



WIRRINGA BAIYA

ABORIGINAL WOMEN'S LEGAL CENTRE INC.

Wirringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or have been victims of violence.

22 July 2013

Hon. Pru Goward
Minister for Women
Attention: Women NSW
Violence Prevention Coordination Unit
Department of Family and Community Services

vpcu@facs.nsw.gov.au

Dear Minister,

NEWS SOUTH WALES DOMESTIC AND FAMILY VIOLENCE REFORMS RESPONSE TO DISCUSSION PAPERS

We refer to the above.

Wirringa Baiya Aboriginal Women's Legal Centre (Wirringa Baiya) is a New South Wales statewide community legal centre for Aboriginal women, children and youth. The focus of our service is to assist victims of violence, primarily domestic violence, sexual assault and child sexual assault.

Staff from Wirringa Baiya have attended a number of consultations held by the Violence Prevention Coordination Unit of your Department in relation to the Domestic Violence Framework. At all of those consultations we provided feedback about many of the proposed reforms that are the subject of the discussion paper. In addition, our Centre is a member of the NSW Women's Alliance, which has also written to your Department on a number of occasions about some of the reforms being proposed.

Although we appreciate that every Government department has tight deadlines to work to, we are concerned that the time frame for the on-line consultation was too short for such a large package of reforms. We have spoken to a number of Aboriginal workers and services that work with victims of domestic violence about the discussion papers and most indicated they would have not the time, nor the resources, to read the discussion papers and make a submission. This is very unfortunate given the significance of the reforms being proposed and the over-representation of Aboriginal women and children as victims of domestic violence.

We thus hope that there will be ongoing consultations as costings and decisions are being made about the reforms. In particular, we urge your Department to maintain an ongoing dialogue with the NSW Women's Alliance. While we will also be making an on-line submission some of our answers were longer than the space allowed, hence this email submission. However, there was much more we could have said in response to the questions but time and our resources have not permitted us to do so.

For the purposes of this submission we will mostly use the term domestic violence. It is our position that domestic violence is different to family violence and in some respects will require different strategies. However we note that some commentators and policy documents use the terms interchangeably.

Although our service is available to both Aboriginal and Torres Strait Islander women, children and young people close to 99% of our clients are Aboriginal. For this reason throughout this submission we will refer to the issues and needs of Aboriginal women and their communities.

Consultation Questions

1. What do you think are the critical elements of the strategies and actions for prevention to drive change?

Wirringa Baiya Aboriginal Women's Legal Centre (Wirringa Baiya) thinks the NSW Prevention Strategy shows promise. We especially agree that: "[e]ffective prevention requires us to identify and address the underlying causes of domestic and family violence, rather than focus solely on its negative impact." (*Preventing domestic and family violence*, page 3) While we certainly agree that domestic violence "is a violation of human rights and a crime", we strongly assert that the definition being proposed needs to clearly recognise that it is a gendered crime predominantly perpetrated by men against women and children, as recognised in the 'Objects' of the *Crimes (Domestic and Personal Violence) Act 2007*. It is our view that the overall Framework must be grounded in a human rights framework and should explicitly acknowledge Australia's obligations to eliminate violence against women as outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) and ratified by Australia on 28 July 1983 and *CEDAW Committee General Comment No 19 (General Comment No 19)*.

It is our view that any prevention program needs to recognise and address the significant socio-economic disadvantage that many groups of victims, but especially Aboriginal women experience. If you want Aboriginal communities to engage in any type of social change, basic human rights issues such as:

access to housing; affordability of utilities; adequate food and nourishment; education; and improvements in basic health and life expectancies need to be addressed. A family that is struggling on a daily basis to make ends meet has no physical or mental energy to do anything else but survive.

Furthermore, any prevention strategies aimed at the Aboriginal community needs to recognise the ongoing trauma caused by the loss of land, language and culture; the forced removal of Aboriginal children; the abuse of Aboriginal children in the care of institutions; poor health and low life expectancies; and systemic racism. A prevention strategy aimed Aboriginal communities needs to understand that unresolved trauma and grief has taken, and continues to take, a huge toll on the mental health and well-being on Aboriginal individuals and communities.

We note that much has been written about prevention and early strategies to reduce domestic and family violence in Aboriginal communities, and a number of reports have recommendations have been made: (see: Australian and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission "Ending family violence and abuse in Aboriginal and Torres Strait Islander communities – Key issues" June 2006; Australian and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission "*Social Justice Report 2007*"; Amnesty International Australia, "*Setting the Standard: International Good Practice to Inform an Australian National Plan to eliminate violence against women*" 2008; "*Aboriginal and Torres Strait Islander Women's Task Force on Violence Report - Digest*" [2000] AU IndigLawRpr 20; (2000) 5(2) Australian Indigenous Law Reporter 91). We do not wish to re-state those recommendations but refer the Government to those reports.

The issue of prevention and early intervention and what are best practices for Aboriginal communities is a critical issue that the state government needs to address. The solutions to prevent domestic violence in Aboriginal communities are multiple and complex and require long-term commitment with significant investment.

We submit that if the NSW Government is serious about reducing domestic violence, together with sexual abuse in Aboriginal communities, it would establish a dedicated crime prevention unit staffed by Aboriginal workers of different expertise to focus exclusively on these issues. These specialists would come from a range of disciplines/skill backgrounds including counselling, early childhood education, middle childhood education, adult education, refuge services, child protection, law enforcement, legal, health, employment and housing. This unit would need to look at state-wide, regional and local strategies. This unit would: (a) have a policy and advice function to the NSW government; and (b) be a resource unit for Aboriginal communities and services to access when developing community managed strategies. We note that this recommendation was supported by the Standing Committee on

Social Issues in its' report: *Domestic violence trends and issues in NSW, August 2012* (see Recommendation 28).

2. What do you think must be done to prevent the intergenerational transfer of violence?

For Aboriginal communities in particular Wirringa Baiya submits that the following is required:

- Address the social and economic disadvantage, as mentioned above in answer one (1).
- Recognise, and where appropriate provide reparations, for the trauma caused by the loss of land, language and culture; the forced removal of Aboriginal children; the abuse of Aboriginal children in the care of institutions; poor health and low life expectancies; and systemic racism.
- Acknowledge and address ongoing issues including: addressing interactions with the NSW Police Force (including both general over –policing of communities and/or lack of response when reporting domestic violence); over-representation of Aboriginal people in the prison system; over-representation of Aboriginal children in the care system.
- When protecting and working with children who have been exposed to domestic and family violence focus on strengthening relationship between women (whom are over-whelmingly non-offenders) and their children, rather than treating women/mothers as the problem.

For all victims we argue that the state needs to provide adequate compensation for the effect of domestic and sexual violence to victims of violent crime. We are deeply concerned that the new *Victims Rights and Support Act 2013* significantly reduced the amount of compensation for victims of violence, and especially fails to adequately compensate victims of domestic violence for the devastating psychological harm caused by domestic violence. It is our view that this *Act* needs to be immediately reviewed and amended.

3. How do you think the proposed reforms and the practice standards will change the 'service' a victim receives from 'the system'?

It is hoped that the needs of victims of violence will be addressed much earlier than is currently the case and that agencies and services will be better coordinated in their responses. However, the reforms are contingent on the there being significant additional resources to achieve the goals.

We once again stress the critical importance of acknowledging domestic violence as a gendered crime that overwhelmingly affects women and children. Thus women- only

services should not only be maintained but strengthened in order to provide the appropriate responses and support envisioned by the reforms.

It is our view that the practice standards are not adequate both in terms of detail and breadth. We submit that a number of practice standards need to be developed including around the following:

- information sharing by both police, the central referral points and at the Safety Action meetings (SAMs)
- comprehensive assessment of the victim's needs and concerns, to be considered at the SAM
- the practice of the Central Referral Points including: skill and expertise required by workers, record-keeping, managing conflicts of interest, quality assurance
- how SAMs are held, including: codes of conduct for participants which must include declaring conflicts of interest; how the victim's views are to be conveyed at a SAM.

It is not clear to us what are the consequences, if any for breaching the practice standards. We submit that there would need to be a regular audit of the standards as a part of the monitoring of the Framework.

4. What do you think will be critical to ensure Safety Action Meetings are effective?

It is Wirringa Baiya's view that the victim should be able to participate at the Safety Action Meeting (SAM) if she wants to do so. If the Government is of the view that victims will not be able to attend SAMs, then a detailed consultation with the victim would need to take place before the SAM. The victim needs to know in advance what services will be attending the SAM to give her an opportunity to indicate any concerns she has with particular services or individuals. For example, it may be that a relative of her's or her perpetrator, works at a particular service.

The Discussion Paper talks about the victim's case manager attending the SAM, but it is not specified who this person is. Is it a case manager the victim already has, or will case managers created specifically for this role? If the case management is to be done by an existing service that service will need additional resourcing to enable it to case management beyond its service provision.

We have concerns about Police chairing the SAMs and do not think it is clearly explained by the Discussion Paper why they are the most appropriate. At the very least when meeting to discuss the safety needs of an Aboriginal woman the SAM should be co-chaired by an Aboriginal worker.

Representatives from Government services and NGOs attending the SAM would need to fully understand the process, and be senior enough to make appropriate decisions and give directions to their own agencies. However, a SAM cannot create false hopes that certain things will be achieved. For example, Housing NSW may attend a SAM but the reality is that there is still a chronic shortage of social housing.

SAMs are meant to produce a “collaborative safety plan which contains agreed actions to address the safety of the victim and their family” (*Securing Safety*, page 18).

However, it is not clear to us if there needs to be consensus or unanimity on the Safety Action Plan. Thus what happens if participants at the SAM have very diverse views about what the Plan should include? Furthermore, what are the consequences if the victim does not agree with the Safety Action Plan or elements of the plan? What if the victim does not want to engage with a particular service? Our fear is that this will be used against the victim (the mother) in a child protection setting.

Indeed it is not clear to us how SAMs fits into child protection case management. Child protection responses tend to focus on the damage that the violence has caused the child, and the blame is often directed to and felt by the mother, not the perpetrator. The focus should be on coordinated service system responses that are focused on ensuring the safety of both women and children, in addition to responding to individual needs. We note the recent discussion paper released by Community Services *Child Protection Legislative Reforms* and refer the Government to the submission made by Wirringa Baiya about the proposed reforms contained in that paper.

It may be of course that a victim who is a mother is involved in protracted litigation with the offending father in relation to the children. While of course this is a matter that will ultimately be resolved by federal courts, it is our view that the participants at the SAM should do all they can to support that mother in those proceedings.

An additional concern is that information produced at a SAM may be subpoenaed to be used at the detriment of the victim, including in family law litigation or criminal law proceedings.

5. What must be done to ensure high-risk people feel confident/comfortable about their information being shared with or without their consent at a Safety Action Meeting?

It is Wirringa Baiya’s view that it must be best practice to always seek the consent of the victim. That consent must be informed consent and must be sought in a non-pressure environment.

It is being proposed by the reforms that victims could be referred to a SAM without their consent if there is a 'serious threat' to the victim. It is proposed that 13/26 factors on the proposed RIT will automatically qualify as a serious risk, although "[p]rofessional judgement would always override in situations where a lower number of risk factors are present but the practitioner considers there to be a serious threat." (*Securing Safety*, page 9). However, it is not clear what would happen if different practitioners have different views about the threat posed to the same victim.

We strongly submit that at all times information obtained and shared at those meetings must only be used to improve the safety of victim/s and for no other purpose. For example, if Housing NSW attends a SAM and becomes aware that there are additional people living with victim this information cannot be used against the woman.

Aboriginal victims in particular must be able to advise about any concerns they have about services or workers prior to the SAM. There is a real risk that victims may be reluctant to report further violence upon realising that their information will be shared without their consent, and not respecting their decisions as to which services to engage with.

The Discussion Paper suggests that any domestic violence service that has used the proposed risk assessment tool could refer a victim to a SAM (page 10). However, it is not clear if this victim then should be referred to the Central Referral Point for further assessment and, if the Central Referral Point has the final decision as to whether a victim is referred to a SAM, or not.

There would need to be strict procedures and standards around record keeping. It is not clear who will keep and retain records of the SAMs and the Safety Action Plan. At the very least all participants would need to sign confidentiality agreements to ensure there is no breach of confidentiality.

It is our view that there would need to be a procedure to deal with conflicting information about the victim. In particular it is our ongoing concern that some Aboriginal women are incorrectly identified as the perpetrator rather than the victim.

6. What do you think the Central Referral Point must consider when dealing with people impacted by domestic and family violence to give them the confidence that they will be responded to/supported?

The first response by the Central Referral Point must be a trauma based response. The Central Referral Point will need to be staffed by workers who are highly skilled in working with victims of domestic violence and sexual violence. Ideally these workers would be trauma counsellors.

We think that the initial response should be from a single agency that is open 24 hours and that provides immediate access to trauma counsellors and minimises information about the victim being shared. Once the victim's immediate trauma needs have been assessed the victim could then be referred to a Regional Referral Point for referrals to appropriate local services, and where necessary SAMs, but only with the informed consent of the victim. If the Government does not accept that consent will be required then the Central Referral Point will have an additional opportunity to seek the consent of the victim to share her information with a Regional Referral Point. A good example of such a centralised 24/7 trauma based agency is the Domestic Violence Line.

It is our view that the Regional Referral Points must be client centred, empowering and non-judgemental. They must have an expertise in dealing with domestic and sexual violence and a comprehensive understanding of the complex issues and barriers that certain vulnerable groups face, including: Aboriginal and Torres Strait Islander communities, CALD communities, LGBTIQ people, people with disabilities and older people. They must not hold exemptions from anti-discrimination laws on the basis of sexual orientation. In addition they must have a comprehensive understanding of their local communities and the services available and good working relationships with those communities and services.

It is unequivocal that both the Central Referral Point and the Regional Referral Point we are proposing would need significant additional resources to provide these functions. Failure to do so will see the immediate failure of the strategy.

It is our view that the RIT needs to make it more explicit that professional judgement is equally important as the tick-a-box indicators when assessing risk.

7. The reforms acknowledge that an additional and/or different response is required from victims from high risk groups (eg: Aboriginal and Torres Strait Islander, CALD, people with disabilities, people who identify as LGBTIQ) What do you think needs to be addressed or considered to enable these more effective responses?

Wirringa Baiya has already identified above a number of fundamental issues that need to be addressed to enable an effective and meaningful engagement with Aboriginal communities such as addressing social and economic disadvantage and redress for past trauma. We re-state that these basic human rights issues must be addressed to engage in any meaningful work to reduce and prevent domestic, family and sexual violence in Aboriginal communities.

It needs to be understood that Aboriginal people and communities have a deep distrust of government agencies, but in particular NSW Police Force officers and Community Services. Many Aboriginal women continue to be fearful of reporting domestic violence and we are very concerned that information sharing without consent will only increase that fear and isolate Aboriginal women even more. When

providing a service to Aboriginal communities it is critical that government agencies work in an equal and respectful partnership with local Aboriginal services and/or Aboriginal specialists. It needs to be understood that gaining trust will now take even more time.

We refer to our answer in question 1 as to how the prevention component will be most effective for Aboriginal communities.

8. Strategies to suggest programs that hold perpetrators to account for their actions and support them to stop using violence. Do you think this is enough? If not, what other suggestions do you have?

While Wirringa Baiya welcomes discussion on working with offenders, funding for such programs must only be provided if there is a strong evidence base for their effectiveness. Longitudinal research must be undertaken and meet NSW and national standards. A critical question is how you measure success of a program given that many perpetrators could reoffend for extended periods of time before re-entering the criminal justice system (if ever).

9. Do the reforms adequately enable the community to respond to Domestic and Family Violence as a whole?

It is our view that the critical way the community as a whole will be able to respond to domestic violence is through the prevention component. However, as we have discussed above a number of critical human rights issues need to be addressed to allow the Aboriginal community to respond.

It is Wirringa Baiya's view that access to housing and better financial assistance for victims of domestic violence is a critical issue for all women and their children. Domestic violence impedes a victim's ability to work to maintain some type of financial independence. We think it is time to recognise victims of domestic violence as a vulnerable group under state anti-discrimination law.

10. What do you think are the key issues to consider to enable a victim to move more effectively through the service pathway?

At the first instance any system and its' agencies need to see the victim as a traumatised person who needs support and compassion. That person needs to be in control of where they're going and to be supported to achieve safety and not be directed, thus Wirringa Baiya's concerns about a victim's information be shared and referred to SAMs without her consent.

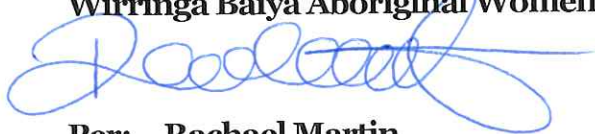
We note that there will be a greater role for Domestic Violence Committees in the implementation of the reforms and the governance structure. While we welcome this, it is our experience that the roles of these committees and level of engagement with their local communities varies considerably across the state. For committees to successfully fulfil their expanded roles and responsibilities they would need to be properly resourced.

To ensure the effectiveness of the proposed reforms we submit that there must be ongoing monitoring and review of the new framework beginning from its inception. This must be independent and transparent. In our view a high-level implementation committee should be developed to ensure this important opportunity reaches its potential and that the Committee include members of the NSW Women's Alliance (with its' broad NGO domestic violence specialist membership). It is submitted that the Government engage in discussions about the concept of an implementation committee with members of the NSW Women's Alliance at its earliest convenience.

If you have any queries in relation to the above submission please do not hesitate to contact Rachael Martin, or Christine Robinson of this office on (02) 9569 3847. We look forward to further discussion with your Department about the reforms and their implementation.

Yours faithfully,

Wirringa Baiya Aboriginal Women's Legal Centre



Per: Rachael Martin
Principal Solicitor