



COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

Friday 27th September 2024

Commissioner Natasha Stott Despoja AO
Royal Commission into Domestic, Family and Sexual violence

To Commissioner Natasha Stott Despoja AO

Submission to Royal Commission into Domestic, Family and Sexual violence from the Commissioner for Aboriginal Children and Young People

I write to you as Commissioner for Aboriginal Children and Young People (CACYP) in South Australia with my submission to the Royal Commission into Domestic, Family and Sexual violence.

I have heard from many Aboriginal children, young people, and their families on the impact that domestic, family, and sexual violence has on them, their families, and their communities. Aboriginal children have the right to grow up safe, supported, strong and connected.

In advocating for the rights of Aboriginal children and young people, I refer to the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child.

United Nations Declaration on the Rights of Indigenous Peoples

Article 22- States shall take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.¹

United Nations Convention on the Rights of the Child

Article 19- Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 34- Governments should protect children from sexual abuse.

Article 36- Children should be protected from any activities that could harm their development.²

Aboriginal children and young people's experience of domestic, family and sexual violence

Aboriginal children and young people are both directly and indirectly affected by domestic, family and sexual violence. Children and young people can be subject to threatening, coercive and controlling behaviours including physical, sexual and emotional abuse. This has a major impact on their development and wellbeing - emotionally, socially, physically, and culturally.



The national 'Aboriginal and Torres Strait Islander Action Plan 2023-2025' recognises that children and young people are victim-survivors in their own right, not an extension of their parents or secondary victims of family violence.³

Research has found exposure to family violence is associated with a range of negative outcomes, including diminished educational attainment, physical and psychological disorders, suicidal ideation, behavioural difficulties and homelessness.⁴

Aboriginal children and young people have high rates of experience of and exposure to domestic and family violence, compared to their non-Aboriginal peers. Aboriginal women are 35 times more likely than non-Aboriginal women to be hospitalised as a result of domestic and family violence⁵.

Domestic and family violence is a key factor leading to interventions by child protection authorities in the lives of Aboriginal children and their families.

During my recent Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia (Inquiry), I heard from Aboriginal children, young people, families, and communities from across the state. In one of the individual submissions I received, a young person shared their experience of violence and sexual abuse within their family where the Department for Child Protection failed to act in a timely manner to ensure their safety. In another submission, a young person was removed from family as a young child and experienced horrific sexual abuse by their non-Aboriginal foster carer who was a prominent person in the community. While in care this young person was denied any information about their family community and culture, including other siblings in care. In another submission, the young person was removed at a young age in response to concerns about family violence, but was not provided with any therapy during their time in out-of-home care.

Aboriginal women spoke about their experiences of their children being removed by the state authority and placed with the family members of the perpetrator. Most cases I am aware of where the preference to place the children with the perpetrator or his family are when the father and his family are non-Aboriginal.

Aboriginal service providers described situations where the Department for Child Protection allowed the perpetrator's family to determine contact arrangements. These situations further traumatise the victim/survivor and set up a situation where the perpetrator can still exert control over them.

Aboriginal people in regional and remote communities in South Australia spoke of having limited access to legal, counselling and therapeutic services nearby. Access to 24-hour safe spaces is also limited to a few regional centres. Community members identified that Aboriginal mothers will often go back to the perpetrator because they do not have a safe space to go to. Women have said that they need a safe space to go to with their children if and when family violence becomes problematic within the community so that mothers, grandmothers, aunties and children are not exposed to this violence.

An additional factor that can influence Aboriginal women and children's access to services in regional and remote locations is having family members of the victim/survivor or family members of the perpetrator working within that service. There are also issues of confidentiality with accessing services that are more visible to family members and the wider Aboriginal community which makes this difficult and confronting.

The way in which domestic and family violence manifests in Aboriginal communities is different in Aboriginal communities. The impact reverberates widely throughout the community across kinship and social structures.

Responses to Aboriginal children and young people as witness to of victims of domestic, family and sexual violence

The manner in which government agencies respond to concerns about domestic, family and sexual violence has a significant impact on outcomes for Aboriginal women and children.

Mainstream responses to violence include legal sanctions and behaviour change programs for perpetrators and seeking safe accommodation for women and children to remove them from violent situations, and to re-establish safety. Child protection interventions in this context often focus on the ability of mothers to 'protect' their children in the context of ongoing harm, holding mothers responsible for the violence, and relying on separating children from their families to reduce risks and harm, thereby perpetuating trauma and posing risks to women and children who may not disclose violence or seek help for fear of child removal. Fear of disclosure by children, young people and women is also linked to repercussions within the family or community.

The Department for Child Protection is the key agency responsible for responding to community concerns about domestic, family and sexual violence as they relate to children and young people in South Australia. As mandated notifiers, employees of government agencies such as SA Police, education, health, youth justice and family support services also play a significant role in bringing matters concerning children to the attention of the Department for Child Protection.

Concerns about children and young people's experience of or exposure to domestic, family or sexual violence are subject to response under the *Children and Young People (Safety) Act 2017* (the Act) as it relates to protecting children and young people from harm.

The Act defines physical or psychological harm as including harm caused by sexual, physical, mental or emotional abuse or neglect. The government's proposed draft *Children and Young People (Safety and Support) Bill 2024* expands the definition of harm to include exposure to domestic violence.

Data about the primary type of abuse in substantiated notifications reveals that for 2020-2021, approximately half (51.1%) of the substantiated notifications in South Australia had emotional abuse recorded as the primary type of abuse (55.1% for Aboriginal children and 49.1% for non-Aboriginal children). Emotional abuse includes children's exposure to, and experience of, family and domestic violence. One quarter of the substantiated reports had a primary harm type of neglect, with similar proportions for Aboriginal and non-Aboriginal children. Approximately one in ten substantiated notifications (12.9%) had a primary harm type of physical abuse (10.3% for Aboriginal children and 14.4% for non-Aboriginal children) and a similar figure (9.2%) had a primary harm type of sexual abuse (6.1% for Aboriginal children and 10.9% for non-Aboriginal children).⁶

Data analysis commissioned for the Inquiry can also provide indicators about the prevalence of domestic and family violence. The data analysis examined the background characteristics of families with children in care in South Australia in 2016. It found that Aboriginal families are two and a half times more likely to be affected by multiple characteristics at one given time. The data shows that:

- 96% had at least one indicator of poverty.
- 54% had at least one indicator of poor mental health.
- 43% had at least one indicator of substance misuse.
- 35% had at least one indicator of domestic and family violence.
- 69% had experienced intergenerational child protection contact.⁷

35% of Aboriginal children and young people in out-of-home care in 2016 had a parent recorded as having one or more indicators of domestic and family violence, compared to 23% of non-Aboriginal children and young people in out-of-home care. For children subject to at least one unborn child notification the rate increased to 48%, compared to 30% for non-Aboriginal children.⁸

This data serves to highlight the need for service provision for Aboriginal families that recognises and responds to intergenerational trauma and co-occurring issues in complex contexts which may deter women from help-seeking.

At present, the legislation, policies and practices of the Department for Child Protection lead to disproportionate numbers of Aboriginal children being removed from their families. Aboriginal women have shared their experience that instead of education and support, the response they received from the Department for Child Protection was the removal of their children.

*“If you are in a DV relationship, that’s an automatic removal. You are punished for being a victim.”
Aboriginal mother – Regional South Australia⁹*

This focus on the protectiveness of mothers experiencing domestic violence is carried through to future dealings with the Department for Child Protection. An example provided to my office was of an Aboriginal woman who had previously escaped domestic violence, then in an unrelated incident when her child was attacked by a stranger in a public location, the Department for Child Protection removed the child on the basis that mother did not display protective behaviours, despite her having called the Police.

Once families are caught up within the child protection system, the coercive power wielded by the Department for Child Protection further victimises the mother and harms the child.

Throughout the Inquiry I heard on many occasions of women who had their children removed on the basis of domestic and family violence. These women experienced contact arrangements as dehumanising and another form of control by the Department. Contact arrangements were often supervised because of the department’s suspicions that the mother may otherwise traumatise the children, treating her like the perpetrator.

In another example a perpetrator was temporarily imprisoned and the children were still with their mother. Department for Child Protection workers surveilled the mother, including via interrogating the children at school about who was visiting the mother and whether they had accompanied their mother to the prison to see their father. The workers also made demands as to what she could and could not do. In this example the Department failed to recognise the dynamics of domestic violence and the inability of the mother at that time to separate from the perpetrator. Instead of offering support and referral to therapeutic counselling services, the response was one of surveillance and evidence gathering. This kind of response was a common experience shared by Aboriginal women in private sessions and stakeholder meetings throughout the inquiry.

SA Police responses

Separate to experiences within the child protection system, Aboriginal community members have spoken to me about a lack of response by police in domestic and family violence situations where violence is viewed by Police as a cultural norm in Aboriginal communities or as part of family disputes that sort themselves out.

Women have spoken about not being believed when disclosing domestic violence to police. In other instances, Aboriginal and Torres Strait Islander women are being apprehended by police for minor offences or warrants as a means to protect them from the perpetrator when they seek assistance.

SA Housing Trust responses

Existing policy requirements fail to support children and families. SA Housing Trust still evicts families with children without having to obtain knowledge of whether domestic and family violence is a factor in this decision and women and children are placed in positions of greater vulnerability as a result. Housing, homelessness and domestic violence are inter-related and agency responses should understand this.

Current system responses are often experienced by Aboriginal families as punitive. They fail to respond adequately to the structural factors that lead to contact with the child protection system and lack the cultural insight necessary to understand the way in which Aboriginal women and children experience domestic and family violence.

Changes needed to support Aboriginal children, young people and families experiencing domestic, family and sexual violence

The responses needed to reduce the rate at which Aboriginal women and children experience domestic and family violence have been well documented. South Australia is a party to the 'National Plan to End Violence against Women and Children 2022-2032' and the supporting 'Aboriginal and Torres Strait Islander Action Plan 2023-2025'. The Action Plan states:

"To break the cycle of violence, Aboriginal and Torres Strait Islander children and young people must be provided with opportunities to heal from their experiences of violence, and to address their own use of problematic and harmful family, domestic or sexual behaviours in holistic ways that incorporate values from culture that drive behaviour change".¹⁰

The Action Plan highlights the importance of partnering with local communities, their leaders and organisations in prioritising, designing and implementing the actions within the Action Plan.

In South Australia, there needs to be greater access to services in regional and remote locations and these services need to be connected to community and understand the local community and cultural context. Instead of funding being funneled into metropolitan-based statewide Aboriginal Organisations, there should be a greater role for local level Aboriginal Community Controlled Organisations that are well established in regional and remote areas and who know the families, the community and what is needed to support them. This is where governments need to be focusing efforts, through local level community development approaches.

Such calls for community led decision-making and responses to domestic, family and sexual violence are not new. In South Australia, I worked on the 'Rekindling Family Relationships Framework for Action 2005-10'

which included the development and implementation of Local Community Family Violence Strategies as well as supporting local level Partnerships Against Domestic Violence funded initiatives.

More recently the Wiyi Yani U Thangani (Women's voices) report (2020) amplified and highlighted the experiences and voices of Aboriginal and Torres Strait Islander women, girls, their families and their communities in advocating for strengths-based community-driven approaches to addressing Aboriginal and Torres Strait Islander disadvantage.¹¹

Similarly, the Inquiry found that systemic racism and cultural bias contribute to the disproportionate rates of Aboriginal child removals. Recommendations to counter this included a greater role for the Aboriginal community through local-level Aboriginal Community Controlled Organisations, in providing cultural advice to the Department for Child Protection and in taking on functions such as family scoping and cultural maintained planning, in recognition that this is where the expertise lies.

Here in South Australia many Elders have told me that there is no place in community for domestic, family and sexual violence. Unless we listen to the voices of those who are on the ground and support them with education and resources to address the inter-related factors underlying women and children's experiences of violence, the status quo will not change or improve.

Separate to partnering with the Aboriginal community, children and young people themselves must be part of the solution. Young people want to have a say in the choices made for their safety and the safety of their families. They also believe that their input is crucial for improving the child protection, family support, and family violence service systems. They want to play an active role in informing how families can be better supported during times of family and domestic violence, separation and reunification, and they feel that their opinions must be respected in order for families to experience greater safety.¹²

Whilst a First Nations National Family, Domestic, and Sexual Violence Peak Body has been established, it is important that the Royal Commission into Domestic, Family and Sexual Violence in South Australia listens to the voices and experiences of Aboriginal women, children and young people and empowers them to develop sustainable local supports and services for victim/survivors and perpetrators. The recently established South Australian peak body for Aboriginal children and families, Wakwakurna Kanyini, can play an integral role in bringing these voices forward.

Regards



APRIL LAWRIE

Commissioner of Aboriginal Children and Young People

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- ¹ United Nations Declaration on the Rights of Indigenous Peoples (2007), Article 22.
- ² United Nations Convention on the Rights of the Child (1989), Articles 19, 34, 36.
- ³ Commonwealth of Australia (Department of Social Services) 2023, Aboriginal and Torres Strait Islander Action Plan to End Violence against Women and Children 2023-2025
- ⁴ Australian Institute of Health and Welfare 2020. Australia's children, p.338.
- ⁵ McGlade, H. My Journey into 'Child Protection' and Aboriginal Family Led Decision Making, Australian Feminist Law Journal, 2019, 45:2, 333-349, p.343-4.
- ⁶ Australian Institute of Health and Welfare, Child Protection Australia, 2022, Table S3.10
- ⁷ Montgomerie A, Dobrovic J, Pilkington R, Lynch J (2023). Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle. Adelaide: *BetterStart* Health and Development Research Group, The University of Adelaide.
- ⁸ Ibid
- ⁹ Commissioner for Aboriginal Children and Young People South Australia, Holding on to Our Future, the Final Report of the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal Children in South Australia, May 2024, p.143.
- ¹⁰ Commonwealth of Australia (Department of Social Services) 2023, Aboriginal and Torres Strait Islander Action Plan to End Violence against Women and Children 2023-2025
- ¹¹ Australian Human Rights Commission, Wiyi Yani U Thangani Report (2020)
- ¹² Moore, T., Arney, F., Buchanan, F., Chung, D., Chong, A., Fernandes, C., Hawkes, M., Meiksans, J., Moulding, N., Martin, R. and Schulze, D., 'Practice Brief - Slow down and listen: Improving children's and young people's safety during periods of violence, separation and reunification', Australian Centre for Child Protection, University of South Australia, 2020, p. 14.