Submission to the Special Rapporteur on the Rights of Indigenous Peoples

March 2017
Introduction

The National Family Violence Prevention Legal Services Forum (The National FVPLS Forum) welcomes the opportunity to highlight a number of key points concerning Aboriginal and Torres Strait Islander victims/survivors of family violence for your consideration. We look forward to these items being discussed in further detail at the upcoming roundtable hosted by Aboriginal Family Violence Prevention Legal Services Victoria. Specifically, this submission details:

1. The disproportionate impact of family violence against Aboriginal and Torres Strait Islander women and the complex causes and consequences of this impact;
2. Interrelated nature of socio-legal issues experienced by Aboriginal and Torres Strait Islander women;
3. Barriers to accessing justice faced by Aboriginal and Torres Strait Islander women;
4. The role and resourcing of Aboriginal and Torres Strait Islander Community Controlled Organisations as a key mechanism in advancing the rights of Indigenous peoples and addressing violence against Aboriginal and Torres Strait Islander women; and
5. Key institutional issues, such as a lack of legislative human rights protections and inadequate mechanisms for engaging with Aboriginal and Torres Strait Islander peoples and their organisations.

The disproportionate impact of family violence against Aboriginal and Torres Strait Islander women and the complex causes and consequences of this impact.

Aboriginal and Torres Strait Islander women experience family violence at vastly disproportionate rates. In comparison with other Australian women, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised from family violence\(^1\) and 10 times more likely to be killed as a result of violent assault.\(^2\)

This is compounded by the fact that approximately 90% of violence is not disclosed or reported by Aboriginal and Torres Strait Islander women\(^3\). This underreporting is due in part to a deep mistrust of the justice system and mainstream services, influenced by the impact of colonisation and historic and contemporary forms of systemic discrimination which drive ongoing fear of police and of child removal by the State, as discussed further below.

Through our casework with Aboriginal and Torres Strait Islander victims/survivors of family violence (predominantly women), Family Violence Prevention Legal Services (FVPLSs) see the intergenerational impacts of family violence on a daily basis. Aboriginal and Torres Strait Islander women are among the most marginalised and disadvantaged group in Australian society.

The previous Special Rapporteur on the Rights of Indigenous Peoples recognised and recommended ongoing need for Government prioritisation of violence against Aboriginal and Torres Strait Islander women following his last visit to Australia in 2009. Since this time, the announcement of high profile family violence survivor and advocate, Rosie Batty, as Australian of the Year in 2015 has generated

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increased government focus on family violence generally, however the recommendation for increased, specific focus on Aboriginal and Torres Strait Islander women’s experiences of violence remains critical.

**Recommendation:**

- That Australian Governments prioritise an increased, specific focus on Aboriginal and Torres Strait Islander women’s experiences of violence that is informed by Aboriginal and Torres Strait Islander women’s voices.

**Causes of the disproportionate impact of family violence on Aboriginal and Torres Strait Islander women**

The factors contributing to the high levels of family violence against Aboriginal and Torres Strait Islander women are complex and intersecting. It must be clearly understood that the causes of this violence do not derive from Aboriginal and Torres Strait Islander culture. However, the disadvantage, dispossession and attempted destruction of Aboriginal and Torres Strait Islander cultures since colonisation has meant that family violence has been allowed to proliferate in Aboriginal and Torres Strait Islander communities, with Aboriginal and Torres Strait Islander women and their children most at risk. Aboriginal and Torres Strait Islander women experience violence at the hands of men from diverse cultural backgrounds. As such, it is crucial that responses target Aboriginal and Torres Strait Islander women’s particular needs and vulnerabilities.

Due to Australia’s history of colonisation and contemporary experiences of discrimination, Aboriginal and Torres Strait Islander women have significant distrust of Government related services. This is perpetuated by poor police responses, and discriminatory responses from the broader justice system in instances of family violence. Aboriginal and Torres Strait Islander 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.

The case of Ms Dhu (Western Australia) demonstrates the challenges Aboriginal and Torres Strait Islander victims/survivors of family violence face in accessing justice and represent serious rights violations and systemic failures on behalf of the State.

Ms Dhu died in police custody in 2014 due to an untreated broken rib caused from family violence. Ms Dhu had been taken into custody due to unpaid fines. Despite repeated requests for medical assistance while in police custody, she was not provided adequate care and she subsequently passed away in a police cell due to her injuries. The gross negligence of duty of care clearly demonstrates that discrimination is deeply embedded in police culture. This case highlights key failures in the justice system that result in poor and unjust outcomes for Aboriginal and Torres Strait Islander women.

The complexity and intersectionality of the causes of over-representation of Aboriginal and Torres Strait Islander women in rates of family violence require a sustained, whole-of-government approach and support for community-led solutions. It is the Australian Government’s obligation to reduce violence and disadvantage in Aboriginal and Torres Strait Islander communities and the Government should be doing more to address the significant barriers for Aboriginal and Torres Strait Islander women accessing justice. This can only be done by prioritising and adequately resourcing community-led solutions that amplify the voices of Aboriginal and Torres Strait Islander women in order to ensure the protection of their rights to live safe and free from violence.
Despite sustained advocacy from groups such as the National FVPLS Forum, Government actions to rectify the situation have fallen short. While Australian Governments have attempted to address this intersectionality through The Third Action Plan of the Australian Government’s National Plan to Reduce Violence against Women and Children 2010-2022, challenges remain. The Third Action Plan appropriately identified the disproportionate impact of family violence on Aboriginal and Torres Strait Islander women and children. However, this acknowledgement needs to be supported by real and concrete action that is community led and adequately resourced.

Organisations like FVPLSs continually face challenges interacting with government concerning the intersectionality of disadvantage experienced by Aboriginal and Torres Strait Islander women. Government responsibility for the multitude of socio-legal issues is split across a number of ministerial portfolios, such as; Aboriginal and Torres Strait Islander, women, legal, health, and children and families portfolios. This results in difficulty obtaining comprehensive, sustained policy and funding commitments from each department. The consequence of this lack of accountability towards the intersectionality of issues creates divergent understandings and responses to issues facing Aboriginal and Torres Strait Islander women across departments.

It is the Government’s obligation to address disadvantage and reduce violence in Aboriginal and Torres Strait Islander Communities and Government should be doing more to address the significant barriers for Aboriginal and Torres Strait Islander women accessing justice.

It is vital that Australian Governments listen to community voices and the frontline expertise of Aboriginal and Torres Strait Islander Community Controlled Organisations, such as FVPLSs, to understand the nuanced nature of the socio-legal issues facing Aboriginal communities and embed this knowledge and experience in the development, implementation and evaluation of policies that directly affect Aboriginal and Torres Strait Islander women and their communities.

**Recommendation:**

- That Australian Governments commit to a sustained, whole-of-government approach to address the interrelated causes of violence and disadvantage experienced by Aboriginal and Torres Strait Islander women that are driven by community-led solutions.

**Interrelated nature of socio-legal issues experienced by Aboriginal and Torres Strait Islander women**

FVPLSs’ frontline experience working with Aboriginal and Torres Strait Islander victims/survivors of family violence informs us of the multitude of socio-legal issues and disadvantage that increase Aboriginal and Torres Strait Islander women’s vulnerability to violence and exacerbate the impacts. Family violence is a leading contributor to Aboriginal and Torres Strait Islander women’s homelessness, poverty, criminalisation, incarceration, mental and physical ill health, drug and alcohol abuse and removal of Aboriginal and Torres Strait Islander children⁴.

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Aboriginal and Torres Strait Islander women are currently the fastest growing group of prisoners in Australia\(^5\), 80% of which are mothers\(^5\). Despite comprising only 2% of the national population, Aboriginal and Torres Strait Islander women represent more than one third of the prison population\(^7\). Research demonstrates that a majority of women in prison have experienced family violence\(^8\), and whilst family violence victimisation is not a direct cause of Aboriginal and Torres Strait Islander women being jailed, it is a precursor to a range of conditions that increase vulnerability to criminalisation and imprisonment.

In addition, family violence is one of the primary drivers of Aboriginal and Torres Strait Islander child removal\(^9\). Nationally, Aboriginal and Torres Strait Islander children account for almost 35% of all children in out of home care despite comprising only 4.4% of Australia’s child population and these rates are predicted to triple by 2035 if not addressed\(^10\). The disproportionately high rates of Aboriginal and Torres Strait Islander child removal and child protection intervention in Aboriginal and Torres Strait Islander families act as a significant deterrent for Aboriginal and Torres Strait Islander victims/survivors to disclose family violence and seek assistance from services.

Through our frontline service delivery we frequently observe that the State, through its Child Protection authorities, often adopts an excessive, punitive and judgmental approach towards Aboriginal and Torres Strait Islander 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. While in Victoria, the participation of Aboriginal Community Controlled Organisations, such as FVPLS Victoria, in a 2016 Royal Commission into Family Violence has generated some action to address these issues, further national action remains urgent.

The experience of family violence for Aboriginal and Torres Strait Islander women and their children is further compounded by a lack of access to safe housing. The single greatest reason people in Australia present to homelessness accommodation services is family violence\(^11\) and Aboriginal and


\(^7\) 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


Torres Strait Islander women are 15 times more likely to seek assistance from crisis homelessness services than non-Aboriginal and Torres Strait Islander women.¹²

Furthermore, our members report that high levels of poverty and welfare dependence impact Aboriginal and Torres Strait Islander women’s ability to flee from family violence and maintain economic independence from the perpetrator. This is particularly relevant for restrictive welfare schemes¹³ that disproportionately impact rural or remote Aboriginal and Torres Strait Islander 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 and Torres Strait Islander women and children to live safe from family violence has not been sufficiently acknowledged or addressed by the State.

**Recommendations:**

| - | It is essential that the Government commits to increased research on impacts of policies affecting Aboriginal and Torres Strait Islander communities, together with strengthened accountability, transparency and consultation with Aboriginal and Torres Strait Islander peoples. |
| - | There is a need for Government to recognise and appropriately resource holistic service models like FVPLSs to address the multitude of socio-legal issues that work to further compound the effects of and increase vulnerability to violence against Aboriginal and Torres Strait Islander women. |

**Barriers to accessing justice faced by Aboriginal and Torres Strait Islander women**

Aboriginal and Torres Strait Islander women have been identified as the most legally disadvantaged group in Australia¹⁴ They face significant barriers to accessing justice, a primary barrier being a deep mistrust of the justice system and mainstream services generated and maintained through historical and contemporary systemic discrimination (as discussed above).

The alarming rates of Aboriginal and Torres Strait Islander child removal and child protection intervention in Aboriginal and Torres Strait Islander families and the punitive responses by Child Protection services (described above) act as a significant deterrent for Aboriginal and Torres Strait Islander victims/survivors to disclose family violence and seek assistance from services.

Another significant barrier for Aboriginal and Torres Strait Islander women is a lack of awareness of legal rights. This can mean that women are not identifying family violence (or other issues such as child protection) as a legal issue and therefore not seeking the right supports. Without early access to proactive and culturally safe legal assistance, legal issues can escalate to the point of police or child protection intervention which might otherwise have been avoided. Our members in regional and remote areas also report that legal issues can escalate due to a lack of access to appropriate interpreters or insufficient support for low levels of literacy by mainstream services and the legal system.

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¹³ Australian Government policies of mandatory income management for Aboriginal people in receipt of welfare payments.

¹⁴ 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.
These barriers are compounded by inadequate and unsustainable funding of culturally safe supports and legal assistance services. Due to chronic underfunding, FVPLSs 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 FVPLSs to support Aboriginal and Torres Strait Islander women in remote locations who don’t have access to culturally safe supports and legal assistance services. While Aboriginal and Torres Strait Islander women in many rural and remote areas face added geographical and linguistic barriers, Aboriginal and Torres Strait Islander women experiencing family violence across the country (including metropolitan locations) experience barriers to accessing justice and the protection of their rights must be prioritised by ensuring access to appropriately funded, culturally safe, legal assistance services regardless of where a woman lives.

**Recommendation:**

- That there should be increased effort by Australian Governments to address the significant barriers for Aboriginal and Torres Strait Islander women accessing justice in order to meet their obligations to reduce violence and disadvantage in Aboriginal and Torres Strait Islander Communities.

**The role and resourcing of Aboriginal and Torres Strait Islander Community Controlled Organisations as a key mechanism in advancing the rights of Indigenous peoples and addressing disadvantage.**

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

Aboriginal and Torres Strait Islander Community Controlled Organisations are best placed to achieve long term, beneficial outcomes for their communities, and dedicated services for Aboriginal and Torres Strait Islander women and children experiencing family violence, such as FVPLSs, are particularly vital. Aboriginal and Torres Strait Islander 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 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 and Torres Strait Islander communities. Programs that strengthen connection to culture and identity are key to building Aboriginal and Torres Strait Islander women’s resilience and reducing vulnerability to violence. It is our view that the FVPLS model reflects best practice for eliminating violence in Aboriginal and Torres Strait Islander 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 and Torres Strait Islander 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 and Torres Strait Islander victims/survivors, predominantly women.
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 for Aboriginal and Torres Strait Islander victims/survivors, especially women, as well as an increased investment in early intervention and prevention programs to allow organisations to both respond to and prevent family violence.

Members of the National FVPLS Forum continually face funding uncertainty and a lack of ongoing sustainable funding through recurrent, short term funding commitments, despite high levels of unmet need for our services. This has exacerbated uncertainty across the sector and impacted vulnerable women and their children who have no viable alternative. 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 and Torres Strait Islander women in need.

In order to promote and protect the rights of Aboriginal and Torres Strait Islander women, holistic and culturally safe specialist organisations like FVPLSs need to receive increased, adequate, secure and long term (i.e. 5 yearly) funding. It is essential that the Government reinstates the National FVPLS Program to ensure national coverage of services and meet the high levels of unmet need for existing services that promote and advocate for Aboriginal and Torres Strait Islander women experiencing family violence.

Recommendations:

- That there is Government recognition of the importance of Aboriginal Community Controlled Organisations being directly involved in policy development, implementation and service delivery.
- That Governments commit to increased, adequate, secure and long term funding agreements for holistic, culturally safe, specialist organisations with expertise in assisting Aboriginal and Torres Strait Islander victim/survivors of family violence, like FVPLSs.
- That the Federal Government reinstate a reinvigorated, stand-alone National FVPLS Program to ensure security of funding, national coverage of services and capacity to address unmet need.
- That there is increased investment in dedicated, culturally safe early intervention and prevention programs for Aboriginal and Torres Strait Islander women and their children to address violence.

Key institutional issues

The previous report of the Special Rapporteur on the Rights of Indigenous Peoples on Australia made a number of relevant and detailed recommendations towards the protection and promotion of the rights of Aboriginal and Torres Strait Islander peoples. Regrettably, consideration of these recommendations has received no formal or comprehensive consideration by Australian governments. In addition to a general institutional failure to respond to the Special Rapporteur’s visit and recommendations, several major institutional challenges remain, including:

- no comprehensive constitutional or legislative protection of human rights;
- inadequate mechanisms for engaging with Aboriginal and Torres Strait Islander peoples and their organisations.
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<td>- That the Australian Government introduce legislation that provides comprehensive</td>
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<td>protection of human rights, such as a Human Rights Act.</td>
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<td>is given to recommendations made by United Nations human rights mechanisms.</td>
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<td>- That the Australian Government provide adequate, long term funding for an independent</td>
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<td>national representative body that is elected by Aboriginal and Torres Strait</td>
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About The National FVPLS Forum

The National FVPLS Forum is comprised of 14 Family Violence Prevention Legal Services (FVPLSs) member organisations across the country that provide culturally safe legal assistance and non-legal support to Aboriginal and Torres Strait Islander victim/survivors of family violence – predominantly women and children. The Forum was established in May 2012 and aims to work in collaboration across its member FVPLS services to increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence.

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 deliver essential community legal education and early intervention and prevention programs. 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)
- Marninwarritikura 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)