

**Senate Finance and Public Administration
References Committee**

**Inquiry into the prevalence and impact of
domestic violence in Australia**

August, 2014



NATSILS

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

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1. About NATSILS

The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. The NATSILS represent 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); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

2. Introduction

The NATSILS welcome the focus that this inquiry by the Senate Finance and Public Administration References Committee will hopefully bring to the issue of family violence in Australia. We also welcome the opportunity to make a submission to the inquiry and put forth our experience and knowledge as to the prevalence and impact of domestic violence and the adequacy and effects of current policies and how the federal government can best support and contribute to the social, cultural and behavioural shifts required to eliminate violence against women and their children.

Domestic Violence, or what is more commonly being called family violence, can be defined as any behaviour that causes harm to a person's wellbeing or aims to control another family or community member. Family violence is not limited to physical abuse, and can include sexual, emotional, financial, cultural or spiritual abuse.

While available data is limited, we know 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 1 in 5 Aboriginal and Torres Strait Islander women has been a victim of violence in the last year.¹

¹ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2011*.

In 2002–03 in Australia, the total cost of family violence to victims, perpetrators, friends and families, communities, government and the private sector was estimated to be in excess of \$8 billion.²

Family violence must be recognised as one of Australia’s most critical social issues. Aboriginal and Torres Strait Islander women and children are disproportionately impacted by family violence. Such can have ongoing harmful effects that can often be linked to, as well as further entrench, the cycle of harm and disadvantage:

- The economic costs of family violence are extensive and undermine economic and social development in Aboriginal and Torres Strait Islander communities;
- Family violence has significant and long term effects on the mental health of those affected, which is a major contributor to its economic costs;
- Experiences of family violence can lead to increased use of drug and alcohol, as substances are used to self-medicate and cope with trauma;
- Experiences of family violence are a contributing factor to the disproportionate, and increasingly so, rate at which Aboriginal and Torres Strait Islander women are incarcerated.³ 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 violence are often linked to their offending;
- Family violence is also a central contributing factor to the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. such must be understood in the context of past and contemporary forms of Aboriginal and Torres Strait Islander child removal; and
- Family violence is the single greatest reason people in Australia present to homelessness accommodation services.

NATSILS expertise lies within the delivery of culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples, and as such, we will limit our comments to matters relevant to such and will defer to other experts in regards to broader matters related to family violence as referred to in the Inquiry’s Terms of Reference. More specifically, we will provide insight into how recent policy decisions in relation to legal assistance services will impact upon those experiencing family violence.

As the specialist peak body in delivering legal assistance services to victims and survivors of family violence, we endorse the submission and recommendations of the National Family Violence Prevention Legal Services Forum (NFVPLS). Over recent years NATSILS and the NFVPLSF have formalised and grown their relationship, building stronger pathways for collaboration and greater networks for the sharing of best practice. The two peak bodies have embedded their relationship through a Memorandum of Understanding which

² Access Economics, *The cost of domestic violence to the Australian economy*, 2004.

³ The incarceration rate of Aboriginal and Torres Strait Islander women has increased by 59 percent between 2000 – 2010.

provides for regular dialogue and joint sessions at each other's national meetings of their respective members. Given the more specific focus of the NFVPLSF and the more detailed nature of their submission, in comparison, our submission will provide a more concise overview of the access to justice issues we view as being of critical importance.

3. The effects of policy decisions regarding legal assistance services on the ability of women to escape family violence

The need for ATSILS and Family Violence Prevention Legal Services (FVPLS)

Access to legal assistance services is a critical part of providing the necessary support to enable individuals to escape family violence. ATSILS and FVPLS provide culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples, including those impacted by family violence. The critical aspect of culturally competent service delivery 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. 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. Given the disproportionate and diverse contact of Aboriginal and Torres Strait Islander peoples with the justice system, and the disproportionate rate 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.

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.

Despite the indisputable need for these services in the community, ATSILS and FVPLS continue to be limited in terms of the services they can provide in this area. 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 and more specifically, FVPLS are explicitly limited in regards to the areas of law they can assist in and the geographic areas in which they can deliver services.

Recent policy decisions, funding cuts and their impact

Both ATSILS and FVPLS are funded by the Australian Government and have recently been the target of funding cuts. On Tuesday 17 December 2013, Treasurer Joe Hockey announced in his Mid-Year Economic and Fiscal Outlook that \$43.1m was to be cut across the legal assistance sector over the next four financial years. The Attorney-General's Department has since confirmed that \$13.41m will be cut from NATSILS and its member ATSILS, and \$3.6m will be cut from FVPLS, between the 2013-14 and the 2016-17 financial years.

Under these funding cuts, the very small amount of funding provided to NATSILS will be cut, essentially meaning that it will be defunded, and the remaining funding cut will be spread across individual ATSILS. How the funding cut will be spread across ATSILS and how such will be implemented is not clear.

The Government has made it clear however, that the funding cuts are aimed at directly targeting NATSILS and individual ATSILS ability to undertake law reform and advocacy work. Peculiarly, FVPLS are not funded to undertake law reform and advocacy work so it is unclear how this explanation applies to these services.

The cuts target our ability to work with Governments to address systemic issues such as the underlying causes of why Aboriginal and Torres Strait Islander peoples are so disproportionately represented in our justice system, including the high rate at which Aboriginal and Torres Strait Islander are impacted by family violence. There is no one else to fulfil this role if ATSILS and FVPLS are prohibited from doing so. Our position as the key legal assistance service provider to Aboriginal and Torres Strait Islander peoples places us in a unique position to be able to engage meaningfully and beneficially as partners with government at the Commonwealth, State and Territory level. NATSILS and our members are well placed to provide evidence based information and advice that reflects the 'on-the-ground realities' within the justice sector more broadly. We have a reputation for providing considered, constructive advice based on our frontline experience engaging with Aboriginal and Torres Strait Islander communities and providing crucial insights and case studies that would not otherwise be available to Government. Importantly, law reform and advocacy also identifies opportunities where government can more efficiently address systemic issues within the justice system, rather than dealing with such on a more costly case by case basis.

Incarceration rates, victimisation rates and justice related costs are spiralling out of control around Australia, and removing the ability of frontline services to provide government agencies with accurate policy advice will only serve to make our system more ineffective, inefficient and increasingly costly. Removing funding from any part of the activities of NATSILS, individual ATSILS and FVPLS would be counter-productive. It would result in higher rates of imprisonment, harsher sentences, greater dysfunction within Aboriginal and Torres Strait Islander communities, and a greatly diminished capacity to identify and manage the issues that contribute to this dreadful cycle. These consequences translate to a real cost for government. That cost would surely far exceed the short-term savings that would be achieved from the announced funding cuts.

Furthermore, as confirmed by the Commonwealth Attorney-General's Department during recent Senate Estimates hearings, the funding of ATSILS cannot be easily separated between 'frontline' service and 'policy' activity. Law reform and advocacy is undertaken within ATSILS by a range of staff. Rather than having full time staff solely focused on law reform and advocacy, it is more often the case that such activities are undertaken by staff in combination with numerous other responsibilities such as community legal education or by solicitors, managers and Principal Legal Officers in addition to their main roles. For this reason, implementing the announced funding cuts cannot simply be done by removing dedicated law reform and advocacy positions. Given how law reform and advocacy work is shared amongst multiple people with responsibility for areas of frontline services, the implementation of the announced funding cuts will necessarily mean that cuts to frontline service delivery will have to be made. This will no doubt mean a reduction in services available to those impacted by family violence. To date, no information has been provided

by the Commonwealth Attorney-General's Department as to how the announced funding cuts will be applied across different ATSILS. Current funding arrangements for both ATSILS and FVPLS expire on 30 June 2015.

In addition, while all legal assistance services, including ATSILS and FVPLS, have historically always sat within the Commonwealth Attorney-General's Department (AGD), the 2014 Budget also brought with it the transfer of FVPLS to the Department of Prime Minister and Cabinet (PM&C), while ATSILS and the two other major legal assistance streams (Legal Aid Commissions and Community Legal Centres) remained within the scope of the AGD. Within PM&C, FVPLS now sit under the new Indigenous Advancement Strategy, from which \$534.4 million is expected to be cut. This transfer of FVPLS blurs the relationship between FVPLS and other legal assistance streams and raises questions as to what role the Australian Government sees for FVPLS within the National Partnership Agreement on Legal Assistance Services. A new National Partnership Agreement on Legal Assistance Services is set to be negotiated and finalised by 30 June 2015.

There is a continued and ongoing need for ATSILS, and FVPLS as a unique and specialised service, to be funded to meet the needs of Aboriginal and Torres Strait Islander peoples impacted by family violence. This is supported by the Productivity Commission's Inquiry into Access to Justice Arrangements Draft Report, as well as the Review of the National Partnership Agreement on Legal Services, which both found that specialised legal assistance services for Aboriginal and Torres Strait Islander people remain justified.

The need for a holistic and integrated approach

While ensuring that sufficient resources are available to meet the legal needs of people impacted by family violence is a critical aspect of assisting individuals to escape such harmful situations, a lack of an integrated, united government approach is also one of the most significant issues impeding the progress towards reducing and eliminating family violence. This must include greater investment in prevention and early intervention, more appropriate targeting, increased collaboration and cooperation across agencies and a strategic national response to critical challenges and pressures, including those affecting the legal sector. As discussed by the NFVPLSF in their submission, additional policy decisions outside of legal assistance services in relation to housing, health and the welfare system, all have direct impacts on family violence (as well as increasing pressure on legal assistance services) and therefore, a more holistic approach that provides integration across multiple sectors and service delivery areas is critically needed.

4. Conclusion

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. Access to legal assistance services is a critical aspect of supporting individuals impacted by family violence to escape such harmful situations, yet recent funding cuts to ATSILS and FVPLS will impact frontline services and reduce the level of support and assistance provided to Aboriginal and Torres Strait Islander peoples.

While access to legal support and protections is a must, ensuring sufficient resources in the justice sector must be accompanied by a broader, more holistic approach that integrates efforts across multiple sectors and service delivery areas. For too long the epidemic that is family violence in Australia has not received the attention it deserves. This can no longer be accepted.