



Submission to the Committee on the Elimination of Discrimination against Women general discussion on the rights of Indigenous women and girls

Domestic Violence NSW Aboriginal and Torres Strait Islander Women’s Steering Committee, Australia

June 2021

Introduction

The Domestic Violence NSW Aboriginal and Torres Strait Islander Women’s Steering Committee, Australia, welcomes the opportunity to provide a submission to the United Nations Committee on the Elimination of Discrimination against Women general discussion on the rights of Indigenous women and girls.

The rates of sexual, domestic and family violence towards Aboriginal girls and women in Australia occur at disturbingly high levels. There are a variety of mechanisms necessary to address this violence. Australia is currently developing the next *National Plan to Reduce Violence against Women and their Children*, and we hope that actions to reduce and prevent violence against Aboriginal and Torres Strait Islander women and girls will be central to the plan.

In this submission we recommend that the Australian, State and Territory Governments - in consultation with specialist women’s and family violence services, and Aboriginal and Torres Strait Islander leaders - establish a consistent national definition of sexual, domestic and family violence in order to increase the consistency of response to gender-based violence across Australia.

About the Domestic Violence NSW Aboriginal and Torres Strait Islander Women's Steering Committee

In 2019, Domestic Violence NSW established the Domestic Violence NSW Aboriginal and Torres Strait Islander Women's Steering Committee (the 'Steering Committee'). The Steering Committee is comprised of a diverse group of leading Aboriginal and Torres Strait Islander women with cultural, community and domestic and family violence sector expertise in prevention, early intervention and response to domestic, family and sexual violence in their communities.

The vision of the Steering Committee is to provide an Aboriginal and Torres Strait Islander lens on policy and practice opportunities and to have real influence through lobbying and advocacy. The Steering Committee amplifies the voices of Aboriginal and Torres Strait Islander women as advocates in their survivor experiences and guides Domestic Violence NSW's work. The group also provides expert advice and advocacy on the issues that matter in their communities to Domestic Violence NSW, government and the sector more broadly in order to ensure that culturally safe practices are developed and promoted.

The current members of the Steering Committee are Ashlee Donohue, Maryanne Brown, Monique Wiseman, Vanessa Lee, Kyllie Cripps, Christine Robinson, Mary Ronayne, Dixie Link-Gordon, Aunty Bronwyn Penrith, Yattungka Gordon, and Kowana Welsh.

About Domestic Violence NSW

Domestic Violence NSW is the peak body for over 80 specialist domestic and family violence services in New South Wales, Australia. Domestic Violence NSW provides a representative and advocacy function for specialist services and the women, families and communities they support.

The mission of Domestic Violence NSW is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government, and communities to create a safer New South Wales for all.

The impact of domestic and family violence on Indigenous women and girls in Australia

In Australia, sexual, domestic and family violence are serious issues for Aboriginal and Torres Strait Islander peoples. Rates of violence towards women in Australia are generally high, with one in four Australian women over 15 experiencing intimate partner violence and one in five women over 15 experiencing sexualised violence (AIHW, 2019^[RF2]).

Aboriginal and Torres Strait Islander women are far more likely to be victims of sexual, domestic and family violence than non-Aboriginal women, and the violence is likely to be more severe. Sexual, domestic and family violence in Aboriginal and Torres Strait Islander communities is disproportionate and severe and must be viewed in the historical context of colonisation, dispossession of land, separation from culture resulting in the breakdown of kinship systems and of traditional law, racism, and government policies of forced removal of children (the Stolen Generations).

Key prevalence statistics:

- The physical injuries resulting from violence are frequently more severe for Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women are 34 times more likely to be admitted to hospital for family violence related injuries (ANROWS, 2019).
- Aboriginal and Torres Strait Islander women are nearly 11 times more likely to die due to assault and twice as likely to die due to domestic and family violence compared to non-Indigenous women (Our Watch, 2018).
- Aboriginal and Torres Strait Islander women are five times more likely to be victims of homicide than non-Indigenous women. More than half (55%) of these homicides are related to domestic and family violence (Chan & Payne).
- Three in five Aboriginal and Torres Strait Islander women have experienced physical or sexual violence perpetrated by a male intimate partner since age 15 (Our Watch, 2018).
- Aboriginal and Torres Strait Islander women are five times more likely to experience physical violence, and three times more likely to experience sexual violence than non-Indigenous women (Mouzos & Makkai, 2004).
- Intimate partner violence contributes 11% of the burden of disease for Aboriginal and Torres Strait Islander women aged 18 to 44, more than any other health risk factor, including alcohol or tobacco use and being overweight or obese. This is more than six times higher than for non-Indigenous women (Webster, 2016).
- Aboriginal and Torres Strait Islander children are at greater risk of exposure to domestic and family violence than non-Indigenous children, with two thirds of Aboriginal and Torres Strait Islander adults who experience violence sharing the household with children (Australian Institute of Health and Welfare (AIHW), 2016).
- Domestic and family violence against women is the leading reason for the disproportionately high numbers of Aboriginal and Torres Strait Islander children removed from their families. These children are over nine times as likely to be on care and protection orders and ten times more likely to be in out of home care than non-Indigenous children (AIHW, 2012).
- Aboriginal and Torres Strait Islander women have lower reporting rates than non-Indigenous women and are known to face specific and additional barriers to reporting (ANROWS, 2019).
- Without intervention, the cost of violence perpetrated against Aboriginal and Torres Strait Islander women, is estimated to be \$2.2 billion in 2021-22, including costs associated with pain, suffering, premature death and health costs (The National Council to Reduce Violence Against Women and their Children, 2009).
- As of June 2018, a third of female prisoners in Australia — 34 per cent — were Aboriginal and Torres Strait Islander, despite Indigenous women comprising just two per cent of the broader female population. (Australian Bureau of Statistics, 2018)
- An overwhelming majority of women in prison are victims of domestic violence, with evidence suggesting between [70 percent](#) and [90 percent](#) of incarcerated women have been physically, sexually or emotionally abused as children or adults — an experience experts say frequently leads to their offending and criminalisation.

Barriers to support

We do not know the full extent to which Aboriginal women experience sexual, domestic and family violence in Australia due to the array of barriers that lead to the underreporting of violence and reduced help seeking in Aboriginal communities.

The rate of violence within Aboriginal and Torres Strait Islander families can only be understood in the context of the historical, political, social and cultural environments in which it occurs. The high rates of sexual, domestic and family violence in Aboriginal and Torres Strait Islander communities must be seen in the context of colonisation, disadvantage, oppression, racism and marginalisation.

There are a variety of barriers that hinder Aboriginal and Torres Strait Islander women's use of mainstream services when seeking support for sexual, domestic and family violence. These include but are not limited to:

- intergenerational trauma and distrust towards non-Aboriginal people;
- fear of retaliation or alienation from kinship community;
- lack of accurate information and awareness of services;
- lack of local service with capacity to assist/expertise; and
- lack of culturally competent service providers.

Women and communities often fear what will happen to the perpetrator if legal action is taken against them due to a variety of reasons including institutionalised racism and high levels of Black deaths in custody.

States party to the Convention need to understand the ongoing effects of colonial policies such as invasion, protection, child removals, assimilation and forced integration of diverse communities of Aboriginal and Torres Strait Islander peoples, if they are to work respectfully with Aboriginal and Torres Strait Islander families and communities.

Many Aboriginal and Torres Strait Islander women, despite living in violent situations, will not use mainstream services or those services that do not understand their needs. This is because women feel the services do not provide a comfortable welcoming environment, nor do they offer the necessary support with the culturally appropriate healing that is required.

Ensuring co-design with Aboriginal and Torres Strait Islander peoples

Best practice policy and responses to domestic and family violence must reflect the views, involvement, ownership and diversity of Aboriginal and Torres Strait Islander peoples in Australian urban, rural and remote communities. Community-driven and responsive programs are more likely to experience greater engagement from local Aboriginal people, and show respect for the rights of Aboriginal peoples to self-determination. Aboriginal and Torres Strait Islander people know the solutions needed in their communities, and policies which are co-designed are more likely to be successful. Aboriginal services are well positioned as leaders and spaces that foster cultural resilience and healing in Aboriginal communities.

Ideally, all domestic and family violence services and government agencies should have Aboriginal and Torres Strait Islander workers and have strong working relationships with Aboriginal services.

The *UN Declaration on the Rights of Indigenous Peoples* (UN General Assembly, 2007) – supported by Australia – provides an international articulation of best practice expected in engaging with Indigenous people. The Declaration reinforces Indigenous peoples' right to self-determination.

Article 18: Indigenous peoples have the right to participate in decision making in matters, which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision making institutions.

Article 19: States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (UN General Assembly, 2007).

Unfortunately the Australian and state and territory governments do not always work in line with the *UN Declaration on the Rights of Indigenous Peoples* when engaging with the Aboriginal and Torres Strait Islander community on proposed legislation, including coercive control. A large amount of consultation is undertaken, however the views and perspectives are not always taken into consideration, consultations are not always culturally safe and participants are rarely compensated for their time and expertise.

Defining domestic and family violence in the Australian context

The members of the Domestic Violence NSW Aboriginal and Torres Strait Islander Women's Steering Committee would like to raise our concerns that there is no national definition of domestic and family violence in Australia. Across the states and territories of Australia, the definition of domestic and family violence varies (ANROWS, 2021). Responding to domestic and family violence in Australia requires a consistent definition of domestic and family violence across legislative and policy settings, Australia-wide.

There is no singular and globally or nationally endorsed definition for 'violence', 'domestic violence' or 'domestic, family and sexual violence'. Various global and national definitions are purposefully broad to accommodate the constantly evolving forms of violence adopted by perpetrators.

The lack of unity creates particular issues for victim-survivors who are engaged in systems across state and federal jurisdictions, or in multiple states and territories. Many reports have pointed towards the need for, 'a common interpretative framework, core guiding principles and objects, and a better and shared understanding of the meaning, nature and dynamics of family violence that may permeate through the various laws involved when issues of family violence arise' (e.g. Australian Law Reform Commission, 2010).

The lack of national definition has complex and far reaching impacts, for example the national comparison of administrative data collected by police in relation to domestic and family violence is complicated by inconsistencies in definitions and identification practices used across jurisdictions. Lack of consistent data collection made available nationally leads to a lack of accountability in performance. The inconsistencies within and cross-jurisdictions complicate the reality of a national data-set.

There has been recent debate in Australia about the addition of coercively controlling abuse as well as non-physical forms of violence into definitions of domestic and family violence definitions. Coercive control is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten a person (Women's aid, n.d.). Coercive control policy must be included and endorsed by the United Nations Declaration on the Rights of Indigenous Peoples, giving Indigenous people the right to combat coercive control and social control in accordance with their cultural protocols. The policies and legislation developed on coercive control in relation to Indigenous peoples must be led and driven from an Indigenous holistic lens outside the realms of domestic violence.

The UN recognises that LGBT people must be afforded dignity and human rights (UN Human Rights Council Resolution 17/19) because LGBT people are distinctly different from heterosexual people and CISGendered People in terms of sexual orientation, gender identity and expression (SOGIE). Furthermore, Indigenous people have distinctly diverse and different cultures. Each Indigenous society has LGBT subcultures which are at the intersectionality of Indigenous, SOGIE, and mainstream SOGIE society. However, they are not formally identified in data sets globally. If UNDRIP is to respect the rights of all Indigenous people, then all Indigenous sub populations must be represented in the declaration, including SOGIE.

The 2010 inquiry into family violence, jointly conducted by the Australian Law Reform Commission and the NSW Law Reform Commission, recommended that domestic violence be contextualised as “violent or threatening behaviour, or any other form of behaviour that coerces or controls a family member or causes that family member to be fearful” (ALRC & NSWLRC, 2010, p. 246). Despite the Commissions' recommendation and the clear construction of the definition of domestic and family violence in the Family Law Act 1975 (Cth), civil law definitions of domestic and family violence continue to vary across states and territories.

The Domestic Violence NSW Aboriginal and Torres Strait Islander Women's Steering Committee recommends that the Australian and State and Territory Governments - in consultation with specialist women's and family violence services, and Aboriginal and Torres Strait Islander leaders - establish a consistent national definition of sexual, domestic and family violence.

References

- Australian Bureau of Statistics. (2018, December 6). 4517.0 - Prisoners in Australia, 2018. Australian Bureau of Statistics. <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4517.0Main+Features12018?OpenDocument>
- Australia's National Research Organisation for Women's Safety. (2021). Defining and responding to coercive control: Policy brief (ANROWS Insights, 01/2021). Sydney: ANROWS. <https://www.anrows.org.au/publication/defining-and-responding-to-coercive-control/>
- Our Watch (2018). Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children. <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/09/20231759/Changing-the-picture-Part-2-AA.pdf>
- Chan A., and Payne, J. (2013). Homicide in Australia: 2008-09 to 2009-10 National Homicide Monitoring Program annual report, Australian Institute of Criminology, Canberra, p.20, <https://www.aic.gov.au/publications/mr/mr21>;
- Australian National Research Organisation for Women's Safety, (2019). 'Fast facts: Indigenous family violence': <https://20ian81kynqg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2019/01/Fast-Facts-Indigenous-family-violence.pdf>
- Our Watch, (2018). Changing the picture, Background paper: Understanding violence against Aboriginal and Torres Strait Islander women and their children, <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/09/20231756/Changing-the-picture-Part-1-AA.pdf>
- Mouzos, J and Makkai, T. (2004). Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey (IVAWS), Research and Public Policy Series, No.56, Australian Institute of Criminology, p.30: <https://www.aic.gov.au/publications/rpp/rpp56>
- Australian Productivity Commission, (2011). Overcoming Indigenous Disadvantage: Key Indicators 2011, Fact Sheet Indigenous Men and Women, Commonwealth of Australia, Canberra. <https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2011/key-indicators-2011-factsheet-men-women.pdf>;
- Webster, K. (2016). A preventable burden: Measuring and addressing the prevalence and health impacts of intimate partner violence in Australian women. Sydney: Australian National Research Organisation for Women's Safety.
- Australian Institute of Health and Welfare (2016), Child protection Australia 2014–15, p. b128. Canberra, ACT: Australian Institute of Health and Welfare.
- Aboriginal Family Violence Prevention and Legal Service Victoria (2015), Submission to Victorian Royal Commission into Family Violence. pp. 15–16.
- The National Council to Reduce Violence Against Women and their Children, (2009). The Cost of Violence against Women and their Children: https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf
- Women's Aid (n.d.), What is coercive control?
<https://www.womensaid.org.uk/information%20support/what%20is%20domestic%20abuse/coercive%20control/>