

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 Senate Finance and Public
Administration References Committee inquiry into
domestic violence and gender inequality

31.03.2016

National Family Violence Prevent Legal Services Forum
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Contents

1	Introduction.....	3
2	Executive Summary and recommendations	3
3	Gender inequality contributing to violence against Aboriginal and Torres Strait Islander women	4
	(a) <i>Gender inequality and domestic violence.....</i>	<i>4</i>
	(b) <i>Violence against Aboriginal and Torres Strait Islander women.....</i>	<i>5</i>
	(c) <i>Racial inequality and violence</i>	<i>6</i>
	(d) <i>Negative stereotypes in media and entertainment.....</i>	<i>7</i>
	(e) <i>Intersectional discrimination</i>	<i>8</i>
4	The role of government initiatives in addressing the underlying causes of violence against Aboriginal and Torres Strait Islander women	9
	Appendix 1: Membership and a brief history of National Family Violence Prevention Legal Services Forum.....	11
	<i>About the FVPLS Program.....</i>	<i>11</i>
	Appendix 2: Figure 1, Australian Institute of Health and Welfare table	13

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

1 Introduction

1. The National Family Violence Prevention and Legal Services Forum (National FVPLS Forum) welcomes the inquiry by the Senate Finance and Public Administration References Committee into the role of gender inequality in domestic violence in Australia, and appreciates this opportunity to make a submission. The National FVPLS Forum consents to making this submission public.
2. The National FVPLS Forum was established in May 2012. The goal of the National FVPLS Forum is to work in collaboration across the 14 member Family Violence Prevention Legal Services (FVPLS) organisations to increase access to justice for Aboriginal and Torres Strait Islander victim/survivors of family violence. 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, including sexual assault/abuse. FVPLSs also provide community legal education, and early intervention and prevention activities. See Appendix 1 for more detail on the National FVPLS Forum and FVPLSs.
3. In recognition of our specific and unique expertise, this submission will not seek to address all of the inquiry's terms of reference. Instead it will focus on:
 - Gender inequality contributing to violence against Aboriginal and Torres Strait Islander women (ToR a)
 - The role of government initiatives in addressing the underlying causes of violence against Aboriginal and Torres Strait Islander women (ToR c).

2 Executive Summary and recommendations

1. The National FVPLS Forum supports the recognition of the gendered nature of family violence; however, it is important to recognise that gender inequality exists in a social context that also contains other axes of inequality. In the case of Aboriginal and Torres Strait Islander women, gender inequality often intersects with racial, health and socioeconomic inequalities.
2. The National FVPLS Forum urges the Committee to consider gender inequality in the context of intersectional dimensions of power and violence, especially in relation to experiences of colonisation for Aboriginal and Torres Strait Islander victim/survivors.
3. The National FVPLS Forum therefore recommends that to address gender inequality in the context of Aboriginal family violence, taking into account narratives and stereotypes promoted in education and the media, the government should:
 - a. Acknowledge the intersectional nature of the inequality faced by Aboriginal women and commit to dismantling systemic and institutionalised discrimination, not only on the basis of gender but also on the basis of race.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

- b. Invest in the existing capacity of Aboriginal women leaders and support new and emerging leaders, including through identifying or creating opportunities and platforms for promoting positive perceptions about Aboriginal women.
- c. Partner with the Aboriginal community and with specialist Aboriginal organisations such as FVPLSs to help amplify Aboriginal voices in the national discussion about domestic and family violence.

3 Gender inequality contributing to violence against Aboriginal and Torres Strait Islander women

(a) Gender inequality and domestic violence

4. One in six Australian women has experienced violence from a current or former partner. One in three Australian women will experience violence in their lifetime. Australian Bureau of Statistics data suggests that police were called to at least 53,976 family violence incidents across Australia in 2014, with women being three to four times more likely than men to be assaulted in relation to family violence.¹ At least 79 women were killed as a result of domestic violence in 2015.²
5. These shocking statistics represent the extreme end of a spectrum which begins with disrespect for women and ends with violence against women. Although each woman's experiences are unique, every woman is impacted by gender inequality on some level. A recent international study conducted by Cornell University and Hollaback! found that:
 - Almost all Australian women reported having experienced street harassment in the past year.
 - 88% of Australian women reported having experienced street harassment before the age of 17.
 - 73% reported having been followed by a man or group of men in a way which made them feel unsafe.
 - Over half had been groped by a stranger in the past year.
 - 87% had taken a different route home to avoid being harassed.
 - 69% had not gone out at night to avoid being harassed.
 - 61% avoided specific areas of their towns to avoid being harassed.³
6. The experiences of Australian women reflect a profound lack of respect amongst some sections of the population for women's right to be in a public space without being subjected to physical or verbal harassment. The study found that the impact of this behaviour on women, who often experienced feelings of anger, fear and

¹ Australian Bureau of Statistics, 2015, *Experimental Family and Domestic Violence Statistics*

² Destroy the Joint, 2015, 'Counting Dead Women' project. Available here:
<https://www.facebook.com/notes/destroy-the-joint/counting-dead-women-australia-2015-we-count-every-single-death-due-to-violence-a/934084536639291>

³ Cornell Survey Project 2015, 2015, Street Harassment Statistics in Australia. Available online:
<http://www.ihollaback.org/cornell-international-survey-on-street-harassment/>

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

helplessness as a result, was frequently minimised by others with the “common refrain that women secretly find harassment to be flattering.”⁴

7. This is an example of the direct connection between a lack of respect for women’s voices (the assumption that even when she says she wants it to stop, that’s not what she really wants) and a lack of respect for women’s right to physical safety. When this lack of regard for women’s fundamental equality and right to safety is directed at a stranger in a public place, it manifests as street harassment; when it is directed at a partner or family member in the home, it manifests as domestic violence. In both cases, the root cause is gender inequality.
8. The National FVPLS Forum believes that it must be recognised that family violence in Aboriginal and Torres Strait Islander communities is gendered – just as it is in the mainstream community.⁵ It should also be noted that violence against Aboriginal and Torres Strait Islander women is perpetrated by men from a wide range of cultural backgrounds, not only by Aboriginal or Torres Strait Islander men.
9. Strategies aimed at addressing domestic and family violence which do not incorporate a gender perspective risk unintentionally reinforcing pre-existing imbalances of power between the genders, amplifying the voices of men over those of women.
10. The promotion of gender equality and the empowerment of women is therefore crucial to designing an effective response to domestic violence. However gender is only one determinant of social power, and other social dynamics and imbalances must also be considered. This is particularly important in relation to violence against Aboriginal and Torres Strait Islander women. It is not possible to meaningfully challenge one system of discrimination without addressing others.⁶
11. Challenging multiple systems of discrimination requires multiple forms of knowledge and expertise, and collaboration between many different sectors. This could include inter-departmental working groups, coordinating bodies and holistic wrap-around services such as FVPLS.

(b) *Violence against Aboriginal and Torres Strait Islander women*

12. Aboriginal and Torres Strait Islander women are disproportionately impacted by domestic and family violence. Aboriginal and Torres Strait Islander women are 34 times more likely than other Australian women to be hospitalised for domestic

⁴ Ibid.

⁵ See Family Violence Prevention and Legal Service Victoria, 2015, *Submission to the Victorian Royal Commission into Family Violence*, pp.21.

⁶ Mason, Nicole, 2011, *Leading at the Intersections: An Introduction to the Intersectional Approach Model for Policy and Social Change*, Women of Color Policy Network, pp.7.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

violence-related assaults, and ten times more likely to die due to assault.⁷ They are also more than twice as likely to be hospitalised for domestic-violence related assaults than Aboriginal and Torres Strait Islander men.⁸

13. The table from the Australian Institute of Health and Welfare (Figure 1, Appendix 2) makes the gendered nature of domestic violence painfully apparent. Women and children represent the vast majority of victim/survivors of family violence in Aboriginal communities, just as they do in non-Aboriginal communities. Nationally, 90% of FVPLS members' clients are women. The overwhelming majority of perpetrators, conversely, are male.⁹

(c) *Racial inequality and violence*

14. Gender inequality does not occur in a vacuum. It influences and is influenced by other social dynamics and power relationships, including deep racial inequalities. The trauma of colonisation and subsequent continuing trauma including child removal policies and racial discrimination has contributed to the disadvantage faced by Aboriginal and Torres Strait Islander people in almost all areas of social, political and economic life. Consequently, Aboriginal and Torres Strait Islander people are amongst the most marginalised people in Australian society.
15. In a similar sense, domestic violence also occurs within a context of other kinds of violence:
 - direct violence, which includes physically violent behaviour;
 - structural violence, including social inequality and injustice; and
 - cultural violence, including the attitudes, beliefs and stereotypes which are used to justify the first two kinds of violence.¹⁰

Applying this to the Australian context:

"...direct violence occurs when Aboriginal people are assaulted or murdered, structural violence happens when they die younger and have fewer opportunities in life than other Australians, and cultural violence is when the

⁷ 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>.

⁸ Ibid.

⁹ While there are certainly instances of male victim/survivors, and these should be treated with equal seriousness and concern as female victim/survivors, it is important to note that male victims are a minority of victim/survivors and of these many are children who experience violence from a male perpetrator, often along with their mothers and siblings.

¹⁰ Balvin, Nikola and Yoshihisa Kashima. 2012. Hidden Obstacles to Reconciliation in Australia: The Persistence of Stereotypes, in Balvin, Nikola and Diane Bretherton (eds.), *Peace Psychology in Australia*, pp.203.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

nation's attitudes and stereotypes ignore, justify and normalise such inequities or blame them on the victims."¹¹

16. In the same way that almost all Australian women had experienced sexual harassment, a study of Aboriginal people in Victoria found that almost all Aboriginal people had experienced racism and avoided particular places and situations where they feared racism was likely to occur.¹² In both studies participants indicated that they avoided particular public places for fear of experiencing harassment. This kind of cultural violence has been found to have a strongly negative impact on Aboriginal people's mental and physical wellbeing.¹³

(d) *Negative stereotypes in media and entertainment*

17. Damaging stereotypes in media and entertainment play a role in creating cultural conditions which contribute to verbal and physical violence against Aboriginal people. A smartphone game called *Survival Island 3 - Australia Story 3D* made headlines in January 2016 by encouraging players to bludgeon Aboriginal characters to death as part of the game. The game was pulled from Apple and Google's online stores just days after being released,¹⁴ but the fact that it ever made it onto the (virtual) shelves at all speaks volumes about the tacit acceptance, even endorsement of violence against Aboriginal people in parts of Australia's entertainment culture.
18. Walkley Award-winning Aboriginal journalist Stan Grant has described the Australian media's coverage of Aboriginal issues as "incredibly lazy and incredibly offensive."¹⁵ Grant says that the media

"...have trampled all over our communities... They don't pay us the respect of understanding our history, or our cultures, or our traditions. They report us from the prism of whiteness, they report us through their eyes without trying to understand how the world looks from our side."

19. Silencing is also a form of cultural violence. Aboriginal issues occasionally make the headlines, however this is usually in a controversial or negative light. Aboriginal people and issues are absent from much of Australian media and entertainment. Grant notes this absence of Aboriginal people in mainstream media, observing that:

"the only time [Aboriginal stories] ever get any exposure is through crisis, is through a sense of emergency, is through a sense of failure

¹¹ Ibid.

¹² Ferdinand, Angelina, Yin Paradies and Margaret Kelaher. 2015. Mental health impacts of racial discrimination in Victorian Aboriginal communities. VicHealth, pp.2.

¹³ Ibid.

¹⁴ Hunt, Elle. 16th January 2016. 'Game that rewards players for killing Indigenous Australians pulled from app stores'. The Guardian. Available here: <http://www.theguardian.com/australia-news/2016/jan/16/game-rewarding-players-for-killing-indigenous-australians-prompts-outrage>.

¹⁵ Stan Grant on *Token* [podcast], The Guardian, 16th December 2015. Available here: <http://www.theguardian.com/australia-news/audio/2015/dec/16/token-podcast-the-australian-media-is-incredibly-offensive-to-indigenous-people-stan-grant>.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

somehow, or conflict. They're the entry points... If that is the entry point for coverage of these issues then you will always have this sense of an Indigenous community here, the broader Australian community standing opposite and judging that community... without a proper understanding of the forces that have shaped those communities."¹⁶

20. As Grant says, "The essence of identity, the essence of community, the essence of sovereignty is owning your story."¹⁷ The negative portrayal and erasure of Aboriginal people and Aboriginal issues from Australia's media and entertainment sectors contributes to the exclusion of Aboriginal people from national life, and the silencing of Aboriginal voices in the public arena.

(e) *Intersectional discrimination*

21. As both women and as Aboriginal people, Aboriginal women experience multiple forms of discrimination and marginalisation. In the algebra of power, intersectional discrimination is best understood as a process of multiplication rather than addition. Rather than experiencing sexism and racism as being distinct and separate from one another, the two are often combined to form new and ugly forms of discrimination directed specifically at Aboriginal women.¹⁸
22. A recent high profile example of this are comments by former a Member of Parliament, when he referred to Aboriginal women as "cash cows."¹⁹ This type of commentary taps into a cultural image of Aboriginal people as greedy and welfare dependent,²⁰ and at the same time employing a dehumanising gendered slur.
23. Negative stereotypes about Aboriginal women influence the responses they receive from both individual workers and institutions as a whole. Discrimination against Aboriginal mothers is visible in the shocking overrepresentation of Aboriginal children in out-of-home-care;²¹ discrimination against Aboriginal women in the justice system is visible in the overrepresentation of Aboriginal

¹⁶ Ibid.

¹⁷ Stan Grant on *Token*.

¹⁸ Cornell Survey Project 2015, Street Harassment Statistics in Australia. Available online:

<http://www.ihollaback.org/cornell-international-survey-on-street-harassment/>;

Ferdinand, Angelina, Yin Paradies and Margaret Kelaher. 2015. Mental health impacts of racial discrimination in Victorian Aboriginal communities. VicHealth, pp.2.

¹⁹ Whyte, Sarah, 2015, 'Aboriginal women on welfare are 'cash cows': former MP Gary Johns', *Sydney Morning Herald*, available online: <http://www.smh.com.au/federal-politics/political-news/aboriginal-women-on-welfare-are-cash-cows-former-mp-gary-johns-20150712-gjaf9u.html>

²⁰ Balvin and Kashima, pp.201.

²¹ Australian Institute of Family Studies. 2015. 'Child protection statistics for Aboriginal and Torres Strait Islander children'. Child Family Community Australia Resource Sheet - Australian Institute of Family Studies. Available online: <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

women in prison;²² and discrimination in the public narrative is visible in the fact that these inequities are often framed as being the result of problems with Aboriginal people rather than problems with the system.

24. These damaging false beliefs could have an impact at any stage, from contributing to the violence being committed in the first place to effecting how the justice system responds to it.
25. Gender inequality affects all women, but it does not affect all women equally. The intersection of multiple inequalities creates significantly different lived experiences for women. Serious efforts to address domestic violence must place gender inequality against a wider context of power and multiple forms of inequality, including racial inequalities.

4 The role of government initiatives in addressing the underlying causes of violence against Aboriginal and Torres Strait Islander women

26. Media narratives and public perceptions can influence government policy-making. In the Prime Minister's \$100 million Women's Safety Package, for example, \$21 million which was earmarked for specific measures to help Aboriginal women and communities. Almost all of this money, however, was spent on policing rural and remote communities.
27. The overwhelming emphasis on policing as a response to family violence in Aboriginal communities, as opposed to a more nuanced and diverse range of approaches for non-Aboriginal communities, implicitly views Aboriginal family violence through the lens of the criminal justice system instead of placing it within the wider context of historical and contemporary disadvantage. Effective policing is only one component of what must be a holistic effort to address the causes of family violence in Aboriginal communities.
28. Widespread distrust of authorities, as a valid and understandable response to abuses of power stretching from colonisation to the present day, along with myriad other barriers means that top-down approaches are highly unlikely to work in Aboriginal communities.²³ Rather, efforts to address family violence need to be bottom-up and driven by communities and their organisations themselves, with appropriate assistance from government.
29. Family violence in Aboriginal communities cannot be addressed without the meaningful engagement of Aboriginal women. Aboriginal women should not be 'included' in a process which is fundamentally about them and their wellbeing; they should lead it.

²² Brennan, Bridget. 26th November 2015. 'Lawyers, advocates push for government plan to address soaring Indigenous women incarceration rates'. Australian Broadcasting Corporation. Available online: <http://www.abc.net.au/news/2015-11-26/advocates-push-for-plan-curb-incarceration-of-indigenous-women/6976816>; Victorian Equal Opportunity and Human Rights Commission. 2012. 'Unfinished business: Koori women and the justice system', pp.97.

²³ Indigenous Legal Needs Project. 2013. Submission to Productivity Commission's Inquiry into Access to Justice Arrangements, pp.5-11.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee inquiry into
domestic violence and gender inequality*

30. The National FVPLS Forum recommends that to address gender inequality in the context of Aboriginal family violence, taking into account narratives and stereotypes promoted in education and the media, the government should:

- Acknowledge the intersectional nature of the inequality faced by Aboriginal women and commit to dismantling systemic and institutionalised discrimination, not only on the basis of gender but also on the basis of race.
- Invest in the existing capacity of Aboriginal women leaders and support new and emerging leaders, including through identifying or creating opportunities and platforms for promoting positive perceptions about Aboriginal women.
- Partner with the Aboriginal community and with specialist Aboriginal organisations such as FVPLSs to help amplify Aboriginal voices in the national discussion about domestic and family violence.

National Family Violence Prevent Legal Services Forum
*Submission to the Senate Finance and Public Administration References Committee for inquiry into
domestic violence and gender inequality*

Appendix 1: Membership and a brief history of National Family Violence Prevention Legal Services Forum

The National Forum was established in May 2012. The goal of the National Forum is to work in collaboration across various FVPLSs to increase access to justice for Aboriginal and Torres Strait Islander victim/survivors of family violence.

The National Forum has its own Charter, is led by an elected National Convenor and supported by a Secretariat. Members are represented by their CEO/Coordinator (or delegates) and have worked together to develop tools for capacity building, good governance, training and evaluation and data collection.

National Forum members are:

- Aboriginal Family Violence Prevention and Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)
- Aboriginal Family Legal Service Southern Queensland (Roma)
- Binaal Billa Family Violence Prevention Legal Service (Forbes)
- Central Australian Aboriginal Family Legal Unit Aboriginal Corporation (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 Violence Legal Service (Darwin, Katherine)
- 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)
- Thiyama-li Family Violence Service Inc. NSW (Moree HO, Bourke, Walgett)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill)
- Western Australia Family Violence Legal Service (Perth HO, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland)

[About the FVPLS Program](#)

FVPLSs provide frontline legal assistance services, early intervention/prevention and community legal education activities to Aboriginal and Torres Strait Islander victim/survivors of family violence. FVPLSs were established over 16 years ago, in recognition of:

- The gap in access to legal services for Aboriginal and Torres Strait Islander victim/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.

National Family Violence Prevent Legal Services Forum

*Submission to the Senate Finance and Public Administration References Committee for inquiry into
domestic violence and gender inequality*

The Australian Government funding for FVPLS in over 31 rural and remote locations will cease in June 2015. Any future funding is subject to the outcomes of a competitive tender process under the Indigenous Advancement Strategy. FVPLS Services will not be notified of the outcomes of the tender until March 2015.

FVPLSs have adopted holistic, wrap-around service delivery models that prioritise legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face.

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 victim/survivors of family violence. FVPLS lawyers provide legal assistance in the areas of family violence law, child protection, family law and victim/survivors of crime assistance.

FVPLSs also provide culturally safe community legal education and early intervention/prevention activities. 90% of FVPLS clients are Aboriginal and Torres Strait Islander women and children. Family violence is complex and the issues our clients face are complex. As well as family violence driven homelessness, our clients live with intergenerational trauma, removal of children, discrimination, poverty, mental health issues, disability, lower levels of literacy and numeracy, as well as a range of other cultural, legal and non-legal issues.

National Family Violence Prevent Legal Services Forum

Submission to the Senate Finance and Public Administration References Committee for inquiry into domestic violence and gender inequality

Appendix 2: Figure 1, Australian Institute of Health and Welfare table

Table 4A.11.22 Non-fatal hospitalisation rate (per 100 000 population) for family violence related assaults, by Indigenous status, by sex and age, 2012-13 (a), (b)

Age group (years)	Indigenous			Non-Indigenous (c)			Rate ratio (d)		
	Male	Female	People	Male	Female	People	Male	Female	People
	0-14	58.3	77.4	67.7	6.7	6.3	6.5	8.7	12.3
15-24	241.0	754.4	490.5	11.0	34.1	22.3	21.8	22.2	22.0
25-34	494.3	1757.6	1130.4	12.1	37.7	24.8	40.8	46.7	45.6
35-44	538.7	1471.4	1022.1	13.7	32.7	23.3	39.3	45.0	43.9
45-54	434.1	762.5	604.9	13.4	23.3	18.4	32.5	32.8	33.0
55-64	175.5	208.5	192.5	7.8	9.9	8.9	22.4	21.0	21.6
65+	72.2	80.3	76.7	6.0	9.0	7.7	12.0	8.9	10.0
All ages (e)	284.1	743.2	517.3	10.0	21.8	15.9	28.3	34.2	32.6

(a) Data are from public and private hospitals in all jurisdictions.

(b) Non-fatal refers to records where the mode of separation was not equal to 'died'. Family violence related assaults include assaults by a spouse/domestic partner, parent or other family member. These are the fifth digit details of ICD-10-AM codes for assault X85-Y09, where the relationship of the perpetrator to the victim is spouse/domestic partner, 0: parent, 1: other family member 2. Hospitalisations were based on ICD-10-AM classification of diseases (International Statistical Classification of Diseases and Related Health Problems, 10th Revision, Australian Modification).

(c) Non-Indigenous includes hospitalisations where Indigenous status was recorded as non-Indigenous and for WA only where Indigenous status was not stated.

(d) Rate ratio is the age standardised Indigenous hospitalisation rate divided by the non-Indigenous Australians' hospitalisation rate.

(e) Rates per 100 000 population, directly age standardised using the 2001 Australian population.

Source: AIHW (unpublished) National Hospital Morbidity Database.

Figure 1 The Australian Productivity Commission, Overcoming Indigenous Disadvantage - Key Indicators 2014, 2014, page 4.93, table 4A.11.22