

Violence against Women in Australia and The National Action Plan to Reduce Violence against Women and their Children

Natalie Eslick, March 2014

Violence against Women (VAW) is a pervasive, global human rights violation. This research memo discusses the current state of VAW in Australia, and the Australian Governments proposed National Action Plan (NAP) addressing VAW across Australia's diverse community. Noting that women's rights are not fully protected by the Commonwealth and revealing the current appalling statistics around domestic and sexual violence against Australian women, the memo then provides insight on Indigenous women and VAW, followed by a deeper look at NAP. Finally, after a brief look at the recent study tour of Australia by the Special Rapporteur on Violence against Women, Australia's commitment to addressing VAW is discussed with reference to reporting for CEDAW and UPR. The memo then considers the Special Rapporteur's study tour in light of the election of a new federal government. It then concludes that if the state shows genuine commitment to its people, and to its obligations under human rights treaties, the onus ultimately rests on it to work with civil society to make use of the human rights mechanisms and seek to honestly and with purpose examine their human rights status and develop and adopt sustainable positive change.

Background

The Commonwealth of Australia is an affluent, developed country, with the world's 12th-largest economy. Almost the size of the continental US, but with a current population of just over 23 million, 2.5% are indigenous (Aboriginal or Torres Strait Islander), 25% of Australians are born elsewhere, and 43% have at least one overseas-born parent. In 2012 Australia had the world's fifth-highest per capita income, and a relatively low rate of poverty - currently around 11%. With the second-highest human development index globally, Australia ranks highly in many international comparisons of national performance, such as quality of life, health, education, economic freedom, and the protection of civil liberties and political rights. Australia is a constitutional monarchy with a federal division of powers, free and universal health care, a low unemployment rate of 6%, a 96% literacy rate and average life expectancy of 79.7 for males, and 84.2 for females.

Despite this utopian vision on paper, Australia is on par with the rest of the globe in terms of appalling rates of Violence against Women (VAW). VAW knows no bounds, it does not discriminate on the basis of geography, age, socioeconomic status, religion or culture. It is a societal challenge that all members of community and government are morally obligated to address. However, Australia's constitution does not include a non-discrimination clause, or

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guarantee equality before the law¹, and is the only modern developed democracy not to enshrine human rights in a national law.²

Women's rights are not fully protected in Australia.

Australia's Sex Discrimination Act 1984 (SDA) does not adequately address systemic discrimination or promote substantive equality. The Act is deficient in that there is no general prohibition on sex discrimination; it is reactive and complaints-based -- the burden for addressing sex discrimination is on individual complainants; intersectional discrimination is not adequately addressed; and exemptions to the Act, such as those for religious institutions, sporting clubs and charities perpetuate unfair and unreasonable discrimination against women. Protection from discrimination against women in the workforce remains inadequate, particularly in the areas of pregnancy and family responsibilities. Proposed changes to the SDA, which will improve protections against sexual harassment, and discrimination on the basis of breastfeeding and family responsibilities, are welcome but further improvements are needed.³

Statistics

Australia's multiculturalism means that though the most commonplace, or certainly the most visible, forms of violence are domestic and sexual violence, all forms of VAW are apparent - FGM/C, forced marriage, trafficking and dowry violence - recently a homeless woman of Fijian-Indian descent in Sydney was a victim of an acid attack, dying as a result of her wounds. Estimating true rates of VAW, the most prevalent manifestation of human rights abuse in Australia, is difficult as definitions and methods of data collection vary between jurisdictions, agencies and surveys, and many cases go unreported.

- One in three women in Australia has experienced physical violence since reaching the age of 15. Of those women, 85% were assaulted by a current or former partner, family, friend or other known male. Three quarters of these physical assaults occurred in the woman's home⁴
- Almost one in five women in Australia has experienced sexual assault since reaching the age of 15.⁵

¹http://www.theguardian.com/global-development/ng-interactive/2014/feb/04/womens-rights-country-by-country-interactive?CMP=tw_t_gu

² Human Rights Law Centre: <http://www.hrlc.org.au/category/focus-areas/focus-area-human-rights-law>

³ Human Rights Law Centre: National Human Rights Action Plan <http://www.humanrightsactionplan.org.au/>

⁴ Australian study tour report: Visit of the UN Special Rapporteur on violence against women 10-20 April 2012
Australian Human Rights Commission 2012

⁵ Ibid

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- Almost every week in Australia one woman is killed by her current or former partner. These intimate partner homicides account for one fifth of all homicides. In 2006-07 in 43% of the intimate-partner homicides there was a prior history of violence or legal intervention, “suggesting that, in many of these cases, the homicide incident is a tragic end to a cycle of domestic violence.”⁶
- Aboriginal and Torres Strait Islander women are 45 times more likely than non-indigenous women to be victims of domestic and family violence, and 35 times more likely to be hospitalised as a result. The homicide rates of Aboriginal and Torres Strait Islander women are between 9 and 23 times higher at different times in the life cycle than they are for non-Indigenous women.⁷
- Culturally and Linguistically Diverse (CALD) women from immigrant and refugee backgrounds also face particular barriers related to their circumstances, and are less likely to receive appropriate assistance from services when they attempt to leave a violent relationship⁸
- Domestic and family violence is the leading contributor to death, disability and illness in women aged 15 to 44 years. It is responsible for more of the disease burden in women than many well-known risk factors, such as smoking and obesity⁹
- Domestic and family violence is the largest cause of homelessness in Australia, due to a lack of available refuges and housing for victims of violence. In the state of New South Wales, for example, up to 40,000 women are on the housing waiting list at any given time and many stay in abusive relationships to avoid homelessness.¹⁰
- Violence against women and children costs the Australian economy over \$13 billion per year currently, and is expected to rise to \$15.6 billion, with productivity losses of \$609 million per year by 2021, unless effective action is taken to address domestic violence.¹¹
- The emotional and personal costs of violence against women cannot be measured: the effects reach all levels of society.

⁶ Ibid

⁷ Ibid

⁸ Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children 2009-2021 (March 2009) http://www.dss.gov.au/sites/default/files/documents/05_2012/the_plan.pdf

⁹ See above n 3

¹⁰ See above n 3

¹¹ See above n 3

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Indigenous Women and VAW

Any behaviour that causes the victim to live in fear is unacceptable. The term, 'family violence' is the most widely used term to identify the experiences of Indigenous people, because it includes the broad range of marital and kinship relationships in which violence may occur.¹² The context of violence in Indigenous communities is complex, and includes a history of colonisation and dispossession leading to structural inequality, high rates of poverty and unemployment, alcohol abuse as well as the underlying sociological reasons for alcohol abuse, limited housing, overcrowding and subsequent early sexualisation of children, along with normalisation of violence against women within communities.¹³

Some Indigenous communities need extra assistance to address specific aspects and disadvantages which contribute to higher rates of family violence and sexual assault among ATSI people. Gaps in life expectancy and life opportunities between Indigenous and non-Indigenous Australians, significantly higher incidence of alcohol abuse, and ineffective police protection in remote communities, requires support for community led initiatives that change attitudes, heal trauma, and improve the coordination of services to victims.¹⁴

It is imperative that programs are focused on supporting Indigenous communities to develop local and internal solutions to violence prevention. This includes encouraging and supporting Indigenous women to have a stronger voice as community leaders and supporting Indigenous men to stand up and reject violence.¹⁵ Improving economic outcomes and opportunities for Indigenous women are critical to reducing violence.

The National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) conducted a survey to garner indigenous views on critical aspects of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), and concluded that responses overwhelmingly carried a theme that governments need to do more to ensure the voices and views of ATSI women are included in consultations.¹⁶ Access to education at all levels with a focus on literacy and numeracy, leadership and representative based development, gender equality work, education and awareness of CEDAW and other international mechanisms and the way they relate to ATSI women, and input of the unique perspective of ATSI women¹⁷ themselves in programs focussing on, and issues surrounding, violence is of utmost importance if VAW in indigenous communities is to be addressed.

¹² The National Plan to Reduce Violence against Women and their Children, Including the First Three Year Action Plan. Safe and Free from Violence, An Initiative from the Council of Australian Governments. (Feb 2012)
http://www.dss.gov.au/sites/default/files/documents/05_2012/national_plan.pdf

¹³ See above n 3

¹⁴ Ibid

¹⁵ See n 7 above

¹⁶ NATSIWA Projects 1, in Newsletter Issue#3, 2012
http://natsiwa.org.au/LinkClick.aspx?fileticket=8BW3_lvRlck%3d&tabid=75&mid=401

¹⁷ Ibid

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A recognised presence for Indigenous women in their own communities is tantamount to power, an acceptance of a status of equality, and the first step to acknowledging discrimination as an underlying factor to VAW.

The National Plan

In May 2008, the Government established an 11 member National Council to Reduce Violence against Women and their Children. The Council's task was to provide advice on the development of an evidence-based national plan. On 15th February 2011, after a two year consultation period, the Australian Government announced The National Plan to Reduce Violence against Women and their Children 2010 – 2022 (*The National Plan*). *The National Plan* was endorsed by the Federal Government and all State and Territory Governments, and focuses on domestic and family violence, and sexual assault.

While state and territory governments independently deliver a range of services including justice, policing and legal assistance for victims and perpetrators, as well as providing some funding and coordination efforts to the civil society sector, the National Council to Reduce Violence against Women and their Children determined that law reform and greater community awareness could be enhanced and improved by a coordinated approach.

According to *The National Plan to Reduce Violence against Women and their Children: First Three Year Action Plan Report*:

The National Plan is unprecedented in the way it focuses on preventing violence by raising awareness and building respectful relationships in the next generation. The aim is to bring attitudinal and behavioural change at the cultural, institutional and individual levels, with a particular focus on young people.

As well as focusing on prevention measures, the National Plan will allow women who have experienced violence to rebuild their lives as quickly as possible as part of a community- wide response.¹⁸

¹⁸ See n 9 above

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The National Plan identifies six national outcomes for all governments to deliver during the life of the project¹⁹:

1. communities are safe and free from violence
 - a. *Success will be measured by an increase in the community's intolerance of violence against women*
2. relationships are respectful
 - a. *Success will be measured by improved knowledge of, and the skills and behaviour for, respectful relationships by young people*
3. Aboriginal and Torres Strait Islander communities are strengthened
 - a. *Success will be measured by reduction in the proportion of Indigenous women who consider that family violence, assault and sexual assault are problems for their communities and neighbourhoods; and increase in the proportion of Indigenous women who are able to have their say within their communities on important issues, including violence.*
4. services meet the needs of women and children experiencing violence
 - a. *Success will be measured by an increase in the access to, and responsiveness of, services for victims of domestic and family violence and sexual assault.*
5. justice responses are effective
 - a. *Success will be measured by an increase in the rate of women reporting domestic violence and sexual assault*
6. perpetrators stop their violence and are held to account
 - a. *Success will be measured by a decrease in repeated partner victimisation.*

The outcomes will be delivered through four three-year Action Plans:²⁰

- First Action Plan (2010–2013) – Building a Strong Foundation
 - Establishing groundwork and creating momentum in primary prevention
- Second Action Plan (2013–2016) – Moving Ahead

¹⁹ National Plan to Reduce Violence against Women and Children Progress Report to Council of Australian Governments 2010-2012

http://www.fahcsia.gov.au/sites/default/files/documents/05_2013/final_edited_report_edit.pdf

²⁰ Ibid

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- consolidate the evidence base for the effectiveness of the strategies and actions implemented, inform the strengthening of those programs in place and development of new approaches
- Third Action Plan (2016–2019) – Promising Results
 - delivery of solid and continuing progress in best practice policies
- Fourth Action Plan (2019–2022) – Turning the Corner
 - expected to see the delivery of tangible results in terms of indicators of change²¹

The First Three Year Action report published February 2012 plan lists four high- level indicators of change determined to show progress or whether targets are being achieved²²:

1. Reduced prevalence of domestic violence and sexual assault
2. Increased proportion of women who feel safe in their communities
3. Reduced deaths related to domestic violence and sexual assault
4. Reduced proportion of children exposed to their mother's or carer's experience of domestic violence.

Special Rapporteur Study Tour

In April 2012, Rashida Manjoo,²³ UN Special Rapporteur on Violence Against Women, conducted a study tour of Australia and highlighted several key issues for discussion at roundtables and meetings, including:

- identifying gender-based violence against women as both a cause and a consequence of discrimination against women and recognition of domestic and family violence as a ground of discrimination under national laws
- identifying violence against women as a manifestation of patriarchy and historically unequal relations between women and men

²¹ See n 9 above

²² See n 9 above

²³ Australian study tour report: Visit of the UN Special Rapporteur on violence against women 10-20 April 2012 <https://www.humanrights.gov.au/sites/default/files/document/publication/UNSRVAW%202012%20Web%20Version.pdf>

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- addressing violence against women from a human rights perspective rather than from a welfare perspective
- applying the obligations of states to respect, protect and fulfil women's human rights and fundamental freedoms, including the obligation to exercise due diligence to prevent, investigate, punish and remedy gender-based violence against women²⁴

At the time of Ms Manjoo's visit, there was a concern around the lack of coordinated implementation of *the National Plan*, within and across governments, and in the absence of the Council of Australia Governments (COAG) first three-year implementation plan, the execution of the National Plan to date had been ad-hoc and implemented without adequate consultation.²⁵ The need for leadership and full commitment to effective implementation was repeatedly noted.²⁶

Community roundtable discussions questioned the efficacy of *The National Plan*, noting that the full implementation of the National Plan has already been impeded by:

- the COAG first three-year implementation plan not being developed or agreed to;
- the federal government not releasing the report on the consultation (conducted by PricewaterhouseCoopers) on possible models for a National Centre of Excellence nor releasing a proposal for the establishment of the Centre;
- the limited consultation with non-government stakeholders and affected communities on the implementation of the National Plan, which has resulted in inadequate attention to the development of specific programs for marginalised groups of women.²⁷

CEDAW and UPR

Focusing on *The National Plan* as the Australian Government's stated commitment to stem the human rights violation that is VAW both during Australia's first Universal Periodic Review (UPR) in 2011, and its 2009 CEDAW review²⁸, it is disheartening to read the report from the Rapporteur for Follow-up on Concluding Observations of CEDAW²⁹. Whilst *The National Plan* has been adopted, and the federal, state and territory governments have acknowledged an intention to implement, its application two years later can only be considered partially implemented in that it "has not reached service providers on the ground or impacted on the

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ CEDAW Combined sixth and seventh periodic reports of States parties Australia (9 March 2009) UN Doc CEDAW/C/AUL/7

²⁹ OHCHR Rapporteur for Follow-up CEDAW (3 September 2013) UN Doc AA/follow-up/Australia/55

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wider regional, rural and remote communities”³⁰. *The National Plan* does not include many of the required and recommended actions of the CEDAW Committee³¹, and the UPR of Australia³².

Token elements of the plan have trickled through, including the establishment of a 1800 RESPECT 24 hour counselling hotline, implementation of a ‘Respectful Relationships’ education program (neither of which have received widespread media campaigns), and some funding to community and sports groups for prevention plans, but to date, the first three-year implementation plan has not been finalised the National Centre of Excellence has only been established at the end of 2013 in a rudimentary consultative form, as part of an election promise from the new Federal Government.

Clarity is sought to determine if *The National Plan* will be adequately funded for effective realisation of the outcomes, particularly in remote rural and indigenous populations, and there is a glaring lack of independent monitoring and evaluation mechanisms to invigilate its execution and determine efficacy.³³

The importance of participation by civil society at all stages of research, establishment and implementation of any government programs or plans addressing such a broad issue such as Violence against Women cannot be underestimated.

Next reporting cycle, new Federal Government

It is with interest that we watch developments on programs designed to combat VAW now that a new federal government is in place. While the National Centre for Excellence has been established as per an election promise, there is currently little room for civil society involvement.

It is also worth noting the new government has already reneged on commitments made in the last UPR by the former government with regards to monetary commitment to Foreign Aid³⁴ and strengthening commitments to climate change.³⁵

³⁰ Ibid

³¹ CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Australia (2010) <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf>

³² Report of the Working Group on the Universal Periodic Review* Australia (24 March 2011) UN Doc A/HRC/17/10

³³ Joint NGO Submission to the UN Human Rights Committee on the List of Issue Prior to Reporting for the Sixth Periodic Report of Australia. NAACL. August 2012.

http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/joint_australian_ngo_submission_to_un_human_rights_committee.pdf

³⁴ The Coalition’s Policy for Foreign Affairs, September 2013

www.lpawebstatic.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20%E2%80%93%20Foreign%20Affairs%20-%20final.pdf

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With the next State Party Report for CEDAW due July 2014, and the next UPR for Australia due in July 2015, now is the time we may see significant progress in implementation of *The National Plan*. The inability to delay reporting for the UPR is unique, and offers a large incentive for governments to show progress on actions discussed at a previous review.

While the UPR is not an enforcement procedure, and does not have a sanction mechanism in place, perhaps its biggest advantage is precisely the fact that it is openly peer reviewed, and outside potential interpretation of politicizing and selectivity of the formal treaty body. The UPR makes comparing countries much easier which is both a dis-incentive³⁶ to sweeping human rights violations under the carpet, and an incentive for states to try and better their expected human rights standards. The application of peer pressure helps to ensure the international community witnesses all states human rights issues, including those uncomfortable in nature, and pursues explanations, provides support and seeks improvement in adherence to obligations and performance.

Reporting back on outcomes and actions, and routine obligatory follow up by further review four and a half years later, ensures all States are on even footing and should strive for positive development and progression in human rights policy, application and enforcement. It is a significant and constructive process, and utilised to its full extent supports all States to achieve meaningful, positive human rights outcomes. The UPR process has the potential to have a positive impact on State party implementation of effective plans to combat gender based violence.

Our world is such a global community now that breaches in human rights previously unseen by the international community at large are now glaringly obvious, instantly uploaded, viewed and commented on. In the same vein, reports, conclusions and stakeholder participation in all of the Human Rights Council processes are equally accessible to anyone with an internet connection, and promptly throughout the review process. While state's detailed responses to comprehensive treaty body examinations can seemingly be delayed indefinitely, the UPR process ensures a level of consistent scrutiny not possible previously, and the peer driven influence (itself propelled by the states constituents being now more than ever aware of human rights violations and their impact on the global community at large) has real potential to make startling differences. The process supports states to develop the correct foundational infrastructure to in turn support the grass root groundswell for change and in a positive and constructive format has the potential to achieve real human rights outcomes.

³⁵ Climate Commission – now defunct. See cached copy of website:
<http://webcache.googleusercontent.com/search?q=cache:4cPvhWPBM4EJ:climatecommission.gov.au/+&cd=1&hl=en&ct=clnk&gl=au>

³⁶ McBeth, A., Nolan, J. & Rice, S. (2011). *The International Law of Human Rights*. Chapter 6: The Human Rights Council (pp. 231-242). South Melbourne, Vic.: Oxford University Press.

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However, while the UPR process itself is commendable, the very nature of it being peer driven rather than expert driven means its success is dependent on the individual states themselves, and the degree to which they 'are prepared to examine their own human rights records and those of other countries frankly and conscientiously.'³⁷ For Violence against Women to be seriously addressed, it must be openly recognised as a human rights violation first and foremost. Women's Rights are Human Rights.

³⁷ Ibid