



26<sup>th</sup> January 2017

Ms Dubravka Simonovic  
UN Special Rapporteur on Violence against  
Women By email: [vaw@ohchr.org](mailto:vaw@ohchr.org)

### **Special Rapporteur on Violence Against Women -NATSIWA**

#### **ABOUT NATSIWA**

The National Aboriginal and Torres Strait Islander Women's Alliance is one of five National Women's Alliances, with funding from the Commonwealth Prime Minister and Cabinet's Office for Women.

Established in 2009, and incorporated in March 2013, the National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) proudly works to empower Aboriginal and Torres Strait Islander women to have a strong and effective voice in the domestic and international policy advocacy process.

NATSIWA's vision is as follows:

*'To protect the health, human rights and fundamental freedoms that are significant to Aboriginal & Torres Strait Islander Women and Children, through cultural preservation, health education and coalition building'.*

Since incorporation NATSIWA's Membership now includes 524 individual Aboriginal & Torres Strait Islander (hereafter 'Aboriginal') women and 14 Aboriginal organisations across Australia.

Our following Guiding Principles are cognisant of the needs, health, wellbeing and development, and aspirations of Aboriginal and Torres Strait Islander Women and Children.

They are as follows:

- Aboriginal & Torres Strait Islander strengths;
- Recognition of the centrality of kinship;
- The need for cultural understanding;
- The impact of history in trauma and loss;
- The impact of racism and stigma;
- Recognition of different needs of communities;

- The recognition of human rights and social justice;
- Universal access to basic health care, housing and education; &
- Equitable needs based funding.

Please visit [www.natsiwa.org.au](http://www.natsiwa.org.au) to download NATSIWA's Strategic Framework.

It is with much pleasure that NATSIWA provide this submission to the UN Special Rapporteur on Violence against Women

**Yours Faithfully**

**Tracey Dillon**  
**Chief Executive Officer**

## Contributing Factors to Domestic Violence in Aboriginal and Torres Strait Islander Families and Communities

### *Gender Inequality*

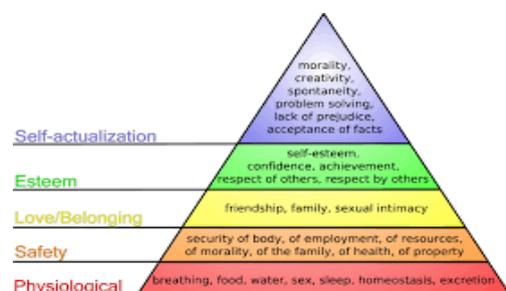
Indigenous women experience significant levels of disadvantage and discrimination due to the interaction between racism, gender and colonial legacies of dispossession and cultural pressure.

Australian women still experience sex discrimination daily, especially Aboriginal & Torres Strait Islander women. Aboriginal & Torres Strait Islander women are subjected to multiple forms of discrimination. Aboriginal & Torres Strait Islander society and gender relations prior to British occupation were more balanced and equal than western society. Aboriginal & Torres Strait Islander men and women had their own roles in society but when it came to decision-making this was more equal.

Gender inequality affects women in all areas especially Aboriginal & Torres Strait Islander women. The nature, history and context of family violence in Aboriginal and Torres Strait Islander communities is different to domestic violence experienced in mainstream communities and populations. Aboriginal and Torres Strait Islander people continue to suffer the intergenerational effects of past welfare practices including the forced removal of their children and dislocation from their communities, country and culture, as well as experiencing higher levels of poverty and social disadvantage compared to other Australians. The combined effects of past practices and current disadvantages present extreme challenges to families.

These historical and current events and issues impact the day to day existence and well-being of all Aboriginal and Torres Strait Islander women, and racism and gender inequalities compound these. In the course of undertaking consultations in relation to this paper the fundamental issues pertaining to need and daily survival of women and their families were repeatedly identified, and can be related to Maslow's hierarchy of needs.

Many of our women struggle to ensure the physiological and safety issues for their families, that they don't have the time or energy to unravel the relationship between their struggles and gender inequality. However, racist attitudes feature highly here when accessing services, wanting to rent a house, getting and holding a job or receiving a promotion.



## ***Legal framework***

The National Aboriginal & Torres Strait Islander Women's Alliance supports the National Family Violence Prevention Legal Services (NFVPLS) and the legal issues and the remedies presented in its submission to Dr Simonovic. NATSIWA recognizes the expertise that the NFVPLS provides to the sector and to Aboriginal women. It provides free legal advice, referral to ongoing casework, and court representation to support women who are victims/survivors of family violence and/or sexual assault who are unlikely to know the system or to access the system.

NATSIWA also acknowledges the failings of the justice system and the poor outcomes for Aboriginal women.

FVPLSs frontline experience informs us that the State, through its Child Protection authorities, often adopts an excessive and inappropriately punitive and judgmental approach towards Aboriginal victims/survivors of family violence that blames victims for exposing their children to violence, rather than supporting them to safely care for their children and live free from violence. Across Australia, Aboriginal children now account for almost 35% of all children in care despite comprising only 4.4% of the nation's child population. On this current trajectory, these rates are predicted to triple by 2035 <sup>(1)</sup>.

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

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

Aboriginal women have been identified as the most legally disadvantaged group in Australia<sup>13</sup> and the protection of their rights must be prioritised by ensuring access to appropriately funded, culturally safe, legal assistance services. One of the most substantial barriers to accessing justice is a mistrust of the justice system, generated and maintained through historical and current entrenched systemic discrimination (as discussed above). For example, alienating and culturally insensitive court processes and police responses that disbelieve minimise or trivialise violence against Aboriginal women. <sup>(2)</sup>

### ***Racial Discrimination***

The Australian Government is holding a joint Parliamentary Inquiry to decide whether the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) (ACT) imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed; and whether the handling of complaints made to the Australian Human Rights Commission (“the Commission”) under the Australian Human Rights Commission Act 1986 (Cth) should be reformed. A report will be provided to Parliament by 28<sup>th</sup> February 2017.

NATSIWA has grave concerns about how changes to the Racial Discrimination Act (1975) will impact on Aboriginal and Torres Strait Islander women, in particular women experiencing domestic violence.

Before the Racial Discrimination Act there were no laws which protected any person or group from being subjected to racial discrimination. There was no right of reply or protection under the law or the right to legal recourse. Criminal codes only dealt with issues pertaining but not limited to physical violence, theft, fraud and common law dealt with contracts such as marriage and employment. A legislative Act was required to provide protection from racial discrimination

Research that was conducted in 2008 and 2011 identified that racial issues were still current.

The Challenging Racism research <sup>(3)</sup> found:

- approximately 85% of respondents believe that racism is a current issue in Australia
- approximately 20% of respondents had experienced forms of race-hate talk (verbal abuse, name-calling, racial slurs, offensive gestures etc.)
- approximately 11% of respondents identified as having experienced race-based exclusion from their workplaces and/or social activities
- 7% of respondents identified as having experienced unfair treatment based on their race
- 6% of respondents reported that they had experienced physical attacks based on their race <sup>(3)</sup>

The Racial Discrimination Act endeavored to ensure that Australians would be treated equally regardless of their ethnicity, background or race. Landlords for example could not discriminate on the grounds of race. The Act identifies that it is unlawful to insult, humiliate or offend persons because of their race. The Act also protects people on internet and social media.

The Racial Discrimination Act has provided the wider Australian community with a moral compass, as it holds people and organisations accountable for acts of racial discrimination and vilification.

Since its inception the Act has been debated and challenged in parliament and in more recent times by media. The argument is that it stifles the freedom of speech, but as a society and a country that values tolerance and freedom from racial oppression, we need to ensure we maintain our moral compass.

### ***Negative Stereotyping and the effects on DV***

It is well recognised that there has been stereotyping of different races. Much of this stereotyping has been negative and this has been true for Aboriginal and Torres Strait Islander people. Many myths have been accepted as factual. We have all heard statements for example that refugees are paid more than our aged pensioners.

#### **Case Study**

During survey consultations NATSIWA women noted that their past experience regarding members of the police force say, when called to a domestic, 'it's only that Aboriginal family'. A support worker experienced Aboriginal women being told there were no houses to rent, only to find moments later a non Indigenous women being afford several to consider by the same real estate. The support worker said it was also common practice for Aboriginal women seeking assistance for emergency assistance from church charities to be asked a myriad of questions as to the minimal questions asked of a non Indigenous woman in the same situation. There has always been limited Aboriginal and Torres Strait Island specific services for women, so our women have faced additional shame by having to tell their stories to workers in mainstream services. Aboriginal and Torres Strait Islander women in crisis were further traumatised by the treatment they received from services that were meant to assist and protect.

In time women, and their support workers, became more familiar of their rights under the Racial Discrimination Act (1975. Because of the Act many of these services were challenged and called to account for their practices. A complaint regarding one of the estate agencies was taken to HEROC and other services were held accountable for their delivery of services to our women.

It is a concern that if Australia were to abolish 18C of the ACT to appease a few members of society. Thus resulting in uncensored freedom of speech without social conscience or consequence, with discriminative cultures within service providers will not be challenged. The repercussions for hundreds of Aboriginal and Torres Strait Island women and children escaping domestic violence will cause additional trauma.

The introduction of paperless arrests without charge in the NT has highlighted the negative stereotyping. ABC news reported;

‘Collins’s agency has launched a High Court challenge to the law. The Human Rights Law Centre, a non-government organisation involved in the challenge says the law was used more than 700 times in the first three months, with three-quarters of paperless arrests applied to Indigenous people. Even before the new law came into effect, young Indigenous people comprised 96 per cent of those aged between ten and seventeen in detention in the Northern Territory, according to Amnesty, more than double their proportion of that age group’s population.’<sup>(4)</sup>

Former policeman John Elferink, the NT attorney-general, argued that the new arrest law relieves a “burden on our police officers.” He told the ABC, “Unfortunately paperwork, and excessive amounts of paperwork, does affect our police.” Elferink blamed high rates of Indigenous incarceration on what he called the “lifestyles” of Aboriginal people.

Our country has high ranking persons, not only in the NT, such as John Elferink stereotyping a race, under the guise of the law; this will become more common if we abandon 18C. As demonstrated stereotyping is prevalent within the services that are meant to provide protection, thus further victimizing.

## **WOMEN AND INCARCERATION**

NATSIWA is also alarmed by the high rates of Aboriginal women in the prison system agree with Sister’s Inside CEO Debbie Kilroy that “Indigenous women are currently the most over-represented population in ...Australian prisons.

According to the Australian Bureau of Statistics “The proportion of Aboriginal and Torres Strait Islander male prisoners increased by 3%....(whilst) The proportion of Aboriginal and Torres Strait Islander female prisoners increased by 20% between June 2011 and June 2012...the non Indigenous female prisoner population increased by 3%. Australian Bureau of Statistics, 2012, Prisoners in Australia, 2012 (cat..no. 4517.0) [www.abs.gov.au](http://www.abs.gov.au).<sup>(5)</sup>

NATSIWA agrees with Debbie Kilroy that "...this is no longer a population which can be ignored or subsumed under either "Indigenous offender" policy or "Female offender" policy. The unique needs of Indigenous women who are involved in the criminal justice system must be considered and address". <sup>(6)</sup>

NATSIWA wants to ensure that the NFVPLS, Aboriginal Legal Services, and other key stakeholders are closely involved in policy development and program improvements for Aboriginal women in at risk of being incarcerated or who are incarcerated.

### Domestic Violence Statistics Overview

Aboriginal and Torres Strait Islander women are

**5** TIMES MORE LIKELY to be **victims of homicide** than other Australian women



of these homicides are related to **family violence**

(7)

Aboriginal and Torres Strait Islander women are

**5** TIMES AS LIKELY to experience **physical violence** and **3** TIMES AS LIKELY to experience **sexual violence**

than other Australian women in the previous year



Aboriginal and Torres Strait Islander women are

**35** TIMES MORE LIKELY to be **hospitalised** due to **family violence related assaults** than other Australian women



Without intervention, the cost of violence perpetrated against Aboriginal and Torres Strait Islander women is estimated to be

**\$2,200,000,000**

in 2021-2022, including costs associated with



**pain, suffering, premature death, and health costs**

(7)

## **Challenges and Strategies to Addressing Domestic and Family Violence**

In 2009 the Labor government supported a new national representative body for Aboriginal Australians. The National Congress of Australia's First Peoples a self-determining body designed by Aboriginal and Torres Strait Islander peoples was a short lived representative group that was to provide leadership for Aboriginal and Torres Strait Islander peoples.

Leaving Aboriginal & Torres Strait Islander peoples in Australia without a peak representative body puts Aboriginal & Torres Strait Islander women marginalized even more without this target group having a say in policy and program design.

Members have expressly mentioned the lack of leadership of Aboriginal communities nationally. With the demise of the Aboriginal & Torres Strait Islander Commission (1990 – 2005) and now the defunding of the National Aboriginal First Peoples of Australia Congress, Aboriginal and Torres Strait Islander peoples rely upon a Ministers advisory committee to give advice on a nation that still has its first peoples' living in third world conditions. NATSIWA recommends that the government support and increase funding to peak Aboriginal and Torres Strait Islander organisations, instead of reducing funding. If not, the concerns as raised by people at the grass roots will continue to escalate.

It would be encouraged in future to have a government bi-partisan agreement that will see the goals of any future Aboriginal body come to fruition and provide leadership to empowering Aboriginal & Torres Strait Islander peoples advance in Australia; especially women from this target group.

It is critical that a huge display of leadership is required from government and Aboriginal communities' to drive the success of any measures adopted to reduce the levels of violence. The limited data available supports the need for a collaborative approach from all sectors and community.

Early intervention and prevention must be identified as a priority area to address Violence Against Women. The preventative measures must reflect a complex understanding of prevention that moves beyond primary prevention. Efforts in prevention need to be appropriate to the interventions and responses across the life cycle, with a particular focus on early intervention and the role that schools, Aboriginal community controlled health organisations and other sectors can play in developing resilience, and the right protective factors.

It is important that we properly assess early intervention and prevention programs to maximise success. Having better integrated responses to issues of complexity like community attitudes to Aboriginal people especially stereotypical views of the Aboriginal male and the wide spread views of all females including Aboriginal females that they "...they asked for it", require better understanding and public education. Proper, planned evaluation measures must accompany any future campaigns.

The key to effectively reducing the risk and threat of violence is in striking an adequate balance between prevention and treatment. If there is to be a paradigm shift towards that of early intervention and prevention, there must remain a balance with properly-resourced ongoing therapeutic assistance.

Aboriginal and Torres Strait Islander data is deficient and could be improved to determine the effectiveness of services. Largely because of a lack of time, skills and resources to enable those providing services to undertake follow- up, and other data collection activities that enhances research and analysis.

Successes of any programs or policy rely heavily upon government support and resourcing. A national strategy incorporating monitoring and evaluation is vital to the subsequent development of effective policies and initiatives for Aboriginal & Torres Strait Islander service delivery improvements. An evaluation framework should have been incorporated from the outset to any funded organisations receiving funds for Aboriginal & Torres Strait Islander peoples so that appropriate data collection is a key element of any new plan. As such, NATSIWA recommends that an evaluation framework, performance indicators and an implementation plan be incorporated into any future plans.

The evaluation framework must detail from the outset how the effectiveness of the plan initiatives will be assessed merely measuring progress against action items is not sufficient to inform future policy and program development.

As there are a wide array of services across many systems that address family and domestic violence in communities such as social services, police, the justice system, crisis services, sexual assault centres, family violence teams, men sheds, legal services and Aboriginal community controlled organisations funding models must accommodate existing and future changes in services' operating environments, that allows agencies to respond to emerging needs and trends that adequately capture the work undertaken by these services are vital. NATSIWA would like to see further cooperation between government, domestic and family violence agencies, sexual assault, Aboriginal Community Controlled Organisations,

professional medical bodies, specialist psychiatrists, psychologists, social workers, universities; legal services, to provide assessment and treatment services focused on individuals with problem behaviors and includes violence against women and for police in relation to training for its workforce.

Training frontline workers in best practices, early intervention and preventative action, risk management, as well as in a tertiary setting is vital. Undergraduate teaching in social sciences, allied health professions, medicine, legal, and policing must give greater emphasis to social and behavioral problem solving, trauma from sexual abuse, family violence, and the issues associated with colonisation. Incentives for these students and established practitioners are required, and could involve the establishment of a scholarship scheme for vocational studies and/or post graduate studies in the relevant field and associated with family and domestic violence.

The implications of a growing Aboriginal population are the concern for intergenerational violence continuing into the next generation. There is a need for some research to indent implications particularly in terms of demand for early intervention and preventative programs at birth and in the education system.

And more recently it has been noted from the health sector that the epidemic in ICE is rife within our communities and it has a huge effect upon violence in Aboriginal families. The alcohol and drug sector needs to fund more Aboriginal alcohol and drug programs nationally. Otherwise this again greatly affects women in the community having to protect themselves and their children.

(1) Family Matters Report 2016 " Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal" Available: [http://www.familymatters.org.au/wp-content/uploads/2016/12/Family\\_Matters\\_Report\\_2016.pdf](http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf)

(2) 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.

(3) Challenging Racism Project. At: [http://www.uws.edu.au/social\\_sciences/soss/research/challenging\\_racism/findings\\_by\\_region](http://www.uws.edu.au/social_sciences/soss/research/challenging_racism/findings_by_region) (viewed 27 November 2011). The project was based on random phone interviews with 12,500 people.

Kevin Dunn et al, Challenging Racism: the anti-racism research project, 2008 Attitudes to cultural diversity, old racisms and recognition of racism, state level comparisons (opens in new window), 4Rs Conference (University of Technology, Sydney) 30 Sept - 3 Oct 2008.

(4) <http://www.abc.net.au/news/2015-03-31/northern-territorypaperless-arrests-regime-challenged-high-court/6363294>

(5) [www.abs.gov.au](http://www.abs.gov.au).

(6) Sister's Inside – Debbie Kilroy The over-representation of Aboriginal and Torres Strait Islander women in prison.

<http://www.sistersinside.com.au/media/Papers/The%20Stringer%20April%202013%20Over%20Representation%20of%20Aborigin al%20Women%20in%20Prison.pdf>

(7) Our Watch –Reporting on Family Violence in Aboriginal and Torres Strait Islander Communities –Sept 2014

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