

This is attachment 'SFB-1' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

*M Ross*

**MEGAN ROSS**

**An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004**

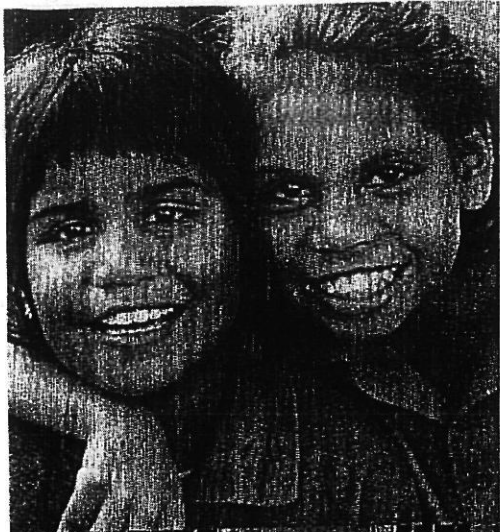
- A greater number of adult female victims seeking assistance from police and courts were from metropolitan regions. However, when analysed as a proportion of the population, there was a higher rate of women from non-metropolitan regions seeking assistance.
- Increasing proportions of women with disabilities continue to be reported through DHS SAAP services.
- Approximately 25 Indigenous patients were identified presenting for family violence-related injuries in each of the four years where VEMD data has been reported on.
- The vast majority of Indigenous victims of family violence were female – increasing from 70 per cent to over 90 per cent in 2007–08.
- Eight in ten aggrieved family members were born in Australia and spoke English. This reflects the Victorian population as a whole where the 2006 census indicates that 23.8 per cent of the Victorian population was born overseas.

This is attachment 'SFB-2' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

*M Ross*

**MEGAN ROSS**

An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004



Overcoming

Indigenous Disadvantage

# Overcoming Indigenous Disadvantage

Key Indicators 2009

Steering Committee  
for the Review  
of Government  
Service Provision

2009



---

identify Indigenous people in data collections or, where Indigenous status is collected, data are not of sufficient coverage or quality to publish.

However, there are several limitations to using police records to measure family and community violence. For example, data do not represent all victims of crime, just those that come to the attention of, and whose details are recorded by, police. In addition, data presented generally reflect victims of violent criminal incidents where the violent incident was reported to, or otherwise detected by, police. Finally, the tendency to report criminal victimisation to police may differ between Indigenous and non-Indigenous people (and there is no way of estimating the level of under-reporting).

There is no national collection for domestic and family violence statistics for all people, including Indigenous people. Some jurisdictions have data disaggregated by Indigenous status, but there are no standard definitions used to identify cases of domestic and family violence. The police data are not comparable between states and territories and are subject to the caveats included in the attachment tables.

In NSW, in 2007:

- Indigenous people were five and a half times as likely to be a victim of domestic violence as non-Indigenous people (table 4A.11.37)
- Indigenous women were 6.2 times as likely to be a victim of domestic violence as non-Indigenous women (table 4A.11.43)
- for Indigenous people, the spouse was the offender in 38.7 per cent of domestic violence related assault offences (compared with 37.2 per cent for non-Indigenous) (table 4A.11.49)
- for both Indigenous and non-Indigenous people, offences against the person are most likely to occur in residential dwellings (61.4 per cent of offences against Indigenous people occurred in residential dwellings compared with 45.6 per cent for non-Indigenous people) (table 4A.11.52).

More information (from NSW Bureau of Crime Statistics and Research) on murder, assault and sexual assault against victims can be found in tables 4A.11.37–42. More information on female victims is in tables 4A.11.43–48. Information on relationships of offenders to victims is in tables 4A.11.49–54.

In Victoria, in 2007-08:

- Indigenous people were 4.5 times as likely to be a victim of domestic violence related assault as non-Indigenous people (table 4A.11.55)
- for Indigenous females, the rate of domestic violence related assault was five times as high as the rate for non-Indigenous females (table 4A.11.61)

This is attachment 'SFB-3' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

  
**MEGAN ROSS**

**An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004**

# The health costs of violence

## Measuring the burden of disease caused by intimate partner violence

A summary of findings

# 1. Intimate partner violence – a major burden on our health

---

*Intimate partner violence is responsible for more ill-health and premature death in Victorian women under the age of 45 than any other of the well-known risk factors, including high blood pressure, obesity and smoking*

In 1999, VicHealth undertook a wide-ranging investigation into factors contributing to the escalating incidence of mental health problems in our community. On the basis of this review we identified mental health as a priority area for action.

In the past, health promotion has focussed on supporting changes in the behaviour of individuals, so that they are better able to protect and promote their health. In the last 15 years, however, in response to increasing evidence of the influence of social and economic factors on health, our focus has shifted to also supporting positive changes in the environments in which people live, work, play and build relationships with one another.

In our mental health promotion work we have focussed on three factors as being particularly important for good mental health: social inclusion, economic participation and freedom from violence and discrimination.

Our 1999 review of the causes of poor mental health indicated that a range of forms of violence required attention, from work place violence and bullying in school environments, through to violence occurring in youth gangs and that perpetrated against racial and other minorities.

Among these, violence against women, particularly that occurring in the context of an intimate relationship, emerged as an especially common phenomenon having serious mental health impacts. Accordingly, in 2003 we conducted a more detailed study, to determine the contribution VicHealth could make to support primary prevention of violence against women.

This study, carried out by VicHealth in partnership with the Department of Human Services, is one of a number of current and planned activities to address this issue.

Too often intimate partner violence is trivialised in our society as somehow being less serious than violence committed in other contexts; as a matter to be resolved in the privacy of the home. The findings of this study present a serious challenge to these views.

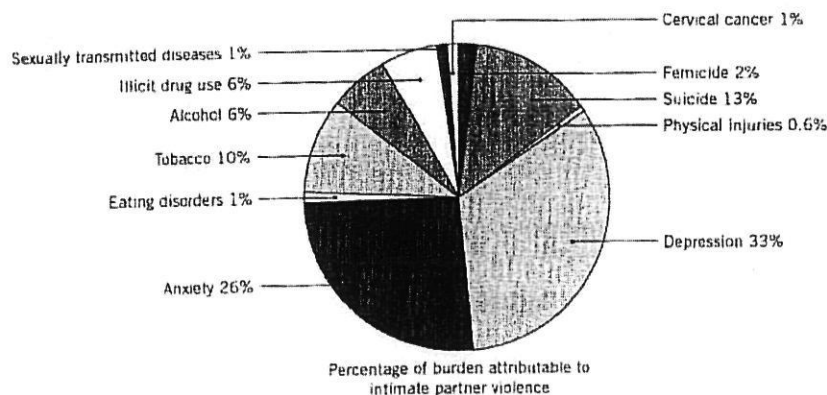
*They demonstrate that intimate partner violence is all too common, has severe and persistent effects on women's physical and mental health and carries with it an enormous cost in terms of premature death and disability. Indeed it is responsible for more ill-health and premature death in Victorian women under the age of 45 than any other of the well-known risk factors, including high blood pressure, obesity and smoking.*

There is a broad consensus internationally that intimate partner violence is best addressed in the context of a human rights, legal and health framework and through the development of multi-level strategies across sectors (WHO 2002; OWP 2002). In Victoria, this approach is co-ordinated through the whole-of-government Women's Safety Strategy, with intimate partner violence also being identified as a priority in the Women's Health and Wellbeing Strategy.

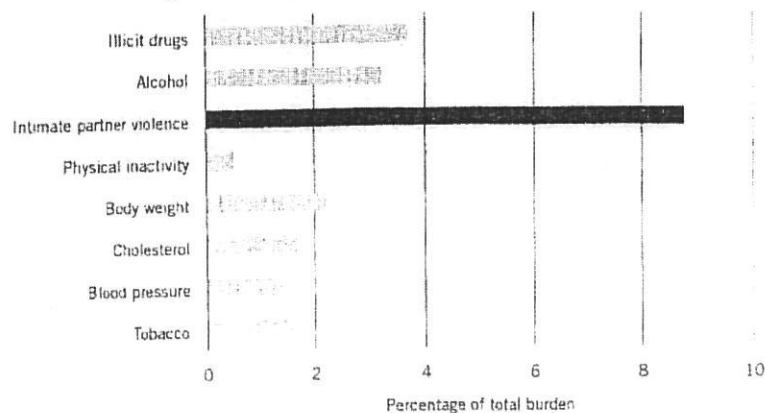
The findings of this study suggest the need to increase our efforts in policy implementation in these areas, with particular emphasis on the primary prevention of violence against women.

*The findings of this study suggest the need to increase our efforts in policy implementation in these areas, with particular emphasis on the primary prevention of violence against women*

**Figure 1: Health outcomes contributing to the disease burden of intimate partner violence in Victorian women**



**Figure 2: Top eight risk factors contributing to the disease burden in Victorian women aged 15–44 years**



This is attachment 'SFB-4' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010



MEGAN ROSS

AN AUSTRALIAN LEGAL PRACTITIONER  
WITHIN THE MEANING OF THE  
LEGAL PROFESSION ACT 2004



**Australian Government**  

---

**Attorney-General's Department**

Consultative draft  
**National Indigenous Law and Justice Strategy**

2007



# **1 Reducing crime in communities and improving access to justice**

Actions to address this aim are:

1. Address the underlying causes of crime
2. Improve access to legal aid services
3. Increase law and justice outcomes for Indigenous women, and
4. Monitor Indigenous deaths in custody issues

A detailed list of measures and processes under this aim are contained in the Action Plan, with additional information about the actions outlined below.

## **Commentary: Action 1 Address the underlying causes of crime**

The causes of crime are complex, and include social and economic factors. Education and literacy levels, the availability of activities in the community, family status, friendship groups or housing conditions are some of the underlying causes of crime which may lead to a single criminal act.

The Department is working cooperatively with other departments, agencies and bodies to identify the causes of crime and implement solutions. Consideration of cross-agency projects in the Single Indigenous Budget Submission, working groups and consultative approaches on a wide variety of issues are necessary to recognise underlying and systemic causes of crime and criminal behaviour.

## **Commentary: Action 2 Improve access to legal aid services**

The Department funds all Indigenous legal aid service providers across Australia under contracts following a progressive roll-out of tenders in an open and competitive procurement process. New policy directions issued by the Department for the provision of Indigenous legal aid services form part of the new contracts. These policy directions introduce clearly defined eligibility criteria, priorities for assistance and service standards, and are available on the Department's website (see Sources referenced in the preparation of the Strategy).

The service providers deliver legal information, initial legal advice, minor assistance, duty lawyer assistance, and legal casework services in criminal, civil and family law matters. In 2004–05 the Australian Government allocated \$45m to the program, with representation provided to over 70,000 clients in more than 137,000 cases and duty lawyer matters.

In addition to funding Indigenous legal aid service providers, the Australian Government funds State and Territory mainstream legal aid commissions to assist applicants in Commonwealth law matters, such as family law matters. Commissions are funded by State and Territory governments for grants of assistance relating to State law matters, such as many criminal law matters. Indigenous Australians are able to access the services of legal aid commissions.

## **Commentary: Action 3 Increase law and justice outcomes for Indigenous women**

Over 10 years ago Indigenous women were found to be the most legally disadvantaged group in Australia, according to an Australian Law Reform Commission report. Despite many

improvements, such as the introduction of specific legal services for Indigenous women, significant disadvantages still exist.

Many Indigenous women suffer particular socio-economic disadvantages including low incomes, reduced life expectancy, high unemployment rates, carer responsibilities and poor education levels. Indigenous women are also more likely to be victims of violence and to live in communities where violence is prevalent, particularly in remote and rural areas.

The focus of recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) related to improving justice outcomes for men, who comprise the overwhelming majority of Indigenous detainees, offenders and prisoners. Five RCIADIC recommendations specifically mentioned Indigenous women, and one addressed the legal needs of women with respect to violence. Indigenous legal services primarily service matters relating to criminal legal advice and representation.

Historically, Indigenous women have had a lower profile in the criminal justice system as the actual number of Indigenous women defendants and prisoners is small compared to the numbers of Indigenous men. At the same time, Indigenous women represent the fastest growing prison population in Australia, although absolute numbers are still relatively low (an increase from 111 in 1993 to 381 in 2003). Indigenous women are imprisoned at a rate per head of population approximately 20 times that of non-Indigenous women, and this is increasing far more rapidly than for Indigenous men. Only a small amount of research has been conducted on the needs or circumstances of Indigenous women in the criminal justice system.

As a result of these factors the needs of Indigenous women are often met through services not specifically designed for them or through mainstream government agencies available for all women. Lack of attention to their distinct needs may marginalise Indigenous women, and entrenches inequalities in service delivery.

Services to Indigenous women need to be targeted, culturally sensitive and more work needs to be done on assessing unmet needs.

#### **Commentary: Action 4 Monitor Indigenous deaths in custody issues**

The RCIADIC report made 339 recommendations to reduce Indigenous custody levels, remedy social disadvantage and improve measures relating to self-determination, empowerment and reconciliation. From 1992–97 all governments acted to implement many justice and justice-related outcomes, including establishing Aboriginal Justice Advisory Committees, improving coronial and statistical collections systems, developing a National Indigenous Legal Studies Curriculum to support Aboriginal legal services field officers and providing support mechanisms to improve the input of communities and elders in criminal justice processes. There have also been measures taken to improve incarceration rates and the overrepresentation of Indigenous people in custody.

The 2003 NAJAC Justice Summit recognised the need to continue monitoring and following up on the implementation of the RCIADIC recommendations, especially those in relation to coronial change processes. A primary concern arising from the RCIADIC has been the issue of deaths in custody and high rates of incarceration of Indigenous people. The Australian Institute of Criminology's National Deaths in Custody Program has released regular information on deaths in prisons, police custody and juvenile detention since 1992.

## 4 Reducing the impact of family violence

The actions to address this aim are:

1. Address levels of family violence in Indigenous communities
2. Provide a holistic response to issues of family violence

### **Commentary: Address levels of family violence in Indigenous communities**

The term 'family violence' is used as it is considered by many Aboriginal and Torres Strait Islander people to be more in keeping with a holistic approach to understanding violence in their communities. The term 'family violence' refers to violence within a broad range of family relationships; for example, aunts, uncles, cousins, and children of previous relationships. Family violence incorporates a wide range of behaviour; the most commonly acknowledged being physical violence, sexual assault, threats, intimidation, emotional abuse, social abuse and economic deprivation.

The level of family violence in Indigenous communities remains unacceptably high. Research indicates that Indigenous people may be up to six times more likely to be victims of domestic-related assault than non-Indigenous Australians. Australian Institute of Criminology data showed 54 per cent of Indigenous homicides occurred between family members in 2001, compared to 38 per cent of non-Indigenous homicides.

The victims of family violence are disproportionately women and children. Over 70 per cent of the 190 Indigenous intimate partner homicides from 1990–91 to 2001–02 involved a female victim killed by a male offender. Almost 40 per cent of the 457 homicides over the same period where both the victim and offender were Indigenous involved a female victim and a male offender. The Australian Institute of Health and Welfare found that in 2003 Indigenous women were 28 times more likely than non-Indigenous women to be victims of family violence and other assaults.

The National Framework on Indigenous Family Violence and Child Protection provides a national platform for addressing levels of family violence in Indigenous communities. This national platform has been further strengthened by the intergovernmental Summit on Violence and Child Abuse in Indigenous Communities and its agreed outcomes.

### **Commentary: Provide a holistic response to issues of family violence**

The physical and social impact of family violence affects all family members, not just the direct victims of violence. For example, family violence has a serious adverse effect on children, who are often both victims and witnesses of parental violence.

Perpetrators, family members of the victim, and the wider community must be included as part of a holistic strategy to reduce family violence. Such measures include the establishment of family healing centres, men's time-out facilities, behaviour change programs and safe haven approaches.

This is attachment 'SFB-5' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

*M Ross*  
MEGAN ROSS

An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

# *From Shame to Pride*

## **Access to Sexual Assault Services for Indigenous People**

**A Partnership Project between Elizabeth  
Hoffman House and CASA House**

### **CONSULTATION OUTCOMES REPORTS AND RECOMMENDATIONS**

**Prepared By  
Lisa Thorpe  
Rose Solomon  
Maria Dimopoulos  
For Elizabeth Hoffman House**

## 1. Project Background

Elizabeth Hoffman House (EHH) has long been aware of the extent and levels of family and sexual violence within Indigenous communities. Recently it estimated that over 80% of the women accessing its refuge and outreach services, or their children, have been sexually abused. Furthermore, a high percentage of those victims had never reported the abuse. In its twenty years of operation as a refuge for Aboriginal women and their children, EHH has become increasingly concerned with Aboriginal communities' inability to come to terms with issues of sexual assault and family violence.

Open discussion of family and sexual violence in Australian Indigenous communities is relatively new. In some Aboriginal communities, violence is said to affect up to 90% of families. Aboriginal men are four times more likely to die a violent death than non-Aboriginal men, and women are six and a half times more likely to die a violent death than non-Aboriginal women. There is considerable evidence that Indigenous women are much more likely to be victims of family violence than non-Indigenous women and to sustain more serious injuries; in some areas that rate of family violence involving Aboriginal women is 45 times higher than for non-Aboriginal women and Aboriginal women are ten times more likely to be killed as a result of family violence. (Bonnie Robertson 'Queensland Indigenous Family Violence Taskforce' Report 2000)

The need to discuss family and sexual assault with Aboriginal workers at the forefront of these issues is seen as critical in enabling Aboriginal people an opportunity to access services that may assist them in the healing process.

It was within this context, that Elizabeth Hoffman House, in partnership with CASA House, sought and obtained funding from the Lance Reichstein Foundation to undertake a project designed to begin the important step of bringing about change within Aboriginal communities around the issue of sexual violence. Whilst the focus of the project was directed at existing programs and workers, the skills and resources gained throughout the project life will undoubtedly enhance responses as well as enhance the skills of the workers.

This report forms the first stage, of what will need to continue to be a highly consultative process, which seeks to establish long term and meaningful partnerships with relevant Indigenous organisations and individuals and the Victorian Centres Against Sexual Assault. The next stage should seek to build on the foundations created by this consultative process, and begin to develop and deliver appropriate training programs.

The project (with its limited resources) did not deliver any skills development training programs. However, this report honours the strong recommendations made by the respondents, that such training be developed only in direct consultation with relevant Indigenous organisations. Furthermore, that such a plan be monitored and evaluated in conjunction with relevant Indigenous organisations. This could be done through the establishment of a Statewide Indigenous/CASA Sexual Assault Reference Group.

It is critical that offers of partnership made by each of the organisations consulted, be explored by the CASAs with the same genuineness and goodwill demonstrated by the Indigenous workers and organisations consulted, if the issues are to be progressed further.



According to the many Indigenous women consulted, rape or sexual abuse is becoming a frequent occurrence in their Communities. It has been estimated that 88% of rape cases go unreported.

The report also highlighted that many cases of rape or sexual abuse occur in a family situation, yet these are rarely identified as rape by Indigenous women or addressed as such by the courts. The report identified that most Indigenous women who are victims of domestic assault have little concept of marital or relationship rape and their right to say no in such circumstances. Even if they do know their rights, they 'are reluctant to seek help from the legal system because they fear they will be abused further by male police and male lawyers who were considered to place them on trial, rather than the perpetrator'.

The rate of sexual abuse among young girls involved with the criminal justice systems is between 70% and 80%, while in one state it is claimed by the Aboriginal and Islander Child Care Agency that 50% of the children within the court system in their region were victims of incest.

The Taskforce Report also identified that the reluctance to report a rape or sexual assault was said to have been caused by fear of the justice system, shame, and difficulty communicating with non-Aboriginal police officers, judges, prosecutors and other legal staff. Many women reported that they were aware that some judges and the police used cultural distortions of rape to legitimise men's behaviour. There have been many accounts in recent times where members of the judiciary, in their summation of sexual offences against Aboriginal women, legitimised and excused the offence as a cultural right of men.

Although the statistics for violent sexual offences are high, many Indigenous women consider that the numbers would be multiplied if the current barriers to reporting were removed. The number of unreported sexual assaults is indicated in these statistics from the Adelaide report *Aboriginal Women Speak Out*:<sup>11</sup>

- 88% of victims did not formally report the rape.
- 75% of victims said they did not report because of fear, of repercussions, or of police attitudes.
- 29% of victims said they did not report because of fear of not being believed.

The NSW Aboriginal Justice Advisory Council has recently released its own discussion paper: "Holistic Community Justice, A Proposed Response to Aboriginal Family Violence" (2001). This Discussion Paper aims to provide a current position on responses to family violence in New South Wales, as well as provide some direction for future responses to family violence. The report refers to a recent compilation of data from the Bureau of Crime Statistics and Research which reveals the following concerning Aboriginal rates of over-representation in the criminal justice system concerning family violence as well as levels of Aboriginal victimisation:

- Approximately 270 per 100,000 of alleged sexual assault offenders in NSW are Aboriginal and Torres Strait Islanders. This is in comparison with only 90 per 100,000 of the general NSW male rate. That is, Aboriginal men are 3 times more likely than the general population to be sexual assault offenders;
- At least 130 per 100,000 Aboriginal and Torres Strait Islander men are alleged child sexual assault offenders compared to only 50 per 100,000 of the general population. That

<sup>11</sup> Carter. E. *Aboriginal Women Speak Out*. Adelaide: Adelaide Rape Crisis Centre 1987



*"I have seen whole generations of families go through experiencing sexual abuse. We have to break the cycle. If we don't break the cycle kids will think its normal. This normalcy of the experience is a particular issue. Young children thinking this is just the way things are. If we don't talk about what is happening to our children, it will just continue on"*

*(Indigenous worker)*

#### 4.1.4 There is a 'normalisation' of sexual violence that is now becoming intergenerational

Several respondents spoke of the 'normalisation' of sexual violence in some communities, to the point where both victims and perpetrators believed that it was seen to be 'cultural'.

Another issue identified by some workers that could result in 'normalisation' of the violence was the fact that often the sexual abuse was seen as a low priority when compared to issues of poverty and unemployment or substance abuse:

*"It seems that at times sexual assault within the community is a low priority compared to some of the other issues that person, or that family could be faced with"*

*(Indigenous worker)*

#### 4.1.5 The issues have to be addressed in a holistic way if any real outcomes are to be achieved

In discussing sexual abuse, almost all of the Indigenous participants were quick to point out the futility of addressing the issue in isolation of other factors such as health, housing, employment and education. If long term change was to take place then any response to the crisis characterising sexual abuse in Indigenous communities has to be couched within a holistic framework:

*"It has to be a holistic approach, it has to be based on self determination and it has to be community controlled. It will be from this basis that we then begin to talk with mainstream agencies. If that starting point is respected, great things can happen"*

*(Indigenous worker)*

Overall, most Indigenous participants spoke of the need for the healing process to incorporate all the stages.

Furthermore, that a holistic approach would also necessitate addressing related issues such as drug and alcohol dependency, housing, employment etc.

#### 4.2 Gaps and barriers that prevent Aboriginal people from accessing sexual assault services

*"I have to say that when I hear this question I get really frustrated. I can sit here and list thousands of gaps and barriers for Aboriginal people. I could probably draw out some really thick reports too that will say the same thing. The big difference is that will this discussion fall on deaf ears, or will it actually get heard by government and by mainstream agencies. Isn't this the real issue?. What gets done around the gaps"*

*and barriers to me is more important than telling it all again"*  
(Indigenous worker)

The above quote reflects the frustration that was often expressed in discussions around the various barriers to appropriate service to Indigenous communities in relation to family and sexual violence. The strong message from Indigenous participants was the critical need for the gaps and barriers to be acknowledged and most importantly addressed by those designing and delivering service, and those formulating policy.

Another important point regularly raised by Indigenous providers was the fact that many Indigenous organisations and their staff were working beyond their maximum capacity. Numerous examples were provided by Indigenous participants of staff who were suffering from high levels of stress and ill health. This was seen to be a completely unacceptable situation and participants demanded that urgent action to address what is clearly an untenable and unsustainable situation.

A number of gaps and barriers preventing Aboriginal people from accessing sexual assault services were however identified in the focus groups. These included:

- Lack of Aboriginal specific services limiting service options for victims
- Lack of Aboriginal staff based at mainstream sexual assault services
- Little or no awareness amongst Aboriginal communities of the existence of CASAs and nature of support they provide
- Limited skills amongst some Aboriginal workers specific to sexual assault
- Inappropriate mainstream service responses
- Inappropriateness of mainstream models such as counselling/appointments etc.
- Institutional racism
- Fear of reprisals from the perpetrator/family/community
- Victims not identifying the act as an 'assault' - part of the normalising process
- Fear of police/legal system and so victims don't report

#### 4.2.1 Lack of Aboriginal specific services limiting service options for victims

*"We need the funding to ensure that outreach services are able to operate across Aboriginal communities. We work with sexual assault every day in our communities, why cant we do it openly and work together to make sure our people get some sort of service:*

*(Indigenous worker)*

Many of the participants identified the lack of Indigenous specific services around sexual abuse as a key barrier to achieving change:

*"We don't have the services to deal specifically with the issues. They get tagged on to the case management stuff we do, or the family support work. However, I think this is an issue that has to get some serious specific attention"*

*(Indigenous worker)*

Whilst most participants were of the view that increased resources and funding for Aboriginal sexual assault services was a vital part of any long term strategy, some also highlighted that this should not be seen as absolving mainstream services of their obligation to provide appropriate services to Indigenous communities:

*"Our communities should have the choice about where they go. They should have that right to decide. I know that some of our clients don't want anything to do with Koori organisations. Their relatives, or the perp's relatives might be at the reception desk. I end up doing a lot of outreach work away from the service. And then there are some who wouldn't go anywhere near a mainstream service. It does come down to the right to choose"*

*(Indigenous worker)*

The issue of resources was also repeatedly raised as one of the most significant barriers for Aboriginal people seeking support. Whilst the importance of this issue seemed to be shared across each of the focus group locations, participants in the East Gippsland group were particularly concerned with what they often described as a 'crisis':

*"We are working to the max. Its just not possible though to sustain this way of working. As Aboriginal workers we are expected to be experts on every issue that comes our way. We are so stretched. We urgently need some funding to give us some relief from this way of working. Our people aren't getting a service if all our Aboriginal workers are so burnt out"*

*(Indigenous worker)*

A number of other workers also referred to the fact that often Aboriginal workers were sole workers, and had to travel significant distances in order to service a large geographical area.

*"Given we have such a high number of stats with child abuse, and child sexual assault, why do we only have just one worker [from VACCA] for the entire region."*

*(Indigenous worker)*

#### **4.2.2 Lack of Aboriginal staff based at mainstream sexual assault services**

A number of Indigenous participants were critical of what they perceived to be an overwhelming lack of Indigenous staff employed by mainstream sexual assault services. Several also targeted for criticism the problematic practice of employing sole workers to do as one worker put it 'all things remotely Aboriginal'. This practice, it was suggested, does little more than create impossible expectations and demands on that worker, and leads to high turnover of Aboriginal staff:

*"Whilst its great to employ Aboriginal staff, its just not fair employing one and expecting them to do it all. But it is important to remember that sometimes by just having an Indigenous face (or several), then that can open doors"*

*(Indigenous worker)*

On the whole though, many of those consulted strongly advocated the employment of Indigenous staff as an effective means of increasing access to Indigenous people. However corresponding support and appropriate infrastructure needed to go hand in hand with the practice of employing Aboriginal people:

*"It's more than just employing a black face. You have to look at how your organisation works, and provide support to the Aboriginal staff you employ. Its no surprise to many of us that so many Aboriginal workers, with great experience and*

This is attachment 'SFB-6' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

*M Russ*  
MEGAN RUSS

An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

5.21 *Culturally appropriate services.* The experiences of women of non-English speaking background differ from state to state. The size and cultural background of the communities also vary and need to be considered in appropriately servicing women's needs in those communities. For example, in Western Australia isolation and lack of services are particular problems for women in mining towns, many of whom have been sponsored on spouse and fiancée visas. In the Northern Territory there is increasing interest in service provision to the immigrant community in Darwin but not in other areas.[30] In Tasmania there are many non-English speaking communities but they are each small in number, women of non-English speaking background continually struggle to have their needs recognised.[31]

5.22 *Locations of particular need.* The need for women's legal services is extreme in rural and isolated areas.[32] The Commission received submissions from individuals, community centres and legal groups which reported that even general legal services are inadequate in rural and remote areas. Legal services that cater to women's needs are virtually non-existent.[33] In many areas the population will be too small to support a permanent service. New models, such as a travelling service, may be appropriate and should be trialled. Alternatively, a service similar to one being run by the Legal Aid Commission in Queensland may be appropriate. Under this scheme, women in isolated communities can communicate with the Legal Aid Commission through fax at their local council chambers.[34]

5.23 *Best practice standards.* Expanding women's legal services must be linked with promoting best practice. This can be done through the National Women's Justice Program. Organisations attempting to establish a women's specialist legal service and existing services should have access to information on operational models, innovative services, funding and other issues that go to providing the best possible service with the resources available.

#### **Recommendation 5.1**

**As a part of the National Women's Justice Program funding should be provided by the Commonwealth for an additional women's legal service in each State and Territory. Funding should include a separate component for programs to assist women of non-English speaking background and women in rural areas.**

[[back to top](#)]

## **Specialist women's legal services for Aboriginal and Torres Strait Islander women**

### *Introduction*

5.24 In the Interim Report the Commission recommended the funding of legal resource and advocacy centres for indigenous women as pilot programs for an initial three year period as part of the national women's justice program.[35] The Commission has received an overwhelmingly positive response to this recommendation. In New South Wales and Queensland there has been independent progress towards the development of such services but a lack of secure funding.[36]

### *Indigenous women are multiply disadvantaged*

[T]he problems for women stem from the fact that we're Aboriginal people as well as being women.  
[37]

Of all the identifiable groups of women whose concerns have been presented to the Commission,



Aboriginal and Torres Strait Islander women are least well served by the legal system. This fact is related to, but not dictated by, the extreme social and economic disadvantage experienced by many Aboriginal and Torres Strait Islander women.[38]

As a minority group within Australia's female population, Aboriginal and Torres Strait Islander women face significant cultural, economic, social and personal hurdles in their quest for recognition and equal opportunity.[39]

Indigenous women suffer particular disadvantages both within the mainstream legal system and in the administration of Aboriginal and Torres Strait Islander legal services. Some of the discrimination they suffer, as women, is analogous to the discrimination suffered by non-indigenous women. Some of the discrimination suffered by Aboriginal and Islander women is particular to them as indigenous Australian women.

**5.25 Diversity of indigenous women.** Indigenous women have different legal needs depending on the region of Australia in which they live and whether they reside in cities or rural communities. There is also considerable variation in culture and laws between rural communities across the country. In remote traditional communities the lack of basic services is often extreme and the practices of a legal system developed by urban white men quite foreign.[40] Women in these communities face particular barriers to access to legal services.

**5.26 Indigenous women's experience of the legal system.** Aboriginal and Torres Strait Islander people are largely excluded from access to the benefits of the legal system. Among clients, practitioners and decision makers in the legal system, indigenous women are even fewer in number than indigenous men. Historically, Aboriginal and Torres Strait Islander peoples know the Australian legal system as one which authorised the annexation of their land and the loss of their lifestyle and many of their ritual roles. This has been the case for men and women but the impact has, in some senses, been different. Women have experienced their children being forcibly taken from them, have lost many of their women specific roles as custodians of culture, have been imprisoned and died in custody, grieved over relatives who have died in custody and have been subjected to violence perpetrated by non-Aboriginal and Aboriginal men, all with the express or apparent sanction of the law.[41] Aboriginal and Torres Strait Islander people, in particular women, are over represented in prison populations.[42] There are 178 indigenous women compared to 9 non-indigenous women per 100,000 people imprisoned in Australia.[43] The disproportionately high level of incarceration of indigenous people, and particularly women, exacerbates the distrust of the legal system felt in many communities. Recognition of the problem of distrust of the mainstream legal system led to the setting up of legal services for indigenous people. However, these services often fail to meet the needs of indigenous women.

**5.27 Aboriginal and Torres Strait Islander women as targets of violence.** The level of violence experienced by Aboriginal and Torres Strait Islander women is generally higher than that experienced by other women.

The relatively suburban term 'domestic violence' does not come close to adequately describing the levels of violence perpetrated on Aboriginal women - typically by male perpetrators (not only the spouse), over a longer period, more commonly with weapons and more frequently resulting in severe injury.[44]

The number of indigenous women killed by their partners and male relatives is far greater than the number of indigenous deaths in custody.[45] Consultations indicate that the majority of serious assaults against indigenous women are not reported.[46] The reality experienced by most indigenous women is that the law provides them with little or no protection. In particular, few men who commit violent assaults against indigenous women are made accountable for these non-indigenous or indigenous crimes.[47] There are various reasons for this. One is a reported lack of action by women

in pursuing claims of violence. Specialised legal services for indigenous women should not be hindered by cultural alienation or by potential conflicts of interest from addressing the urgent legal needs of women survivors of violence.

*Domestic violence laws simply do not work in remote Aboriginal communities. . . . Aboriginal women simply have no access to legal information; their children tend to be very young; power in these communities rests squarely with the males; white police do not attend domestic violence situations; there is a serious degree of violence; the community council is male dominated and that council filters complaints to the police; there is, generally speaking, no women's council to represent women; . . . women don't get heard. . . . [T]he communities are effectively closed. . . . Women in these communities are also immobilised. . . . Restraining orders will not be enforced.*  
[48]

### ***Indigenous women are not adequately served by the legal system***

**The case of Robyn Kina R v Kina** is a disturbing example of the legal system's failure to serve an indigenous woman. In 1988 Robyn Kina was convicted of the murder of Tony Black and sentenced to imprisonment with hard labour for life. Robyn Kina had been subjected to extreme abuse by Black, her partner, during the three years prior to the killing, including on the morning of the killing. However, she did not give evidence at her trial and evidence of the links between this history of abuse and her actions on that morning was never presented to the trial court. Her trial on the murder charge took less than one day. No evidence was presented in her defence. In 1993, on appeal, the Supreme Court of Queensland set aside her conviction as a miscarriage of justice. She did not receive a fair trial due to 'problems, difficulties, misunderstandings and mishaps occurring in the communication of my instructions to the lawyers'.<sup>[49]</sup> The Court stated that:

*[None] of the lawyers who acted for the appellant received any training or instructions concerning how to communicate or deal with Aborigines or Islanders.*<sup>[50]</sup>

*Some of Robyn Kina's legal representatives worked for the Aboriginal Legal Service; others did not. The Public Defender sent a young white male legal clerk to take a statement from her in prison. Her situation was ignored. She was wrongly convicted of murder and spent five years in prison.*

**5.28 Ignorance of indigenous cultures within the legal profession.** There continues to be a disturbing level of ignorance of Aboriginal and Torres Strait Islander cultures in the legal profession and in the courts. While this affects both men and women it has a specific impact on women. The Commission has been told of sign language being used to intimidate victim witnesses giving evidence, unknown to the court.<sup>[51]</sup> During a rape trial in Alice Springs in 1992:

a young adult female witness was asked by the prosecutor about the nature of her relationship to a previous male witness who was of the same age as her. She replied 'grandson', and there were smiling grimaces and expressions of disbelief by the prosecutors, judge and court personnel, none of whom had even a basic understanding of the kinship system and 'skin' or subsection groupings. She was asked the question again and she gave the same answer. Apart from the inescapable conclusion that the prosecutor had not spent enough time with the witness prior to the trial, the experience was at best confusing and at worst humiliating for her.<sup>[52]</sup>

**5.29 Women's business and men's business.** In some traditional indigenous communities there is joint and separate business for women and men.<sup>[53]</sup> Aboriginal and Torres Strait Islander women have responsibility for the protection and maintenance of women's sacred sites, women's ceremonies and women's business. Under traditional law, women are forbidden to disclose this law business to



men. Lack of understanding of the significance of women's and men's business has hindered communication of cultural information between indigenous and non-indigenous people. A representative of one Aboriginal organisation submitted:

*This leads to problems for Aboriginal women attempting to exercise their rights under the non-Aboriginal legal system which is male dominated and usually does not have procedures for dealing with Aboriginal women's business in a culturally appropriate way.* [54]

The division between women's and men's business has often resulted in the legal system only getting half the story when it comes to issues involving women. In matters of land rights and the protection of sacred sites, government consultations at federal, State and Territory level are often conducted exclusively by men.

*Women are often required to compromise in these circumstances, in a way that men never have to. . . . Aboriginal women are then in the difficult position of either not disclosing . . . women's business that may be relevant to the hearing or to compromise their Law by revealing material that should only be revealed to other women. In many claims this is resolved by not revealing the women's business.* [55]

The legal system's lack of understanding of the division between women's and men's business also often compromises the administration of justice in cases of violence against women. Evidence of women's perspectives may simply fail to be brought before the court.

White lawyers, particularly male lawyers, have accepted Aboriginal men's explanation that traditional law sanctions their violent assaults against women in a whole variety of circumstances. [56]

However,

When traditional women are asked about rape and about the incidence of incestuous sexual assaults, their responses are emphatic that it is not Aboriginal way, that it is not in accordance with Aboriginal traditions or customary law. . . . They said that a man could be put to death for rape or speared in the thigh, and if a man continued to sexually harass a woman he would certainly be put to death. [57]

Consultations indicate that, even in cases that directly concern Aboriginal and Torres Strait Islander women, their views are being given little acknowledgment in the Australian legal system.

**5.30 Aboriginal and Torres Strait Islander legal services.** There is a network of Aboriginal and Torres Strait Islander legal services in Australia. [58] Services within this network are located in each state and Territory. Each service determines its own policies to serve the legal needs of the Aboriginal and Torres Strait Islander communities in its local area.

**5.31 Policy of most existing Aboriginal and Torres Strait Islander legal services.** Most Aboriginal and Torres Strait Islander legal services do not currently benefit women and men equally. This is a result of the combined effect of two common practices. First, most services implement a policy of not acting for either party in a matter between two indigenous clients. Second, most legal services give priority to defending criminal cases over other matters. [59] On their face these practices appear gender neutral, but their effect is to indirectly discriminate against indigenous women. [60] Like most groups of women, indigenous women often need legal assistance in relation to matters of family violence and family law. For most indigenous women such disputes are with other indigenous people. The outcome of precluding women from receiving assistance for such matters is that indigenous women are disadvantaged compared to indigenous men and compared to other women.

*Women's access to law is severely limited since white private law firms do not take on the work, and as the various inquiries into Aboriginal people's use of legal aid services show, there is some reluctance to use non-Aboriginal services, and those services are not widespread enough to reach into rural areas.[61]*

In addition, where Aboriginal and Torres Strait Islander legal services are staffed predominantly or exclusively by men, there is potential for the separation of women's business and men's business to preclude the service adequately dealing with certain legal issues for women. Because of the barriers of cost, language and cultural alienation which discourage most Aboriginal and Torres Strait Islander people from using mainstream legal services, indigenous women who can obtain no assistance from their own legal services are left without legal recourse. Further, the fact that the funded Aboriginal and Torres Strait Islander legal services rarely prosecute matters of family violence conveys the message that Australian society condones violence in the home.[62] Indigenous women's need for access to legal advice and representation seems to be greatest in the areas of civil law, family law, family violence, sexual assault and victims' compensation.[63]

### ***Successful initiatives***

5.32 Aboriginal and Torres Strait Islander women in various parts of Australia have developed a number of initiatives which are beginning to increase their access to justice. In central Australia a number of night patrols are run and staffed by women.[64] Night patrols are a community policing initiative which is consistent with customary law and traditional authority structures. The women in the night patrols are recognised authority figures in the communities. These women patrol the streets to reduce community disturbances. Night patrols are actively supported by the Northern Territory police. It is reported that night patrols have been instrumental in reducing the level of violence in remote communities and in town camps.[65] Another women's initiative is the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPY Women's Council).[66] This organisation of Aboriginal women has initiated a diverse range of projects for the benefit of their communities including raising money for the purchase of women-only transport vehicles,[67] facilitating women's participation in land rights debates and taking collective action against the abuse of alcohol in their communities.[68] Currently the NPY Women's Council is working on a funded project to develop community strategies to prevent family violence.[69] These and other projects of the NPY Women's Council are measures which directly increase women's ability to access justice. At Parramatta and Redfern courts in Sydney, Aboriginal women are staffing support schemes for women witnesses and defendants.[70] In Wilcannia in New South Wales, the 'Women's Business Project' has worked at increasing Aboriginal women's access to legal and other services.[71] At a recent conference in Brisbane, Aboriginal and Torres Strait Islander women described the empowering effect of having women from their own communities trained as Justices of the Peace. They raised the need for shelters and safe houses as well as legal services.[72]

### ***Responses need to be specific to women and to the communities***

5.33 The initiatives which have improved access to justice for Aboriginal and Torres Strait Islander women demonstrate that solutions reside in the women and in the communities.[73] Unfortunately, the initiatives described here are still rare. Funded initiatives for Aboriginal and Torres Strait Islander communities are often structured and implemented with little or no regard for the priorities of women and fewer still include women in decision making roles.[74] Consultations confirm indigenous women's dissatisfaction with this situation and their demand for involvement in the control of services for their communities.[75] It is essential that measures to increase indigenous women's access to justice begin by giving status to women. This requires that women determine the nature of the service and control the delivery of the service.

### ***What is the most appropriate response?***

5.34 *Changing the law.* Some indigenous women contend that they are better served by customary law than white law and speak nostalgically of the protection from crime, particularly excessive violence, that traditional law afforded their communities.

Aboriginal women need to be involved in the process of redefining and articulating customary law; that is, mechanisms of social organisation and social control which allowed Aboriginal society to function before invasion.[76]

The merits of the recognition of customary law are controversial. In this report the Commission does not comment on whether redefining customary law for modern needs is an appropriate measure to increase access to justice in Aboriginal and Islander communities.[77] However it is clear that women must be involved in the formulation and implementation of whatever measures are appropriate to ensure safety and respect for human rights in Aboriginal and Torres Strait Islander communities. Indigenous women must be empowered in the regulation of their own communities. This might include a role for customary law. Legal services which adequately serve indigenous women would contribute to this process because as has been discussed in regard to general women's legal services these could provide a focus for developing community based expertise and policies regarding women's needs of the legal system.

5.35 *Providing appropriate services.* The need for legal services which are responsive to the needs of Aboriginal and Torres Strait Islander women is urgent.[78] In many instances the most appropriate solution would seem to be separate legal services for indigenous women. Consultations indicate strong support for specific legal services for indigenous women as a strategy that could successfully increase their access to justice.[79]

*What we've been trying to do [is] set up an Aboriginal women's legal and advocacy centre. A centre that would be able to give information to Aboriginal women . . . and which would also be able to provide community education . . . to let people know what their rights are. . . . We also want to be able to provide professional training to other solicitors and magistrates and police and Aboriginal workers. We also want to have a 008 number so that women throughout the State are able to access immediate and confidential information. But the important thing, we think, is that we need to have a centre that is run and co-ordinated by Aboriginal women for Aboriginal women and we think we know what the answers are - we do know what the answers are . . .[80]*

#### *The role of services for indigenous women*

5.36 *Culturally appropriate information, referral and representation.* An Aboriginal and Islander women's legal service could provide culturally appropriate information and referral on any legal matter. Many indigenous women's alienation from existing services is such that they rarely approach a lawyer for initial advice and are even less likely to pursue a legal remedy in relation to a legitimate legal claim.

*Aboriginal women need to be able to make an informed decision. That is, whether they choose to use the law or whether they choose not to use the law. In most instances, the choice has been taken away from them by the legal system's inability to provide a culturally appropriate and sensitive legal service.[81]*

A service where Aboriginal and Torres Strait Islander women could freely discuss women's business is likely to increase their use of and participation in the legal system. In the event of a case progressing to litigation, an Aboriginal and Islander women's legal service could ensure that an indigenous woman's evidence is accurately recorded and increase the likelihood that the evidence is properly presented to the court.[82] The service could support the women in bringing the case.



5.37 *Indigenous women's legal services as educators.* Presenting accurate information to courts serves an educative function. In addition, like other community legal services, Aboriginal and Islander women's legal services could engage in community education and law reform as well as providing legal advice. The ignorance of indigenous women's cultures which currently creates a barrier between indigenous women and the legal system can be redressed through education.[83] The people best able to increase knowledge about the realities of Aboriginal and Torres Strait Islander women's lives are Aboriginal and Torres Strait Islander women.

#### **Recommendation 5.2**

**The NWJP should fund the establishment of legal services for Aboriginal and Torres Strait Islander women in areas where consultation with the local indigenous women indicates a demand for such a service. In determining the location of the services, the following matters are to be taken into account:**

- **The services are, where possible, to be staffed and managed by Aboriginal and Torres Strait Islander women. The type of legal service provided should be determined by the women of the communities to be served.**
- **The services are to be targeted at regions of greatest need, having particular regard to remoteness and existing services in the region.**
- **The existence of community networks which are demanding such a service and which will use and support the service.**

[1] Equality before the law: women's access to the legal system Report No 67 (Interim) 56-57.

[2] Women's Legal Resources Centre, Sydney Submission 256; Domestic Violence Advocacy Service, Sydney Submission 148; Domestic Violence Legal Help, Darwin Submission 306; Women's Legal Service Inc, Brisbane Submission 379; Confidential Submission 427; Confidential Submission 428.

[3] See for example Office of Legal Aid and Family Services Community Legal Centres: A study of Four Centres in New South Wales and Victoria Australian Government Publishing Service Canberra 1991 for an explanation of the role of community legal centres.

[4] Women's Legal Resources Centre, Sydney Submission 256.

[5] Women's Legal Resources Centre, Sydney Submission 256; Domestic Violence Advocacy Service, Sydney Submission 148; Domestic Violence Legal Help, Darwin Submission 306.

[6] For the Women's Legal Resources Centre in Sydney, 70% of calls relate to family law issues and many of these involve issues of physical and/or sexual abuse.

[7] Women's Legal Resources Centre, Sydney Submission 256.

[8] `STD calls are individually itemised on telephone accounts, allowing anyone who sees an account to know the numbers phoned. By nature 008 calls are charged at the local call rate and are not individually itemised.

[9] Women's Legal Resources Centre, Sydney Submission 256.

This is attachment 'SFB-7' referred to in the affidavit of  
Shelley Frances Burchfield sworn before me this 1<sup>st</sup> day of April 2010

  
MEGAN ROSS

An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

## **. Intersectional discrimination - Addressing the distinct experiences of Indigenous women**

Previous *Social Justice Reports* have noted the apparent invisibility of Indigenous women to policy makers and program designers in a criminal justice context, with very little attention devoted to their specific needs and circumstances.(42)

There are two main reasons for this. First, there is the practical issue that at any given time the number of Indigenous women in prison in a state or territory is relatively few (in raw numbers). This poses practical problems in establishing programs specifically for Indigenous women that are sustainable. It also means that Indigenous women do not have a strong voice to be able to advocate for their needs through the criminal justice system. It is clear that Indigenous women tend to be overlooked as a group of prisoners with distinct needs as a result of these factors.

Second, and connected to these issues, is that the needs of Indigenous women are generally treated as being met through services which are designed for Indigenous men or through the operation of mainstream services for women (which are not culturally specific). Throughout the consultations undertaken for this chapter we were informed by government and mainstream community agencies that there are a range of general programs available to all women, including Indigenous women. However other participants in the consultations indicated that only a small fraction of Indigenous women requiring support are in fact accessing these services.

One of the main findings of this research is confirmation that an approach that assumes that the needs of Indigenous women will be met through services designed for Indigenous men, or those for women generally, will not work. The lack of attention to the distinct needs of Indigenous women marginalises them and entrenches inequalities in service delivery. It can lead to intersectional discrimination.

Intersectional discrimination, or intersectionality, refers to the connection between aspects of identity, such as race, gender, sexuality, religion, culture, disability and age. An intersectional approach asserts that aspects of identity are inter-connected and discussing them in isolation from each other results in concrete disadvantage. 'Intersectional discrimination' refers to the types of discrimination or disadvantage that compound on each other and are inseparable. As the *Social Justice Report 2002* noted:

Intersectional discrimination is not understood by merely adding together the consequences of race, class and gender discrimination. That is, an indigenous woman's life is not simply the sum of the sexism she experiences because she is a woman *plus* the racism she experiences because she is indigenous *plus* the disadvantage she experiences because of poverty and exclusion from services. A person may be discriminated against in qualitatively different ways as a consequence of the combination of the aspects of their identity...(43)

The discrimination faced by Indigenous women is more than a combination of race, gender and class. It includes dispossession, cultural oppression, disrespect of spiritual beliefs, economic disempowerment, but from traditional economies, not just post-colonisation economies and more...(44)

Indigenous women are particularly vulnerable to intersectional discrimination within criminal justice processes. This is due to a number of factors.

First, it is due to the combination of socio-economic conditions faced by many Indigenous women. Many Indigenous women in Australia today live well below the poverty line. Indigenous women's life expectancy (like Indigenous men) is considerably less than non-Indigenous Australians. They are more likely than non-Indigenous women to be unemployed, to have carer

responsibilities for children other than their own, to receive welfare payments and to have finished school at an earlier age. Indigenous women are also more likely to be a victim of violence and also more likely to live in communities where violence is prevalent. These factors combine to make Indigenous women particularly vulnerable and their needs more complex than others.

Second, the consequences of family violence in Indigenous communities, and its impact on Indigenous women, have not been grappled with appropriately by the criminal justice system. The criminal justice system is extremely poor at dealing with the underlying causes of criminal behaviour and makes a negligible contribution to addressing the consequences of crime in the community. Policies and programs provide relatively little attention to the high rate of Indigenous victimisation, particularly through violence and abuse in communities. Indigenous women disproportionately bear the consequences of this.

It is now well understood that Indigenous women experience extremely high rates of family violence<sup>(45)</sup> and that past experiences of violence or abuse are extremely common among Indigenous female prisoners.<sup>(46)</sup> As the *Social Justice Report 2002* noted:

It is beginning to be accepted that while much offending behaviour is linked to social marginalisation and economic disadvantage, the impact of non-economic deprivation, such as damage to identity and culture, as well as trauma and grief, have a significant relationship to offending behaviour.<sup>(47)</sup>

The *Social Justice Report 2003* identified a range of significant initiatives currently underway at all levels of government to address family violence in Indigenous communities. It expressed concern, however, that often responses to such violence have not recognised the distinct situation of Indigenous women. It argued that Indigenous women:

do not have a purely gendered experience of violence... They, along with their men, experienced and continue to experience, the racist violence of the State. Aboriginal women do not share a common experience of sexism and patriarchal oppression, which binds them with non-Aboriginal women...<sup>(48)</sup>

Indigenous women's experience of discrimination and violence is bound up in the colour of their skin as well as their gender... The unique dimensions of violence against Aboriginal women are a result of complex factors and socio-historical and contemporary experiences and must be considered when attempting to provide solutions that are relevant to the specific situations and needs of Aboriginal women. Solutions to problems, no matter how well-intentioned, can create further problems for subordinated groups within a society, particularly when the 'solutions' are based in a systemic structure that has functioned abusively on the subordinated group.<sup>(49)</sup>