



THE LAW SOCIETY
OF NEW SOUTH WALES

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14 February 2022

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: nathan.macdonald@lawcouncil.asn.au

Dear Ms Nicoll,

Draft National Plan to End Violence against Women and Children 2022-32

Thank you for the opportunity to contribute to a Law Council submission on the Department of Social Services' Draft National Plan to End Violence against Women and Children 2022-32 (**National Plan**). The Family Law and Indigenous Issues Committees of the Law Society contributed to this submission.

We note that the National Plan is expressed in terms of principles, objectives, approaches and focus areas, rather than in terms of specific measures. At a high level, the National Plan discusses many of the issues raised in our submission of 13 July 2021. Many of our suggestions reflect the approach set out in the National Plan's four Foundation Principles and are consistent with the broad 'Focus areas' within the National Pillars of Prevention, Early Intervention, Response and Recovery. We stand by and reiterate the points and suggestions made in that submission.

Our comments in this submission primarily relate to the reference in the National Plan to the development of a standalone Action Plan in respect of ending violence against Indigenous women and children.

Ending violence against Indigenous women and children

Understanding the social, political, economic and historic context around violence against Indigenous women and children is critical and necessary to inform the development of a response to violence against Indigenous women and children. As recognised in the National Plan, the drivers of violence against Indigenous women and children are complex and intersectional, and Indigenous women can experience more severe forms of violence as compared to other women.

Furthermore, we note that the UN Human Rights Council has stressed the need for states to respect, protect and fulfill the right of Indigenous women to a life free from violence. This requires not only strategies to respond to the violence, but also effective prevention measures

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aimed at ‘addressing underlying discrimination and marginalisation [and] eliminating structural and institutional discrimination and harmful stereotypes.’¹

In 2017, the United Nations (UN) Special Rapporteur on the Rights of Indigenous Peoples, on her visit to Australia, observed ‘a disturbing pattern of violence against Aboriginal and Torres Strait Islander women’. This was fostered by ‘discrimination on the grounds of gender, race and class [that] is structurally and institutionally entrenched’. The Special Rapporteur also noted the ‘lack of culturally appropriate measures to address the issue’.²

She also observed that for Aboriginal and Torres Strait Islander women, ‘family violence is an intersectional concern that overlaps with homelessness, poverty, incarceration, health and removal of children.’³

We note also that care must be taken with considering the definition of violence against Indigenous women and children. Indigenous women can also experience violence in a non-family and non-intimate context, such as from colleagues, classmates and strangers.⁴ Furthermore, legal and policy responses must recognise that domestic and partner violence against Indigenous women can be perpetrated by men from any cultural background,⁵ not just by Indigenous men.

This context suggests the need for a fundamental reconsideration of the approach taken to ending violence against Indigenous women and children.

The Law Society strongly supports the proposed specific Aboriginal and Torres Strait Islander Action Plan (**Action Plan**). Such a plan should be urgently developed, and the Government should provide sufficient, sustainable and reliable resourcing to support the successful implementation of the standalone Action Plan. We note the views of Professor Marcia Langton in this regard:

We absolutely need our own Indigenous plan for ending violence against women and children and we absolutely need local and regional initiatives joined up with all the mainstream services, our representatives at the table, designing the local interventions...⁶

Indigenous individuals and Indigenous community-controlled organisations should be at the forefront of designing the Action Plan, and Indigenous individuals and Indigenous community-controlled organisations should lead program design and delivery. Indigenous community-controlled organisations should not be expected to absorb this work into their current programming. It will be necessary to properly and sustainably resource Indigenous community-controlled organisations to build the requisite capacity to undertake this work, at least throughout the lifetime of the National Plan and Action Plan.

¹ Human Rights Council, *Annual Full-Day Discussion on the Human Rights Of Women*, 32nd sess (15 June 2016) 1; Human Rights Council, *Accelerating Efforts to Eliminate Violence Against Women: preventing and responding to violence against women and girls, including indigenous women and girls*, 32nd sess, Agenda Item 3, UN Doc A/HRC/RES/32/19 (19 July 2016) 4 [7].

² Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 16.

³ *Ibid* 16.

⁴ Our Watch, *Changing the picture* (Background paper, 2020) 19 <<https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/09/20231756/Changing-the-picture-Part-1-AA.pdf>>.

⁵ *Ibid*.

⁶ Katharine Murphey, ‘Indigenous Australians need own plan to reduce violence against women, summit told’, *The Guardian* (Online, 6 September 2021) <<https://www.theguardian.com/society/2021/sep/06/indigenous-australians-need-own-plan-to-reduce-violence-against-women-summit-told>>.

We submit that formulation of the National Plan, and the standalone Action Plan, should be carried out in accordance with the Productivity Commission's Indigenous Evaluation Strategy, including those parts of the National Plan and Action Plan that take place on a state and regional level.⁷ We also suggest that there be transparency as to the individuals who will be leading and undertaking taking this work, including transparency in respect of the selection process.

We are pleased to note that the National Plan acknowledges the relevance of truth-telling and reconciliation work to address intergenerational trauma as a driver of the violence against Indigenous women and children. We are also pleased to note that the National Plan acknowledges the need to align this work closely with the work done under the National Agreement on Closing the Gap. In our view, meeting the structural reform agenda set out under the National Agreement on Closing the Gap will be critical, and will likely set up the conditions precedent, to ending violence against Indigenous women and children.

More specifically, the Action Plan should include consideration of long-term investment in specific projects and Indigenous community-controlled organisations to achieve Closing the Gap Target 13. For example, we note that increased funding for family violence services in response to COVID-19, which has enabled services such as the Aboriginal Legal Service (NSW/ACT) to expand family law services to meet a demand for culturally safe and targeted services, is not to be continued past June 2022. Ad hoc and short-term approaches to funding are detrimental to the ability of organisations to plan and deliver services. There are also, obviously, serious impacts on women and children experiencing violence when such services no longer exist, or exist only in a significantly restricted way. In our view, an audit should urgently be carried out to determine current critical gaps that require funding. In the experience of our members, this includes the establishment of Indigenous-specific crisis accommodation services for Indigenous women and children, including crisis accommodation services for pregnant Indigenous young people under 18, and the raft of post-crisis supports required to assist survivors of violence reintegrate into their lives.

Consistent with the Law Society's ongoing support for wraparound therapeutic approaches to justice in respect of Indigenous people, our view is that justice responses alone in respect of perpetrators, particularly Indigenous perpetrators, will not adequately address the systemic nature of violence against Indigenous women and children. Culturally appropriate efforts to work with perpetrators to address and change violent behaviours are required to address the underlying issues including trauma, poverty, mental health and substance abuse.

Finally, we note that the National Plan mentions the involvement of the private sector where private sector players have volunteered to help identify and respond to family violence. One of the response pillars at page 37 regarding the private sector is "Expand work within the financial sector in identifying and taking action against the misuse of banking platforms and embed safety principles in all products and services".

We understand that the financial sector has developed guidelines and codes on responding to family violence such as the Australian Bankers Association's Industry Guideline on Financial Abuse⁸ and Part 9 of the General Insurance Code of Practice. These codes are enforceable through the Australian Financial Complaints Authority.

However, these guidelines can be amended by the industry bodies themselves and do not contain any real requirement to provide culturally competent compliance. The National Plan

⁷ Productivity Commission, *Indigenous Evaluation Strategy* (Report, October 2020) 14 <<https://www.pc.gov.au/inquiries/completed/indigenous-evaluation#report>>.

⁸ See for example <https://www.ausbanking.org.au/wp-content/uploads/2021/03/ABA-Financial-Abuse-Industry-Guideline.pdf>.

proposes that the Government will continue to work with the private sector to address family violence, but there are no specific requirements for the private sector to provide their response in a culturally competent manner with Indigenous consumers. We submit that the Action Plan should require the continued engagement of industry bodies and ombudsmen services on how respective industry codes will be applied in a culturally competent manner.

We look forward to the opportunity to further contribute to the subsequent development of the more detailed aspects of the National Plan.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J van der Plaat', written in a cursive style.

Joanne van der Plaat
President