

# **Submission to the Inquiry on Domestic Violence and Gender Inequality**

April, 2016



**NATSILS**

**NATIONAL ABORIGINAL & TORRES  
STRAIT ISLANDER LEGAL SERVICES**



## Table of Contents

<b>1. About NATSILS</b>	<b>3</b>
<b>2. Introduction</b>	<b>3</b>
<b>3. Background to family violence against women in Aboriginal and Torres Strait Islander communities</b>	<b>4</b>
<b>4. Gender Inequality and Domestic Violence</b>	<b>5</b>
<b>5. Gendered Stereotypes and Family Violence</b>	<b>7</b>
<b>6. Role of Government Initiatives in Addressing the Causes of Family Violence</b>	<b>8</b>
<b>7. Concluding Comments</b>	<b>16</b>

## 1. About NATSILS

1.1. National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS). The ATSILS have over 40 years of experience and are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples collectively providing on average 200,000 legal assistances per year.<sup>1</sup>

1.2. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA);
- Tasmanian Aboriginal Community Legal Services (TACLS) and;
- Victorian Aboriginal Legal Service Co-operative Limited (VALS)

## 2. Introduction:

2.1. NATSILS welcomes the opportunity to make a submission to this inquiry and put forth our experience and knowledge in relation to the role of gender inequality and stereotypes as a contributing factor for family violence and how governments can support and contribute to the social, cultural and behavioural shifts required to eliminate violence against women and their children. We would like to note that NATSILS has previously submitted to the Senate Finance and Public Administration References Committee Inquiry into the prevalence and impact of domestic violence in Australia.<sup>2</sup>

2.2. NATSILS expertise lies within the delivery of culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples, and consequently we defer to other experts in regards to some of the specific aspects of the Inquiry's Terms of Reference, such as education and entertainment. However, due to extensive experience and expertise, NATSILS has valuable input that should be considered in relation to gender inequality and stereotypes as it relates to Aboriginal and Torres Strait Islander women. Notwithstanding, the key focus of this submission is on the last term of reference regarding the role of government in addressing the underlying causes of family violence.

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<sup>1</sup> Australian National Audit Office *Administration of the Indigenous Legal Assistance Programme* (17 Feb 2015) at 16.

<sup>2</sup> The submission can be accessed through NATSILS website at:  
<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20-%20Senate%20inquiry%20into%20prevalence%20&%20impact%20of%20domestic%20violence%20in%20Australia%20Aug%202014%20.pdf>

### 3. Background to family violence against women in Aboriginal and Torres Strait Islander communities

- 3.1. Domestic violence, or family violence, as is the preferred term within Aboriginal and Torres Strait Islander communities<sup>3</sup>, can be defined as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.<sup>4</sup> Family violence is not limited to physical abuse, and can include sexual, emotional, financial, cultural or spiritual abuse.<sup>5</sup>
- 3.2. While available data is limited, Aboriginal and Torres Strait Islander women and children are disproportionately impacted by family violence. For example, statistics show that Aboriginal and Torres Strait Islander women are 31.4 times more likely to be hospitalised as a result of injuries caused by assault, than non-Aboriginal and Torres Strait Islander women, and that one in five Aboriginal and Torres Strait Islander women has been a victim of violence in the last year.<sup>6</sup> Furthermore, a Secretariat of National Aboriginal and Islander Child Care (SNAICC) study found that Aboriginal and Torres Strait Islander children were significantly more likely to have witnessed physical violence against their mother or stepmother than other child respondents (42 percent compared with 23 percent).<sup>7</sup>
- 3.3. Despite these statistics and studies, it is argued that the true prevalence of family violence and its impact on women and children is currently not accurately known and that this is especially true for Aboriginal and Torres Strait Islander women. This is because there are a number of issues with current data and a number of obstacles to reporting family violence particularly for Aboriginal and Torres Strait Islander women. As the Gordon Inquiry into family violence concluded:<sup>8</sup>

The true prevalence of Aboriginal family violence is unknown. What is known is that the violence is endemic and presents an extremely troubling picture of the situation in many Aboriginal communities.

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<sup>3</sup> See for example, Law Reform Commission of Western Australia, *Enhancing Laws Concerning Family and Domestic Violence: Discussion Paper* (Project No.104, December 2013) at 27.

<sup>4</sup> *Family Law Act 1975 (Cth)* s4AB(1)

<sup>5</sup> *Ibid* s4AB(2)

<sup>6</sup> The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011*.

<sup>7</sup> Cited in K Richards, *Children's Exposure to Domestic Violence in Australia* (AIC, Trends and Issues in Crime and Criminal Justice No 419 (2011) at 2.

<sup>8</sup> S Gordon et al, *Putting the Picture Together: Inquiry into response by government agencies to complaints of family violence and child abuse in Aboriginal communities* (July 2002) at 48.

## 4. Gender Inequality and Domestic Violence

- 4.1. Research points to gender inequality as a contributing factor to family violence rates.<sup>9</sup> In NATSILS experience gender inequality can be a factor which both contributes to and compounds the victimisation of Aboriginal and Torres Strait Islander women. For example, Aboriginal and Torres Strait Islander women are significantly disadvantaged in terms of entry into and promotion within the labour market,<sup>10</sup> which can leave these women marginalised, discriminated against and financially dependent on partners. As has often been acknowledged, economic dependency can make it extremely difficult for women to leave an abusive partner.<sup>11</sup>
- 4.2. However, as noted by Wall, the connection between family violence and gender inequality is complex and requires consideration from different perspectives.<sup>12</sup> In this regard, it is important to recognise the specific disadvantage faced by Aboriginal and Torres Strait Islander women as they are perhaps the most vulnerable and marginalised group in Australian society.<sup>13</sup> Many Aboriginal women have high levels of stress, and are regularly positioned by statistical data in the lowest categories of economic and social status.<sup>14</sup> Aboriginal and Torres Strait Islander women are also likely to experience racism at an early age, have repeated failures at school and come from families where excessive alcohol, substance abuse, and offending are behavioural norms.<sup>15</sup>
- 4.3. It is important to recognise, however, that for Aboriginal and Torres Strait Islander women, factors other than gender inequality play a key role in the disproportionate rates at which they experience family violence. In this regard, NATSILS argues that the severe disadvantage and the high rates of family violence within Aboriginal and Torres Strait Islander communities can only be understood in the context of colonisation and its

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<sup>9</sup> See for example: M. Flood & B Pease, 'Factors influencing attitudes to violence against women' (2009) 10 *Trauma, Violence, & Abuse*, 125; R Jewkes, (2002). Intimate partner violence: causes and prevention (April 2002) 20 *The Lancet*, 14231-14429. The role of gender inequality as contributing factor to family violence has also been recognised within a number of international forums, including the United Nations General Assembly, in its 1993 Declaration on the Elimination of Violence Against Women.

<sup>10</sup> Australian Bureau of Statistics, *Australian Social Trends* (Nov 2013, Cat no. 4120.0).

<sup>11</sup> Human Rights and Equal Opportunity Commission, *Gender Equality: What matters to Australian women and men: The Listening Tour Community Report* (July 2008) at 5.

<sup>12</sup> L Wall, *Gender equality and violence against women What's the connection?* (ACSSA Research Summary No. 7, June 2014). See also: N Sokoloff and Ida Supo, 'Domestic Violence at the Intersections of Race, Class and Gender: Challenges and Contributions to Understanding Violence against Marginalized Women in Diverse Communities' (Jan 2005) 11 *Violence Against Women*, 38.

<sup>13</sup> P E Andrews, 'Violence against Aboriginal Women in Australia: Possibilities of Redress within the International Human Rights Framework' in Adrien Katherine Wing, *Global Critical Race Feminism: an International Reader*

<sup>14</sup> M Davis, 'Aboriginal women: the Right to Self-determination' (Murrup Barak, Melbourne Institute for Indigenous Development, University of Melbourne, 8 November 2012)

<sup>15</sup> E Grant and S Paddick, 'Aboriginal women in the Australian Prison System' (11 September 2014) Right Now: Human Rights in Australia,

impacts.<sup>16</sup> This point was well made in the Our Watch, National Framework when it was noted that the high rates of Aboriginal and Torres Strait Islander family violence must be:<sup>17</sup>

considered in the context of broader colonial violence and specifically the intergenerational impacts of dispossession, the forced removal of children, the interruption of cultural practices that mitigate against interpersonal violence, and the ongoing and cumulative economic exclusion and disadvantage experienced by Aboriginal and Torres Strait Islander communities. These impacts include intergenerational trauma, lateral violence and internalised colonialism.

4.4. Thus it should be recognised that these factors, outside of gender inequality and stereotypes, are critical to understanding family violence in Aboriginal and Torres Strait Islander communities. This point was acknowledged by the Law Reform Commission of Western Australia when they stated that:<sup>18</sup>

Aboriginal commentators have argued that feminist theories of family and domestic violence do not adequately accommodate the experiences of Aboriginal communities and that family violence in these communities is caused by a multitude of factors including colonisation, dispossession and cultural breakdown, stolen generation, racism, marginalisation, welfare dependency, unemployment, past history of abuse, substance abuse, health and mental health issues, and low self esteem.

4.5. NATSILS argues that the following factors are of particular concern to Aboriginal and Torres Strait Islander women:

- Drug and alcohol abuse. For example, the *Listening Tour: Gender Inequality in Australia* report found that family violence linked to alcohol abuse was the primary concern of the Aboriginal and Torres Strait Islander women interviewed.<sup>19</sup>
- Lack of stable housing and homelessness, particularly as a result of family violence.<sup>20</sup>

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<sup>16</sup> J Oberin 'Domestic and family violence: the latest research. In: Out of the fire—domestic violence and homelessness' (2001) 14(2) *Parity* 25; Gordon et al cited in Al-Yaman F et al, *Family Violence Among Aboriginal and Torres Strait Islander Peoples* (Canberra: Australian Institute of Health and Welfare, 2006) at 3. See also: P Memmott et al, *Violence in Indigenous communities* (Canberra, Commonwealth Attorney-General's Department, 2001); J Atkinson, *Trauma trails, recreating song lines: The transgenerational effects of trauma in Indigenous Australia* (North Melbourne, Spinifex Press, 2002).

<sup>17</sup> Our Watch, *Change the Story: a Shared framework for the primary prevention of violence against women and their children in Australia* (Melbourne, 2015) at 3.

<sup>18</sup> Law Reform Commission of Western Australia, *Enhancing Laws Concerning Family and Domestic Violence: Discussion Paper* (Project No.104, December 2013) at 13. . See also Ombudsman of Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (2015) at 108–109.

<sup>19</sup> Human Rights and Equal Opportunity Commission, *Gender Equality: What matters to Australian women and men: The Listening Tour Community Report* (July 2008) at 17.

<sup>20</sup> *Ibid*, at 5. See also: Flinders Institute for Housing Urban and Regional Research, *Women, Domestic and Family Violence and Homelessness: A Synthesis Report* (August 2008) at 19. Australian Institute of Health and Welfare, *Domestic Violence a major factor in homelessness among women and children* (28 September 2008).

- The disproportionate, and increasing, rate at which Aboriginal and Torres Strait Islander women are incarcerated.<sup>21</sup> A high proportion of Aboriginal and Torres Strait Islander women in prison have been victims of physical and sexual assault, and their experiences of family and domestic violence are often linked to their offending.<sup>22</sup> In a survey of Aboriginal and Torres Strait Islander women in prison and their experiences of victimisation, over 80% state that they believed their offending was an indirect consequence of their victimisation.<sup>23</sup>
- The over-representation of Aboriginal and Torres Strait Islander children in the child protection system. Nationally, Aboriginal and Torres Strait Islander children are ten times more likely to be on care and protection orders and almost eleven times more likely to be in out-of-home care than non-Aboriginal children.<sup>24</sup>
- The higher incidence of cognitive and psychiatric impairments and other forms of disability for Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women living with a disability are at greater risk of being victims of family violence and/ or sexual abuse, particularly if they have little or no support.<sup>25</sup>

## 5. Gendered Stereotypes and Family Violence

5.1. NATSILS is not in a position to comment on the extent to which gendered stereotypes contribute to family violence in relation to message conveyed to children and young people.

5.2. NATSILS notes, however, that any analysis of gendered stereotypes in the context of family violence must also pay attention to how gendered stereotypes intersects with racial stereotypes. Thus when acknowledging oppression associated with gender, it is vital to also acknowledge that for many women this also intersects with oppression caused by both historical and contemporary racism, often in complicated and complex ways. Without such recognition, it is easy to forget that gender stereotypes are not monolithic

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<sup>21</sup> Aboriginal and Torres Strait Islander women make up approximately 2% of the population, but 34% of the prison population. Australian Bureau of Statistics, *Prisoners of Australia 2012*, (CAT no 45170, Canberra, 2012). Australian Institute of Criminology, *The Relevance of Family Violence to Indigenous Women's Offending, 2010*, page 28

<sup>22</sup> L Bartels, *Indigenous Women's Offending Patterns: A Literature Review* (Australian Institute of Criminology, Research and Policy Series, no. 107, July 2010) at 28; T Calma, *Ending family violence and abuse In Aboriginal And Torres Strait Islander communities: key issues – an overview paper of research and findings by the Human Rights and Equal Opportunity Commission, 2001-2006* (2006); L Bartels, 'Violent Offending by and against Indigenous Women' (July/ August 2012) 8(1) *Indigenous Law Bulletin*, 20. .

<sup>23</sup> NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence, 2001*, (Sydney, 2001) at 7.

<sup>24</sup> Australian Institute of Health and Welfare, *Child Protection Australia: 2012-3* (Child Welfare Series, No. 58, 2014) at 43 and 55.

<sup>25</sup> Eileen Baldry et al, *A Predictable and Preventable Path: Indigenous Australians with Mental health Disorders and Cognitive Disabilities in the Criminal Justice System* (UNSW, October 2015); University of New South Wales, 2013, *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia* (Sydney, 2013).



and that women from non-dominant ethnic communities face additional challenges in terms of stereotypes. Assuming that ‘women’ have a coherent group identity prior to their entry into social relations, ignores how the ideologies of masculinity, femininity and sexuality are inherently racialised.

5.3. This is particularly true for Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women have different understandings and lived experiences of their gender than other women, whilst simultaneously being perceived as different from other women. This difference must be recognised and appreciated when talking about how identity and stereotypes are perpetuated.

5.4. Thus, recommendations that are likely to flow from this inquiry such as the teaching of healthy relationships and gender norms within school curriculums and the need to combat negative stereotypes of women in the media, must also consider questions of racial stereotyping alongside gender stereotypes. Here the effect of negative stereotypes of Aboriginal and Torres Strait Islander peoples in the media should be considered, as well as the dearth of cultural understanding of Aboriginal and Torres Strait Islander peoples’ histories and experiences by mainstream Australia.

## 6. Role of Government Initiatives in Addressing the Causes of Family Violence

6.1. It is critical that all levels of government play a leadership role in addressing family violence. The National Plan to Reduce Violence against Women and their Children 2010-2022 (the National Plan) is an important component of a holistic plan for government action on family violence.

6.2. A specific strategy in the National Plan is to advance gender equality on the basis that “the unequal distribution of power and resources between women and men and adherence to rigid or narrow gender roles and stereotypes reflects gendered patterns in the prevalence and perpetration of violence.”<sup>26</sup> The Plan goes on to note that “[b]uilding greater equality and respect between men and women can reduce the development of attitudes that support or justify violence.”<sup>27</sup> Importantly it is acknowledged that “other factors contribute to gender equality, such as where women from culturally and linguistically diverse communities have difficulties accessing the paid workforce or higher education.”<sup>28</sup>

6.3. However, while there are a number of key actions under this strategy including improving women’s economic participation and independence and participation in leadership

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<sup>26</sup> Council of Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010-2022* (2011) at 15

<sup>27</sup> *Ibid* at 15.

<sup>28</sup> *Ibid* at 15.

positions, there is no specific focus on Aboriginal and Torres Strait Islander women in this area of the strategy. While it is acknowledged that CALD communities may require additional supports in overcoming negative gender roles and stereotypes there is no specific recognition of the need for targeted support for Aboriginal and Torres Strait Islander women in this area.<sup>29</sup>

6.4. The National Plan also references and acknowledges that issues of family violence are particularly severe in Aboriginal and Torres Strait Islander communities and that targeted measures are required.<sup>30</sup> Under the first three years of the National Plan, Outcome 3 is that “Indigenous communities are strengthened.”<sup>31</sup> The plan provides that in order to meet this objective, “Governments will support communities to develop and implement local solutions across all areas of the National plan” and that access to appropriate services will be improved.<sup>32</sup> The plan also states that an immediate national initiative will be to “fund initiatives to Close the Gap...and develop new targets to hold Governments to account.”<sup>33</sup>

6.5. The National Plan has now moved into stage two which sets different priorities for implementation and which has a particular focus on understanding how family and domestic violence is best addressed in Aboriginal and Torres Strait Islander and other diverse communities.<sup>34</sup>

6.6. Importantly, under stage two, the second national priority is understanding diverse experiences of violence, including the experiences of Indigenous women, women from CALD communities, and women with disability. In relation to Aboriginal and Torres Strait Islander people this priority has three specific actions:

- Meet the needs of Indigenous women and their children through improving access to information and resources, and providing avenues for advocacy and leadership.
- Improve outcomes for Indigenous Australians through building community safety.
- Gain a better understanding of ‘what works’ in improving Indigenous community safety.<sup>35</sup>

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<sup>29</sup> For example, outcomes stated are to: ‘Build and support legal literacy among migrants and refugees on Australian law and gender equality principles’ and; ‘provide information about protections for women who experience violence in Australia to newly arrived migrants and refugees.’

<sup>30</sup> Council of Australian Governments, *National Plan to Reduce Violence against Women and Their Children: including the first three-year Action Plan* (Commonwealth of Australia, 2011) at 20.

<sup>31</sup> *Ibid*, at 20. The Plan also notes that, “Indigenous women and their children must be considered in all elements of the National Plan.”

<sup>32</sup> *Ibid*, at 20-22. Note that National Outcome 4 is, “Services meet the needs of women and children experiencing violence.” at 23.

<sup>33</sup> *Ibid*, at 21.

<sup>34</sup> National Priority Two: Understanding diverse experiences of Violence’ Department of Social Services, *Second Action Plan, Moving Ahead – of the National Plan to Reduce Violence against Women and their Children 2010-2022*.

<sup>35</sup> *Ibid*, at 25.

- 6.7. NATSILS welcomes this increased focus on the needs of Aboriginal and Torres Strait Islander women. However, we would make a number of points about the proposed actions for implementation. Firstly, NATSILS notes that the suggested focus of consultation with “National Aboriginal and Torres Strait Islander Women’s Alliance, the Prime Minister’s Indigenous Advisory Council and state-based groups” does not have an appropriate focus on consultation with Aboriginal and Torres Strait Islander community controlled organisations. This is critical as Aboriginal and Torres Strait Islander community controlled organisations have the needed connections with communities.<sup>36</sup>
- 6.8. Secondly, in relation to improving community safety, the plan notes that at the December 2013 COAG meeting, the Commonwealth agreed to establish a permanent police presence in some larger remote Indigenous communities.<sup>37</sup> While police play an important role in addressing family violence, in NATSILS view too great a focus on increasing the presence of police can be counter-productive and would involve resources that could be better directed to programmes and services that help to prevent family violence.
- 6.9. Thirdly, in relation to gaining a better understanding of “what works” to make Indigenous communities safe, it is noted that a national picture will be developed under the Second Action Plan.<sup>38</sup> We look forward to the development of this national picture and would urge that consultation with Aboriginal and Torres Strait Islander community controlled organisations should be a critical part of this process.
- 6.10. In terms of the overall success of the strategy we would note that while the plan is significant, to date this has not been meaningfully implemented including adequate funding. Indeed, in NATSILS view the key issue with the government response to family violence is the lack of appropriate services for Aboriginal and Torres Strait Islander people which has not improved since the release of these plans - and which appears, from evidence available to NATSILS, to have significantly worsened as a result of funding under the Indigenous Advancement Strategy.<sup>39</sup>

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<sup>36</sup> It is noted that this part of the plan notes that consultation will “include” organisations like the National Aboriginal and Torres Strait Islander Women’s Alliance, the Prime Minister’s Indigenous Advisory Council and state-based groups and is not exhaustive, however, the singling out of these organisations demonstrates an intended focus for consultations.

<sup>37</sup> Ibid, at 26.

<sup>38</sup> Ibid, at 26.

<sup>39</sup> See NATSILS *Submission to the Senate Inquiry on Indigenous Advancement Strategy Funding* (30 April 2015).

- 6.11. In the absence of a united commitment to achieving the outcomes stated in this Plan and Framework, a reduction in family violence rates can't be expected. As Tom Calma has noted:<sup>40</sup>

Aboriginal and Torres Strait Islanders can no longer accept governments making commitments without effecting processes and programs to achieve them. They can also no longer accept the failure of government to commit to urgent plans of action accompanied by adequate funding. There must be adequate measures within set timeframes.

- 6.12. In order to ensure that these outcomes are met NATSILS recommends that the federal government act upon the commitment in the Plan noted above to implement, "new targets to hold Governments to account".<sup>41</sup> This should be achieved by putting justice targets into the COAG, Closing of the Gap Strategy under the safer communities 'building block'. Currently, this is the only area that does not incorporate specific targets and this is where clear targets on lowering imprisonment and family violence in Aboriginal and Torres Strait Islander communities should be incorporated.<sup>42</sup> These targets should be developed in conjunction with relevant individuals and organisations to ensure that its strategies are effective and culturally competent. In NATSILS view, meeting such targets will firstly require a commitment to a more holistic therapeutic approach to family violence, and secondly appropriate resourcing of services. These two elements are discussed in turn.

**Holistic therapeutic approach:**

- 6.13. NATSILS argues that a more holistic approach to family violence is needed. Intervention before family violence occurs or escalates is the ideal solution, as by the time family violence has reached the stage of the criminal justice system, NATSILS is responding to a crisis situation. Justice reinvestment is an effective way to address family violence in Aboriginal and Torres Strait Islander communities and, more broadly, to reduce the disproportionate levels of Aboriginal and Torres Strait Islander people in the criminal justice system. A justice reinvestment approach holds that in order to achieve long-term sustainably safer communities, government policy and investment need to address the underlying causes of criminal behaviour (including violence) through investment in key areas such as education, housing and healthcare. As concluded by the Senate Inquiry into Justice Reinvestment:

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<sup>40</sup> Tom Calma, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending violence in Indigenous communities Forum* (Parliament House Canberra, 19 June 2006).

<sup>41</sup> Council of Australian Governments, *National Plan to Reduce Violence against Women and Their Children: including the first three-year Action Plan* (Commonwealth of Australia, 2011) at 20

<sup>42</sup> NATSILS, 'NATSILS calls for Federal Government commitment to Justice Targets on Close the Gap Day' *Media Release*, 19 March 2013.

“By addressing the social determinants of crime – unemployment, homelessness, health and education issues – justice reinvestment has the potential to improve the life outcomes of individuals and build strong, safe and cohesive communities.”<sup>43</sup>

6.14. NATSILS is of the view that services and preventative and rehabilitative programmes are an important investment and will reduce the enormous social and economic costs of family violence, particularly for Aboriginal and Torres Strait Islander communities. While ATSILS already delivers critical early interventions including Community Legal Education (CLE) and prisoner through-care, funding limitations mean that ATSILS are unable to meet the need for these services in communities.

6.15. A therapeutic and holistic response should include:

- Dedicated family violence courts (in particular, Aboriginal family violence courts), which use a therapeutic jurisprudence approach to offenders and their victims to address the underlying causes of offending. This should be accompanied by adequately resourced culturally competent programs and services;
- Culturally competent and community controlled Alternative Dispute Resolution (ADR) services. In this regard, it is noted that the ADR programs offered by Native Counselling Services of Alberta, Canada, should be considered, as providing an excellent potential model. ADR services need to be applied in a range of civil law contexts, such as small civil claims and child protection disputes;
- Appropriate bail laws which enable judges to grant bail on certain conditions such as attendance at a family violence program. This would allow defendants to access programs at an early stage in the criminal justice process;
- Sentences of community-based orders that are designed to address the underlying causes of family violence;
- More coordinated support for defendants and victims, appropriate to their particular case. For example, some ATSILS clients are released from prison without knowing whether there is an intervention or protection order in place preventing them from contacting the victim.
- Increased provision of rehabilitative domestic violence programmes, particularly those designed to meet the needs of Aboriginal and Torres Strait Islander offenders.
- Restorative justice approaches which enable victims to be part of the process if they wish. This might involve mediation to address harm caused, or family counselling in a safe context. It is critical however, that restorative justice options take into account the unique needs and culture of different Aboriginal and Torres Strait Islander communities.<sup>44</sup>

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<sup>43</sup> Senate Legal and Constitutional Affairs References Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013) pp 33–41.

<sup>44</sup> L Behrendt, ‘Lessons from the Mediation Obsession: Ensuring that Sentencing ‘Alternatives’ Focus on Indigenous Self Determination’ in H Strang and J Braithwaite, *Restorative justice and Family Violence* (Cambridge University Press, 2002) at 178. See also H Blagg, ‘Restorative justice and Aboriginal Family Violence: Opening a space for healing,’ in H Strang and J Braithwaite, *Restorative justice and Family Violence* (Cambridge University Press, 2002) at 191.

### Resourcing of services:

6.16. A critical part of effectively reducing family violence is providing resources to services that support Aboriginal and Torres Strait Islander women who experience family violence. In particular, access to legal assistance services is a critical part of providing the necessary support to enable women to be protected from family violence. ATSILS and Family Violence Prevention Legal Services (FVPLS) provide culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples, including those impacted by family violence. The provision of legal services to victims is critical especially because of the complex and interrelated legal issues associated with family violence. These include, for example:

- a) assisting mothers whose children have been taken into care by state child protection agencies where one of the primary issues is that the children are/were living in a violent environment;
- b) providing advice and representation for clients whose experiences of family violence impact on their housing status. This includes representing victims in housing matters where they may be facing eviction due to “anti-social behaviour” associated with their residence. Often the alleged anti-social behaviour is directly related to family violence;
- c) assisting victims with intervention orders;
- d) assisting victims with making police complaints where police have not taken seriously complaints of family violence or have failed to respond to repeated breaches of intervention orders;
- e) representing victims of family violence for criminal injuries compensation claims; and
- f) providing advice and representation in family law matters, including parenting proceedings, child support, property and child protection matters.

6.17. When ATSILS deal with these matters we are always searching for practical solutions to break the cycle of violence for these women and children by making referrals to appropriate services (where such services are available). It is a significant part of our practice. The following case studies are provided to illustrate the critical role that the ATSILS play in addressing family violence and its attendant issues.

#### CASE STUDY ONE:

*In the case of Ms B, our member organisation North Australian Aboriginal Justice Agency (NAAJA) was able to assist with making an application for victims of crime compensation out of time. Ms B had been in a violent relationship. She originally told NAAJA that she wanted to claim for physical injuries that her former partner had inflicted upon her. These were documented in medical records. However, over time NAAJA was able to encourage her to claim for the sexual assaults she had also been subjected to in that relationship. NAAJA assisted her to provide evidence in the form of a statutory declaration from a relative who had knowledge of the sexual assaults. As a result, Ms B was assessed as being*

*entitled to the maximum awards under the Victims of Crime scheme due to the extent of her psychological injuries.*

CASE STUDY TWO:

*In October 2015, the Aboriginal Legal Right Movement (ALRM) successfully opposed an application made by the Minister seeking an immediate removal of a new born. ALRM represented the mother in the proceedings. The mother had just given birth and was due to be discharged from the hospital. The Minister's grounds for removal related to the father's propensity to violence including an outstanding criminal charge of an assault to a 17month old baby relating to the father's ex partner's child. ALRM made submissions to the court that the "risk" factor related to the father and not the mother. It was further submitted it would be appropriate for the court to make an order to restrain the father not to have contact with the mother and the new born, rather than granting a custody order in favour of the Minister which would mean separating the mother from her child. His Honour agreed and did not grant custody to the Minister and made an order for an injunction against the father instead. Following the hearing ALRM arranged for the father through his criminal solicitor to vary his bail conditions regarding his place of residence otherwise he would be in breach of the restraint order. ALRM also referred the mother to an external service provider to assist and monitor the mother's progress and to ensure the baby's emotional and physical needs were met.*

6.18. The critical aspect that sets ATSILS and FVPLS apart from other legal assistance services is their focus on and ability to provide culturally competent legal services to Aboriginal and Torres Strait Islander peoples. Staff are highly skilled in working with Aboriginal and Torres Strait Islander people, with particular attention paid to cross-cultural communication, use of interpreters, and ensuring clients are able to understand and meaningfully participate in court processes.<sup>45</sup> Given the disproportionate rates at which Aboriginal and Torres Strait Islander peoples are impacted by family violence, it is essential that Aboriginal and Torres Strait Islander peoples can access culturally competent legal assistance services such as ATSILS and FVPLS.

6.19. It is important to note the usefulness of having two culturally competent streams of legal assistance services for Aboriginal and Torres Strait Islander peoples, particularly in the context of family violence. The existence of conflict of interest issues, which can frequently arise in family violence matters, means that multiple parties are not able to access legal assistance services from the same service. Hence, the existence of two culturally competent legal assistance services ensures that all parties are able to access culturally competent legal assistance services, as it their right.

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<sup>45</sup> Cultural competency is much more than awareness of cultural differences, as it focuses on the capacity to improve outcomes by integrating cultural understanding into the design and delivery of services on a daily basis.

6.20. Despite the indisputable need for these services ATSILS and FVPLS continue to be limited in terms of the services they can provide. A lack of adequate resourcing in comparison to the identified need for legal services restricts the level of assistance that both ATSILS and FVPLS can provide. A number of government reports share the above concerns and have recommended that ATSILS funding needs to be increased. For example, the Senate Inquiry into Youth Justice recommended that ATSILS funding be increased to at least that of Legal Aid Commission funding<sup>46</sup>, while the Productivity Commission report on Legal Access noted that:<sup>47</sup>

[services are] vastly under-resourced in terms of capacity to address legal need in Aboriginal communities. Additional funding is urgently required for civil/family law work, with priority to be given to Indigenous legal services as primary providers of legal assistance to Indigenous people.

6.21. In similar vein, the Commonwealth Attorney-General's Department has recommended that:<sup>48</sup>

the Australian Government increase the level of funding for Indigenous legal services with a view to sufficiently resource this sector of the legal aid system to meet the needs of Indigenous peoples, including appropriate loading for extra service delivery costs.

6.22. NATSILS recommends that further funding be provided to the ATSILS and FVPLS to enable Aboriginal and Torres Strait Islander peoples experiencing family violence to access the legal services they need.

6.23. Further funding and resourcing is also needed for support services.<sup>49</sup> Failure to provide appropriate services and responses to family violence and related issues such as drug and alcohol dependence, increase the likelihood that family violence and its underlying issues will go unaddressed. For example, the failure to provide appropriate accommodation means that victims of family violence are less likely to leave their situations of abuse, or may become homeless as a result of leaving.

6.24. While noting that family violence is a major issue for Aboriginal and Torres Strait Islander communities it clearly does not impact communities evenly. Responses therefore do need to be locally based and driven by what communities and services identify as the critical needs. ATSILS are well aware that some of the communities we work in have high

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<sup>46</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011) at para 79. See also the Office of Evaluation and Audit Report 2003 which indicated that ATSILS required an additional \$25m to achieve funding levels similar to Legal Aid Commissions.

<sup>47</sup> Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview* (September 2014) at 24.

<sup>48</sup> Access to Justice Taskforce Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009) 147, Recommendation 27

<sup>49</sup> Broken Hill and Menindee Rural Crisis Intervention Projects, Australia et al, *'Community solutions to Aboriginal family violence : final report and model of best practice 1999-2000; Broken Hill and Menindee Rural Crisis Intervention Projects'* (2001).



levels of family violence, while others even though affected by many of the same socio-economic issues have very little.

6.25. Further funding needs to be provided to services, including:

- appropriate accommodation;<sup>50</sup>
- community education which promotes the legal rights of women and children supportive relationships;
- counselling, including the provision of men's counselling and treatment;
- drug and alcohol rehabilitation; and
- mental health and cognitive impairment treatment and support.

6.26. In this regard, it is important to note that research has identified that Aboriginal and Torres Strait Islander women experience additional difficulties in accessing appropriate supports, compared to their non-Indigenous counterparts.<sup>51</sup> These difficulties arise for a number of reasons, including remoteness and inability to physically access services, distrust of government and non-government agencies delivering social services and communication barriers. These obstacles need to be addressed in order to increase the opportunity for Aboriginal and Torres Strait Islander women are able to access help and this means tailoring services appropriately.

## 7. Conclusion:

7.1. The prevalence and impact of family violence in Australia is a critical social issue that must be recognised as a key priority for all Australian governments. This submission has argued that the role of gender inequality and gender stereotypes needs to be seen in a nuanced light, particularly when applied to Aboriginal and Torres Strait Islander communities. Critically it is submitted that for Aboriginal and Torres Strait Islander women, the context of enduring disadvantage, racism and oppression must be considered in order to have an understanding of family violence for Aboriginal and Torres Strait Islander women. This is essential to an informed and responsive strategy to targeting the crisis levels of family violence in Aboriginal and Torres Strait Islander communities.

7.2. As discussed, in NATSILS view strategies to address the rates of family violence, particularly for Aboriginal and Torres Strait Islander women, must be culturally competent and ensure the adequate provision of services. The ATSILS as individual organisations and as a collective through NATSILS play a critical role in addressing the serious issue of family violence in Aboriginal and Torres Strait Islander communities. However, the ATSILS are limited in their ability to address the crisis of family violence both by inadequate funding and by laws and policies which neither serve victims nor offenders. In order to break the

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<sup>50</sup> S Wendt and J Baker, 'Aboriginal women's perceptions and experiences of a family violence transitional accommodation service' (2013) 66(4) *Australian Social Work*, 511.

<sup>51</sup> M Willis, *Non-disclosure of violence in Indigenous communities* Trends & Issues in Crime and Criminal Justice no. 405. (Canberra, Australian Institute of Criminology, 2011).

cycle of violence in our communities' responses must be therapeutic, holistic, resourced and effectively targeted to the needs of Aboriginal and Torres Strait Islander women.