
OUR WATCH

SUBMISSION TO THE FREE AND EQUAL NATIONAL CONVERSATION ON HUMAN RIGHTS

November 2019

About Our Watch

Our Watch is an independent, not for profit organisation established by the the Commonwealth and Victorian Governments in 2013. Since establishment, all States and Territories have become members of Our Watch.

Our vision is shared with the *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan), namely an Australian community free from violence against women and their children.

The specific mandate of Our Watch is to focus on the primary *prevention* of violence against women and their children. We aim to provide leadership at national, state, regional and local levels to drive change in the social norms, structures, attitudes and practices that underpin, drive and support violence against women and their children. Our Watch has four key areas of work:

1. Design and deliver public campaigns that engage and educate individuals and the community
2. Promote a sustained and constructive public conversation
3. Enable organisations, networks and communities to effect change
4. Influence public policy, systems and institutions.

Our Watch draws directly on international human rights frameworks to provide the rationale for our work, based on an understanding of violence against women as a serious and preventable human rights abuse.

About this submission

In order to contribute to the national conversation, this paper highlights a range of issues that we think are important for consideration by the Australian Human Rights Commission in relation to the protection of human rights in Australia, barriers to human rights protection, and measuring progress.

This submission draws on three key frameworks developed by Our Watch: *Change the story*, *Changing the picture* and *Counting on change*.

Change the story

[*Change the story: a shared framework for the primary prevention of violence against women*](#), developed by Our Watch in partnership with Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth, and launched in November 2015. *Change the story* was developed following a significant review of the international evidence on what drives and contributes to the prevalence of violence against women. It was also informed by an extensive national consultation process, involving over 400 diverse stakeholders from across civil society and all levels of government. This enabled the *Change the story* framework to draw on existing practice-based knowledge and expertise as well as available research. Based on this evidence, the framework presents an explanatory model of violence against women, and a coherent conceptual approach to

its prevention – one that prescribes actions that are explicitly aligned with and designed to address the underlying drivers of this violence.

Change the story adopts the United Nations’ Declaration on the Elimination of Violence against Women (1993) definition of violence against women, describes violence against women as a fundamental violation of human rights, and points to Australia’s obligation under international law to prevent this violence. The human rights-based imperative to end violence, and the human rights principles of collaboration, participation and ensuring equality of outcomes for all, inform every aspect of the framework.

Change the story has been integrated into the Third and [Fourth Action Plans](#) of the National Plan to Reduce Violence against Women and their Children, endorsed by all Australian governments through COAG in October 2016 and August 2019 respectively.

Changing the picture

The specific intersections relevant to understanding and preventing violence against Aboriginal and Torres Strait Islander women in particular are outlined in [Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children](#). This resource was produced by Our Watch and based on significant research, consultation and collaboration with Aboriginal and Torres Strait Islander people including an Advisory Group. Aiming to support national efforts to prevent violence against Aboriginal and Torres Strait Islander women and their children, *Changing the picture* sets out a model for understanding the specific intersecting drivers of this violence.

Changing the picture takes a human rights based approach, drawing on the UN Declaration on the Rights of Indigenous Peoples; work by the Special Rapporteur on the Rights of Indigenous Peoples, Special Rapporteur on Violence against Women and CEDAW committee; and resolutions by the UN Human Rights Council.

Counting on change: A guide to prevention monitoring

Following the development and release of *Change the story*, Our Watch identified a challenge in how we measure progress towards this shared national goal of a significant and sustained reduction in violence against women and their children. While Australia measures population-level prevalence of violence against women through the Australian Bureau of Statistics’ Personal Safety Survey, *Change the story* acknowledges that it may take ten years or more of multi-pronged and sustained prevention efforts to create quantifiable change against prevalence indicators.

[Counting on change: A guide to prevention monitoring](#) seeks to provide advice on how to consistently collect and report on data that will tell us, in the short to medium-term, if relevant factors are changing. The document outlines the indicators of change against the drivers and reinforcing factors of violence (set out in *Change the story*) that will tell us if we are ‘heading in the right direction’ for longer-term reductions in prevalence of violence against women. In doing so, the Guide aims to support national measurement of progress towards the prevention of violence against women and their children and provide policy-makers with evidence-based best-practice guidance on how they can best measure population-level change.

Counting on change was commissioned by Our Watch in partnership with Australia's National Research Organisation for Women's Safety (ANROWS). The Equality Institute was contracted to review the international literature and identify indicators for *Counting on change*, and the research was supported by an Advisory Group comprising members from: ANROWS; the Australian Bureau of Statistics; the Australian Institute of Family Studies; Department of Premier & Cabinet, Victorian Government (ex-officio member); Ministry of Health, New South Wales Government; Office for Women, South Australian Government; and the University of Melbourne.

How should human rights be protected in Australia?

National human rights legislation

Our Watch supports calls for comprehensive national human rights legislation, such as an Australian Human Rights Act. Such legislation is crucial to effectively implementing Australia's obligations under international human rights instruments and to holding government to account.

National legislation of this kind needs to be one strategy among a broader policy approach to address and prevent human rights breaches. Importantly, the fulfilment of human rights must not be dependent on bringing individual complaints, an approach which has been shown to limit access to justice and systemic change.

Primary prevention

There is a strong need for governments to commit effort and funding to primary prevention efforts to prevent human rights abuses rather than relying on reactive human rights mechanisms.

Primary prevention approaches should be grounded in strong understandings about the drivers of the issue. Evidence-based, multi-faceted and sustained strategies should then be applied to address those drivers.

In the case of violence against women, primary prevention requires changing the social conditions, such as gender inequality, that excuse, justify or even promote this violence. Individual behaviours may be the intended result of the prevention activity, but such change cannot be achieved prior to, or in isolation from, a broader change in the underlying drivers of such violence across communities, organisations and society as a whole. A primary prevention approach works across the whole population to address the attitudes, practices and power differentials that drive violence against women; it reaches people where they live, work, learn and play to address the drivers of violence and promote gender equity. This approach needs to be supported by complementary political and institutional strategies, including public policy, legislation and regulation in order to shift the social structures that enable, drive or effectively condone this violence.

In outlining a shared national approach to prevention, *Change the story* identifies roles for many different stakeholders, but points to the particular roles and responsibilities of governments. The Commonwealth government has a key role to play in coordinating and maintaining cross-jurisdictional leadership and in establishing a communication mechanism to drive and support a shared approach from the national to the local level. State and territory

governments should develop their own plans, reflecting this shared national direction, but tailored and responsive to specific jurisdictional contexts and needs. State and territory governments can play a lead role in crucial prevention settings that fall within their remit, such as education and health. Local governments are well placed to respond to local concerns and to lead primary prevention activities through existing mechanisms and via a range of partnerships.

Commitment to comprehensive, secure and ongoing funding for primary prevention across Australia is needed to achieve change on this issue. This investment must complement (rather than deduct from) response service funding (which itself needs to be increased).

National Plans and Strategies

National Plans are an important policy mechanism that can drive nation-wide action to address endemic and complicated issues, such as violence against women. However, there are a number of elements that are necessary to ensuring national plans have significant and ongoing impact:¹

- A long-term commitment and approach
- A national, coordinated approach with commitments from all governments contributing to the same goal, and learnings from activities and reform shared
- Addressing cultural change via multiple levers – public health efforts recognise the need to combine techniques and implement them across multiple settings to achieve impact
- Structural changes – legislative change, policy infrastructure design and policy reform must all be included in the mix to complement and reinforce other cultural and attitudinal changes
- Holistic – taking a broad view to the issue being addressed and making commitments across policy areas
- Adequate and ongoing funding – ongoing funding for key reforms, services and activities is crucial to achieving sustainable change. Governments should embed funding models and modalities that facilitate sustainability and impact – moving away from ad hoc grants and project funding to integrated and ongoing funding for key priorities in order to facilitate sustainability and impact
- Civil society engagement – meaningful mechanisms for consulting with, collaborating and seeking advice from civil society throughout the implementation of National Plans
- Robust reporting, monitoring and evaluation frameworks – National Plans should have mechanisms for regular reporting on activity and progress; mechanisms for program-level evaluation and evaluations that can look across activities to understand whether broader change is being achieved; and inclusion of short, medium- and long-term measures of success in monitoring frameworks

¹ These elements are based on analysis of successful whole-of-population prevention approaches to issues such as HIV/AIDS, tobacco and road safety, and analysis undertaken by Our Watch in the context of preventing violence against women including in *Change the story* and subsequent work.

A recent [ANAO audit of coordination and targeting of domestic violence funding and actions by the Department of Social Services](#) has resulted in changes which will be implemented in the fourth and final action plan of the National Plan to Reduce Violence against Women and their Children.

The audit found that the majority of actions in the Third Action Plan of the National Plan did not specify which jurisdiction is responsible for implementing the identified actions, and that the absence of a supporting implementation plan for the Action Plan meant that there was a lack of transparency and accountability about responsibility for implementation of the actions.² As a result of the ANAO's audit, governments are developing a national implementation plan for the Fourth Action Plan that will outline how governments will deliver actions and measure their impact to address the national priority areas.³

The ANAO also recommended that new measures of success, data sources and specific outcomes be developed for the Fourth Action Plan and any future National Plans.⁴ This recommendation was made in recognition that the outcomes established at the outset of the National Plan currently measure limited aspects of each outcome. The recently released Action Plan includes a commitment from governments to develop and agree on an enhanced performance monitoring and reporting framework to support the implementation of the Plan, including revised measures of success (with both short and medium-term measures).⁵

The audit found that Annual Progress Reports for the National Plan do not provide a sufficient level of information for public transparency and accountability and recommended that public annual progress reports from the Fourth Action Plan document the status of each action item and the outcomes of the National Plan as a whole.⁶

Gender responsive policy-making and budgeting

The use of gender responsive policy-making and budgeting is crucial in order for governments to address gender inequalities across Australian society, in line with our international human rights obligations and to change the broad and underlying conditions that produce and support violence against women.

Gender responsive budgeting “seeks to ensure that the collection and allocation of public resources is carried out in ways that are effective and contribute to advancing gender equality and women’s empowerment. It should be based on in-depth analysis that identifies effective interventions for implementing policies and laws that advance women’s rights. It provides tools to assess the different needs and contributions to men and women, and boys and girls within the

² Australian National Audit Office (ANAO), *Coordination and Targeting of Domestic Violence Funding and Actions – Department of Social Services* (2019), Auditor-General Report No 45 2018-19 Performance Audit, page 45.

³ Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 (2019), page 3.

⁴ ANAO (2019), recommendation 3

⁵ Fourth Action Plan (2019), page 51.

⁶ ANAO (2019), recommendation 5.

existing revenues, expenditures and allocations and calls for adjusting budget policies to benefit all groups”.⁷

Gendered policy-making and budget development can identify government levers to address gender inequalities, for example by promoting women’s independence and decision-making, challenging gender stereotypes, and promoting and normalising gender equality in public and private life.

In 2018 the Committee on the Elimination of Discrimination against Women recommended that Australia undertake a gender-impact analysis of cuts to social, health, education and justice budgets; and implement gender-responsive budgeting in the allocation of public resources.⁸

Governments should invest in the development of the capacity and skills of the public service in gender-responsive budgeting and policy-making to support ongoing implementation. This could form part of the Human Rights Commission’s proposal to introduce human rights obligations for policy and law makers and develop a human rights culture in the public service, by providing tangible skills and knowledge in how to integrate gender analysis into policy-making and budgeting.

Civil society advocacy

Support for civil society advocacy, through funding and mechanisms for informing government policy, is an important aspect of protecting and promoting human rights. For example, analysis has shown that the most important and consistent factor driving policy change relating to violence against women is feminist activism – and strong, vibrant domestic feminist movements use international and regional conventions and agreements as levers to influence policy-making.⁹

In recent years, UN committees and Special Rapporteurs have recommended that the Australian Government:

- provide funding to services that focus on women’s rights and to women’s organisations, including to those which focus on the rights of Indigenous women;¹⁰
- adequately support organisations and networks of women and girls with disabilities, particularly those representing Aboriginal and Torres Strait Islander women and girls with disabilities, to ensure their effective participation in the development of policies for gender equality;¹¹

⁷ UN Women, ‘Gender Responsive Budgeting’, accessed: <https://unwomen.org.au/our-work/focus-areas/what-is-gender-responsive-budgeting/>

⁸ Committee on the Elimination of Discrimination against Women – Concluding observations on the eighth period report of Australia (2018), 46 (a).

⁹ S Laurel Weldon and Mala Htun, ‘Feminist mobilisation and progressive policy change: why governments take action to combat violence against women’ *Gender & Development* (2013) 21:2, 231-247.

¹⁰ Committee on the Elimination of Discrimination against Women – Concluding observations on the eighth period report of Australia (2018), 46 (b).

¹¹ Committee on the Rights of Persons with Disabilities - Concluding observations on the combined second and third periodic reports of Australia (2019), 11 (b).

- improve communication with civil society organisations and seek greater consultation, participation and collaboration in the development, implementation, monitoring and evaluation of the implementation of violence against women prevention policies¹²
- allocate adequate resources to initiatives such as the National Plan to Reduce Violence against Women and their Children 2010-2022, the National Framework for Protecting Australia's Children 2009-2020 and its action plan, ensuring genuine participation of civil society organisations in the implementation and evaluation of such initiatives¹³

Federal discrimination law reform

In our submission to the National Inquiry into Sexual Harassment in Australian Workplaces, Our Watch supported calls for:¹⁴

- increased regulatory and enforcement powers to both improve responses to sexual harassment at work and strengthen the impetus for employers to take preventative action; and
- law reform to create stronger and clearer legal duties on employers to take proactive steps to prevent sexual harassment at work.

Aboriginal and Torres Strait Islander human rights

Changing the picture identifies the importance of addressing the intersecting drivers of violence against Aboriginal and Torres Strait Islander women in order to prevent this violence. Those drivers are:

- The ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people
- The ongoing impacts of colonisation for non-Indigenous people and in Australian society
- Gendered factors – both gender and inequality in a general sense, and specific gendered drivers of violence that are a consequence of colonisation

As part of a national effort to prevent violence against Aboriginal and Torres Strait Islander women, governments must address the legacies and ongoing impacts of colonisation by identifying and amending discriminatory laws, policies and organisational and institutional practices; addressing power inequalities, particularly in decision making positions; and challenging and preventing all forms of racism.

Key mechanisms to support the protection of Aboriginal and Torres Strait Islander rights in Australia, and contribute to the primary prevention of violence against Indigenous women, should include:

¹² Special Rapporteur on violence against women, its causes and consequences on her mission to Australia (2018), 99.

¹³ United Nations Committee on Economic, Social and Cultural Rights – Concluding observations on the fifth periodic report of Australia (2017), 34(b).

¹⁴ See further: [https://www.ourwatch.org.au/getmedia/ca9af60a-5bc9-4217-b19b-5d8b53402548/Our-Watch-submission-National-inquiry-into-sexual-harassment-in-Australian-workplaces-\(2019\).pdf.aspx](https://www.ourwatch.org.au/getmedia/ca9af60a-5bc9-4217-b19b-5d8b53402548/Our-Watch-submission-National-inquiry-into-sexual-harassment-in-Australian-workplaces-(2019).pdf.aspx)

- The establishment of a National Plan on Violence against Aboriginal and Torres Strait Islander Women (as recommended by the CEDAW committee in 2018, Special Rapporteur on Violence against Women in 2018, Committee on the Elimination of Racial Discrimination in 2017 and Special Rapporteur the rights of Indigenous people in 2017)
- The establishment of a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People¹⁵
- Commitment to and implementation of self-determination principles including sustained funding for Aboriginal-controlled organisations (as recommended by the Special Rapporteur on Violence against Women in 2018)
- Commitment to implementing key recommendations made by Aboriginal-controlled organisations including from the *Family Matters Roadmap* and *Change the Record Blueprint for Change*, and other recommendations such as from relevant Royal Commissions and UN bodies

Women with disabilities

A number of key mechanisms are needed to support the protection and promotion of the rights of women with disabilities in Australia, including the following (set out in):

- Australia, in the implementation and monitoring of the Convention on the Rights of People with Disabilities, establish formal and permanent mechanisms to ensure the full and effective participation of persons with disabilities, including children with disabilities, through their representative organisations, in the development and implementation of legislation and policies to implement the Convention, ensuring adequate resources and the provision of the necessary support¹⁶
- Adequately resource Disabled People’s Organisations and Disability Representative Organisations to participate in the implementation and monitoring of CRPD¹⁷
- Develop a National Disability Insurance Scheme Gender Strategy to address gender inequities in the NDIS¹⁸

¹⁵ SNAICC and Family Matters, *Position Paper: Establishment of a national commissioner for Aboriginal and Torres Strait Islander children and young people* (2019), accessed - https://www.snaicc.org.au/wp-content/uploads/2019/10/SNAICC_Family-Matters_Position-Paper_national-commissioner_FINAL.pdf

¹⁶ Committee on the Rights of Persons with Disabilities – Concluding observations on the combined second and third periodic reports of Australia (2019), 8.

¹⁷ *Disability Rights Now 2019: Australian Civil Society Shadow Report to the United National Committee on the Rights of Persons with Disabilities* (2019), accessed - <https://dpoa.org.au/wp-content/uploads/2019/08/CRPD-Shadow-Report-2019-English-PDF.pdf>

¹⁸ Ibid.

Barriers to protection of human rights in Australia

The following are barriers to protection of human rights in Australia include:

- Gaps in implementation of Australia's international obligations into domestic law¹⁹
- There is no National Gender Equality Strategy - a significant gap in the fulfilment of Australia's human rights obligations is relating to women's rights
- Lack of transparency in how governments plan to implement recommendations from UN committees and Special Rapporteurs, and lack of regular reporting on progress
- A focus on individual complaints models for systemic human rights issues, and often limited or no recourse for outcomes of individual complaints to result in action to address systemic issues. Additionally, there are flaws in the individual complaints model including multiple systems at different levels of government or attached to different service delivery models which make it difficult for people to know where to go with their complaint²⁰

Measuring progress in respecting, protecting and fulfilling human rights

Our Watch's experience developing the *Counting on change* monitoring framework and working to operationalise the framework has shown that comprehensive monitoring can be highly resource intensive and complex – but that without a multitude of indicators, it can be difficult to get a full picture of an issue. For endemic issues like violence against women, where population-level prevalence rates will only reduce after multi-pronged and sustained primary prevention efforts, short and medium-term indicators must be adopted to understand progress.

Our work has also highlighted the significant data gaps which exist in our existing population-level data sets that particularly impact on our ability to understand the experience of groups that experience intersecting forms of discrimination. For example, the Committee on the Rights of Persons with Disabilities recently recommended that Australia address the methodological restrictions in data-collection instruments used to capture data on violence against women and girls with disabilities.²¹

¹⁹ As noted in Australian Human Rights Commission (August 2019), 'Discussion paper: A model for positive human rights reform in Australia'.

²⁰ As noted in the Australian Human Rights Commission (October 2019), 'Discussion paper: Priorities for federal discrimination law reform'.

²¹ Committee on the Rights of Persons with Disabilities - Concluding observations on the combined second and third periodic reports of Australia (2019), 32 (f).

Civil society and community engagement (for example, with Aboriginal-controlled organisations, disabled people’s organisations and women’s organisations) through effective mechanisms is important when establishing indicators for progress and success, to ensure that they appropriately reflect the people that are directly affected and/or the organisations working directly with those people.

Governments and researchers should apply the principles of Indigenous Data Sovereignty to measuring progress on human rights fulfilment, including control over what information is collected, how it is collected and used, and the system that supports these functions.²²

²² National Aboriginal and Torres Strait Islander Legal Services (NATSILS) Executive Officer Karly Warner in Social Ventures Australia, ‘Data sovereignty, community control and better outcomes’ (November 29, 2018), accessed - <https://www.socialventures.com.au/sva-quarterly/data-sovereignty-community-control-and-better-outcomes/>