

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 Department of Social Services

Developing the next National Plan to reduce
Violence against Women and their Children

July 2021

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1 Executive Summary

This submission responds to the Commonwealth Government's public consultation on the next National Plan to reduce violence against women and their children in Australia.

The submission draws on the vast experience of the National Family Violence Prevention and Legal Services Forum (**NFVPLS Forum**) as the only national peak body for Aboriginal and Torres Strait Islander victim/survivors of family violence and sexual assault.

This submission seeks to highlight a number of key issues of importance to Aboriginal and Torres Strait Islander victim/survivors of family violence that, in our view, must inform the development of the next National Plan.

The next National Plan must focus on better meeting the needs of diverse groups of women, including those who are most vulnerable to violence. Aboriginal and Torres Strait Islander women have been identified as one of the "most at risk groups" for family, domestic and sexual violence¹ and face a number of barriers to accessing support services and the justice system.

The NFVPLS Forum supports the need for a National Plan that focuses on prevention and early intervention and recognises the deep-rooted drivers and underlying factors that contribute to violence against Aboriginal and Torres Strait Islander women.

In our view, addressing the disproportionate rates at which Aboriginal and Torres Strait Islander women experience violence cannot be achieved through an overarching National Plan. A separate, dedicated Aboriginal and Torres Strait Islander National Plan must be established.

Our recommendations are set out in further detail below.

2 Introduction

The NFVPLS Forum was formally established in May 2012 and is comprised of fourteen Family Violence Prevention and Legal Services (**FVPLS**) member organisations across Australia. FVPLSs provide specialist, culturally-safe, legal and non-legal supports to Aboriginal and Torres Strait Islander victim/survivors of family violence through holistic, wrap-around service

¹ Australian Institute of Health and Welfare (2018), Australia's Health 2018, 3.16 Family, domestic and sexual violence, Chapter 3, p.1.

models that recognise and address the multitude of interrelated issues faced by Aboriginal and Torres Strait Islander victim/survivors of family violence.

FVPLSs also deliver essential Community Legal Education (**CLE**) and early intervention and prevention (**EIP**) programs. While the FVPLSs are not all gender exclusive, more than 95% of Aboriginal and Torres Strait Islander people accessing their services nationally are women and children.

Family violence is a core practice area of the FVPLSs, along with family law and child protection law. Almost all FVPLS clients engage with their services against a backdrop of family violence.

3 Recommendations

The NFVPLS Forum makes the following recommendations.

3.1 Recommendation 1: Establish a separate, dedicated National Plan for Aboriginal and Torres Strait Islander women and children

For years, the NFVPLS Forum has been calling for a separate, dedicated Aboriginal and Torres Strait Islander National Plan to be established.

Violence against Aboriginal and Torres Strait Islander women and children is a national crisis. Aboriginal and Torres Strait Islander women experience violence at vastly disproportionate rates that continue to rise. The violence experienced is also often more severe. Nationally, Aboriginal and Torres Strait Islander women are:

- **32 times** more likely to be hospitalised due to family violence;²
- **10 times** more likely to die due to assault;³ and
- **45 times** more likely to be victims of violence,⁴

than their non-Aboriginal and Torres Strait Islander counterparts.

Drivers of violence in Aboriginal and Torres Strait Islander communities

Preventing violence requires addressing the complex, interrelated drivers of violence that are specific to Aboriginal and Torres Strait Islander communities. These factors include the ongoing impacts of colonisation, intergenerational

² Australian Human Rights Commission (2020), Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report, AHRC, Sydney.

³ Al-Yaman, F, Van Doeland, M, and Wallis, M, Family violence among Aboriginal and Torres Strait Islander peoples, AIHW, Canberra, 2006, cat. no. IHW 17.

⁴ Goulding D, The Role of Socio-Economic and Familial Factors in the Pursuit of Final Violence Restraining Orders For Women Subjected to Family and Domestic Violence, Centre for Social and Community Research, Murdoch University, Perth, 2007, p. v.

trauma, socioeconomic disadvantage and discrimination. Family violence in Aboriginal and Torres Strait Islander communities is often cited as “cyclical and intergenerational”.⁵

While there are some overlapping drivers of violence across different groups of women and children, violence against Aboriginal and Torres Strait Islander women and children is experienced in a different context and against a backdrop of specific drivers.

A National Plan that does not consider these specific drivers or the broader social, cultural and political context in which violence occurs in Aboriginal and Torres Strait Islander communities will not be effective in reducing violence against Aboriginal and Torres Strait Islander women and children.

In our view, there must be a separate, dedicated National Plan that understands the specific context in which violence against Aboriginal and Torres Strait Islander women and children occurs and addresses the underlying drivers that contribute to the prevalence of this violence.

A dedicated National Plan for Aboriginal and Torres Strait Islander women and children must:

- be a genuine partnership between the Commonwealth Government and Aboriginal and Torres Strait Islander communities and language groups;
- include mechanisms to support Aboriginal and Torres Strait Islander peoples’ participation, for example, providing interpreter services for diverse language groups; and
- recognise and uphold the right of Aboriginal and Torres Strait Islander people to self-determination.

At a minimum, the National Plan must include a commitment from the Commonwealth Government to establish and develop an Aboriginal and Torres Strait Islander National Plan.

⁵ See, eg, Aboriginal Peak Organisations (NT), Submission No 134 to the Senate Standing Committees on Finance and Public Administration, Domestic Violence in Australia (August 2014) 4; Janet Stanley et al, ‘Causal Factors of Family Violence and Child Abuse in Aboriginal Communities: Exploring Child Sexual Abuse in Western Australia’ (Australian Institute of Family Studies, prepared for the Western Australian Government Inquiry into Responses by Government Agencies to complaints of Family Violence and Child Abuse in Aboriginal Communities, 2002).

3.2 Recommendation 2: Increase investment into early intervention and prevention

As the Fourth Action Plan of the current National Plan states, ‘prevention is the most effective way to eliminate violence against women’.

The next National Plan must prioritise EIP initiatives and adequately resource specialist, frontline services to enable them to deliver programs and supports to Aboriginal and Torres Strait Islander women experiencing or at risk of family violence. In the past, FVPLSs have reported that up to 30% of Aboriginal and Torres Strait Islander women in contact with their service are turned away due to lack of resources and capacity issues.

Along with EIP programs, CLE can also act as a source of self-referral into FVPLS services.

Across Australia, the FVPLSs have demonstrated that EIP programs have achieved successful outcomes for Aboriginal and Torres Strait Islander women. Some examples of these programs and projects include:

- **Northern Territory:** ‘Super Law’ developed by Central Australian Aboriginal Family Unit. The Super Law DVD and workbook are educational tools to inform Aboriginal and Torres Strait Islander communities about laws, specifically those related to domestic and family violence.
- **Queensland:** ‘Love Bites’ developed by the Queensland Indigenous Family Violence Legal Service. A prevention program delivered to high school students on healthy and unhealthy relationships, identifying domestic and family violence behaviours and their impacts.
- **South Australia:** ‘Sista 2 Sista’, ‘Love Colours’ and ‘Healthy Relationships’ developed by the Family Violence Legal Service Aboriginal Corporation SA. Sista 2 Sista is a day of fun and community education for Aboriginal and Torres Strait Islander women covering domestic violence, health, mental, social, welfare and financial issues. Love Colours is a healthy relationships workshop that incorporates art activities and thoughtful discussion in a yarning circle style of delivery. Healthy Relationships is a program delivered to high school students with a focus on relationships; values and beliefs, respectful relationships and law and legal issues in relationships.
- **Victoria:** ‘Dilly Bag’, ‘Sister’s Day Out’ and ‘Young Luv’ developed by Djirra. Sisters Day Out is a wellbeing workshop where Aboriginal and Torres Strait Islander women enjoy a day of pampering and relaxation, with activities designed to raise awareness of family violence issues, rights and

options. Dilly Bag programs are more intensive and encourage personal development through activities designed by, and for, Aboriginal and Torres Strait Islander women. Young Luv is designed for Aboriginal and Torres Strait Islander young women aged 13 to 18 and focuses on promoting healthy relationships.

- **Western Australia:** 'Sparkle and Grow', 'Strong Girls Stronger Women' and 'Healing Hands' developed by Aboriginal Family Legal Services WA. Sparkle and Grow is a CLE and personal development program for Aboriginal and Torres Strait Islander women targeted at educating and raising awareness on family and sexual violence issues, respectful relationships, legal assistance and building participants' self-esteem. Strong Girls Stronger Women is delivered to Aboriginal and Torres Strait Islander female students identified as emotionally, physically or socially vulnerable. It provides education on safe and healthy relationships. Healing Hands is a self-care session primarily aimed at Aboriginal and Torres Strait Islander women and girls who have experienced trauma through family violence. Healing Hands raises awareness about violence and sexual abuse issues in a safe, comfortable environment.

3.3 Recommendation 3: Increase investment into FVPLSs

Nationally, over 95% of Aboriginal and Torres Strait Islander people experiencing or at risk of family violence and accessing our FVPLS services are women and children. This places the NFVPLS Forum and its fourteen FVPLS member organisations in a strong position to drive systemic change and make a significant impact in Aboriginal and Torres Strait Islander communities.

However, FVPLSs have consistently been critically underfunded and under-resourced. FVPLSs must see an increased investment and be adequately funded to provide specialist, culturally safe, legal and non-legal frontline services and deliver EIP programs.

As outlined earlier in this submission, the prevalence and severity of violence experienced by Aboriginal and Torres Strait Islander women is disproportionate. This justifies a greater investment in FVPLSs and a prioritised approach to prevention of violence against Aboriginal and Torres Strait Islander women under the next National Plan, commensurate with the high rates of violence experienced.

The allocation of funding to existing and established FVPLSs must also be prioritised ahead of funding mainstream organisations that provide services to Aboriginal and Torres Strait Islander people. FVPLSs are best placed to effectively deliver culturally-appropriate services and achieve better outcomes

for Aboriginal and Torres Strait Islander victim/survivors of family violence. This is also an important element of self-determination.

3.4 Recommendation 4: Establish a nationally consistent, mandatory Aboriginal and Torres Strait Islander child protection notification and referral system

Nationally, the rate of Aboriginal and Torres Strait Islander children living in out of home care is 10.2 times higher than that of non-Aboriginal and Torres Strait Islander children.⁶

Research has identified fear of child removal and lack of services (particularly culturally appropriate services) as barriers to reporting family violence for Aboriginal and Torres Strait Islander women.⁷ Reducing the prevalence of violence against Aboriginal and Torres Strait Islander women and children requires a holistic approach that addresses both the drivers of violence and the barriers to reporting.

The NFVPLS Forum has been advocating for a system (akin to the Custody Notification System) to be established under which Aboriginal and Torres Strait Islander families in contact with the child protection system would be referred to culturally appropriate services at the earliest possible opportunity.

The system would seek to address family violence driven child removal through EIP, specifically through the delivery of culturally safe and holistic legal and non-legal supports and services to Aboriginal and Torres Strait Islander families.

3.5 Recommendation 5: Support Aboriginal and Torres Strait Islander data sovereignty

Aboriginal and Torres Strait Islander data sovereignty is a key tenet of self-determination. That is, the right of Aboriginal and Torres Strait Islander people to exercise authority over and govern the creation, collection, ownership and use of their data.

Government creation and ownership of data that pertains to Aboriginal and Torres Strait Islander people and communities raises a number of issues. For example, it often:

⁶ Australian Human Rights Commission (2020), Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report, AHRC, Sydney.

⁷ Langton et al. Improving family violence legal and support services for Aboriginal and Torres Strait Islander women (Sydney: ANROWS, 2020).

- removes a community's ability to define what success looks like for them and diminishes the right to self-determination;
- limits the ability of Aboriginal and Torres Strait Islander communities to access relevant data that is collected;
- has a focus on deficit, disadvantage and difference to justify the introduction of Government policies that have historically had negative impacts; and
- fails to recognise broader social, cultural and political drivers.

It is critical for the next National Plan to recognise Aboriginal and Torres Strait Islander data sovereignty and shift ownership of data from the Commonwealth Government to Aboriginal and Torres Strait Islander Community Controlled Organisations (**ACCOs**), FVPLSs and Aboriginal and Torres Strait Islander communities. This must be supplemented by increased funding dedicated to building the capacity of these organisations and communities to collect and engage effectively with data.

3.6 Recommendation 6: Expand geographical reach of fourteen existing FVPLSs

It is well established that geographical location is another factor that impacts experiences of violence. Research has demonstrated that geographical isolation:

- intensifies experiences of violence;⁸ and
- may act as a barrier for women to seek support and escape violence (due to lack of available services, transport, social isolation etc).⁹

Access to culturally appropriate, specialist services (like those provided by FVPLSs) plays an important role in EIP and reducing violence against Aboriginal and Torres Strait Islander women and children. A lack of access to these services is frequently cited as a barrier to reporting and a driver of violence in Aboriginal and Torres Strait Islander communities.

Major service gaps exist in both metropolitan and urban areas. The rationale for Aboriginal and Torres Strait Islander specific services applies equally in these settings.

Addressing these issues and adequately resourcing the expansion of existing FVPLSs must be prioritised under the next National Plan to enable FVPLSs to

⁸ Loxton et al., 2003; Owen and Carrington, 2014; Wendt, 2009a.

⁹ George & Harris, 2015; Loxton et al., 2003.

service unmet need amongst communities in remote, regional and metropolitan Australia.

3.7 Recommendation 7: Reinstate a dedicated funding stream for the National Family Violence Prevention and Legal Services Program with long-term funding arrangements

In 2014 the National FVPLS Program was merged into the Indigenous Advancement Strategy within the Department of the Prime Minister and Cabinet.

As a result, the National FVPLS Program no longer received a direct allocation of funding and FVPLSs were required to competitively tender for funding alongside other organisations providing services to Aboriginal and Torres Strait Islander people.

ACCOs and FVPLSs have the knowledge, frontline expertise and trust of Aboriginal and Torres Strait Islander communities. This puts them in a strong position to be driving and implementing actions under the National Plan and improving outcomes for Aboriginal and Torres Strait Islander victim/survivors. However, historic and continued underfunding of ACCOs and FVPLSs has placed constraints on their ability to provide services and created uncertainty. Competing with other service providers for funding has only exacerbated existing funding concerns.

Outcomes for Aboriginal and Torres Strait Islander women under the next National Plan cannot be achieved unless ACCOs and FVPLSs are adequately resourced.

The next National Plan must include a commitment from the Government to reinstate a dedicated funding stream with a focus on increased, long-term and secure funding for FVPLSs.

4 Responses to Department of Social Services Survey

(a) *Major issues faced by people experiencing family, domestic, and sexual violence*

FVPLSs have consistently cited recurring issues faced by Aboriginal and Torres Strait Islander women experiencing or at risk of family violence. These issues include:

- **Lack of services / remoteness:** A lack of culturally appropriate, specialist services leaves Aboriginal and Torres Strait Islander victim/survivors of violence vulnerable and isolated. This is particularly prevalent in remote locations where there are even fewer culturally safe, specialist services.

- **Barriers to accessing the justice system:** The barriers faced by Aboriginal and Torres Strait Islander people in accessing the justice system are well established. The NFVPLS Forum has previously submitted that Aboriginal and Torres Strait Islander women face a wide array of complex and compounding barriers to accessing support and reporting family violence. Those barriers include:
 - lack of understanding of legal rights and options and how to access advice / support;
 - mistrust of mainstream legal, medical and other support services and their inability to respect the needs / wishes of Aboriginal and Torres Strait Islander women;
 - lack of cultural competency and experiences of direct or indirect discrimination, including by police and child protection agencies;
 - poverty, social and geographical isolation; and
 - lack of access to interpreters or support services for Aboriginal and Torres Strait Islander women with low levels of literacy.
- **Housing:** Housing issues and family violence are often connected. FVPLSs have identified homelessness and lack of appropriate housing as drivers of violence against Aboriginal and Torres Strait Islander women and children and factors which increase their vulnerability. For instance, risk of homelessness or lack of appropriate housing is often cited as a reason for victim/survivors and perpetrators remaining in the family home.
- **Poor justice responses:** Contemporary police responses to family violence continue to be affected by an overarching history of poor police responses, including the historical role of police in child removals and Aboriginal and Torres Strait Islander deaths in custody. Today, poor police responses and practices contribute to stereotyping and often result in the misidentification of Aboriginal and Torres Strait Islander women as perpetrators rather than victims of crime.
- **Fear of child removal:** As outlined in detail under paragraph 3.4 of this submission, a fear of child removal is one of the most commonly cited issues faced by Aboriginal and Torres Strait Islander women experiencing or at risk of family violence.
- **Reluctance to report:** In addition to the barriers to reporting violence experienced by victims generally, Aboriginal and Torres Strait Islander women face a range of further barriers. At a high level, these can be categorised as:
 - personal barriers (e.g. child protection / removal concerns, shame / embarrassment, cultural or community pressures, fear of reprisal by the perpetrator, relationship with the perpetrator etc); and

- barriers relating to the justice system (e.g. distrust of police and poor police response, fear / lack of understanding of the justice system etc).

These barriers have had substantial impacts on the rates of reporting, with research conducted by the Australian Institute of Criminology indicating that up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported.¹⁰

(b) *Major issues regarding services for people experiencing family, domestic, and sexual violence*

- **Lack of funding:** A lack of funding poses a threat to the viability of FVPLSs and limits the reach of their specialist services. Specialist ACCOs and FVPLSs must be adequately funded, including on a longer-term, secure basis to ensure better outcomes for Aboriginal and Torres Strait Islander women experiencing or at risk of violence.
- **Lack of culturally safe / appropriate services:** As outlined under paragraph 3.6, access to culturally appropriate, specialist services must be improved in both urban and rural areas.

(c) *Other priorities that would make a big difference to preventing family, domestic and sexual violence*

- **Increased funding for FVPLSs and EIP programs:** As outlined under paragraph 3.3, there must be an increased investment in FVPLSs and a focus on EIP under the next National Plan. FVPLSs and specialist ACCOs must be prioritised ahead of mainstream organisations for funding that is allocated for the delivery of services to Aboriginal and Torres Strait Islander people.
- **Access to housing and crisis accommodation:** The next National Plan must identify housing as a priority area and provide solutions for accessible and well-resourced shelters, refuges, safe houses and crisis accommodation for Aboriginal and Torres Strait Islander women and children escaping violence.
- **Proper consultation with FVPLSs:** If addressing violence against Aboriginal and Torres Strait Islander women and children is truly a national priority, there must be genuine collaboration, consultation and partnership with the NFVPLS Forum. The NFVPLS Forum must be included in national conversations that impact Aboriginal and Torres Strait Islander women

¹⁰ Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (Trends and Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, January 2011) 4–10.

(e.g. the National Women's Safety Summit). It must not be excluded from advisory groups such as the National Plan Advisory Group and the Aboriginal and Torres Strait Islander Advisory Council.

- **Proper consultation with communities and language groups:** There must be genuine collaboration, consultation and partnership with Aboriginal and Torres Strait Islander communities and language groups to inform family and domestic violence objectives. Proper consultation encourages informed decision-making and allows Aboriginal and Torres Strait Islander communities to define what success looks like for them and to drive change. Without proper consultation, programs that are imposed on Aboriginal and Torres Strait Islander communities fail to uphold the principles of self-determination.

(d) *Improvements / useful responses for the prevention of family, domestic and sexual violence*

- **Cultural awareness and competency training:** Cultural competency and other training relevant to the unique needs and barriers of Aboriginal and Torres Strait Islander victim/survivors of family violence must be mandatory for people working in the legal and child protection systems (including judicial officers, lawyers, independent children's lawyers, court counsellors and expert witnesses). This would seek to improve access to the justice system and outcomes for Aboriginal and Torres Strait Islander people.
- **Police responses:** FVPLSs often report inappropriate police responses to incidences of violence against Aboriginal and Torres Strait Islander women. Police responses to family violence against Aboriginal and Torres Strait Islander women can be improved by implementing comprehensive and mandatory training for police. Training should include cultural competency, trauma informed response and domestic and family violence training.
- **Community led education:** FVPLSs have reported success in delivering community led education on a range of issues relating to family and domestic violence to Aboriginal and Torres Strait Islander people.

(e) *Other considerations to support people who are experiencing family, sexual and domestic violence*

Set out below are some additional considerations that are complementary to support the prevention of violence against Aboriginal and Torres Strait Islander women and children.

- **Self-determination:** Principles of self-determination and a commitment to upholding these principles must be entrenched in the National Plan. Implementation of self-determination principles requires sustained and

secure funding for specialist ACCOs and FVPLSs that are working exclusively in family violence.

- **Implementation of recommendations:** The next National Plan must include a commitment to implement the key recommendations made in this submission as well as the submissions of other specialist ACCOs.
- **Holistic, wrap around approach:** The next National Plan should adopt a holistic, wrap around approach to reducing violence against women and children. As part of this holistic approach, frameworks must be developed to facilitate prevention as well as early prevention and response.
- **Cultural considerations:** It is crucial that the National Plan properly captures the importance of culture to, and the cultural needs of, Aboriginal and Torres Strait Islander women. Effective intervention, prevention and responses to violence cannot be delivered without a comprehensive understanding of this. For example, consideration must be given to how culture and customs dictate and impact the choices of Aboriginal and Torres Strait Islander women in responding to family violence.