24/05/2024

The ***National Aboriginal Torres Strait Islander Women's Alliance*** (NATSIWA) thank you for the opportunity to provide a submission to the inquiry into justice responses to sexual violence in Australia.

National Aboriginal and Torres Strait Islander Women's Alliance

The National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) is the peak body for Aboriginal and Torres Strait Islander women in Australia. The leadership team of Directors are Indigenous women each representing States and Territory across Australia. National Aboriginal and Torres Strait Islander Women's is funded by the Australian Government to bring together the issues and voices of Aboriginal and Torres Strait Islander women's organisations and individuals across Australia.

Background

The Australian Law Reform Commission ('ALRC') is inquiring into justice responses to sexual violence. The ALRC will consider how to harmonise laws about sexual violence across Australia and how to promote just outcomes for people who have experienced sexual violence. The ALRC will pay particular attention to people in groups that are disproportionately reflected in sexual violence statistics and recommendations will aim to ensure that people who have experienced sexual violence and their families are properly supported when they seek help, and that the justice response minimises the extent of any re-traumatisation.

There is an over representation of Indigenous Australians recorded within sexual violence statistics, with Aboriginal and Torres Strait Islander women in particular experiencing significantly higher rates of sexual violence than the general population, at approximately three times that of non-Indigenous Australians. [1] There are many complex and diverse factors that contribute to the levels of sexual violence experienced by Aboriginal and Torres Strait Islander women, much of which stems from the ongoing negative impacts of colonisation, which have caused socioeconomic disadvantage and trauma, structural imbalances of power through systemic racism and oppression and the continuing dispossession and disconnection to culture, all of which has resulted in increased vulnerability and risk for Aboriginal and Torres Strait Islander women. [2]

NATSIWA Responses

[1] Queensland Sexual Assault Network, 2024, Resources, Aboriginal and Torres Strait Islander People
[2] Australian Institute of Health and Welfare, 2024, Family, domestic and sexual violence, population groups, Aboriginal and Torres Strait Islander Peoples.

1. Reporting the experience of sexual violence safely

Many victim survivors do report their experience to anyone, including police. For Aboriginal and Torres Strait Islander women this is further exacerbated by a range of complex barriers, such as, but not limited to; lack of understanding of legal rights and options and how to access support; imbedded discriminatory practices and limited cultural safety in support services; fear, mistrust and historical negative interactions with the police and legal services; isolation and limited access to support services due to communication and geographical barriers; fear of disconnection to family, community and/or children; fear of retribution or reprisal by the perpetrator; community pressure not to report; shame, embarrassment and assumed or actual lack of confidentiality by Aboriginal and Torres Strait Islander run support services.

To overcome or minimise these barriers significant cultural change and systems reform needs to occur to create trauma-informed, culturally safe and accessible support services to empower Aboriginal and Torres Strait Islander women to report sexual violence safely in a secure, supported and confidential manner.

Recommendations:

- Creating culturally appropriate and trauma-informed reporting mechanisms within mainstream support services for Aboriginal and Torres Strait Islander Women.
- Provisions for anonymous reporting capabilities, as to establishing patterns of offending, when victim survivors do not or cannot openly report due to fear of perpetrator, cultural or community retribution.
- Specially targeted information available openly via websites, apps and hotlines with translated information on how to report and seek support for Aboriginal and Torres Strait Islander women.
- Genuine commitment from the Police service and justice system to abolishing systemically discriminatory and racist practices and policies to create a safer service environment and build trust with Aboriginal and Torres Strait Islander peoples.
- Access to adequate resourcing and funding for Aboriginal and Torres Strait Islander community-controlled services to be able to provide culturally appropriate, confidential and safe spaces for Aboriginal and Torres Strait Islander victim survivors to report sexual violence and access support.
- The provision of flexible and innovative Aboriginal and Torres Strait Islander victim survivor informed alternative reporting practices, that are developed in co-design with communities.
- Access to appropriate Aboriginal and Torres Strait Islander interpreter services and information that is presented in clear and simple terms, without jargon or complexity.

2. Criminal justice responses to sexual violence

2.2. Police responses to reports of sexual violence

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2.2.1. Aboriginal and Torres Strait Islander people and the police have a long history of negative experiences which has built a embedded mistrust for engagement, there is often a fear of being exposed to issues of racism, discrimination, retribution and not being listened to by Aboriginal and Torres Strait Islander people when engaging with police, this is a barrier to reporting sexual violence. Ongoing commitment and demonstrated action by the Police to genuinely expel systemically racist and discriminatory practices needs to be enacted, including cultural informed training, co-designing place based programs with local Aboriginal and Torres Strait Islander community and victim survivors, development of cultural and trauma informed policies and programs and specific divisions within the police force that are culturally safe spaces and positions held by Aboriginal and Torres Strait Islander people. Transparency and accountability by the Police of their actions when engaging with Aboriginal and Torres Strait Islander people is paramount to rebuilding some semblance of trust and encouraging Aboriginal and Torres Strait Islander victim survivors to report sexual violence.

2.3. **Prosecution response**s

2.3.1. All prosecutors must have access to and undertake cultural and trauma informed training, this should be embedded as standard in the tertiary education program to ensure appropriate interactions and engagement with Aboriginal and Torres Strait Islander peoples. Additionally, ongoing professional development must occur throughout the lifecycle of their careers. The development and implementation of a cultural capability framework is imperative, as well as specific guidelines that ensure prosecution responses are guided by cultural and trauma informed principles. Independent review of sexual violence cases that are not progressed should be provided, along with cases to be considered by a victim's commissioner if requested. Prosecution decisions must be regularly audited to identify decision making patterns, particularly in relation to the decision to prosecute or not.

2.4. The trial process

2.4.1. Procedural changes need to be continually reviewed and implemented in accordance with trauma informed principles and victim survivor lead reforms. These special measures also need to be co-designed and place based, in particular for rural and remote Aboriginal and Torres Strait Islander communities.

2.5. 'Special measures': evidence in the form of audio-visual recordings

2.5.1. The ability and choice for a victim survivor to give evidence in the form of audio-visual recordings needs to be harmonised nationally to provide choice and limit further trauma. This special measure should be extended as a option for all Aboriginal and Torres Strait Islander victim survivors, not just children or those deemed as a 'vulnerable person' under the current definition. Additionally, in the instance of police interviews, sufficient and appropriate technology should be accessible in all locations, especially rural and remote areas; police conducting these types of interviews must have specialised training in both trauma-informed practices and cultural safety; there must be standards and guidelines for the police conducting the interviews; intermediaries should be used before and during the interview; interviews must be conducted in a safe space for victim survivors, noting for Aboriginal and Torres Strait Islander peoples this

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may not be achieved in a police station setting; decisions of what is admitted into evidence need to be victim survivor informed and choice of also giving evidence in person victim survivor led.

2.6. 'Special measures': intermediaries and ground rules hearings

2.6.1. Culturally informed, community approved and appropriate intermediaries should be available and use for Aboriginal and Torres Strait Islander victim survivors, in order to remove communication barriers. This should be extended to all Aboriginal and Torres Strait Islander victim survivors, not just children or those under the current definition of vulnerable adult. This should be harmonised across all jurisdictions. The definition of who is classified to act as an intermediary should be extended to include a wider range of culturally informed health and community professionals, with appropriate training, accreditation, registration and funding provided to ensure all communities have access to services. In rural and remote communities, this may be local Aboriginal Health workers with additional training.

2.7. Assessment of the credibility and reliability of complainants

2.7.1. All jurisdictions should harmonise and adopt legislation to provide jurors with directions to address myths and misconceptions about memory and responsive behaviours, this might be in the form of a video or calling expert evidence. Education and training should be provided on memory and responsive behaviour research for police, defence counsel, prosecutors, trial judges and appeal judges.

2.8. Judge-alone trials

2.8.1. Judge alone trials may be less traumatic for victim survivors, limit juror biases, offer greater flexibility and transparency and decrease costs, however, more needs to be done to ensure this is a trauma informed and victim lead process. Specialised training for Judges needs to occur to limit instances of cultural misconceptions or their own personal beliefs clouding judgement, additionally access to culturally appropriate and informed people, practices and advisors for judges may support this process.

2.9. Cross-examination and the law of evidence

2.9.1. The manner and duration of cross-examination needs to be sufficiently controlled to limit re-traumatisation of victim survivors. Prosecutors should be able to object questions which are unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; are put to the witness in a manner or tone that is belittling, insulting, or otherwise inappropriate; have no basis other than a stereotype (this is particularly relevant to Aboriginal and Torres Strait Islander victim survivors). Cross-examination of complainants on the topic of 'sexual reputation should be restricted and prohibit an unrepresented accused from personally cross-examining the complainant. Furthermore, statements in relation to the reliability or credibility of particular classes of complainants should be prohibited.

2.10. Interpreters

2.10.1. Access to Aboriginal and Torres Strait Islander interpreters must be available, if an accredited interpreter is not available, appropriate alternate access to a trusted community language speaker, such as a recognised and respected elder,

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should be available at the selection of Aboriginal and Torres Strait Islander victim survivors.

2.11. Personal information

2.11.1. It is imperative review and harmonise legislation across jurisdictions that restricts and prohibits the disclosure of information about counselling or other therapeutic interventions which a complainant of sexual violence has sought prior to trial. Complainants should be to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions.

2.12. Types of evidence

2.12.1. The admissibility and use of evidence must be reformed in a manner that is trauma and culturally informed to minimise perpetuation of myths, limit victim re-traumatisation and unduly delay proceedings.

2.13. Specialisation and training of judges and counsel

2.13.1. Specialised culturally informed training designed and delivered by Aboriginal and Torres Strait Islander people needs to be undertaken by all judges and legal counsel, long with trauma informed training on handling sexual violence matters.

2.14. Delay

2.14.1. Delays in the criminal justice system can have a negative impact on victim survivors' ability to recover from trauma, impact the families, lead to an increased likelihood of discontinuance of proceedings and affect the quality of evidence. For Aboriginal and Torres Strait Islander peoples such delays have an even greater impact due to the many and complex barriers to reporting and engaging in the justice systems. To reduce to delay overarching reform needs to occur mitigate the systemic issues and reduce resource pressures that contribute to preventable delays.

2.15. Guilty pleas

2.15.1. Communication with the victim survivor needs to be improved when ODPP negotiations around guilty pleas occurs. This enables transparency and an improved consultative process.

2.16. Sentencing

2.16.1. Harmonisation of sentencing practices should occur to minimise victim survivor re-traumatisation and remove feelings of being excluded in the sentencing process. The use of victim impact statements needs to be an option for victim survivors, be enabled by technology for rural and remote communities and have clear and concise information available on the use and supports, allowed contents, impact on sentencing and how this may be cross-examined.

2.17. Appellate proceedings

2.17.1. Appellative processes need to be victim centred through communication and consultation. Evidence should be pre-recorded to limit re-traumatisation if re-trial occurs. Education and specialised cultural and trauma informed training needs to be mandatory for appellate judges to increase understanding of the impact on victim survivors due to delays.

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3. Civil proceedings and other justice responses

Aboriginal and Torres Strait Islander women have historical and unique experiences engaging with the criminal justice system, this may be due to communication barriers, mistrust, intimidation and expenses civil litigation. NATSIWA Recommendations:

3.2. Restorative justice

3.2.1. Restorative justice practices and programs need to be embedded into justice legislation, be expanded, easily accessible and be governed by strong operational practices. Restorative justice programs must have culturally informed and safe practices embedded to ensure targeted and culturally nuanced support for Aboriginal and Torres Strait Islander victims in enable an enhance sense of justice and healing for the victim survivor, the person responsible and the community. Restorative justice programs need to be created via co-design with Aboriginal and Torres Strait Islander peoples, be place based and integrated with available treatment and support programs.

3.3. Civil litigation

3.3.1. Civil Litigation needs to be more accessible for Aboriginal and Torres Strait Islander women through the availability of government funding, culturally informed support to assist applicants to apply for intervention orders and enforced payment of damages. Court processes need to be trauma and culturally informed for Aboriginal and Torres Strait Islander women and include access to training on both the myths and misconceptions about sexual violence, as well as Aboriginal and Torres Strait Islander cultural safety. The admissibility of prejudicial evidence of little or no probative value needs to be excluded and available remedies to be extended and inclusive of Aboriginal and Torres Strait Islander culturally informed practices. Understanding, acknowledging and being inclusive of the intersection of sexual violence issues with family violence matters, family law matters, and child protection matters is essential for Aboriginal and Torres Strait Islander women who are even more likely to experience these matters simultaneously.

3.4. Workplace laws

3.4.1. In the workplace recommendations and actions need to be developed with the intersection of systemic racism, discrimination and sexual harassment towards First Nations peoples. Establishing workplace environments and policies that encourage reporting, safeguard victims and witnesses and demonstrate a commitment to eliminating sexual harassment, racism and discrimination of Aboriginal and Torres Strait Islander women is paramount. The Australian Human Rights Commission Act 1986 (Cth) and Fair Work Act 2009 (Cth) to facilitate civil proceedings, for example by permitting representative groups to bring proceedings, inserting protections regarding costs orders, and including the perpetration of sexual harassment as valid grounds for dismissal. Anti-discrimination laws should be harmonised and inclusive of specific provisions for the discrimination of Aboriginal and Torres Strait Islander people.

3.5. Compensation schemes

3.5.1. Compensation schemes need to accessible, equitable and trauma informed for Aboriginal and Torres Strait Islander Women to readily have access to support, taking into consideration planned provisions for geographical and technological limitations, in particular for women in rural and remote communities.

3.6. Victims' charters

3.6.1. Victims charters need to be extended and inclusive of specific and culturally informed obligations for Aboriginal and Torres Strait Islander victims. These charter rights need to be incorporated into the Human Rights act and also align with the UN Declaration on the Rights of Indigenous Peoples. Accountability and transparency in reporting and actions is imperative.

As evidenced throughout our response and in advocating for the rights of Aboriginal and Torres Strait Islander women who are victim survivors of sexual assult, NATSIWA welcomes this inquiry and commitment to reforming justice responses to sexual violence in this country. Much work has been done and needs to continue, with victim survivors at the forefront of reform processes.

For Aboriginal and Torres Strait Islander women, we are the most marginalised demographic of women in this country and far more likely to be impacted and experience sexual violence in our lives. Organisations like ours and other Aboriginal and Torres Strait Islander controlled entities must be consulted with in these types of reforms – early and continually throughout, we must be adequately funded to be able to provide best practice, culturally and trauma informed support that is accessible in all communities for our victim survivors. We must be engaged as research leads and included by research partners in an authentic and genuine manner. We must have input on all facets of these inquiries.

We are the cultural knowledge holders; we have the lived experiences and connections to community to guide and support outcomes for our people, in particular our women.

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