



NATIONAL ABORIGINAL & TORRES STRAIT ISLANDER WOMEN'S ALLIANCE

SUBMISSION

South Australian Government's Domestic Violence Discussion Paper

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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 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 to download NATSIWA's Strategic Framework.

It is with much pleasure that NATSIWA provide the South Australian Government's *Domestic Violence Discussion Paper* this brief submission.

Discussion Paper

The South Australian Government's *Domestic Violence Discussion Paper* shines a light on the extent of domestic violence in our state and encourages the community to provide its views, to inform our future responses to this important issue.

The Discussion Paper paints a picture of domestic violence in South Australia and the work we are currently doing to address it.

Eight topics for community consideration and discussion are also introduced, including potential changes to the way domestic violence is handled:

1. Domestic Violence Disclosure Scheme

Who should be able to find out about someone's history of domestic violence offending? How should this scheme work?

2. Expiry Dates on Intervention Orders

Should intervention orders (previously restraining orders) be able to expire?

3. Comprehensive Collection of Data

What is the best way to ensure that accurate data relating to domestic violence is collected?

4. Allowing Video Evidence

Should police video recordings from incidents be admissible as evidence at trial?

5. Confidentiality

Should changes be made to improve the confidentiality in court of medical and counselling records?

6. Drug and Alcohol Treatment

Should the courts send domestic violence offenders to be assessed for drug and alcohol problems?

7. Housing and Homelessness Service Priorities

How can we best assist victims of domestic violence who are facing homelessness?

8. Fostering Supportive Environments

How can we assist domestic violence victims to seek support in the workplace and other environments?

BACKGROUND

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 & 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.

This was aptly described in the following article/text by Carol Thomas and Joanne Selfe (www.aic.gov.au/media_library/publications/proceedings/21/thomas.) who stated:

“The white men arrived and so too did a white value system which saw a different type of person (that is, white and male), placed at the top of the ladder. Along with their racist, pre-conceived notions of Aboriginal people, they brought with them a new legal system, incredible levels of uncontrolled violence and a belief that women did not have the same importance or significance to society as men. In general, they attempted to re-create what they had left behind: a society which did not function particularly well, and which included notions based on those who this society considered deserving and those considered undeserving. Aboriginal people fell into the category “undeserving”. It has been easy for the new white population to assume that Aboriginal women were not equally important to Aboriginal men. It was, and continues to be, easiest for non-Aboriginal Australia to force its own sexist and racist value system upon the indigenous people of this country.”

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.

From discussions with our members regarding DV and issues pertaining to disclosure the membership recommended;

- That any initiatives or programs developed out of the Discussion Paper have strict protocols, guidelines and are adequately funded.
- That whilst considering these strategies there is a multi-dimensional approach that factors in domestic and family violence that involves housing crisis and affordable housing; institutions such as government, education, policing, justice etc. which encompass those coming into contact with victims and perpetrators at the coal face as well as a policy level.
- That more women victims of Domestic Violence are involved in development of policy and

implementation of any strategies.

- And of vital importance that men are involved in all initiatives in reducing violence.

The service providers and governments who provide services and develop policy would fare well if they understood Aboriginal society and how it operates differently from white society. When it comes to this scourge of violence in our communities it needs to be known that answers lie within communities and how they operate. The power system of the western world is different to Aboriginal society constructs. Aboriginal people relate to each other from a collective manner as was practiced many years prior. When a community experiences violence there needs to be commitment from members of the family or the community to solve these issues. There are some in our community who would not want to do this openly, but we need to work with our families/communities.

Discussion with NATSIWA's South Australian membership revolved around increasing women's safety, security, health and wellbeing, and questions asked were adapted from the SA Discussion Paper Survey on DV Disclosure. It was noted by members that incidences, victims and perpetrators of Domestic Violence is common knowledge within most communities. The connections and communication between communities also means that when people relocate their DV history will come to light. The members felt that DV Disclosure was important on the whole, as the additional policies and procedures that would accompany this policy would strengthen the public, legal and DV services perception and response to DV.

Age Range of those surveyed

The women survey ranged in age from 30-59

All resided in urban areas.

Past experience with Domestic Violence

All of those surveyed knew of others who were victims of Domestic Violence. 70% of those surveyed had experienced DV as a child living in a DV home, they noted that their first intimate relationship as adults were also violent. Those who had noted DV relationships had managed to leave these. For some it was much harder than others depending on access to family support, the response of the legal system and access to services. All of those surveyed noted they knew perpetrators, either directly or indirectly and all thought Domestic Violence is a very important issue.

D 59 yrs stated 'It affects not only the couple and their children, but also the extended family and the community. It effects the kids schooling and people's health.'

What should be considered when deciding whether to disclose information to a third party.

When considering whether to disclose information to a third party person, our members consulted were very apprehensive about how this information could be used. It was discussed that if this information were supplied to the intimate partner there would need to be very strict legislation regarding the sharing of that information with others for example it should be limited for use only for the purpose of legal proceedings such as Intervention Order's or court evidence of prior history. To provide this information to a parent of a child under 21 years or the carer of a disabled person should also only be done under the supervision or direction of legal representative such as a police officer to circumvent any vigilante actions.

Any data base containing such information should only be accessed by police or under court order

S 45 yrs. stated; "if there is a data base it should be a national data which should be accessed by police only or under court order."

Should the DVDS apply only to people in a current intimate relationship, or to both current and former intimate relationships?

When this question was asked some thought it should apply to current partners but former partners was questionable. On further examination the safety of children was raised as a reason why former partners should be able to access this information. Parents of children who have regular access with a parent who has a history of violence, need to be able to ascertain if their child is being exposed to further violence in any subsequent relationships.

Should there be an age limit for both the applicant and the subject?

Those applying for disclosure of information, should be over the age of consent. If persons are old enough to legally have an intimate relationship, they should be eligible to apply for the information.

What offences should be included when a disclosure is made? Should they relate to domestic violence convictions only, or should convictions for other offences be included?

Our members agreed that offences disclosed should be related to assaults, DV associated with

drugs and alcohol. They believed that issues pertaining to drugs and alcohol can often exacerbate DV and assaults and intimate partners should be informed if there are past incidents or patterns of behavior, even multiple allegations. A data base that applies to DV should only have incidents recorded pertaining to DV. Drug and Alcohol offences should only be disclosed if they are noted in the DV offence.

V 41 yrs. stated: "Drug and alcohol offences that are related to assaults or DV should be disclosed. Drug and alcohol not related to violence, e.g. driving under the influence or possession should not be disclosed".

What offences should be excluded? Should spent convictions or juvenile convictions be disclosed?

Concerns were raised that a person's criminal history should have a limitation on it. Juvenile offences and offences that are more than 10 years old should not be disclosed. DV and assault priors should only be released under tight criteria. If there were data base being used in other countries that hold information pertaining to past offences, then this should be explored.

D 59 yrs. stated; 'Yes, juvenile offences and those pertaining to theft, and any crime older than 10 years should be excluded'.

Should intervention orders, either current or prior, be included?

There was a resounding yes from all those surveyed. All intervention orders whether interim or otherwise should be disclosed. A history of repeated interim Intervention Order can also show a pattern of behavior.

Should courts be able to put an expiry date on an intervention order?

What is an appropriate expiry term?

The respondents considered that a perpetrator would have to demonstrate they are no longer a threat. There is no guarantee of future inappropriate behavior such as stalking, or harassment especially if the application to rescind is within the first two-year period. A 5-year end date if no further assault, intimidation or harassment either directly or indirectly through a third party has not been committed. The Victim should never be permitted to lift it the only way it should be lifted prior to the 5 year term and should be through special application through the court.

V 41 yrs. stated; "the victim should not be allowed to lift it...if appointed by a court then must be removed by a court through application".

How important is it to label or flag an offence as being related to domestic violence? How should this data be used once it is collected?

This raised more questions for the respondents. They saw that it would be a valuable thing to have, but were concerned that it may influence situations e.g. Police called to a domestic may have pre conceived assumptions due to the flag. To flag past domestic violence is very important, but this can only be done if there is a uniformed approach developed to collect the data. How this would happen is unsure and who would get the flag Police?

D 59yrs stated: "a uniformed approach must be developed to collect the data and strict protocols on how much or what is actually flagged".

Which government agencies should be expected to flag domestic violence offending?

Police and mandated DV and children services should flag domestic violence offending.

Should police video recordings, taken using body cameras at the incident, be admissible as evidence at trial?

The respondents agreed that police video recordings should be admissible evidence at trial. The responsibility must be taken from the victim so therefore the evidence is supplied by Police and the victim should not be permitted to withdraw their statements. The charge should be instigated by the police on evidence and if the victim is a non-compliant witness their statement and the police video evidence can be tendered to the court- thus not wasting the courts time and protecting the victim. The onus of charge must not be placed on the victim.

Should domestic violence counseling records be exempt from being disclosed in legal proceedings, in the same way as they would in a sexual assault case?

During discussions counseling records being subpoenaed brought up many concerns. The respondents were split so no conclusive yes or no to this question can be offered. The discussions had with counselors are not necessarily of a legal nature, and it was thought that clients may be reluctant to reveal issues if confidentiality is at risk. It was felt that client counselor privilege confidentiality should be maintained. If this were to be considered in the DV

disclosure Act then, it should have very strict criteria i.e. there should be discussion between the counsel for the victim and the judge to ascertain the necessity of the evidence and the potential risks.

S 45 yrs. stated: "to know your conversations could be revealed inhibits getting confidence".

When an intervention order is issued, should it be mandatory for the subject be assessed for drug and alcohol abuse, to determine an appropriate intervention program?

Drugs and alcohol affect a person's judgement and behavior. Drugs and alcohol can be one of the contributing factors to domestic violence. The problem is that while the courts may recommend or order people to undergo a drug and alcohol program there are few around and it's almost impossible to get into rehabilitation programs. Rehabilitation programs must be extended to address healthy respectful relationships.

S 45 yrs stated: "drug and alcohol programs if and when they are available - none at present".

Aboriginal women residing in regional and remote communities are particularly vulnerable to domestic and family violence. What are views on the way services are delivered in these areas? How can we provide better support?

In regional and remote areas there is not enough emergency accommodation, and the ones in the city are always full. There needs to be more education about prevention and healthy respectful relationships. Aboriginal communities also have the added burden of high rates of incarceration and deaths in custody, so much more research is needed in this area. We also need more men's programs. Men often know what is happening but they have cultural obligations, therefore communities need to develop their own strategies to address this.

A 55 yrs. stated: "Not enough emergency accommodation. More education needed about prevention. We have the added burden of high rates of incarceration and deaths in custody- so much more work is needed here".

Do you think that domestic violence should be a ground of discrimination? What potential issues need to be considered?

While the members thought that people should feel safe, they also thought that people need a second chance. Police checks should alert an employer to the DV history. This would then allow the discussion to take place between the employer and employee. The employee must understand and have read the workplace policies on DV. This would prevent any persons with a violent background being in a role where intimidation and bullying may occur. Police checks must happen from the top down and include Boards of organisations

Do you think workplace policies and guidelines can offer effective support for domestic violence victims? If yes, what should they include?

The members did not know of any workplaces that had DV policies. They agreed that all workplaces should have them and they should provide the victim with time off to attend court or meetings with police or solicitors. Employers should ensure that protocols are in place so that if the perpetrator turns up they have steps to follow to keep everyone safe. The policy must ensure that the rights and privacy of the victim are protected.

Workplaces could make special allowances on extended sick leave on a case by case basis.

V 41 yrs. stated: ". Yes, they should ensure that protocols are in place so that if the perpetrator turns up, everyone knows the steps to follow to keep everyone safe.

D 59 yrs. stated: "This would be very difficult to write in a way the protects the rights and privacy of all particularly the victim".

The role of government

NATSIWA has noted the following points in earlier submissions but felt they still applied here.

The Australia Government developed a national plan to prevent violence against women which is often highly commended by other countries. However, from respondents who utilize the system say it still needs some work.

- The domestic violence plan should be seen through a cultural lens. That is, ensuring that crisis and service delivery is culturally appropriate and mainstream services should ensure this type of training for all staff. This then allows Aboriginal choice of service delivery.
- All support programs should have built in aftercare with follow up at certain intervals.
- There needs to be more financial resourcing put into early intervention/prevention programs not just the pointy end. However, there needs to be a good balance.

Other investigations and reviews such as the Victorian Royal Commission, have identified that there needs to be more money for programs and policy especially in the early intervention/prevention context. More money needs to be spent on access for women and men for early intervention prevention programs. At the moment there is no, to little access to service delivery when there is a relationship problem; all resources are at the pointy end. There is little amount of funding for evaluation. More money must be dedicated to holistic and therapeutic approaches.

Recommendations

That the government policy commits and is reflective of the following:

1. Advisory group be formed of DV leaders and other experts to consider and address all the cultural, ethical and legal benefits and implications of a Disclosure Policy.
2. Draft set of guidelines and protocols of a Disclosure Policy to be provided to key stakeholders for comment.
3. Strict guidelines regarding collection and supply of data to be developed.
4. Uniform approach to collection and disclosure of data
5. Commit to and provide for a budgetary allocation for culturally appropriate Aboriginal and Torres Strait Islander services that will support and promote implemented initiatives and strategies that identify with family and domestic violence prevention and early intervention.

Policy and Planning

6. Develop resources and protocols for employers to implement policies and procedures that protect victims and work colleagues for potential risk as a result of DV.
7. Develop resources and protocols for education facilities to implement policies and procedures that protect victims for potential risk as a result of DV.
8. Increased investment in data collection together with increased analysis of data sets is fundamental to ensure appropriate responses to family and domestic violence issues.
9. Support the development and implementation of educational and media campaigns that highlight the impact of DV; and that identify behaviours associated with DV e.g. stalking, harassment.
10. Map services and resources to assist with points of referral for courts and police to provide to perpetrators and victims.