

Escaping family violence

How the justice system is failing Aboriginal women

Charmaigne Weldon
interviewed by **Anna Kerr**

Aboriginal woman and domestic and family violence prevention campaigner, Charmaigne Weldon, talks to lawyer Anna Kerr about her career, the access to justice issues faced by women experiencing domestic and family violence, and the need for reform.



Charmaigne, can you please begin by telling us a little about yourself and your background?

I am a proud Aboriginal woman originating from the Weilwan/Gomeri/Wuradjuri nation. I am a mother of six children. I have lived and worked in Sydney for the past 26 years, dedicating over 20 years of my career to the crusade against domestic and family violence. My personal experiences have given me the ability to raise awareness and highlight issues

which are having an impact on our communities. I believe that building relationships at a community level is paramount for Aboriginal and Torres Strait Islander families and the wider community. Aboriginal communities have complex hierarchies and people within those communities understand their roles and positions. It is important for Aboriginal and Torres Strait Islander people to maintain strong relationships through cultural practices such as women's yarn circles.



This painting by Charmaine Weldon depicts an Aboriginal spirit woman, her family and tribal community. The choker represents Aboriginal women's suppression and how they are hindered from progressing in modern times.

How have your own experiences informed the work that you do?

Gulargambone, where I grew up, was plagued with domestic and family violence. At the age of seven years, I witnessed a murder at a family function. My uncle was intoxicated and during an argument with my aunt he used a broken bottle to inflict a fatal cut to my aunt's throat. My aunt was holding her baby at the time and he was also cut across his left cheek. I had to run home through a paddock to get my parents and bring

them back. The nearest ambulance and police stations were in Coonamble, which was a 40-minute drive away.

Years later I ran into my aunt's children; my cousin still had the scar on his face. After the incident, my cousins were removed from their home by Family and Community Services. My cousins' whole lives were shattered by that violence. I still have family back in Gulargambone and I go back for funerals, but it brings back a lot of difficult memories for me.

The normalisation of violence within our own communities and the risk of child removal are two of the most significant factors in the under-reporting of domestic and family violence by Aboriginal women. Evidence has shown that Aboriginal women are particularly reluctant to report family violence and sexual assaults in their relationships.¹ The fear of the system combined with community stigma make it difficult to implement early community intervention. There is often a lack of communication, and when violence happens we don't talk about it because of the shame we feel. 'You've made your bed, now lie in it' is an expression many Aboriginal women facing domestic and family violence expect to hear; words which make these women reluctant to seek assistance.

My own experiences of domestic and family violence have given me a profound insight into how the direct harm of this violence can be compounded by later interventions, such as the removal of children from their communities. As an Aboriginal worker I developed an appreciation of the diversity of Aboriginal families and I have learned about, and developed a respect for, their cultural protocols. I am a strong believer that change needs to happen at the grassroots level in our communities across Australia. We need Aboriginal leadership and an abundance of positive energy and compassion to encourage Aboriginal women to reach out to support services.

How did you begin your career in this field of work and how did it lead to your current position?

I began work in 1997 as a case worker in the first of a number of women's refuges. I gained a wealth of knowledge and had many formative experiences. It was clear to me early on that there were gaps between the services provided to, and the needs of, Aboriginal women. I was keen to do more. This led me to take on a role with Redfern Community Legal Centre's Women's Domestic Violence Court Advocacy Service (WDVCAS), which offered more opportunity to provide one-on-one support to Aboriginal women involved in domestic and family violence court proceedings. I gained extensive insights from working with Aboriginal women who were going through the court system. After 11 years there, I decided to join an Aboriginal-specific service. I now work at Wirringa Baiya Aboriginal Women's Legal Centre, providing case management for Aboriginal women.

Each workplace has provided me with different opportunities and I have learned a great deal. I have been on the frontline, working with and advocating on behalf of women for a justice system that is both accessible and which can ensure the safety and well-being of Aboriginal women and children. I am committed to ensuring Aboriginal women and children are provided with holistic support.

I understand you have also had the opportunity to contribute your knowledge to policy development at both national and international levels?

In 2008 I was appointed to a federal government consultative committee to work on the National Action Plan to Reduce Violence against Women and their Children. For four years I served on this committee, which advised cabinet on

issues relating to the prevention of violence against women, particularly Aboriginal women. In this role I attended countless rural and regional consultations addressing the issue of violence against women in our communities. The committee was instrumental in informing and developing the 'It Stops Here' and the Safer Pathways reforms. These reforms created strategic frameworks intended to strengthen government responses to domestic and family violence against women. In 2016, I also had the opportunity to present at the United Nation's 60th session of the Commission on the Status of Women (CSW 60) on Aboriginal women and the judicial system.

Can you tell us a bit about the National Plan and the Safer Pathways reforms?

The first National Action Plan was developed in 2010 and was intended to reduce the rate of women experiencing domestic and family violence and sexual assault.

There has been a series of awareness campaigns for domestic and family violence with 'It Stops Here' and Safer Pathways. An important reform was the introduction of safety action meetings (SAM) for women at serious threat. These meetings aim to identify, provide and coordinate all necessary support services (such as housing, police, WDVCAS) so that the services wrap around women and keep them safe in their community. In contrast, strategies that do not place women at their centre, such as White Ribbon, which uses media campaigns to 'shock society' and 'change men's attitudes towards women', have proved ineffective.

Despite all these campaigns and programs, domestic and family violence rates have not reduced.

While many within government agencies may believe that sharing information about clients at risk may help to prevent domestic and family violence, this poses its own risks. In order to gain the trust of Aboriginal women and their families, maintaining and communicating respect for privacy are of fundamental importance. Without that trust, many domestic and family violence offences will go unreported. It is essential too that a WDVCAS operates as an autonomous women's service of high integrity and not just as a handmaid to the police and other government agencies.

You mentioned entrenched attitudinal barriers. Can you expand on this?

In the short 250-year history since the arrival of Europeans, the impact on Aboriginal and Torres Strait Islander people has been devastating, with ongoing systemic discrimination that still dominates our society. It is important to recognise the role this history has played and continues to play in preventing access to services for Aboriginal women experiencing domestic and family violence.

Aboriginal women are over-represented in the justice system both as victims and defendants. They are 40 times more likely to experience domestic and family violence and sexual assault than non-Aboriginal women and, despite making up only 2 per cent of the population, Aboriginal women account for 15 per cent of homicide victims.² Aboriginal women who remain silent are likely to suffer anxiety and other mental health conditions which can result

in significant trauma. Aboriginal and Torres Strait Islander people are nearly three times more likely to be psychologically distressed than other Australians and twice as likely to die by suicide.³ There is a 'dose' effect: the risk of high or very high levels of psychological distress increases as the volume of racism increases.⁴

Governments consult with Aboriginal and Torres Strait Islander leaders to develop practice modules for service delivery by government organisations and non-government community service-providers. However, efforts to maintain effective communication between Aboriginal-specific services, specialist workers and other organisations can fall short and, as a result, the complex needs of Aboriginal women and their families are not being met. Governments and mainstream service-providers often work on the assumption that 'one-size-fits-all'. However, there are numerous facets of the experiences of Aboriginal women to consider before moving forward, such as the cross-generational effects of colonisation and how the feminist movement in Australia left Aboriginal women behind.

High ethical standards, an understanding of our history, and sensitivity to our cultural protocols are profoundly important when working with Aboriginal women and gaining their trust; as is an awareness of their experience of repeated betrayals by white authorities. Closing the gap will first require breaking down problematic attitudes that currently discourage our women from engaging with services that could otherwise support positive changes in their family lives.

How do these attitudes influence treatment of Aboriginal women?

I am a strong believer in feminist philosophies and human rights principles that support women and girls to achieve a life free from harm and violence. I believe we need to support all women to drive positive change in their own lives. However, Aboriginal victims of domestic violence encounter many additional challenges within the justice system. I know from my work that there is a great need for more resources and specialised workers; and there are also some entrenched attitudinal barriers to overcome.

Aboriginal women are constantly criticised for their parenting and living skills. They are not reporting domestic and family violence to police because they fear being confronted by judgemental attitudes and victim-blaming, and in some cases the removal of their children.

Under the strategic plan and policy framework set out in NSW Police's *Aboriginal Strategic Direction 2018–2023*⁵ (and in its 2012–2017 predecessor), Police Aboriginal Consultative Committees (PACCs) operate in local Police Area Commands (PACs) and Police Districts (PDs). These are led by police and are designed to address the issues of offending and domestic and family violence affecting different communities. Committee meetings are informative and provide an opportunity for communities to come together and discuss these issues. However, despite these policies and protocols aimed towards working collaboratively with Aboriginal community members and leaders, many of the entrenched

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and unhelpful police practices remain.

Significantly, there are concerns about police attitudes within certain police commands where racist attitudes continue to be directed towards Aboriginal women reporting incidents of domestic and family violence. This comes back to ingrained victim-blaming. And police are mandatory reporters to other departmental bodies such as Housing and Family and Community Services.

How do these attitudes impact on Aboriginal women?

Discrimination and racism are common experiences for Aboriginal and Torres Strait Islander people, particularly for women. Exposure to discrimination and racism has an adverse impact on the mental health and well-being of these women, putting them at greater risk of developing depression and anxiety, and/or substance abuse problems, and attempting suicide. Even within frontline domestic and family violence services, these women are often treated with a lack of respect.

One woman who came to WDVCS said that she wasn't made aware that there was a specialist Aboriginal worker available. Other women report that they have not been told when their matter was in court and/or whether orders have been made.

When one of our clients, a social worker who was well aware of her rights, sought an apprehended violence order (AVO), the police domestic and family violence liaison officer assisting her simply did not listen when she asked that the orders sought take account of the need for the other party to have access to the children. Instead, the police officer didn't allow her to attend the court proceedings and just told her to go home. It is unsurprising that she left feeling that Aboriginal women are disrespected and treated unfairly by the justice system.

At times I feel very discouraged that Aboriginal women can be treated so poorly within the system. Another woman I have encountered was in a severe domestic violence situation; her face looked like a boxer's after a fight, and she was also homeless and sleeping in her car. If she went back to him, he would lock her in the house. She would say to me, 'Charmaine no one ever listens to me because they just put me in the too hard basket' – due to her mental health issues. I had arranged for her to go to a refuge, but she had seven kids, and her eldest was classified as too old to meet the criteria to stay. Last I heard, she had left and gone to Queensland.

Another case that comes to mind is of an Aboriginal woman in her forties who had been in a volatile relationship for four years with an extreme history of domestic violence. She had had 16 court appearances relating to charges and breaches of AVOs and should have been identified by services as being at serious threat. Domestic violence had left her homeless and couch-surfing, and, at times, sleeping in her unregistered car. She had never accessed services for

fear of being judged and labelled as having a mental health condition. Due to her homelessness, she was vulnerable and as a result became a victim of sexual assault. She attended the local hospital for a rape kit and reported the matter to police, and it was referred to a female detective who conducted the interview. She told me, 'the detective accused me of telling lies and I felt judged and discriminated against. I walked out of the interview and refused to complete my statement to police'. So, an important opportunity for the authorities to win her trust was completely lost.

What does government need to do to ensure that these women are better supported?

A recurring theme of concern from the Aboriginal women I have worked with is the constant feeling of being criticised by service-providers: they face racism; the judgemental attitudes of workers who lack cultural awareness; and they deal with some workers who believe that Aboriginal people are given 'special treatment'. At other times, Aboriginal women have experienced indifference from service-providers. I think it is important to look at how government policies and legislation influence worker attitudes before we can move forward as a society.

The legislative policies for the advancement of Aboriginal communities have been controversial. It is difficult to implement a one-size-fits-all approach to domestic and family violence, and to meet the intrinsic needs of Aboriginal women who have been alienated by our legal and welfare systems. Minimal priority is given to the emotional distress of intergenerational trauma and the impact on an individual's health and well-being, and yet this is a crucial consideration when assisting Aboriginal women in modern times.

Can you give examples of how the treatment of women by courts and police needs to change?

Local court magistrates are accountable for keeping women safe and encouraging them to attend court on the final hearing of an application for an AVO. Magistrates have a discretion to adjourn the hearing and issue a warrant for a woman to appear when she has failed to attend on the date set for the hearing, but often these matters are simply dismissed. Police also often fail to issue women with subpoenas to attend; yet it is often important for women to be able to tell their communities that they were compelled to attend court.

I am also concerned that, increasingly, Aboriginal women who are victims of domestic violence are being identified as perpetrators when they attempt to defend themselves or respond to a long-term pattern of abuse. Aboriginal women are increasingly being unfairly arrested and incarcerated, which can result in the loss of their children and perpetuate intergenerational trauma. This has to stop. Domestic and family violence legislation should be for the protection of women and not weaponised against them.

There is little accountability to society and Aboriginal communities regarding legislation and its fairness and ability to keep domestic and family violence victims safe. The judiciary is obliged to ensure a fair hearing for both victim and defendant. Procedural practices and accountabilities must

be strengthened to ensure that women are kept informed and supported to attend their court hearings. A failure to do so is having a deleterious effect on Aboriginal women, who are subject to many dilemmas in giving evidence in domestic and family violence proceedings.

How as a society can we better support victims in these difficult circumstances?

The Charter of Victims Rights in the *Victims Rights and Support Act 2013* (NSW) applies to all NSW government agencies who work with victims of crime. It requires that a victim will be treated with courtesy, compassion, cultural sensitivity and respect for the victim's rights and dignity. Resistance from many Aboriginal women, often even after being issued with a warrant to appear at an AVO hearing, reflects not just their experiences of domestic and family violence, but the fears they hold about a legal system which has its own history of being unkind to Aboriginal people.⁶

Providing more consistent and inclusive safety and cultural awareness training would be a helpful step. Aboriginal service-providers and workers who engage with women in these contexts must be aware of the reporting barriers and why these women are reluctant to seek out support services: the intergenerational trauma; the pervasive negative attitudes within these communities; the fear of being judged; the fear that their children may be removed; and the history of negative experiences within the justice system. Cultural safety policies must also be put in place to ensure best practice in working with Aboriginal women.

There also needs to be greater awareness and adherence to the UN Declaration on the Rights of Indigenous Peoples and its key principles, including Article 22, which says: '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.'⁷

As the recent protests have made clear, it is time the Australian Government explored other criminal justice models, such as the women's police stations in South America

and the less punitive Scandinavian prison systems which focus on restorative justice, for alternatives which do not destroy Aboriginal communities.⁸ To win the trust of Aboriginal women, services must acknowledge the wrongs of the past and show a commitment not to repeat them. ■

With thanks for research assistance from students Allientia Weldon and Adele Marwood.

Notes: 1 Parliament of Australia, *Domestic violence in Australia – an overview of the issues*, <www.apf.gov.au> (retrieved 2020-06-09). 2 NSW Government, Department of Premier and Cabinet Office for Women's Policy, *Discussion Paper on NSW Domestic and Family Violence Strategic Framework* (2008) 8; A Spinney, 'FactCheck Q&A: Are Indigenous women 34–80 times more likely than average to experience violence?', *The Conversation*, 4 July 2016. 3 Australian Bureau of Statistics (ABS), *3303.0 Causes of Death in Australia, 2018* (2019) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3303.0Main+Features12018?OpenDocument>>. 4 A Ferdinand, Y Paradies and M Kelaher, *Mental health impacts of racial discrimination in Victorian Aboriginal communities: The Localities Embracing and Accepting Diversity (LEAD) Experiences of Racism Survey* (2013) Victoria: Lowitja Institute, <<https://www.lowitja.org.au/content/Document/Lowitja-Publishing/LEAD-Report-WEB.pdf>>. 5 NSW Government, NSW Police Force, *Aboriginal Strategic Direction 2018–2023*, <https://www.police.nsw.gov.au/_data/assets/pdf_file/0003/481215/ASD_2018-2023_Book_Updated_4Web.pdf>. 6 M Willis, 'Non-disclosure of violence in Australian Indigenous communities', *Trends & issues in crime and criminal justice*, No. 405, 2011, Canberra: Australian Institute of Criminology, <<https://aic.gov.au/publications/tandi/tandi405>>. 7 Australian Human Rights Commission, *UN Declaration on the Rights of Indigenous Peoples*, <<https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>> (retrieved 2020-06-09). 8 Queensland University of Technology, *Women's police stations cut violence against women* (7 May 2019) <<https://www.qut.edu.au/news?id=143668>>. D Larson, 'Why Scandinavian prisons are superior', *The Atlantic*, 24 September 2013, <<https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/>>.

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