother for the risk the child had been exposed to as a result of domestic violence.

The FVPLS member organisation raised a number of complaints to relevant regional child protection managers in relation to ongoing 'systems abuse'. The member organisation raised concerns that the case was constantly being transferred to different child protection practitioners, cultural awareness was called into question on several occasions, as well as often unreasonable expectations on Ms X to live away from her home and family to prove her commitment to her child's safety. The FVPLS member organisation working collaboratively with Ms X, other service providers, the courts and police was eventually successful in having the child reunified with Ms X.

The experience of family violence for Aboriginal women is further compounded by a lack of access to safe housing for Aboriginal women and their children. The single greatest reason people in Australia present to homelessness accommodation services is family violence⁷ and Aboriginal women are 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal women.⁸

Our members report that poverty and welfare dependence impact Aboriginal women's ability to flee from family violence and maintain economic independence from the perpetrator. This is particularly relevant for restrictive welfare schemes⁹ that disproportionately impact rural or remote Aboriginal communities, specifically victims/survivors of family violence with limited or no access to other forms of income. The reality of poverty and restrictive welfare payment schemes' impact on the ability of Aboriginal women and children to live safe from family violence has not been sufficiently acknowledged or addressed by the State. Increased research on impacts, together with

⁷ Australian Institute of Health and Welfare, Specialist Homelessness Services: 2013–2014 'Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response' (2014). See also Australian Institute of Health and Welfare, Domestic Violence a major factor in homelessness among women and children (2008) available at <http://www.dpmc.gov.au/women/publications-articles/safety-women/women-synthesis-report-HTML.cfm>

⁸ Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending* (2010) 28, available at http://www.aic.gov.au/media_library/publications/rpp/107/rpp107.pdf.

⁹ Australian Government policies of mandatory income management for Aboriginal people in receipt of welfare payments.

strengthened accountability, transparency and consultation with Aboriginal communities is essential.

Furthermore, Aboriginal women are now the fastest growing group of prisoners in Australia¹⁰. Despite comprising only 2% of the national population, Aboriginal women represent more than one third of the prison population¹¹. Research demonstrates that a majority of women in prison have experienced family violence¹², and whilst family violence victimisation is not a direct cause of Aboriginal women being jailed, it is a precursor to a range of conditions that increase vulnerability to criminalisation and imprisonment.

Barriers to accessing justice faced by Aboriginal women

Aboriginal women have been identified as the most legally disadvantaged group in Australia¹³ and the protection of their rights must be prioritised by ensuring access to appropriately funded, culturally safe, legal assistance services.

One of the most substantial barriers to accessing justice is a mistrust of the justice system, generated and maintained through historical and current entrenched systemic discrimination (as discussed above). For example, alienating and culturally insensitive court processes and police responses that disbelieve, minimise or trivialise violence against Aboriginal women.

¹⁰ Human Rights Law Centre, 'New stats reveal that Aboriginal and Torres Strait Islander women are one of the most incarcerated groups in the world', Media Release, (16 September 2015) <http://hrlc.org.au/new-stats-revealthat-aboriginal-and-torres-strait-islander-women-are-one-of-the-most-incarcerated-groups-in-the-world/>. See also: Australian Institute of Criminology; <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp107/06.html>; Australian Human Rights Commission, A Statistical Overview: Social Justice Report 2008 (2008), <https://www.humanrights.gov.au/publications/statistical-overview-aboriginal-and-torres-strait-islanderpeoples-australia-social>; University of New South Wales, Social and Cultural Resilience and Emotional wellbeing of Aboriginal Mothers in prison (2013), <https://npesu.unsw.edu.au/project/social-and-cultural-resilience-andemotional-wellbeing-aboriginal-mothers-prison-scream>.

¹¹ Ibid. See also: Kilroy, D. 'Women & Girls in Prison: Australia's Alternative to Equality & Justice' JCU Criminology Lecture, 22 May 2012, Presented by Debbie Kilroy, Chief Executive Officer of Sisters Inside

¹² Australian Institute of Family Studies, Addressing women's victimisation histories in custodial settings (2015) Canberra, Australian Government, available at <http://www.aifs.gov.au/acssa/pubs/issue/i13/i13b.html>; K. P. Moloney, B. J van den Bergh & L.F. Moller 'Women in Prison: The central issue of gender characteristics and trauma history' (2014) 123 Public Health, 426-430; Holly Johnson, Drugs and Crime: A Study of Incarcerated Female Offenders, Research and Public Policy Series (2014) No. 63, Canberra, Australian Institute of Criminology; WIPAN (2014) Women in Prison - Primary Document for a Public Forum surrounding Women in Prison being hosted by WIPAN, Community Justice Coalition (CJC) and the International Commission of Jurists (ICJ) at NSW Parliament House on 13 August 2014, 16

¹³ Aboriginal and Torres Strait Islander Commission (ATSIC), Submission to the Senate Legal and Constitutional References Committee, Parliament of Australia, Inquiry into Legal Aid and Access to Justice, 13 November 2003, 4.

Case Study

A young Aboriginal woman sought legal assistance from one of our member organisations when police informed her they were unwilling to proceed with a Family Violence Restraining Order application on her behalf. The client's ex-partner had subjected her to years of physical, emotional and economic violence and abuse, including choking or attempting to strangle her on 40 occasions.

When the FVPLS lawyer contacted the police, she was informed firstly that police did not believe the matter was serious enough to go to Court. Advocating for our client, the lawyer set out the history of horrific violence in the case and why this presented a serious risk to the safety and life of our client. The police officer then informed the lawyer that police did not want to proceed because the client had not sufficiently "cooperated" with police. This was despite the client having provided a formal statement to police along with names and contact details of multiple witnesses.

Ultimately, with the support of culturally safe legal representation from an FVPLS the matter proceeded to Court and the client was granted a Family Violence Restraining Order for her protection. Without this advocacy from a trusted, specialised Aboriginal legal service provider, like an FVPLS, this client would likely have been intimidated or dismayed by the police response, disengaged from the system and been left without legal protection at risk of serious harm.

Despite sustained advocacy from groups such as the National FVPLS Forum and acknowledgement from the Australian justice system of the disproportionate violence faced by Aboriginal women, Government actions to rectify the situation have fallen short. The recent quote from Judge Greg Cavanagh of the Northern Territory highlights judicial awareness of the devastating consequences of family violence for Aboriginal women.

"Domestic violence is a contagion. In the Aboriginal communities of the Northern Territory it is literally out of control. As a Local Court Judge I witness it most days. As the Coroner I see the terrible lives these women endure and their horrifying deaths."¹⁴

As detailed above, the alarming rates of Aboriginal child removal and child protection intervention in Aboriginal families also act as a significant deterrent for Aboriginal victims/survivors to disclose family violence and seek assistance from services.

Another significant barrier for Aboriginal women is a lack of awareness of legal rights. Without identifying the legal issue and seeking support, legal issues can escalate to the point of police or child protection intervention. For example, our members report that clients often weren't aware that child protection intervention was a legal matter until their children are removed from their care. Furthermore, our members in regional and remote areas identify that legal issues can escalate due to the lack of appropriate interpreters or adequate support for low levels of literacy by mainstream services and the legal system.

¹⁴ *Inquest into the deaths of Wendy Murphy and Natalie McCormack* [2016] NTLC 024, Available: <http://www.localcourt.nt.gov.au/judgements/2016decisions.shtml#civil>

These barriers are compounded by inadequate and unsustainable funding of culturally safe supports and legal assistance services. Due to chronic underfunding, our members report that approximately 30-40% of clients have had to be turned away due to a lack of capacity to support them. Funding uncertainty also limits the ability of our members to support Aboriginal women in remote locations who don't have access to culturally safe supports and legal assistance services. While Aboriginal women in many rural and remote areas face added geographical and linguistic barriers, Aboriginal women experiencing family violence across the country (including metropolitan locations) experience barriers to accessing culturally safe services, justice and safety.

The role and resourcing of Aboriginal Community Controlled Organisations

Appropriate culturally safe service provision is a critical component of addressing the disproportionate rates of family violence experienced by Aboriginal women and children. Aboriginal Community Controlled Organisations are widely recognised as important and powerful mechanisms for servicing and empowering Aboriginal people and communities, and embody principles of self-determination and the protection of cultural rights.

Aboriginal Community Controlled Organisations that are specialised in supporting victims/survivors of family violence, including dedicated services for women, are particularly vital.

FVPLSs are Aboriginal and Torres Strait Islander Community Controlled Organisations. Aboriginal communities know and trust our staff and services. We are unique, experienced and specialist service providers delivering culturally safe legal and non-legal services within which Aboriginal and Torres Strait Islander culture is not only acknowledged and celebrated, but embedded within the very foundations of our organisational structures and operations.

The dislocation from culture caused by Australia's history of colonisation and maintained by entrenched contemporary discrimination has a profound impact on Aboriginal communities. Programs that strengthen connection to culture and identity are key to building Aboriginal women's resilience and reducing vulnerability to violence. It is our view that the FVPLS model reflects best practice for eliminating violence in Aboriginal communities by providing culturally safe support to victims/survivors, together with tailored community legal education and early intervention and prevention programs which draw on Aboriginal culture and women's roles as a source of strength. The Australian Government has an obligation to appropriately resource FVPLSs to ensure the model operates to the full benefit of Aboriginal victims/survivors, predominantly women.

The examples below demonstrate the holistic approach to service delivery and violence prevention by FVPLSs across urban, regional, rural and remote Australia:

- **Aboriginal Family Violence Prevention Legal Service Victoria (VIC)**- *"Sisters Day Out": a one-day workshop which builds resilience and self-esteem among Aboriginal women and breaks down barriers to reporting violence by providing a culturally welcoming and safe space for Aboriginal women to gain some respite from life stressors, obtain information and connect with services in a celebratory and non-confronting atmosphere.*
- **Southern Aboriginal Corporation Family Violence Prevention Legal Service (WA)** – *"Strong mother's strong women (prison program)": Aims at strengthening mothers to return to their community – focuses on education, awareness and cultural support.*

- **Central Australian Aboriginal Family Legal Unit (NT) “Super Law” (DVD):** an animated educational film about how the law can protect and help people having trouble with domestic and family violence.
- **Queensland Indigenous Family Violence Legal Service (QLD) – “Healthy and Unhealthy Relationships”:** An interactive session that discusses some warning signs of an unhealthy relationship, and the creation of a safety plan.
- **Many Rivers, Kempsey Family Violence Prevention Legal Service (NSW) - “Sista Girls program”:** Aimed at young Aboriginal girls staying in school, it focuses on information and support on issues that affect them on a daily basis.

The National FVPLS Forum looks forward to the opportunity to discuss these and other programs in further detail with the Special Rapporteur upon her visit.

Funding restrictions

The Australian Government’s obligation to eliminate violence against women must involve a commitment to long term and secure funding for specialised and culturally safe services, including Aboriginal Community Controlled legal assistance services for victims/survivors such as FVPLSs.

Since inception, members of the National FVPLS Forum have faced funding uncertainty and a lack of ongoing sustainable funding through recurrent, short term funding commitments. This has exacerbated uncertainty across the sector and impacted vulnerable women who have no viable alternative. For example, to date FVPLSs have received only one or three-year funding agreements following lengthy tendering and other application processes. Until recently, nine of the 14 FVPLSs were on short term funding grants due to expire in July 2017. Through the work of the National FVPLS Forum, agreement was secured in September 2016 from the Australian government to extend funding for these FVPLSs through to July 2018, in line with other FVPLSs. However, no FVPLSs have a guarantee of funding beyond that date. This uncertainty has significant impacts on organisations’ capacities to undertake strategic planning, commit to long-term programming and community partnerships, retain high quality staff and organisational knowledge, and provide critical certainty to Aboriginal women in need.

About The National FVPLS Forum

FVPLSs were established in recognition of:

- the gap in access to legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault;
- the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS); and
- high rates of family violence in Aboriginal and Torres Strait Islander communities.

The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victims/survivors of family violence. The legal services are provided to victims/survivors in matters related to:

- family and domestic violence orders;
- victims of crime compensation;
- family law; and
- child protection.

FVPLSs also provide an important community legal education and early intervention and prevention function. FVPLSs have adopted a holistic, wrap-around service delivery model that prioritises legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. Nationally 90% of our clients are Aboriginal and Torres Strait Islander women and children.

National FVPLS Forum Members:

- Aboriginal Family Violence Prevention and Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)
- Aboriginal Family Law Service Western Australia (Perth HO, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland)
- Aboriginal Family Legal Service Southern Queensland (Roma)
- Binaal Billa Family Violence Prevention Legal Service (Forbes)
- Central Australian Aboriginal Family Legal Unit (Alice Springs HO, Tennant Creek)
- Family Violence Legal Service Aboriginal Corporation (Port Augusta HO, Ceduna, Pt Lincoln)
- Many Rivers Family Violence Prevention Legal Service (Kempsey)
- Marninwarnitkura Family Violence Prevention Unit WA (Fitzroy Crossing)
- North Australian Aboriginal Family Legal Service (Darwin, Katherine, Top End)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service (Alice Springs, NPY Tri-state Region)
- Queensland Indigenous Family Violence Legal Service (Cairns HO, Townsville, Rockhampton, Mount Isa, Brisbane)
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany, WA)
- Thiyama-li Family Violence Service Inc. NSW (Moree HO, Bourke, Walgett)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill)