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NATIONAL ABORIGINAL AND
TORRES STRAIT ISLANDER WOMEN'S ALLIANCE

**NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDERS
WOMEN'S ALLIANCE**

SUBMISSION

2018 CEDAW SHADOW REPORT

A non-government perspective on Australia's implementation of the United Nations Convention on the Elimination of all Forms of Discrimination Shadow Report (CEDAW).
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Submitted by: National Aboriginal and Torres Strait Islander Women's Alliance.

Project Team:

Sandra Creamer Interim CEO of NATSIWA

Wendy Anders Senior Project Officer NATSIWA

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1. Introduction

The National Aboriginal and Torres Strait Islander Women’s Alliance (NATSIWA) is the peak body for Aboriginal and Torres Strait Islander women in Australia. The leadership team of Directors are Aboriginal and Torres Strait Islander women each representing States and Territories across Australia.

Summary

Aboriginal women and girls in Australia have traditionally held the centre role in taking care of families and communities, it is now evident that they are suffering and no longer able to take on this role. This is through the different policies and laws in Australia that should be relevant to Aboriginal and Torres Strait women regarding housing, domestic violence, legal protection. Indigenous women interact within the legal system and policies in two major ways, as participants within it, and as women affected by it.

Whilst the Australian Federal Government and State Governments have made attempts to provide human rights instruments for Aboriginal and Torres Strait Islander women and girls, they need to work more collectively to ensure equality. They need to work with Aboriginal and Torres Strait communities and women to address, implement and adopt policies, legislations and programs that have a cultural, holistic and rights-based approach for the empowerment and safety of Aboriginal and Torres Strait Islander women and girls.

Aboriginal and Torres Strait Islanders of both gender struggle with issues of social equality, compared to non-Indigenous peoples. Australia has made a commitment through the signing of the CEDAW to promote policies, laws, organisational structures and attitudes that ensure women are guaranteed the same rights as men.¹ Though, Australia has made a commitment there are still concerns with the number of policies and programs adopted to address the overrepresentation of Aboriginal and Torres Strait Islander women in prison, health, housing, domestic violence and equality before the law, that they still continue to be amongst the most disadvantaged among Australians with adverse situations.

¹ Australian Human Rights Commission – Sex Discrimination Commissioner – Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) <https://www.humanrights.gov.au/convention-elimination-all-forms-discrimination-against-women-cedaw-sex-discrimination-international>

2. CEDAW Article 1 & 2 - Article 1-5 principles of the CEDAW Convention: Equality, Non-Discrimination and States Obligation

The rights of Aboriginal and Torres Strait Islander peoples are not incorporated into Australia's Constitution. The Australian Government announced in 2010 and made a commitment to a referendum on constitutional recognition of Australia's first peoples. A panel was made up of MP's, community leaders and Aboriginal and Torres Strait peoples to advise the government on how best to amend the Constitution. In 2018 the Australian Government has now put the debate about Constitutional recognition back and released the following statement:

“Our democracy is built on the foundation of all Australian citizens having equal civil rights – all being able to vote for, stand for and serve in either of the two chambers of our national parliament.

A constitutionally enshrined additional representative assembly which only Indigenous Australians could vote for or serve in is inconsistent with the fundamental principle.

It would inevitably become seen as a third chamber of parliament. The Referendum Council noted the concern that the proposed body would have insufficient power if its constitutional function was advisory only.”²

The Australian Constitution has failed to protect Aboriginal and Torres Strait Islander rights as the first people of the country.³ For example, *the Racial Discrimination Act 1975 (Cth)(RDA)* has been compromised on three occasions: each time it has involved Aboriginal and Torres Strait issues. The Constitution did not prevent the suspension of the RDA of the Northern Territory Emergency Response. Therefore, it was ineffective in protecting Aboriginal and Torres Strait Islander women and men from the most fundamental of all freedoms, the freedom from discrimination.⁴ The Australian Constitution does not make adequate provision for Aboriginal and Torres Strait Islander women and men.

Verene Albertha Shepherd, Committee Expert and Country Rapporteur for Australia, reports reiterated the recommendation that Australia ensure that the Convention was fully incorporated into domestic legislation.⁵ Australia should amend its Constitution to enshrine the right to equality

² The Conversation Journal, <https://theconversation.com/turnbull-government-says-no-to-indigenous-voice-to-parliament-86421>

³ Australian Human Rights Commission, Constitutional reform: Fact Sheet – Recognising Aboriginal & Torres Strait Islander people in the Constitution

⁴ *ibid*

⁵ United Nations Human Rights Office of the High Commissioner – Committee on the Elimination of Racial Discrimination examines Australia's report – 28th November 2017 - <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22460&LangID=E>

in a complete body of laws, rather than in scattered clauses in the Constitution. She encouraged the State party to recommence talks to consolidate federal anti-discrimination legislation.⁶

Recommendation: To amend the Australian Constitution to include CEDAW provisions.

3. CEDAW Article 4 and 14 – Temporary special measures to achieve equality and Rural women

In Australia the socio-economic conditions of Aboriginal and Torres Strait Islander people, and for the women and girls specifically are extremely poor.

Under the National Affordable Housing Agreement (NAHA) the Australian Government (states and territories) are committed to ensuring that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation.

It is critical for Aboriginal and Torres Strait Islander women secure stable housing, they face many challenges such as having their children removed or barriers to reunification with children and this means that children remain in the child protection system.

Aboriginal and Torres Strait Islander people are suffering due to the lack of access to safe, secure affordable housing, safe drinking water and sanitation. This can cause women and girls to be particularly vulnerable to abuse within these poor socio-economic conditions.

The Special Rapporteur on the rights of Indigenous Peoples, Victoria, Tauli-Corpuz concluded in her 2017 report on Australia that: “Housing remains in short supply in many Indigenous communities, and low levels of income have forced people into overcrowded or dilapidated housing”. While in Darwin, the Special Rapporteur visited Aboriginal town camps and was appalled by the dismal conditions therein, the lack of basic sanitation services.⁷ The helplessness and shame that people feel when they are unable to find work results in the entrenchment of poverty and money being spent on illicit substances as opposed to basic needs. The high rates of homelessness, overcrowding and poor housing have a high impact on Aboriginal and Torres Strait Islander health indicators and fuels the disproportionately high rates of Aboriginal children entering child protection and youth detention systems.⁸

We express our concerns regarding the need for funded long term maintenance programs to improve the living conditions for Aboriginal and Torres Strait Islander women, men and children. Housing facilities need to improve so this will raise better outcomes for health.

⁶ ibid

⁷ Report of the special Rapporteur on the rights of indigenous peoples on her visit to Australia, Human Rights Council-Thirty-sixth session, 11-29 September 2017, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

⁸ ibid

Australia has a commitment to the 17 Sustainable Development Goals to ensure the access and quality of safe drinking water, hygiene practices and wastewater treatment, this includes Aboriginal and Torres Strait Islander peoples in remote communities.

The Council of Australian Government's Strategy on Water and Wastewater Services in Remote (including Indigenous) Communities has provided national funding since 2006 for centralised water treatment infrastructure to shift away from reliance on septic tanks.⁹

Despite the improvement of these wastewater services there has been evidence of poor maintenance of wastewater treatment facilities. For example; a 2015 audit from Western Australia noted a high rate of remote communities had inadequate testing of systems, which potentially prolonged breakdowns, leaks or overflows.¹⁰

In 2014-2015, 38 percent of the indigenous adult population in remote areas and very remote areas were living in overcrowded conditions, almost three times the rate than in non-remote areas (13%).¹¹ Notably 28 percent were living in dwellings that failed to have an adequate number of bedrooms and access to working facilities for washing people, clothes and bedding, for safely removing waste, and/or enabling the safe storage and cooking of food was not available or did not work (ABS 2016). The lack of working facilities can pose serious health risks, such as exposure to infectious diseases. Building structure and basic facilities are important components of health living environment.

Aboriginal women and girls in remote areas with small populations are limited for health service choice, this can impact on early diagnosis and treatment. The Special Rapporteur for Indigenous people's country report for Australia, states the inequalities in remote primary health services, and the essential roles of these services in the prevention of chronic disease.

In early 2015, there were 305 dialysis patients receiving treatment in Alice Springs, of which approximately 260 had relocated from remote Central Australian communities to access treatment.¹² There needs to be consideration for the mental health and psychological stress that this can place on the women and children. The historical impact of colonisation and Government policies that forced family separation and caused segregation and inclusion are ongoing health impacts that have affected women and has deteriorated life expectancy and increased high morbidity.

⁹ Australian Indigenous remote communities & water, sanitation & hygiene, Water e-journal, Online Journal of the Australian Water Association, ISSN 2206-1991, Volume 3 No 2 2018, Nina Hall

¹⁰ AG WA. Delivering Essential Services to Remote Aboriginal Communities. Perth: Western Australian Auditor General., 2015. [45]

¹¹ ABS. (2016) National Aboriginal and Torres Strait Islander Social Survey, 2014-15. Canberra: Australian Bureau of Statistics.

¹² HealthInfoNet. \$15.3 Million for Purple house, <http://www.healthinfonet.ecu.edu.au/about/news/3404> (accessed 19/4/16). Australian Indigenous HealthInfoNet. 2015.

The Government needs to address housing and access to social services for Aboriginal and Torres Strait Islander women and children who are affected by violence, especially in remote areas.

We do support the National Housing and Homeless Policy, which is currently focusing on a range of issues relating to housing, tenancy research and bond aggregator.

Recommendation:

We urge the Federal and State Governments to invest in housing for Aboriginal and Torres Strait Islander women, especially for women and Children escaping domestic violence.

Proactively increase the capacity of specialist Aboriginal and Torres Strait women's services including their response, early intervention and prevention work, not only through resourcing but also by supporting meaningful structures to enable coordination across jurisdictions.

4. CEDAW Article 15 and 16 – Equality before the Law and Marriage and Family Law

The over-imprisonment of Aboriginal and Torres Strait Islander women and girls (this includes prisons and police cells) is now at the highest rate.

Case example of a tragic and preventable death while in custody of the Western Australian police was of Ms Dhu, who died while in police custody. Ms Dhu had been taken into police custody two days earlier for \$3,622 in unpaid fines, she died on her third visit with 48 hours to Hedland Health Campus after complaining of feeling unwell to South Hedland Police Station, she had been declared fit for custody by the health centre. An internal police investigation into Ms Dhu's case found that 11 police officers failed to comply with police procedures, not one of them was fired or suspended. It was found that Ms Dhu was suffering from pneumonia and septicaemia caused by a broken rib, inflicted by her partner some months earlier.¹³

As at June 2016, there were 1,062 Aboriginal and Torres Strait Islander women in Australian prisons, making a staggering 34 per cent of the adult female prison population.¹⁴ The imprisonment rate of Aboriginal and Torres Strait Islander women has increased by 148 per cent since 1991.¹⁵ From 2000 to 2016, their imprisonment rate increased at over double the rate of Aboriginal and Torres Strait Islander men.¹⁶ The most frequent offences committed by Aboriginal and Torres

¹³ www.abc.net.au/news/2016-12-16/ms-dhu...police-over-death...custody/8122898

¹⁴ Human Rights Law Centre – Aboriginal and Torres Strait Islander Women's over-imprisonment report

¹⁵ *ibid*

¹⁶ *ibid*

Strait Islander women are said to be fine default, drunkenness, offensive language and security fraud.¹⁷

The National Indigenous Law and Justice Framework 2009-2015 purpose was developed by the Standing Committee of Attorneys-General to address the serious and complex issues for Aboriginal and Torres Strait Islander peoples and the justice system. The aims of the framework:

- to reduce the over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the justice system
- to improve the Australian justice system to prevent discrimination against the Indigenous women and ensure they are treated equitable before the law.

This has not happened for Aboriginal and Torres Strait Islander women and girls. Statistics show that women and girls are at times incarcerated for relatively minor matters, therefore the Government must ensure that the criminal justice system is appropriate, equitable and fair.

The Special Rapporteur on Indigenous Peoples Rights, Victoria, Tauli-Corpuz stated in her report: “The extraordinarily high rate of incarceration of Aboriginal and Torres Strait Islanders, including women and children, is a major human rights concern.¹⁸ Whilst the high rate of incarcerated Aboriginal and Torres Strait Islander people make up only 3per cent of the total population, they constitute 27 percent of the national prison population.¹⁹ It is caused by the lack of political will to address the situation, despite that key measures for improvement that have been repeatedly identified by a string of national and state inquiries, royal commissions, coroner’s reports and international human rights monitoring mechanisms.²⁰”

The criminal justice system is supposed to be concerned primarily with the prevention and punishment of crime for Aboriginal and Torres Strait Islander women, especially, those on minor offences or who have come out of domestic violence situations. Alternative programs should be considered. Aboriginal and Torres Strait Islander women are weary of the system and too often when incarcerated they are retraumatized and can also be revictimized.

We support the Coroners inquest’s recommendations of Ms Dhu and that the Government ensure:

- that at every police station where detainees are held, there must be dedicated lock-up keeper. Alternatively, that a minimum of two officers are rostered for custodial care duties at any time.

¹⁷ Australian Government, Australian Institute of Criminology, Research and public policy series Indigenous women’s offending patterns: A literature review, Types of offences committed by Indigenous women, policing data

¹⁸ Report of the special Rapporteur on the rights of indigenous peoples on her visit to Australia, Human Rights Council-Thirty-sixth session, 11-29 September 2017, Agenda item 3, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

¹⁹ *ibid*

²⁰ *ibid*

- that the pending reforms outlined by the Justice Ministers Working Group concerning the following measures by given a high priority for consideration by Parliament, with a view to providing alternatives to incarceration through legislative reform:
- increasing out of court options for low level offenders;
- reviewing processes for incarceration under the fines enforcement and recovery process;
- considering alternative for avoiding detention and incarceration of suspects and court remanded prisoners;
- introducing community work orders and expanding the use of work and development orders, as alternatives to incarceration

We welcome the Australian government’s commitment to develop a National Data Collection and Reporting Framework for domestic and family violence and sexual assault, to improve information available to support research, policy development, operational decision making, education and community awareness activities into the future. This National Plan with the framework is expected to be operational by 2022.

We also welcome the Government’s recent budget statement in identifying data gaps which will be released by June 30, 2018:

- Trends in Indigenous mortality and life expectancy 2001-2015 and
- Family, domestic and sexual violence²¹

The statistic below will demonstrate how violence is against women in Australia, for Aboriginal and Torres Strait Islander women, they experience both far higher rates and more severe forms of violence compared to other women.

- At least one woman a week is killed by a partner or former partner in Australia
- One in three Australian women has experience physical violence since the age of 15
- One in five Australian women has experience sexual violence
- Of these women who experience violence, more than half have children in their care.²²

Domestic or family violence against women is the largest driver of homelessness for women.²³ This is only what is reported in the statistics, there are many unreported acts of violence, especially for Aboriginal and Torres Strait Islander women, so the number is far higher.

We support the National Plan to Reduce Violence Against Women and their Children, which is bringing together Government and the community to reduce the levels of violence against women and their children. It is the primary policy in Australia to reduce sexual violence and domestic

²¹ Budget 2018-19 Portfolio Budget Statement 2018-19, Budget Related Paper No.1.9, Health Portfolio, Budget Initiatives and Explanations of Appropriations Specified by Outcomes and Programs by Entity, [http://www.health.gov.au/internet/budget/publishing.nsf/Content/2018-2019_Health_PBS_sup1/\\$File/2018-19_Health_PBS_1.00_Complete.pdf](http://www.health.gov.au/internet/budget/publishing.nsf/Content/2018-2019_Health_PBS_sup1/$File/2018-19_Health_PBS_1.00_Complete.pdf)

²² Domestic Violence Prevention Centre Gold Coast Inc. – <http://domesticviolence.com.au>

²³ ibid

violence. This plan consists of four Action plans, these plans cover three years and are intended to create steps to respond to and prevent violence against women and their children.

The statistics of violence perpetrated against Aboriginal and Torres Strait Islander women are high and the violence that takes place is either in the home or on the street. Violence is complex and multi-faceted, resulting in years of dispossession, marginalisation of Aboriginal and Torres Strait Islander women, their families and communities. It can at times seem to be a paternalistic relationship between Aboriginal and Torres Strait Islander people and the Government. Over-simplification of this issue may serve at times as a political agenda, but does not serve the women, families and girls whose lives are at risk.

The international human rights standards suggest that States are required to take and make reasonable effort to prevent violence against women. Those States and legal systems that failed to do so, bear the responsibility for some of the suffering and loss that they could prevent.

NATISWA support the recommendations from the newly released report 11-29 September 2017, to the Human Rights Council, Thirty-six session, Agenda item 3, from Special Rapporteur on the rights of Indigenous Peoples on her visit to Australia.

“107 (b) Amend the “Closing the Gap” strategy to include specific targets to reduce detention rates, child removal incidence and violence against women”

Recommendation:

The development of the data needs to provide data on violence of children which is limited and to increase the limited demographic characteristics on perpetrators.

Recommendation:

The Australian Government address the lack of data on Family Support Services, currently there is no data set which provides information about accessibility to services.

Recommendation:

the Australian Government empower Aboriginal Women’s organisations where possible to implement culturally appropriate programs that will prevent, divert and rehabilitate, Aboriginal and Torres Strait Islander women and girls in the justice system through counselling, mediation, employment and education.

Recommendation:

Diversion programs should be understood as an option at all points of contact with the justice system. Prevention and early-intervention programs that target women at risk of entering the criminal justice system can also be understood as a form of diversion.

