



**Aboriginal
Legal
Rights
Movement**

The Royal Commission into Domestic, Family and Sexual Violence

South Australia 2024

Response to Issues Paper

Aboriginal Legal Rights Movement

16 August 2024

Acknowledgement of Country

Aboriginal Legal Rights Movement (ALRM) acknowledges the Kurna people as the custodians of the greater Adelaide region, from which this submission is being forwarded.

ALRM recognises that the cultural and heritage beliefs are still as important to the living Kurna people today and pays tribute to elders and leaders past, present and emerging.

We pay our respects to the cultural authority of Aboriginal people from other lands & waters of South Australia and Australia.

About the Aboriginal Legal Rights Movement

Aboriginal Legal Rights Movement is an independent Aboriginal community controlled organisation governed by our all Aboriginal Board. ALRM is also a law practice for the purposes of the *Legal Practitioners Act* of South Australia and this submission is very much informed by the work of our various law practices.

Our motto, ***Justice Without Prejudice***, encapsulates what our organisation strives to achieve. Through the provision of legal services and associated activities, ALRM promotes legal, cultural, economic, political and social rights for Aboriginal and Torres Strait Islanders as dispossessed peoples within South Australia.

Our Vision

To pursue social justice, equality, and wellbeing for the Aboriginal people of South Australia, especially for those Aboriginal people who are detained in police custody or imprisoned.

We write this to give guidance as to the ALRM response to the Issues Paper and further direction for considering the research and other organisations. We address the questions, as numbered in the Issues Paper July 2024, as follows:

PREVENTION:

Questions to consider:

1. What causes domestic, family and sexual violence?

Whilst the mainstream model of cause may be focused on gender / power / coercive control, the research conducted by Aboriginal academics and our experience is that for family violence within Aboriginal families and communities, the causes are more complex. The studies warn that continuing to restrict the causal factors to the mainstream model, risks further subordination of Aboriginal women.

ALRM considers there is a lack of understanding of Aboriginal peoples who have experienced violence and / or use violence with the expectation that they will fit into frameworks or theories designed for (and by) people of cultures totally different to their own.

We set out here some of the research and reports conducted by Aboriginal people, organisations and communities, and consider there is ample material written by Aboriginal academics and researchers which must be prioritised in relation to Aboriginal responses.

As an example, we refer to the report 'Innovative Models in addressing violence against Indigenous Women' of 2018,¹ which explains:

"In relation to family violence, Western approaches have been allowed to define the field and Indigenous knowledge has been neglected and subordinated. Indigenous women have been the objects of inquiry rather than a source of knowledge about family violence. A powerful narrative originating in the United States and Western Europe has been superimposed on to the Australian landscape. Indigenous women's knowledge of family violence, covering a range of aggressive and culturally destructive behaviours arising from a number of sources but over-determined by colonisation, is constantly subordinated to explanatory systems reflecting the views and experiences of generally white women in mainstream Australia. (pg 20)

"We argue that the "mainstream" feminist model has driven law and policy into a legal cul-de-sac where Indigenous victims are concerned. This is because it has focused exclusively on coercive control as the fundamental cause of violence against women." (pg 23)

¹ Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N. (2018). Innovative models in addressing violence against Indigenous women: Final report (ANROWS Horizons, 01/2018). Sydney: ANROWS, pg 20

“Participants’ narratives indicate that the issue of family violence cannot be considered in isolation of the whole context within which people live each day. Rather, the issue of family violence must be considered in the context of family and community systems and dynamics, law and culture, the presence of alcohol and other drugs, the multiple forms of trauma present in families and communities, and the various stressors and pressures to which community members are subjected today.” (pg 34)

“The research project has highlighted issues often neglected within mainstream debates about family violence in communities; these relate to issues of alcohol, intergenerational trauma, and disability as causal factors for violence in remote Indigenous communities, and reasons why mainstream court and police orders and mainstream coordination strategies don’t work well in Indigenous contexts. This does not dismiss the need for robust intervention to protect victims at the point of crisis; rather, it suggests that the male power lens visualises only one thread in a densely compacted, multi-layered fabric of harms on remote communities, and offers a distorted picture of its topography.

Women’s agency

Relying on the mainstream feminist approach as the chief response to violence and conflict inadvertently renders invisible the trauma and suffering experienced by Indigenous families as a result of their status as a colonised people. Indigenous women often use mainstream systems strategically to manage situations that have gotten out of control, never intending to leave the relationship or, worse, have their partner jailed. In the Kimberley region, there were complaints from police that some Indigenous women were “gaming the system” by initiating proceedings with no intention of going through with them once the initial crisis point had passed. Rather than seeing this as a problem (or a form of “cheating”), we should look positively on the degree of agency Indigenous women are able to claim by activating the system in this way. Indigenous women are sometimes able to make the system work for them, but not in the way the system intends.” (pg 51-52)

In a further ANROWS report ‘Understanding the role of law and culture’², the researchers explain the underlying causes and consequent needs this way:

“Family violence within Aboriginal and Torres Strait Islander communities is increasingly being understood to be shaped by the specific context of colonialism, systemic disadvantage, cultural disruption, forced removal of children, and the intergenerational impact of trauma. This understanding recognises that family violence in Aboriginal and Torres Strait Islander communities has specific causes and complexities. There is growing consensus that policies should be distinct and tailored, and must be guided by the experiences and viewpoints of Aboriginal and Torres Strait Islander peoples. Many Aboriginal and Torres Strait Islander peoples have advocated for a community-led approach to family violence.”

² Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence: Key findings and future directions (Research to policy and practice, 19/2020). Sydney: ANROWS pg 2 & 4)

... “Participants were anxious to stress that violence against women and children is not an acceptable part of Aboriginal and Torres Strait Islander Law and Culture. Participants said that in actuality, it is the discouragement of Culture, the inability to carry out cultural obligations, and interruptions in passing values and expectations down to younger generations which causes social dysfunction and violence. Health and wellbeing are also compromised when cultural obligations are not fulfilled.”

We have also considered the NPY Women’s Council’s submission to the National Government who say there is no simple or leading explanation for family violence. (pg 2) They highlight the impact of colonisation, intergenerational trauma, systemic racism and poverty along with child removal, poverty and high incarceration rates which exacerbate intergenerational trauma and lateral violence (pg 5).³

ALRM agrees and considers that violence needs to be understood in terms as set out above along with both the causal and exacerbating factor of alcohol and drugs.

We are informed by colleagues that communities understand and have their ways to prevent violence, through complex kin systems, relational obligations and law. It may include the perpetrator’s aunt punishing the perpetrator in some communities or other means in others. Prevention has been made difficult by changes imposed on Aboriginal communities including by service providers who work with Aboriginal communities without the deep knowledge needed of their law and systems. It is also interrupted by alcohol and drug use – where law is not complied with and the person puts themselves outside of the relationship rules.

We refer here to a 1984 study “Alcohol in the outback, two studies of drinking⁴,” in which anthropologists Kingsley Palmer and Maggie Brady wrote about the effects of the availability of cheap takeaway alcohol on a remote Aboriginal community. The authors describe alcoholic intoxication as a “liminal state” in which the intoxicated person was no longer subject to the constraints and social controls of kinship, upon which personal identity was built in traditional society. The authors (at pg 76) in turn consider drinking to be a means by which Aboriginal people ‘attempt to remedy their perceived powerlessness in the ordering of their own community affairs. To be without power is to suffer the ignominy of being manipulated and directed, controlled and governed by others, many of whom do not understand or wish to understand Aboriginal priorities, aspirations or goals. However, the avenues open to them to remedy such a situation are few.’

ALRM also hear from many clients who have experienced violence as a child having been victims of it, witnessed it, protected their mothers from it or watched their family members

³ Submission by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council to the House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into family, domestic and sexual violence, 21 July 2020 - NPY Women’s Council submission to H of R Standing Committee on Social Policy and Legal Affairs 21.7.2020 (accessed through NPY Women; s council website 9.7.24)

⁴Alcohol in the outback, Two studies of drinking”, Prof Maggie Brady & Dr Kingsley Palmer Australian National University Northern Australian Research Unit, Monograph 1984

and close friends perpetrate it. It becomes the learned response and is particularly when fueled by drugs or alcohol, particularly lethal is methamphetamine.

Further, it is important to note that there is an increasing population of Aboriginal women in prison, including for charges relating to violence against their partners. We find this is against a background of trauma and violence perpetrated against them within their own lives, though not always from the partner who they assault. A recent South Australian Department for Correctional Services Consultation Paper dated 2024⁵ states that assaults are amongst the highest charge types for Aboriginal women on remand. This aligns with the reports that conclude the higher assault type charges are primarily as a result of women's own victimisation (page 8).

The AIHW / NIAA 2023 report said 'Females in prison (First Nations and non-Indigenous) are often the victims and survivors of violence and may use violence as a strategy to respond to their victimisation. ... High proportions of First Nations females in prison are survivors of childhood sexual and other abuse. First Nations women are vastly overrepresented in prisons and suffer high rates of post-traumatic stress disorder (from the sudden death of a loved one, being the victim of serious domestic violence or sexual assault or observing serious physical violence in the home as a child), and co-occurring mental disorders, for which many did not or could not access mental health care prior to incarceration.'⁶

The findings of the Australian Law Reform Commission Report on the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (the ALRC report) supports the above studies.

The ALRC report in its executive summary says:

"In 1991, the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that the Aboriginal population was grossly over-represented in custody. It noted that 'Aboriginal people are in gross disproportionate numbers, compared with non-Aboriginal people, in both police and prison custody and it is this fact that provides the immediate explanation for the disturbing number of Aboriginal deaths in custody'. The RCIADIC looked at indicators of disadvantage that contributed to this disproportionate representation, including that 'Aboriginal people were dispossessed of their land without benefit of treaty, agreement or compensation.' Other indicators identified by the RCIADIC were the economic position of Aboriginal people, the health situation, their housing requirements, their access, or non-access to an economic base including land and employment, their situation in relation to education; the part played by alcohol and other drugs—and its effects."⁷

The ALRC report devotes a chapter to Aboriginal and Torres Strait Islander women and in summary, 'the ALRC contextualises Aboriginal and Torres Strait Islander female offending within experiences of intergenerational trauma, family and sexual violence, child removal, mental illness and disability, and poverty. The ALRC argues that strategies that aim to address the offending of Aboriginal and Torres Strait Islander women must take a trauma-informed

⁵ The recent South Australian Department of Correctional Services, Offender Development Committee Consultation Paper: 'The Next Steps in Strategy & Action For Women, Five Year Outcomes and Consultation on a New Action Plan in February 2024)

⁶ Australian Institute of Health and Welfare and National Indigenous Australians Agency, "Aboriginal and Torres Strait Islander Health Performance Framework, Chapter 2.11 at:

www.indigenoushpf.gov.au/measures/2-11-contact-criminal-justice-system (accessed 2.5.24) p22

⁷ Australian Law Reform Commission, Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133 (2017) (ALRC report) page 22

and culturally appropriate approach. To this end, the ALRC recommends that all criminal justice responses should be developed with and delivered by Aboriginal and Torres Strait Islander women.⁸

ALRM agrees with this. An understanding of each Aboriginal person in the system with their trauma history, both current and intergenerational, and that they have ongoing experiences of racism – including systemic racism and that their needs are for trauma informed, culturally appropriate interventions is necessary to any consideration of cause.

2. What works, or will work, to prevent domestic, family and sexual violence?

ALRM considers that prevention incorporates ensuring that if violence has occurred, it doesn't occur again.

ALRM considers that self-determination is key to what will work for Aboriginal communities. This has been stated again and again – from the RCIADIC report to the Bringing them Home report, and in countless research and submissions made by Aboriginal peoples before and since then. However, this has not truly been honoured.

ALRM promotes models that are place-based and Aboriginal community led and driven as the clear solutions. These are time and time again put forward as the solution but not heeded. In fact, research in the Innovative Models⁹ considered the experience is of “instances where white family violence coordination agencies openly disparaged the views of Indigenous women.”

The Innovative Models report summarised ‘the major points regarding coordination and integration according to Aboriginal participants’ as:

- Indigenous women also experience violence by the State. State violence takes numerous forms, from invasive surveillance and control through to children's protection services “ripping babies from mother's arms” (Perth consultations).
- From an Indigenous women's perspective, the adherence to the belief that violence against women is the result of inequities created by patriarchy automatically excludes their experiences as Indigenous women.
- While violence in domestic relationships accounts for some of the violence, it fails to account for the broad spectrum of violence in Indigenous communities, including violence by Indigenous women (on partners and on other Indigenous women).
- Violence intervention is slanted towards one form of harm against women and children, ignoring many other forms.

⁸ ALRC report page 31

⁹ Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N. (2018). Innovative models in addressing violence against Indigenous women: Final report (ANROWS Horizons, 01/2018). Sydney: ANROWS, pg 56

- Criminal justice interventions reflect a distorted image of harms in Indigenous communities. It is not possible to identify levels (and layers) of violence on Indigenous communities using police data.
- Communities want to see a greater focus on prevention that covers the whole spectrum of violence on communities.
- Violence responses need to address the over-sale and overconsumption of alcohol and the harmful impact of drugs.
- Poor housing conditions and over-crowding exacerbates violence and makes women and children vulnerable to abuse from a broad range of potential abusers.
- While “healing” is gestured to in government policy documents as a necessary step, it remains misunderstood as a largely individual journey rather than a collective experience.” Pg 58

The Innovative Models report concluded that their research:

- “supports the creation of a network of place-based Indigenous family violence strategies owned and managed by Indigenous people and linked to initiatives around alcohol reduction, inter-generational trauma, social and emotional wellbeing, and alternatives to custody. These initiatives may be constructed differently depending on context, but would ensure that responses to family violence reflect the needs of local women.” (pg 6)
- The key theme running through our consultations was that innovative practice must be embedded in Aboriginal law and culture. This recommendation runs counter to accepted wisdom regarding intervention in family and domestic violence, which tends to assume that gender trumps other differences, and that violence against women results from similar forms of oppression, linked to gender inequalities and patriarchal forms of power. While not disputing the role of gender and coercion in underpinning much violence against Indigenous women, we, nonetheless, claim that a distinctively Indigenous approach to family violence necessitates exploring causal factors that reflect specifically Indigenous experiences of colonisation and its aftermath. (pg 9)

The Innovative Models report summarised the state of knowledge at the time of that report and found that Indigenous-led family violence initiatives share a number of common features:

- a commitment to Indigenous leadership;
- the necessity of working alongside men;
- a holistic, place-based approach;
- a focus on prevention and capacity building;
- linking of family violence work with other issues, such as alcohol reduction strategies, housing overcrowding, and mental health services;
- building of structures that are culturally as well as physically secure for women escaping violence and for those working within the family violence organisation;
- recognition that there is no clear boundary between Indigenous women as family violence workers and family violence victims (working practices and work with victims needs to be based on a healing approach);

- development of policies and protocols intended to prevent lateral violence in the workplace;
- taking into account forms of violence that are not just “domestic” in nature;
- decentralisation of the male power model, and a greater emphasis on collective, intergenerational trauma awareness in interventions;
- a re-centring of Indigenous structures and processes; and
- factoring in of issues such as cognitive disabilities, acquired brain injuries, and foetal alcohol spectrum disorders in violent behaviours, rather than a need to coercively control. (pg13)

ALRM recognises that Aboriginal peoples have long been asserting that the causes and responses to violence must be considered in the light of their own knowledge and experience.

This was demonstrated again within the Wiyi Yani U Thangani, First Nations Women’s Safety Policy Forum Outcomes Report, November 2022¹⁰:

“Advocates have called for a dedicated approach to address First Nations family violence for decades, recognising that the drivers of violence are different from non-Indigenous people and include not only gender inequality but also the ongoing impacts of colonisation and racism. Forum participants spoke to First Nations women and children’s needs being subsumed by mainstream plans, resulting in inadequate investment and development of First Nations specific responses to addressing family violence.” (page 15)

“Research highlights the impacts of colonisation and trauma in a historical sense, as an ongoing intergenerational process, and as perpetuating and causing contemporary issues and cycles of harm. Dispossession of land, separation of families and communities, ongoing marginalisation from racism and discrimination and in particular the forcible removal of children, are historic traumas and continue through current structures. They are deeply linked with the experiences of family violence, serving both as a cause and effect of intergenerational trauma and violent behaviours.

Our voices are continually derided, placed to the sidelines, lost in the chorus of mainstream feminism, who perhaps unintentionally, do not realise that the fights for gender equality have always been within white structures, and have alienated many Aboriginal women, who are often fighting alongside Aboriginal men against the oppressive colonial settler state.” (pgs 26-27)

“Indeed, there is now quite an extensive body of literature that clearly illustrates what has long been known at an Indigenous community level: that typical ‘Western’ responses to family violence like women’s refuges, criminal justice responses and programs of a therapeutic nature have mostly been culturally inappropriate and ineffective. These approaches are largely based on Western models of intervention

¹⁰ Wiyi Yani U Thangani, First Nations Women’s Safety Policy Forum Outcomes Report, November 2022, Australian Human Rights Commission: humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6

that have focused on the separate needs of victims and perpetrators, with a particular focus on a criminal justice response. The latter is an approach to violence that largely criminalises violence and relies on the institutionalisation of the offender to protect the victim. Indigenous community members have consistently criticised this approach as being irrelevant, discriminatory and a repeat of the kinds of violence inherent in policies and practises of colonisation.” (pg 30)

“More evidence is needed to help understand what works to prevent violence. Significant knowledge gaps exist in relation to effective interventions for perpetrators of sexual violence, and for LGBTIQ+SB people. However, the voices of First Nations experts are clear in that the solutions to family violence lie in culturally appropriate strategies that support safety and healing, and prevention and accountability of offenders. Punitive responses focussed on the criminal justice system alone do not work and in fact can endanger women and children.” (pg 32)

ALRM points to the great efforts put into Closing the Gap, yet, the most recent Closing the Gap Annual Data Compilation Report July 2024 is clear that we are not succeeding. What does work according to the media release¹¹ is:

“We know that having ready access to culturally safe and responsive services (and systems) can make all the difference to socio-economic outcomes for Aboriginal and Torres Strait Islander people,” said Commissioner Button.

“In our recent three-yearly review, we saw ‘pockets of good practice’ where outcomes were not only achieved but exceeded. The consistent theme to improved outcomes was governments enacting the Priority Reforms: a strengthened Aboriginal Community Controlled sector, shared decision making, shared data and the government changing its operation. The aspirations of the Agreement are not only achievable, but equity of outcomes for Aboriginal and Torres Strait Islander people is within reach if governments breathe life into the Priority Reforms,” said Commissioner Siegel-Brown.’

ALRM are informed by our colleagues from regional and remote communities that in Aboriginal communities, family violence is impacted when non-Aboriginal society does not endorse or permit the Aboriginal law to be followed. For example, a baby is born into a complex kinship network or system with different family relations having different roles and obligations for one another as well as avoidance relationships. These relationships may change over time depending on ceremonies / ages and stages of life and although the community will understand this, outsiders may not. This affects how to communicate, who with and all aspects of relational life. When people don’t understand these networks or laws, they will make errors that have disrupted communities and effective remedies that communities hold. Service providers who are not led by local Aboriginal people and projects that are not the vision of or led by the local community can further disrupt the community rather than assist it. The mechanisms for solving family violence are within communities and need to be supported.

¹¹ [Annual data report | Closing the Gap Information Repository - Productivity Commission \(pc.gov.au\)](https://www.pc.gov.au/closing-the-gap-data/annual-data-report)
www.pc.gov.au/closing-the-gap-data/annual-data-report

We are informed that where communities fall down are when people are under the influence of drugs or alcohol and are not themselves – they are seen as having adopted another identity. This confirms the research in the Alcohol in the Outback report set out above. Further police intervention can escalate situations that could be resolved otherwise by community. As one person has told us, we are in two worlds, we are worlds apart.

Further issues for consideration here are that many adult victims and perpetrators of violence report their own experience of violence in childhood. Lack of healing and wholistic support as children may well cause violence as adults. This is required to prevent violence continuing in families and communities.

Drugs and alcohol are factors named by Aboriginal people both as causing and escalating violence. This cannot be ignored and responses must include wrap around rehabilitation and alcohol and drug culturally appropriate healing models.

EARLY INTERVENTION

Questions to Consider:

6. What interventions should be considered to manage the risk of a person who is identified as being at high risk of experiencing or perpetrating domestic, family and sexual violence?

We refer to other sections within our response and in particular the research cited above and below.

ALRM considers that when children have been exposed to family violence, they should receive culturally safe and trauma informed support to ensure they heal and do not go on to further experience or perpetrate violence.

Likewise, those who are at greatest risk need appropriate supports in place that are wholistic, culturally appropriate and healing.

Given the causes of violence are intergenerational, including factors brought about by colonisation including alcohol and drugs, the prevention will include rehabilitation for those impacted by alcohol and / or drug use along with opportunities for therapeutic healing provided by Aboriginal designed and led services.

The most important factor in intervening is to listen to the person who is experiencing it and being led by the needs expressed. It may be that the person senses an escalation that will lead to violence, sees the warning signs and triggers, that person must be believed, provided a safe place to take refuge and supported and empowered within their own safe plans. Too

often we hear people who are made powerless by the violence – again made powerless by systems that are set up to help.

RESPONSE

Questions to Consider:

7. What are the barriers to reporting domestic, family and sexual violence to police or seeking support from domestic, family and sexual violence services?

Whenever considering family violence and Aboriginal peoples, it must be borne in mind that Aboriginal peoples are navigating systems that were not designed with or for them and of which they are understandably, deeply suspicious. We quote from Carlson et al in her 'What works' report:

"First Nations women describe their interactions with the justice system as one that exacerbates the impacts of violence and compounds the trauma they experience. Fundamentally, the justice system should protect women and children, but instead it re-traumatises women, removes their children and too often criminalises them for the violence they have endured. Reforms are needed at all stages of contact, from police, courts, corrections, community corrections (parole and probation), both in relation to reporting violence but also to prevent First Nations women from becoming perpetrators due to a lack of protection. Indigenous women who are under protected or not protected at all by the system may cause harm to the person who is being violent towards them as their only means of escape." ¹²

" Many Aboriginal and Torres Strait Islander people are suspicious when targeted by mainstream organisations, especially regarding family violence. This is because family violence often has a direct link to two critical areas of government policy, notably the criminalisation of the perpetrator, as opposed to the integration of the individual into the healing process; and the status of child safety, determined with prejudice and disconnected from the holistic approach to wellbeing ... To put it simply, for Aboriginal and Torres Strait Islander people, contact with a mainstream organisation regarding family violence can result in going to prison, and/or the removal of children." ¹³

The research (well summarised in Carlson et al above) and our experience suggests the reasons for this include:

¹² (Wiyi Yani U Thangani, First Nations Women's Safety Policy Forum Outcomes Report, November 2022, Australian Human Rights Commission: humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6, pages 35-38)

¹³ (Carlson, B., Day, M., & Farrelly, T. (2024). What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence (Research report, 02/2024). ANROWS (pages 31-32)

1. Suspicion of mainstream organisations because interactions lead to ‘criminalisation of the perpetrator, as opposed to the integration of the individual into the healing process’ – i.e. can result in imprisonment.
2. Reporting of any violence against an Aboriginal woman means a child safety organisation becoming involved – with eventual removal of their children.
3. That when Aboriginal women report to police, this can lead to that women’s own imprisonment. For example, police find the woman has an outstanding warrant, fines or is wanted for questioning and pursue that issue rather than the violence that she is facing.

Further, Aboriginal women may not be the prototype victim that non-Aboriginal people expect and her trauma responses lead to the woman herself being detained for violence against the man instead of the other way around. The Carlson research summaries this well: “It is well known that police commonly arrest Aboriginal women who call for assistance when they are experiencing family violence”. (Carlson et al 2024, p 60 citing Langton et al., 2020; McGlade & Tarrant, 2021)

ALRM supports this and adds the following barriers:

ALRM had past but not recent experience of police arresting women while reporting family violence to them. It is important that victims are not concerned that in the process of reporting, they themselves will be arrested and imprisoned.

ALRM has long ongoing incidences of women not reporting due to the threat of removal of children if violence is reported.

When violence does become known to authorities, ALRM is concerned as what we perceive as a ‘victim blaming’ mentality within the Department for Child Protection who do not understand the complexities of family violence nor how women consider best to protect themselves. They are blamed for returning to perpetrators and instead of safety planning and supporting in appropriate ways, threaten or do remove children. ALRM is focussed on the protection of children from violence but greatly is concerned at the harm caused by removing children from their families and the deep impact this has on family violence being reported – and repeated. A healing, family based response that is culturally appropriate and culturally protective is required here and one which enables strengths to be supported. Some clients prefer to have a plan to be together but separate when the perpetrator is exhibiting alcohol use or other triggers for violence. They consider each needs the ongoing support of family and community and with careful planning with whole family, this can be achieved. Others consider they need to be apart but with mechanisms to connect with family and country, this too should be supported.

Aboriginal women and children also inform us that they hold great fear and therefore delve into deep courage to go to the police. Many report that when they do, they are not given supportive responses or are not believed, possibly because of the way they express their trauma responses whilst reporting. We have heard women and child victims who have pleaded with police to intervene, but police ‘assess’ the perpetrator and feel he’s safe without believing the woman’s fears.

Aboriginal clients experience services as very siloed – each having defined parameters and not accepting clients who don't fit into their criteria. For Aboriginal people in crisis, one phone call or reach out to a service takes a lot of courage and when they are knocked back because they have no intervention order / haven't reported / violence hasn't occurred in last 3 months / have a male teenage child etc – they are reluctant to try another service and simply give up. Some clients have walked from service to service, homeless and with children in tow, after one or two rejections they simply return to the violence.

Further barriers are shame issues which are strong for Aboriginal women and families. Many report they suffer total loss of self-esteem, self-belief, self-confidence, feel judged by admitting it, feel judged for staying so long, feel judged for leaving and feel judged by the services they are reaching out to. This feeling is a strong barrier for reporting or reaching out to services.

- 8. What are the elements of a best practice crisis response which will meet the needs of:**
- a. a victim-survivor?**
 - b. a victim-survivor who is a child?**
 - c. a perpetrator (acknowledging that one need is to hold a perpetrator to account for their use of violence)?**

The best practice for response when working with Aboriginal people is Aboriginal peoples' self-determination. This was clearly enunciated throughout the recommendations made within the RCIADIC report and in the Bringing them Home Report along with reports and submissions by Aboriginal peoples that both pre and postdate them. Realistically, it is the only way forward. Other solutions have been tried – but failed.

Our ALRM family support workers feel those who have been victims of family violence (children and adults) need to feel believed, cared for and empowered. They need to feel they can speak confidentially and build rapport and to be seen as a whole person – not defined by the violence perpetrated against them. When victims call for help to a service who can't help them – a warm referral is necessary (i.e. – that service finds one that can help that then contacts the client). Barriers preventing warm referrals need to be overcome. Our experience is that if a service responds negatively to a victim in crisis with no assistance offered – the victim is likely to give up quickly, this is particularly the case when women physically go to a service – with children accompanying them.

Legal representation for all who have experienced violence when reporting to police

It is of grave importance that all Aboriginal peoples involved in family violence (criminal or civil) and / or family law legal proceedings are enabled to be legally represented - with self-determination within their legal representation.

We refer to a successful restorative justice model set up in Ceduna, SA in the early – mid 2000s which we will name the ‘Julia Lansley model’ after the lawyer who originated the program. This sought that all victims of violence were represented in family violence criminal and restraining order proceedings by the Aboriginal Family Violence Legal Service and where the accused was an Aboriginal person, that person was represented by the Aboriginal and Torres Strait Islander Legal Service (ALRM)¹⁴ – ensuring both were properly represented and given a voice in the criminal, civil and family proceedings.

This model came into play largely as some Aboriginal women presented as seeking safety but not wanting their partners to be criminalised or imprisoned. This may lead to charges being dropped or not guilty findings if the victim didn’t attend trials. By providing the woman with a lawyer soon after reporting to police, lawyers could work with the women to empower them through the process. In some cases, this meant the alleged perpetrator may attend counselling and following positive engagement reports and demonstrated change, the charges may not be proceeded with.

Responses for people who perpetrate violence:

In relation to perpetrators, we recognise ‘the importance of addressing perpetrator trauma, often stemming from violence inflicted on them in the past, as part of facilitating individual accountability.’ and that there are difficulties especially prevalent when men experience mental health issues, substance abuse issues and / or neurological conditions.¹⁵

The crisis as well as ongoing response therefore should incorporate full assessments – neurological / mental health / drug and alcohol – then address those issues. The above report in footnote 15 continues: “Correctly recognising symptoms of mental health issues or neurological conditions can have significant implications for the way perpetrators of family violence are treated and managed in the justice system. For example, preventative approaches such as referring individuals to appropriate treatment could divert many perpetrators away from the criminal legal system and inappropriate incarceration. This is especially important given the high and increasing rates of Aboriginal and Torres Strait Islander people being incarcerated.” (pg 14) – identified ‘CISP’ – Court Integrated Service Program’ where defendants assessed and then treated ...Victorian program (pg 14). We agree with the reports conclusions that there is a real lack of culturally appropriate ‘men’s healing programs’ – as distinct from men’s behavioural change programs (pg 15-16).

We refer to the NPY Women’s Council submission and quote:

‘Any programs intended for users of violence must be embedded in consultation and alignment with pre-existing women’s support services to ensure the safety of victim-survivors. When placed in the context of Aboriginal remote communities these programs cannot focus on ‘behaviour change’ in its entirety and execution.’ NPY Women’s Council runs a program which ‘involves senior representatives of communities coming together to discuss

¹⁴ The Julia Lansley Model (named for the originator of the program), is described in more detail in correspondence from ALRM to the Commonwealth Attorney General’s Department in 2012, attached.

¹⁵ Australia’s National Research Organisation for Women’s Safety. (2020). Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions (Research to policy and practice, 25–26/2020). Sydney: ANROWS Pg 12-13

strategies to prevent violence through mentoring, modelling and support. Majority of women we support tell us that 'the men need support as well. In the NPY region context is vital to present men with alternative programs to the mainstream 'behaviour change' models. The important factors in considering programs aimed at users of violence are:

- Innovation and creativity
- Trauma-informed care
- Modelling and mentors
- Community led
- Aboriginal direction and engagement of the overarching strategies

Such programs must recognise the influence of colonisation, poverty and institutional racism on the higher rates of violence within Aboriginal Communities. Therefore, funds and interventions must be directed towards supporting community led initiatives. NPY Women's Council has shown that when community members are properly informed and knowledgeable (empowered) about such things as trauma, they are then able to formulate a better understanding of how to respond to such complex and sensitive matters like DFVS.' (see footnote 4 at pg 4-5)

9. What are the elements of a best practice health response?

10. What are the elements of a best practice police response?

11. What are the elements of a best practice justice system response?

Again, we emphasise self-determination and Aboriginal designed and led responses as key.

We also note that the answers to question 8 along with the background information in other questions are applicable here.

Justice Systems:

The Innovative models report (**footnote 1**) supports a paradigm shift (see pg 60-63). In relation to Courts it recommends:

"Court innovations

Innovations in court practices also have relevance to family violence. Innovations designed to simplify proceedings and ensure victim safety are being trialled. The Integrated Domestic Violence Courts, which are "one family/one judge" courts that respond to the unique nature of domestic violence with one judge handling all criminal domestic violence cases and related family issues, such as custody, visitation, civil protection orders, and matrimonial actions, offer some useful ideas. To be relevant to the bush these initiatives must be mobile and flexible.

Court innovations must also decolonise in two distinct ways: firstly, by ensuring they take into account intergenerational trauma and other catastrophes of colonisation as situating factors in family violence cases, and secondly, by being structured to incorporate Indigenous knowledges and cultures in the process by sitting as Aboriginal courts, meaning that the court should be less formal and hierarchical than mainstream courts, have Indigenous artefacts prominently displayed, and have Elders flanking the magistrate. Aboriginal courts are sentencing courts, not trials, and although magistrates listen closely to the views of Elders, they still sentence offenders alone.

The importance of triage

These courts could draw on the techniques employed by “problem-oriented courts” that attempt to collectively provide more holistic, trauma-informed problem-solving meetings involving relevant agencies and court workers, with a view to presenting solutions to the magistrate, and a non-adversarial approach, which commits prosecution and defence to focus on resolving underlying issues (such as alcohol use). Key aspects of this approach include the co-location of services (including victim services) and a “no wrong door” approach, which means that services are offered irrespective of what the presenting issue is. This places stress on good triage practices at the point of contact with the court and the speedy presentation of reports to the magistrate. The triage process must include screening for disabilities, addictions, trauma, housing, and mental health.”(pg 62)

ALRM points to various court models that should be considered including:

- Nunga Courts (South Australia)
- Barndimalgu Court in Geraldton, WA:
[Barndimalgu Court and the Geraldton Family and Domestic Violence Project - Barndimalgu Court and the Geraldton Family and Domestic Violence Project - Programs - Alcohol and Other Drugs Knowledge Centre \(ecu.edu.au\)](#)
- Marram Ngala Ganbu – Koori Court in Victoria for Child Protection Matters – link to evaluation:
[Evaluation of Marram-Ngala Ganbu | Childrens Court of Victoria](#)

ALRM is aware that the Federal Circuit and Family Court of Australia (“**FCFCOA**”) has implemented specialised Aboriginal and Torres Strait Islander lists across Australia, which was as a result of the initiative and judicial activism of her Honour Judge Sexton (as her Honour then was). The pilot list commenced in Sydney, and later in Paramatta with Judge Sexton in or around 2016, and ALRM collaborated with her Honour Judge C Kelly to enact the second Aboriginal and Torres Strait Islander list in the Adelaide Registry in or around March 2018. These lists, where possible, intend to promote collective decision making.

ALRM submits that these should be empowered and enabled to assist in the resolution of all issues between family members, including any family violence orders, where the families agree to this. Reference should be made to these lists within legislation and corresponding rules to entrench such a process within the legislative framework.

ALRM also points out that the Nunga Court model developed by the Magistracy for Pt Lincoln makes specific provision for the legal representation of victims, unlike the more generic model found in recent amendments to the Magistrates Court Act.¹⁶ If consideration is to be given to implementing the Julia Lansley model in Nunga Courts, a very broad interpretation of section 9AA(4)(c) Magistrates Court Act, might be needed or a provision giving the court a discretion to as to locus standi being granted in restorative justice cases.

¹⁶ Part2Division3 Section 9AA(Nunga Court) Magistrates Court Act1991

ALRM further considers there is a need for all involved in the judicial system including lawyers to receive specific and ongoing training and written guidance on the ongoing impact on Aboriginal people of colonisation, dispossession and the many laws and policies that have severely impacted Aboriginal people including the removal of children, culture, country and stolen wages. Training must also be provided by Aboriginal experts in cultural obligations.

In February 2023 the *Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia* reported to the State Attorney-General's Department (the 2023 Advisory Commission).¹⁷ This report clearly and plainly sets out the need for greater understanding of Aboriginal people within the justice system, their cultures and issues that impact Aboriginal people. The Advisory Commission reported:

“Too often, non-Aboriginal people are making decisions that impact Aboriginal people and communities despite not having knowledge about Aboriginal people and culture, or a full understanding of the ongoing impacts of colonialism. This lack of knowledge leads to unconscious biases, racist behaviours and poor decision-making.”

The *Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia* recommended:

‘That, in accordance with recommendation 96 of the Royal Commission into Aboriginal Deaths in Custody, the National Judicial College of Australia and the Australasian Institute of Judicial Administration mandate ongoing professional development for judges and magistrates in the areas of cultural competence and unconscious bias, including systemic and institutional racism and intergenerational disadvantage of Aboriginal people. Training should be tailored to the region and delivered by Aboriginal Community Controlled Organisations and / or Aboriginal Elders and community leaders.’

ALRM considers Interpreters are of fundamental importance and the need to ensure that where interpreters are required, they are provided and consideration is given to cultural safety and obligations in regard to the gender of the interpreter used. Likewise, the kin relationships needs to be carefully considered by the interpreter and assurance that they are free to interpret for the person they are interpreting for. There is likely to need to be different interpreters for defendant and complainant along with their witnesses.

Specialist Family Violence courts that are Aboriginal designed and led are important – to include younger people who use and experience violence.

In relation to perpetrators who are incorporated into the criminal justice systems, the ALRC recommendations applicable are as follows:

Recommendation 9-1: ‘State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release. These programs should be made available to:

- prisoners held on remand;
- prisoners serving short sentences; and

¹⁷ [Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples \(agd.sa.gov.au\)](https://www.agd.sa.gov.au)

· female Aboriginal and Torres Strait Islander prisoners.

Recommendation 11-1: 'Programs and services delivered to female Aboriginal and Torres Strait Islander offenders within the criminal justice system—leading up to, during and post-incarceration—should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system. Such programs and services, including those provided by NGOs, police, courts and corrections, must be: · developed with and delivered by Aboriginal and Torres Strait Islander women; and · trauma-informed and culturally appropriate.'¹⁸

ALRM endorses these recommendations.

ALRM notes that many clients in prisons are not enabled to participate in programs because either the programs are not available or not appropriate for Aboriginal people. Some examples of issues as to why programs may be inappropriate include:

- Many programs are conducted in groups, where participants are expected to verbally contribute to the program and can be removed / marked down for lack of contribution. However, it may not be culturally appropriate for Aboriginal people to do this intensive / personal / confidential and private work in a group or contribute aloud.

Some concerns with this approach are retraumatising and / or shame from exposing their private life, this itself can place them at risk of retribution or harm – physical or emotional. The need is for one to one sessions alongside or instead of groups and for participants in groups to be allowed to participate in a reflective quiet way without obligation to speak in front of the group.

- Many prisoners believe what they say in programs and to counsellors becomes part of the prison intel. The understanding is this may be shared between officers / different parts of the prison and used to make internal prison decisions, parole board decisions and used in other detrimental ways. This means prisoners don't consider there is confidentiality and impedes them from sharing honestly.
- On the other hand, completion of mandated programs may ensure the people are released but does not bring the therapeutic effect that is needed for rehabilitation.
- As an example, the Violence Prevention Program offered in prisons – is often felt to put prisoners in danger when revealing their past. The program doesn't address the fact so many prisoners were victims as children and doesn't meet the real need for one to one therapy. As a stark example, many children abused in the Magill Training Centre / in care have not been healed and then perpetrate, but effective therapy and understanding is not there. There is a need to take into account the whole person and their whole experience.

In relation to those imprisoned, ALRM recommends that:

¹⁸ Australian Law Reform Commission, Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133 (2017) (ALRC report) page 22ALRC report (at 24) Page 15-16 and 31

- Programs be commenced within the early stages of entry into prison and be available to all prisoners, whether on remand or not and no matter the length of sentence;
- Programs be throughcare – that is paired with community programs available to be continued upon release.
- The recommendations set out above from the ALRC be implemented.
- The programs be evaluated in a way that encourages honest feedback from prisoners.
- Healing circles or yarning circles be conducted in a culturally safe and confidential manner as a better option to group programs.
- Programs are Aboriginal designed and led as well as being evaluated by Aboriginal and Torres Strait Islander people, to ensure they are appropriate and effective for First Nations people.

ALRM recognises programs that work to be further considered include:

- KWY Aboriginal Corporation programs – especially their programs for men
- DASSA – alcohol and drugs
- Aboriginal Sobriety group
- House of Hope
- Footsteps – Port Augusta
- Bush Camps and programs run by local people in APY lands – but funding is not ongoing
- Nunga Mi:Minar Inc - Northern Regional Aboriginal Family Violence Service
- ALRM – in particular the Prison Care Program and Aboriginal Family Practitioners
- Family Violence Legal Service Aboriginal Corporation (SA)
- Aboriginal Family Support Services
- Nunkuwarrin Yunti Counselling Services – unfortunately has little availability for services
- Uniting Communities – eg good stronger families work in Port Pirie – but again with long waiting lists
- Cross Borders Program e.g. in Ceduna is effective – the downfalls are it is not offered frequently enough and people are not allowed to repeat it. ALRM considers that those who perpetrate often have a long exposure to violence from childhood. This takes time to work through. The better approach is to enable people to re-do the course as needed. Other issue is women in abusive relationships often come from trauma backgrounds and we find if they don't also have trauma counselling and education alongside the men's counselling/ education programs then if the couple choose to be together – they haven't healed together and the relationship won't heal. As a concrete example, a man may learn to de-escalate and when arguments arise – to leave and go for a walk to deescalate. The woman understandably follows, the argument continues and the de-escalation plan does not work.

Key in programs is to included interpreter to both explain in language or in English but in a way that is understandable and relatable to the community, perhaps cultural interpreters are required.

An Interstate program to consider is the 'Change em Ways' program in Broome / the Kimberly region which incorporates cultural and on-country programs for men as well as groups separately held but alongside the men's group for women.

We reiterate the need for triaging of perpetrators – for mental health issues / FASD or other neurological disorders / drug and alcohol issues – these need to be addressed and unpacked to consider the issue behind the issue (in our experience the issues behind are likely to incorporate trauma).

RECOVERY AND HEALING

Questions to Consider

13. Acknowledging that every victim-survivor will have different needs depending on their personal circumstances, are there universal needs that will arise for all victim-survivors?

14. What are the best practice approaches to supporting a victim-survivor to recover from trauma and the mental, physical, emotional and economic impacts of violence?

We reiterate – best practice always enables self-determination.

ALRM considers that each victim-survivor should be able to lead their own healing journey, they experience powerlessness in the abuse and then feel they are made further powerless when seeking healing.

The support systems for Aboriginal peoples involved in Family Violence need to be wholistic and Aboriginal designed and led on a local level. These must be available to all Aboriginal peoples. The models favoured generally take a healing and trauma aware approach. These appreciate that family violence is not acceptable and never has been but has been deeply impacted by colonialism and the violence Aboriginal peoples continue to suffer due to ongoing impacts of dispossession, stolen generation and current and past racist laws, policies and practices.

We refer to two research reports here which well explain the way forward in recovery and healing for Aboriginal peoples:

1. 'What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence' 2024:¹⁹

“The majority of research participants described trauma-aware, healing-informed and strengths-based approaches as key to the success of healing programs that respond to family violence.” (page 40)

“The Aboriginal and Torres Strait Islander Healing Foundation Development Team (ATSIHFDT; 2009) identified four primary principles essential for Aboriginal healing:

- 1) Addressing causation of community dysfunction, as opposed to focusing on symptomatic solutions or reforms. ...
- 2) Aboriginal ownership, definitions, and design and evaluation of healing programs. ...

¹⁹ Carlson, B., Day, M., & Farrelly, T. (2024). What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence (Research report, 02/2024). ANROWS

3) Programs which are based on Aboriginal worldviews include a multidimensional and holistic approach to life. ...

4) Strength-based approaches to healing, which acknowledge resilience of the Aboriginal people and the richness and durability of culture... (pages 23-24)

“When asked to elaborate on what this “holistic” approach was comprised of participants offered a number of aspects, including:

- a “one-stop shop” – a holistic program enables all of a person’s needs to be met in the one place, without the risk of having people “slip through the gaps” between service providers as may happen if they were being referred on elsewhere
- being able to target the individual but also the family and broader community. This includes being able to accommodate the needs of all members of a family, and even those who do not live in the same household but are part of the wider family group
- having the ability to assess every individual and their situation on their own merits and respond to their unique needs with a tailored approach. This comes from an understanding that each person’s healing needs, and journey, are unique
- utilising traditional healing methods and incorporating culturally therapeutic informed approaches to healing to at least work in parallel with other western approaches, such as Cognitive Behavioural Therapy
- allowing families to stay together if they want to, rather than be forcibly separated
- working to prevent the crises in families that can result in separation
- working with the strengths of the individual, family and community
- the provision of long-term support and maintaining a consistent presence – as one NSW participant stated, “it’s not a five-minute fix. This is long-term stuff that people need to work on”
- being client-led – the healing journey was described as something only the individual can determine in terms of needs and duration.” (Pg 37 – 38)

ALRM considers there is likely to be room for justice reinvestment here.

2. ‘You can’t pour from an empty cup: Strengthening our service and systems responses for Aboriginal and Torres Strait Islander children and young people who experience domestic and family violence’ 2023: ²⁰:

... a ‘failure to heal’ the hurts experienced by children and young people is ‘carried forward as they become parents’. ... ‘Healing is central to change: an understanding of trauma informs us, but healing approaches will transform us, breaking the cycles of trauma in which our children and young people are caught.’ ‘A decade of reports clearly articulates ... any response or intervention must fundamentally involve Aboriginal community members in defining the problem and its contexts an in setting the parameters for pathways forward.’

²⁰ Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., Parsons, J., Prior, G., Idagi, L., Bruce, R., Twist, A., Gray, T., Hostalek, M., Gibson, J., Mitchell, B., Lea, T., Miller, C., Lemson, F., Bogdanek, S., ... Cahill, A. (2023). You can’t pour from an empty cup: Strengthening our service and systems responses for Aboriginal and Torres Strait Islander children and young people who experience domestic and family violence (Research report, 01/2023). ANROWS (pages 7 -9,).

'There are limited supports to help children work through the impacts of DFV, but there are also minimal services to educate parents on the trauma impacts of their behaviours on their children. There is a need for systemic change to break the cycle of DFV.

A result of not addressing childhood impacts of DFV or their underlying causes is that DFV becomes cyclical and unaddressed trauma becomes generational, which contributes to cumulative trauma carried by families from colonisation. For some participants, they could clearly articulate the impacts of childhood experiences of DFV on relationships later in life, including with their children:

You get that feeling where like you don't have any love anymore to give because your parents ... didn't show love ... if you haven't got that affection before, or love, it's really hard to show that love back. (██████████ community member)

Most Aboriginal and Torres Strait Islander women and men who experienced childhood violence identified that they have never had their childhood wounds recognised. Community researchers noted that child protection responses require parents to support their children who experience DFV with little sense of ever having been loved themselves. As one community researcher remarked, "You can't pour from an empty cup".²¹

The solutions listed include:

- focus on healing
- strengthen cultural connections and practices
- education is essential
- targeted resources to children
- Place based responses to amplify cultural authority and leadership
- Safe people and places to seek support
- Empower children and young people
- Strengthen entire families and communities
- Workforce development
- Systems responses – whole systems and in particular improving funding for ACCOs as 'important for addressing underlying causes of DFV and developing community-led models that can make generational difference'.
- Further solutions page 49 – include
- compassionate responses
- addressing fear that prevents help-seeking
- Increased cultural capability (pg 32)

The report continues:

'Successive governments have failed to invest in a system that is right for our children despite DFV and its impacts being a serious issue which needs a comprehensive response. What has been missing is any serious attempt to enable Aboriginal and Torres Strait Islander community organisations to design a system for them and by them.'²²

In ALRMs experience, for Aboriginal peoples, culture is key. It is lived and breathed. Culture is not something you do at a certain time and place – it is how you talk, what you laugh at, what makes you sad or angry, how you show respect and the little knowing shared looks. It underpins your very being.

²¹ Footnote 20 page 25

²² Footnote 20 at page 59

The 'Understanding the role of Law and Culture' report says: "Despite colonisation, many Aboriginal and Torres Strait Islander people retain a connection to Aboriginal and Torres Strait Islander Law and Culture. A strengths-based approach embedded in Aboriginal and Torres Strait Islander Law and Culture does not mean returning to "traditional" ways but is an approach that recognises the ways in which culture is living and dynamic and adapts."²³

Distressingly, the culture Aboriginal peoples must cope in day to day is not their own and the systems they must navigate in society are not natural ones for them. Aboriginal peoples face lack of cultural sensitivity at best and both structural and personal racism including aggressions on a daily basis at worst.

The National and South Australian Governments have acknowledged 'the far reaching, intergenerational impacts of colonisation and dispossession which explicitly excluded Aboriginal peoples and resulted in entrenched, systemic and structural racism and disadvantage'.²⁴

This question is whether we will continue Aboriginal peoples within a family and domestic violence system of 'entrenched, systemic and structural racism and disadvantage' or will we ensure the response is one that 'fundamentally involves Aboriginal community members in defining the problem and its contexts and in setting the pathways forward'²⁵ and whether we will now make 'serious attempts to enable Aboriginal and Torres Strait Islander community organisations to design a system for them and by them'.

Research

Carrington, K., Sozzo, M., Ryan, V., & Rodgers, J. (2022). Women-led police stations: reimagining the policing of gender violence in the twenty-first century. *Policing and Society*, 32(5), 577–597. <https://doi.org/10.1080/10439463.2021.1956925>

Langton, M; Smith, K; Eastman, T; O'Neill, L; Cheesman, E; and Rose, M, 2020, Improving family violence legal and support services for Aboriginal & Torres Strait Islander women. Sydney: ANROWS, [ANROWS-Langton-RtPP-Improving-services.pdf](https://www.anrows.gov.au/sites/default/files/2020-12/ANROWS-Langton-RtPP-Improving-services.pdf) (anrowsdev.wpenginepowered.com)

Wiyi Yani U Thangani, First Nations Women's Safety Policy Forum Outcomes Report, November 2022, Australian Human Rights Commission: [humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6](https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6)

The Wiyi Yani U Thangani Change Agenda for First Nations Gender Justice, 2024, [WYUT Change Agenda 2024 \(FINAL DIGITAL\).pdf](#)

²³ Blagg, H., Tulich, T., Hovane, V., Raye, D., Worrigal, T., & May, S. (2020). Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence: Key findings and future directions (Research to policy and practice, 19/2020). Sydney: ANROWS pg 2

²⁴ SA Implementation Plan for the National Agreement on Closing the Gap, 2021, page 5

²⁵ You can't pour from an empty cup report footnote 20, pgs 7-9 and 59.

Blagg, H., Tulich, T., Hovane, V., Raye, D., Worrigal, T., & May, S. (2020). *Understanding the role of Law and Culture in Aboriginal and/or Torres Strait Islander communities in responding to and preventing family violence*, Ngarluma/Jaru/Gooniyandi (Hovane), Kimberley and Pilbara region, WA, Jabirr Jabirr/Bardi (Raye), Dampier Peninsula and Kimberley region, WA, Gooniyandi/Gija (Worrigal), Kimberley region, WA (Research report, 19/2020). Sydney: ANROWS.

Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., Parsons, J., Prior, G., Idagi, L., Bruce, R., Gray, T., Jia, T., Hostalek, M., Gibson, J., Mitchell, B., Lea, T., Clancy, K., Barber, U., Higgins, D., ... Trew, S. (2022). *New Ways for Our Families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people* (Research report, 06/2022). ANROWS

Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia, 2023

Carlson, B., Day, M., & Farrelly, T. (2024). *What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence* (Research report, 02/2024). ANROWS.

Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N. (2018). *Innovative models in addressing violence against Indigenous women: Final report* (ANROWS Horizons, 01/2018). Sydney: ANROWS. (esp. page 60 -62)

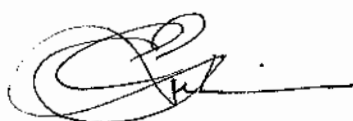
Summary report of above report is: *Innovative models in addressing violence against Indigenous women: Key findings and future directions* / Harry Blagg et al. Sydney: ANROWS, c2018.

Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., Parsons, J., Prior, G., Idagi, L., Bruce, R., Twist, A., Gray, T., Hostalek, M., Gibson, J., Mitchell, B., Lea, T., Miller, C., Lemson, F., Bogdanek, S., ... Cahill, A. (2023). *You can't pour from an empty cup: Strengthening our service and systems responses for Aboriginal and Torres Strait Islander children and young people who experience domestic and family violence* (Research report, 01/2023). ANROWS.

We thank you for considering this submission.

You are welcome to contact our policy and advocacy unit if you have any questions about this matter at: [REDACTED]

Signed:



Chief Executive Officer

Aboriginal Legal Rights Movement



**Aboriginal
Legal
Rights
Movement**

**The Royal Commission Into: Domestic, Family and Sexual Violence: South Australia 2024
Aboriginal Legal Rights Movement – Further Submission 31 October 2024**

Acknowledgement of Country

Aboriginal Legal Rights Movement (ALRM) acknowledges the Kurna people as the custodians of the greater Adelaide region, from which this submission is being forwarded.

ALRM recognises that the cultural and heritage beliefs are still as important to the living Kurna people today and pays tribute to elders and leaders past, present and emerging.

We pay our respects to the cultural authority of Aboriginal people from other lands & waters of South Australia and Australia.

About the Aboriginal Legal Rights Movement

Aboriginal Legal Rights Movement is an independent Aboriginal community controlled organisation governed by our all Aboriginal Board. ALRM is also a law practice for the purposes of the *Legal Practitioners Act* of South Australia and this submission is very much informed by the work of our various law practices and other services.

Previous Response:

ALRM responded to the Discussion Paper in full by submission forwarded to the Royal Commission on 16 August 2024.

In that, we advocated for the Royal Commission to:

1. Understand that the causes of family violence in Aboriginal communities are far more complex and include colonialism, systemic disadvantage, cultural disruption, forced removal of children and the intergenerational impact of trauma. Alcohol plays a role that is crucial to understand and we referred to studies on that. ALRM considered that restricting known causes to the mainstream model risks further subordination of Aboriginal women.

2. Ensure that:
 - a. Prevention and responses for Aboriginal peoples are based on research by Aboriginal researchers (which we highlighted) and that responses are Aboriginal designed and led and place based. This is particularly important because of complex kinship systems, law and obligations that cannot be understood other than by the local Aboriginal communities.
 - b. Intervention includes a listening, strengths based and empowering approach.

3. Remove barriers to reporting and support for Aboriginal peoples by acknowledging current systems were not designed for or by Aboriginal peoples and incorporate systemic powerlessness and disadvantage within them. Aboriginal peoples experience a victim blaming mentality – particularly in the removal of children from families experiencing violence.

4. Ensure that best practice at its heart is a place based, self-determination and holistic model, as all other imposed solutions have failed. ALRM supports the following – each to be based on place based Aboriginal designed and led programs:
 - a. Legal representation by an ACCO legal service (Aboriginal and Torres Strait Islander Legal Service or Family Violence Legal Prevention Service) at the earliest possible stage for each person involved with options for resolution to incorporate restorative justice and healing models.
 - b. Responses to those who experience violence to be led by the person themselves with places of safety offered for the time needed and a healing approach taken to their ongoing care.
 - c. Responses to those who perpetrate to ensure that programs are Aboriginal designed and led with a trauma informed and culturally appropriate model, also to include places to go if they consider violence may or has occurred.
 - d. Children who are exposed to family violence need culturally appropriate, trauma based support as a priority to assist the cycle to be broken.
 - e. Innovative Courts – to include a triage of needs and restorative justice. We suggested the Royal Commission consider Nunga Courts in SA, the Specialist Indigenous Lists in the Federal Circuit Court and Family Court of Australia, Barndimalgu Court in WA and Marram Ngala Ganbu in Victoria.

Recent Reports:

We draw the Royal Commission's attention to further reports that have come to light since our first submission.

- Australian Institute of Criminology – the statistics and known facts of homicides of Aboriginal and Torres Strait Islander women is instructive: Bricknell S & Miles H 2024. Homicide of Aboriginal and Torres Strait Islander women. Statistical Bulletin no. 46. Canberra: Australian Institute of Criminology.¹

¹ [Homicide of Aboriginal and Torres Strait Islander women | Australian Institute of Criminology](#)

- The Senate Legal and Constitutional Affairs References Committee, *Missing and murdered First Nations women and children, Commonwealth of Australia 2024*² – this has delved deeply into the causes and factors driving violence, including:
 - Causes include ongoing impacts of colonisation, stolen generation and systemic racism – leading to trauma;
 - Child protection and removal of children as an issue;
 - Need for safe housing and havens;
 - Institutions and structures themselves being harmful;
 - Police responses including ongoing systemic racism – with truth telling as a way forward;
 - Lack in access to justice with need for better resourcing of Aboriginal and Torres Strait Islander Legal Services and Family Prevention Legal Services, particularly in regional and remote areas;
 - Judicial system and court processes not being culturally appropriate and instead being barriers to accessing justice.

The Senate Committee made recommendations which ALRM endorses, in particular:

- “Recommendation 5: The committee recommends that the Australian government urgently gives effect to the relevant recommendations in the Independent Review of the National Legal Assistance Partnership 2020–2025, in particular Recommendations 2–3, 9 and 11–12, and specifically addresses the need to increase the geographic spread and capacity of Family Violence Prevention Legal Services.
- Recommendation 6 : The committee recommends that the Department of Social Services, the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the National Indigenous Australians Agency develop, for implementation, a sustainable funding mechanism to provide ongoing support services for First Nations people, including women and children, experiencing domestic, family and sexual violence. This funding must prioritise service and program delivery by Aboriginal community-controlled organisations who demonstrate evidence-based primary prevention initiatives that are independently evaluated for efficacy, including for delivery in regional and remote areas.
- Recommendation 7: The committee recommends that the Australian government empowers First Nations women to lead the design and implementation of services and supports that address violence in their communities, as consistently advocated by the Wiyi Yani U Thangani (Women's Voices) project, and reflecting the principles contained in the United Nations Declaration on the Rights of Indigenous People.
- Recommendation 10: The committee recommends that the Australian government systematically considers the many recommendations and suggestions made to this inquiry. This includes recommendations relating to:
 - trauma informed healing, including the recommendations made by the Healing Foundation and White Ribbon Australia;
 - implementation of a violence prevention framework for men and boys;

² [Missing and murdered First Nations women and children – Parliament of Australia](#)

- development of Aboriginal community-based support programs for men; and
 - initiatives which promote a sense of individual and community responsibility for the issue of male violence against Aboriginal women.”
- SA Finding of Inquest by State Coroner Whittle, Inquest Number 01/2020 (0884/2015), Delivered on 29th day of August 2024, relating to the death of a young Aboriginal woman from domestic violence in a community in 2015. This commented on fear she had of reporting due to threats of her child being removed along with lacks in service including police responses. The Coroner recommended a service or facility to provide crisis care for victims of domestic violence with strategies to be community driven and generated and a thorough review of perpetrator services available.³

Further Submission:

ALRM take this opportunity to provide further information that doesn't easily fall within the scope of the questions in the discussion paper. We provide insights we have gained from those we work with day to day with lived experiences of family violence. We recognise the strength and courage of those who have shared their experiences with us, in the hope meaningful change will be made.

From our own day to day contact we offer the following:

1. Self-determination:

Culture always took care of families and prevented family violence.

Aboriginal children are born into a complex kinship system with people who would protect them, others they need to protect, people who they must avoid, people they must respect. They were taught how to behave and given protection through this system. Violence from one partner to another was not part of this system and there were clear family members of the perpetrator themselves that would intervene if this occurred – stopping the perpetrator and protecting the victim.

This deeply ingrained protective system has been severely disrupted with colonisation, white law, prisons, dispossession, removal of children and systems which make no sense. Trauma ensued. Drugs and alcohol provided temporary relief. Violence followed.

It is time to fully resource, equip and support Aboriginal people in their own communities to have full self determination in their healing and family violence prevention. The evidence is that overwhelmingly restorative justice is needed, punitive systems are not working.

³ Coroners findings - CAA

Self Determination for those who experience violence:

Individually, we are told that women in family violence situations know how to protect themselves and need support in that, but policy for many services prevents that from happening.

For example, for some women an intervention order will not be protective, however services will turn them away unless they have one. For others, reporting to police will not be protective but is required before the service will work with them. Women know when reporting or intervention orders are protective – or will inflame the situation and should be supported as they come.

Some women consider they are safer remaining in the relationship and living with their partner to know where they are and how they are – not because they want the relationship to continue but they understand that by knowing where they are they can best protect themselves and their children. However, when they choose this option, services are cut off from them (e.g. if they are in a refuge and return – the refuge won't accept them again for a certain period of time, if at all).

Others have generally good relationships and want to stay, but know there are times when triggers are present, possibly around alcohol being used and the risk is high that violence will follow. These families can function with safety around the family so that members are separated at times of risk. In this instance they may simply need time out – one or two nights away. They too should be supported in their safety assessments and strategies with places for either partner to take refuge as required. In this case, support with alcohol / drug rehabilitation / trauma counselling and a healing approach to work with the underlying trauma causing the need for alcohol and resulting violence will assist. In the meantime, places for either of the partners to go to during these danger times will be required.

With some situations, family can help to be protective. In others, family cannot be protective – one reason being that DCP is involved and protecting a victim of violence may mean their own children are removed.

Others know they have to get out and to remain away – for the relationship and all contact to be cut to be safe. They need all the support around them to do that. When they reach out to the police or other services they know they are in danger and need full support. We are told when they reach out in distress, police cannot be relied on to help.

Women are also denied places of refuge if they have a son over 12 years old – they cannot leave their son behind. Others have a family pet and feel the need to stay to protect the pet, nowhere will otherwise accept them. Sometimes options for where to stay are worse than staying at home – for example being offered a small hotel room with a number of children without facilities to cook – not being able to afford food and not having entertainment for the children. Women in this position simply return home.

Understanding and respecting the cycle of violence:

Some women would like time to safely plan an exit which could take many months, and they should be supported in this time. They will have a huge burden in separating including financially, socially, resettling of children and maintaining safety. These women will be ready at a certain point but find services won't support or give refuge if she hasn't experienced family violence in the prior 3 months for some services or 12 months for others. There are times that

the violence stops for this time but then triggers warning a woman that it will happen arise – they are also denied services.

We know that a build up to leaving a violent partner is long and women do leave and return numerous times. It is a fact that our clients experience, they love their partner, their partner may assist with children/ bills/ be protective in other ways – but women are shunned from services when they do this. ALRM supports a model of enabling women and children to leave when they need to, be given support and education and the man offered the same, but not be banished or shamed by a service when they return to their partners. The very time that a service excludes a woman simply because she leaves and returns and has a history of this, could be the difference between life and death.

We are told that no one really understands how hard it is to leave and then how hard it is to stay away. This could be because of genuine love and need for proximity/ relationship and other needs to be met. It could be because of emotional abuse – their partner threatening to kill themselves. It could be because family put pressure on them not to leave, not to deny the father and his family access to the children or that if the man does suicide, then the woman will be to blame. There is guilt, obligation (including cultural obligation) which pressures a woman to stay. She should not be penalised by any services for facing this grave difficulty. Again, we reiterate the need to refer to the research conducted by Aboriginal researchers, set out in our earlier submission, as it relates to family violence.

We are told that women balancing the ups and downs of the relationship, the abuses, the care of children, and the cultural and family obligations are often in survival mode. They may make decisions which seem illogical – but protecting children and being able to parent their children are keys to survival and the threat of removal exacerbates the need to stay and keep quiet.

We are also told that services cease often when most needed. Services need to be ongoing for longer than 1 year, support needs to be intensive and long term. It takes years to get over the emotional abuse and to increase self-image and confidence to a functional level. There are times in the healing journey that women cannot think straight, are in survival mode and need someone to do basic things with them – to go to Centrelink, schools and other institutions. Walk alongside them.

ALRM seek:

- Rehabilitation services which are culturally appropriate for Aboriginal peoples with healing/ trauma informed models. There are a total lack of these services which must be prioritised.
- Places for respite for people to go to if family violence triggers such as alcohol or drug use occur – either the man or woman should be able to go somewhere with choice between them as to who takes this respite time.
- That ACCOs be properly funded to give wholistic wrap around support and to have places of safety for women to stay in without an intervention order, with no exclusion for returning to a partner and with a flexible approach to supporting a woman in her journey of dealing with family violence with maintenance of confidentiality.
- That respite options including safe havens be part of the response, for when partners want to stay together but need to leave when they can feel violence is imminent.

2. Responses for those who use violence:

ALRM submits that investment in prevention is poor, a punitive response isn't working and restorative justice should be prioritised.

Both the research (cited in our first submission) and our experience shows us that those who use violence have experienced family violence and/ or have grown up in foster or residential care, been to Magill Training Center or other similar place and been victims of abuse themselves. They and their families and communities have been displaced, been through stolen generation and have been so traumatised they now suffer mental health issues, trauma issues and often self-medicate through drugs and alcohol. They need to be able to reflect on this and how it has impacted them to heal and change.

Many have underlying physical, mental, emotional, spiritual, trauma or neurological issues – many of these have not been diagnosed. Most have dependence on drugs or alcohol – resulting from underlying issues. We cannot dismiss these nor their lived experience issues, these are reality.

Whether or not those who perpetrate are charged, imprisoned, placed on orders or remain in the community, triage for underlying issues and wholistic, trauma based and culturally appropriate support is required.

Family violence often experienced is by a loved family member such as a son or daughter with mental health issues. At times when their symptoms escalate, they attack family and loved ones who fear reporting due to the punitive interventions likely to be received. Families need support and respite, not criminal responses or intervention orders.

Though controversial to say, we are told there are women who fight with men and women, who are the aggressors and the man is afraid of the woman. This is also set out in research cited in our earlier submission.⁴ It is also found in the numbers of Aboriginal women in prison for assault type charges.⁵ This too is a result of ongoing dispossession, stolen generation, past experience of abuse, violence and trauma. We are told that we have to stop looking through a white woman's lens, Aboriginal women too hold so much trauma resulting in drugs or alcohol to self-medicate and at times escalate to violence towards men or women. It is a lived reality. When both partners suffer this way one can commence violence and the other can retaliate, or could walk away. At times the one who walks away is followed or chased, resulting in violence. For families where this is the case acknowledgement and trauma support along with strengths based solutions are needed.

We are also told of men who have been through programs, learned to walk away but women follow and want to continue the argument. This is because both have suffered trauma in their lives, both cannot handle the trauma and one has learned a technique to prevent violence but the other hasn't. Both need this support. We are told by our workers that sometimes men call them feeling very challenged at the yelling or chasing down the street they are experiencing,

⁴ See for example: Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N. (2018). *Innovative models in addressing violence against Indigenous women: Final report* (ANROWS Horizons, 01/2018). Sydney: ANROWS.

⁵ South Australian Department of Correctional Services, Offender Development Committee released the Consultation Paper: 'The Next Steps in Strategy & Action For Women, Five Year Outcomes and Consultation on a New Action Plan in February 2024, page 8

our workers talk for hours until the man is away in a safe place and no violence occurs. At times the relationship needs support – at other times it needs to end.

Punitive responses to men can actually stop women from reporting violence. They care and worry for their partner and even if they want the relationship to end, they prefer their partner was given support rather than punishment – while having the opportunity themselves to stay safe.

Many women tell us they fear police and they fear what will happen to the person they love who is violent to them if the police are involved. There are deaths in custody, suicides, harsh treatment by police, harsh treatment in prison. If women could trust that their partner would be fairly and appropriately dealt with, they may be more willing to go to police and go through the criminal justice system. That is not the case now and the increase of sentencing is not helping here.

Instead, it is making life worse. New legislation making bail⁶ and parole impossible without being able to wear a monitoring device has meant that people living in Aboriginal communities cannot be released – only because the state will not monitor them in their communities or in certain areas. The requirements for perpetrators to complete courses before release from prison is also preventing Aboriginal people being released on parole – or having sentences extended by the use of Extended Supervision Orders and Continuing Detention Orders. This is because there are not enough courses offered in prisons or not at the prison that prisoners happen to be placed in. It is also due to the courses themselves being so culturally inappropriate as to be impossible to engage in or complete. These are some of the harsh differences in treatment by the justice system for Aboriginal and non-Aboriginal people.

We have been told of the ‘piece of paper’ (intervention order) being worth nothing.

We are told of a prisoner released after a sentence for domestic violence, returning home and committing further acts of violence. We are told this is because the men are not empowered in their own roles including traditional roles. Families are not prepared for the return of a prisoner where they are released to a family where they no longer have a clear role.

For those remanded in custody and then released for a not guilty finding or because the sentence was effectively completed on remand, services, counselling and programs have not been available. If sentences are short due to length of time served on remand, courses are missed. This means time in custody is not used for any benefit for the community, family or the accused themselves. Culturally appropriate services, programming and counselling must be provided as soon as incarcerated (both on remand and when sentenced) for any change to be made. The impact of short custodial stays (in which Aboriginal people are grossly over-represented) and their exacerbating effect on domestic and family violence was echoed in recent research by the Centre for Social Impact.⁷

As mentioned earlier, we are told that many of the prevention programs offered in prison or by the Department for Correctional Services are shame based, group based and have rules that people admit what they did and who their victims were in front of a group. These are culturally inappropriate and will actually cause more harm. Approaches that work are strengths based,

⁶ Bail Act (Conditions) Amendment Act 2024 which commenced on 1 October 2024

⁷ J. Mizzi, C. Hughes, M. Halsey, J. Cleary, S. Deegan and I. Goodwin-Smith (July 2024), *Beyond Bars: Exploring Challenges and Solutions to the Problem of Short Custodial Stays in Regional South Australia* (https://assets.csi.edu.au/assets/Beyond-Bars-Report-Final_Oct-2024.pdf).

trauma informed and culturally appropriate with an understanding of how to talk about the harm and how to prevent it moving forward. Some programs that could be considered are:

- Change em Ways (Kimberley Western Australia)
- KWY
- AFSS
- Cross Borders program – is seen by our staff as very good. This model could be improved by increasing its availability, extending to women (as both need counselling, support, education and ways to work through), provide through care for support when families resume or return to community though separated, otherwise all learned will fail and the cycle will resume and to have follow up mens and women's groups and regular check ins.
- Barndimalgu Court in Geraldton, Western Australia

Finally, as mentioned, there are a high proportion of women in prison charged with assault type offences and for breach of intervention or other orders. These are women who have been victims of violence. If harsh laws are made for perpetrators, it must be remembered that these Aboriginal women who have experienced violence will themselves be caught up in them. Surely another way must be found.

ALRM seek:

- That 'drivers are unpacked' – that accused be fully assessed for underlying issues causing violence such as mental health issues, neurological issues, physical issues (including lack of hearing) and finally, underlying trauma. If this isn't resolved then drug and alcohol use won't be properly addressed nor violence issues resolved.
- That ACCOs be properly funded to provide wrap around support to those who use violence and respond with a healing, culturally appropriate and trauma informed response. Courts, the Department for Correctional Services and Parole Board must ensure these are available and completion of them is accepted for completion of domestic violence course requirements.
- That men be given full support and pathways to return to the family when supported by the woman, this includes wholistic assistance to access supports and someone to talk with when they feel anger or like drinking.

3. The threat of removal of children:

So many women are told by Police, Department for Child Protection (DCP) and other services that if there is violence and parents do not separate, children will be removed.

Police and DCP workers tell our clients if they do not report violence, do not follow through with charges or Intervention orders or go back to partners, their children will be removed for 'failing to protect'. They are pressured to go through a system they do not wish to go through. Aboriginal communities experience this as threatening and controlling behaviour.

This is cruel and victim blaming. This issue has been highlighted both in the 2024 Coroner's report of State Coroner Whittle and the Senate Report discussed earlier^{8 9}

We are also told that Aboriginal women will often not open up to psychologists or health workers knowing that DCP will be notified if violence is disclosed. This is a huge barrier to accessing services. The mention of DCP to an Aboriginal women means their children will be removed, the experience and statistics make this very real.

Likewise, we are told that in many Aboriginal homes, children know they could be removed if they speak to DCP and will not share their experiences with school, professionals or DCP.

The reality is the whole community feels the stigma of the Welfare Officers coming to take the children away. Sadly, it is very normal to be playing with your cousins one day and then to not see them for a couple of years because the welfare took them. That stigma is still alive today.

When child protection are involved the experience is they do not work with a family who wants to be together to do so safely, excluding fathers with no pathway to return. In the same way, they do not empathise with a woman who returns for various reasons. We are told this often leads to hopelessness, both parents turn to alcohol or drugs for lack of a way through. We have sadly seen a suicide by a man who understood he would be excluded from family life ongoing if ever the mother was to have her children with her.

We have to find another way to support families than to take children, this is not protective. If children are removed, therapeutic support in a way that is culturally appropriate for the child should be given and ongoing family support provided so that they can quickly return home. Longitudinal studies show removal is not a good outcome for a child, nor is lack of appropriate emotional support.

4. Experience of services including feeling disrespected and racism:

We are told that due to the overwhelming negative self-views and fear it takes a lot of courage to contact a service for support. Sadly, we are told that Aboriginal women often have a string of questions launched at them which they cannot answer. They experience being turned away due to lack of remembering dates of police reports, lack of any intervention order or lack of being able to express themselves within the intake.

We are told they feel judged by the services there to help them. Feeling this way at such a traumatic time leads to responses that appear as loud or aggressive – meaning they are banned from contacting the service again.

The feeling of being judged and the exclusion may mean the woman doesn't try to seek support again.

Racism against Aboriginal peoples is prevalent. It is the lived experience of people we work and speak with day by day. Our Deputy CEO shares:

⁸ SA Finding of Inquest by State Coroner Whittle, Inquest Number 01/2020 (0884/2015), Delivered on 29th day of August, 2024

⁹ [Missing and murdered First Nations women and children \(aph.gov.au\)](https://aph.gov.au); see page 40

“Our people regardless of their age face cultural bias on a daily basis in many activities that range from being served in a shop last when they were there first. This is so in many service industries where it should be first come first served. Discrimination has become something our people tolerate on a daily basis and don't call it out. This is because they could become even more disadvantaged or disenfranchised than they already are.”

The research confirms that racism is 'among the most profound social and public health issues of our time'. It is 'negatively associated with depression and distress/ worry and with emotional difficulties and wellbeing'. 'Being subjected to racism generates physiological changes that result in irreparable damage and long term adverse effects on mental health, including high levels of psychological distress, depression, and suicidal ideation. Indigenous social and emotional wellbeing, and mental and physical health have been adversely affected by over 200 years of institutional, cultural and interpersonal racism.' The Queensland Mental Health Commission report Don't judge and listen found that 'Indigenous people were subjected to a general and pervasive racism throughout their lifetime, recommending a multifaceted, whole-of-system approach to address racism and improve Indigenous social and emotional wellbeing.'¹⁰

The Senate Report cited earlier set out the Australian Human Rights Commission submission which said: “The disproportionate level of violence faced by First Nations women and girls is not a result of a deficit located within First Nations cultures in Australia and around the world. Rather, it is the result of systemic exclusion, inequalities [and] intersecting discriminations including racism and sexism.”¹¹

While the National Aboriginal and Torres Strait Islander Health Plan 2021-2031 includes ensuring Aboriginal peoples 'experiences of racism and discrimination must be fed back into system improvement processes to ensure whole of health system accountability and change' the authors of the Mitigating Impacts Report find this is not yet effective and stronger including legislative mechanisms are required.¹² We commend the report, and refer to all Governments' commitments to identify and eliminate racism in all its forms as part of the broader transformation required under Priority Reform 3 of the National Agreement on Closing the Gap.

5. Police Responses:

The courage it takes for an Aboriginal woman to walk into a police station or call police is deep and real – but difficult for non-Aboriginal people to understand.

¹⁰ Dudgeon P, Bray A, Walker R. Mitigating the impacts of racism on Indigenous wellbeing through human rights, legislative and health policy reform. *Med J Aust.* 2023 Mar 20;218(5):203-205. doi: 10.5694/mja2.51862. Epub 2023 Mar 5. PMID: 36871199; PMCID: PMC10953442. See also, Ben, J., Elias, A., Issaka, A. *et al.* Racism in Australia: a protocol for a systematic review and meta-analysis. *Syst Rev* 11, 47 (2022). <https://doi.org/10.1186/s13643-022-01919-2> - pages 2 & 4 and see study for further studies such as:

[20-71A-HOLLINSWORTH,-David-Campaign-to-Combat-Racism-Report-Revised-16.10.23.pdf](#)

¹¹ [Missing and murdered First Nations women and children \(aph.gov.au\) \(page 44\)](#)

¹² Dudgeon P, Bray A, Walker R. Mitigating the impacts of racism on Indigenous wellbeing through human rights, legislative and health policy reform. *Med J Aust.* 2023 Mar 20;218(5):203-205. doi: 10.5694/mja2.51862. Epub 2023 Mar 5. PMID: 36871199; PMCID: PMC10953442

There are so many barriers to reporting to police, the historical and present nature of police-Aboriginal community relations, the experience of police interventions with your own family, deaths in custody and then your own reputation within family/ community for reporting to them.

After facing these barriers, sadly, the police response is often not helpful.

We acknowledge that policing family violence is complex, difficult and also dangerous for police and also acknowledge the many times they give brave and caring assistance. Sadly, however, there remain ongoing deep problems with police responses to Aboriginal people which need to be addressed with an empathetic and listening approach.

We are told of Aboriginal women and children who report violence to police but are not believed, or police attend and see an alleged perpetrator as calm and fail to assist – despite being begged by women and children present to please assist. We were told by one child how he and his brothers begged police to help as they knew their father was violent but putting on a face for the police, police refused, the children had to run away.

We are told that women drink to dull the pain, one was injured so badly she turned to alcohol for immediate self-medication. By the time she had the courage to call the police she was under the influence. She nevertheless asked for help but the answer was 'you are intoxicated' and no assistance was offered. Women may drink or use drugs to numb the pain, this should not be a reason to refuse them assistance.

Likewise, we are told of women who are loud and appear aggressive having just experienced violence, they are shocked, traumatised, in pain and express that differently to non-Aboriginal women. Again, she is labelled and no assistance is offered.

We are told of one person who was questioned by police about the violence while the person who was the perpetrator sat with her, he said he was a cousin and the woman couldn't say otherwise for fear.

Calling police can be very risky but when they do and when the perpetrator is removed, women report they are left out of what happens next.

At times, the woman considers a risk of imminent but not ongoing violence and needs the man removed to a safe place for one night, however he is charged, imprisoned and not released for many months. This prevents women calling police for the support they need to keep safe for that one night. This situation underscores the need for respite options to be provided, as we call for above.

At other times police take over beyond what is wanted – for example by an ongoing intervention order which prevents more than is warranted and then cannot be overturned easily. If an intervention order is made, this needs careful explanation to both parties and victim input into what it should restrain and for how long. We have heard of non-Aboriginal female police implementing an intervention order for Aboriginal women in the APY Lands despite not being requested, and being told to go to Adelaide to seek their withdrawal. In these instances, the Aboriginal women are being subordinated by the mainstream feminist approach, which is not appropriate for Aboriginal women.

Still other times women genuinely fear for their lives, they need the perpetrator removed and to stay away. They voice this but are shocked and terrified when police arrest him and he then returns a few hours later without warning.

Some women tell us they need to ensure the perpetrator leaves the home for long enough to make herself safe, perhaps two days to pack up and leave or take other action. The woman herself will know what needs to be done. In some cases, she may need to leave the area, change schools for children and even change her name. Others will not consider that is required. At the very least she needs to be kept fully informed of where he is and when he will be released and consulted about how this is done. This does not happen.

The Senate Inquiry considered police responses including racist attitudes and systemic racism with truth telling seen as a way forward.¹³ Inadequate police response was also considered in the Coroner's report cited earlier.¹⁴ Out of 5 police complaints reported between 1 April to 30 June 2024, 3 complaints were for failing to take positive action and failing to activate body worn video in responding to alleged domestic violence complaints. One included the approach not being empathetic and empowering towards the victim.¹⁵

Those who report violence need to be respected and believed as well as given self determination in the way forward.

ALRM recommends legal assistance from an ACCO for both the person experiencing and the person allegedly perpetrating violence as soon as possible to assist in navigating the systems that follows the police intervention. We discuss this below.

6. Hospitals/ Services – need to offer safety:

We are told of women who go into hospital to have a baby or for treatment after a violent incident who ask that their former partner be excluded from visiting – but he is allowed in. Sometimes with serious consequences. Women who ask for safety need to be protected, for example in a secure part of the hospital or doors locked and visitors only allowed in if the women look on a camera and see the person is a safe person.

We are told of people who discuss their experience of violence with police/ health workers/ homeless services and others and are not given follow up support nor pathways to support. The reality for Aboriginal women is that warm referrals and relationship building are required and time in hospital or with police/ homeless or other services can be the perfect time to establish that link.

7. Safe Places:

Women and men need safe places within an easy distance from their community to go to when they need to. This extends to bail houses, safe houses for women and safe houses for men when either want to escape violence or leave before they experience or perpetrate it.

Some women tell us they stay in a violent situation as they know of no other place to go.

Some safe places are not safe – for example we are told that some places are well known to the town and it is easy to jump the fence. What would make them safe is barbed wire over the

¹³ [Missing and murdered First Nations women and children \(aph.gov.au\) \(pg 45-49 and 84-98\)](#)

¹⁴ SA Finding of Inquest by State Coroner Whittle, Inquest Number 01/2020 (0884/2015), Delivered on 29th day of August, 2024.

¹⁵ [SAPOL - Disciplinary outcomes](#)

fences and a male security guard present, however it seems policy prevents this. Women coming out of violence cannot sleep – being sure of safety ensures they can catch up on much needed rest.

Some men would leave when they feel triggered but also have no place to go to. If police intervene where there are arguments but no violence and separation is required – one partner may need to sleep on the street, increasing tension.

In some communities stopping the violence means one person being away – but the community knows the need for both partners to be close to elders/ children and dependents. If there were safe places for men, then the woman may feel more willing to ask him to leave, knowing that doesn't mean abandonment or family scorn for removing him far from the community.

In some distant communities, families pressure women not to report as the consequence mean removal and imprisonment for the man. Safe places for men that are not too distant could resolve this as families can still remain close.

8. Access to Justice:

Both Aboriginal women and men, those who experience and those who perpetrate violence require legal supports as well as options for restorative justice. This could include family led meetings with rules set by Elders and community leaders, attending counselling or programs that are wholistic. They need legal services with an understanding that each person involved has experienced trauma and a deeper understanding of the issues.

Culturally appropriate legal advice and representation needs to be provided through an Aboriginal and Torres Strait Islander Legal Service or Aboriginal family Prevention Legal Service available to all involved in family violence. These services have at their heart safety and well-being for the whole family and self-determination.

At times, those who experience violence want intervention orders, charges and sentences to keep them safe. This is respected.

Both will need advice on what this means, for example many don't understand intervention orders are life long or prescribe where they can or cannot go. Distances such as 200 meters or landmarks are misunderstood by Aboriginal people with languages other than English or from towns or communities where these concepts mean little. This leads to breaches and further imprisonment. Interpreters and careful pictorial explanations in terms culturally understood are needed.

At times, women would like intervention orders dropped. They may have been required for a short time only, or a long time has elapsed since it was ordered and life has changed so that the order is no longer needed. They do not know how to go about resolving this and feel shame at explaining why it should be dropped. They need empowering in this, particularly as we understand there is a cost involved and is seen as a barrier they cannot overcome.

There are issues too with Courts, we find that in regional areas especially, intervention order lists are in a similar time to criminal lists – so that families for both accused and alleged victim are present. This is not safe nor helpful. Courts need to talk with Aboriginal communities about how best to do court in their area.

In the 2000s, ALRM and the Aboriginal Family Violence Legal Services in Ceduna cooperated in a client centered model to ensure that if a victim of family violence had reported violence to police but no longer wanted to pursue that, she would be represented by the family violence legal service for advice and assistance and the accused would be represented by ALRM. We name this the Julia Lansley model as the lawyer who commenced this and have explained it in more detail in our earlier submission. We suggest this or a similar model in which both parties have early legal intervention and representation – before, during and/ or after police and court involvement to enable responses which incorporate restorative justice and ongoing holistic safety and supports for the family.

ALRM has long experience in the broader issues underlying violence and assisting communities. In the 1980's ALRM were well aware of the family violence resulting from alcohol use in Yalata and were involved in the Licensing Court applications as a way to reduce violence and the effects of alcohol. We refer here to an article by Brady, Byrne and Henderson in the Australian Aboriginal Studies report of 2003 which gave a detailed account of this.¹⁶

ALRM consider the way forward is restorative justice, punitive measures have been tried and failed. There are many ways of ensuring restorative justice is fair – starting with legal representation for each party. There have been many studies, trials and reports – we recommend for example John Tregenza's Scoping study in the APY lands¹⁷. In the end this is an issue of self-determination – culturally designed and led in each place. ALRM remain available to assist in this.

Finally, we have discussed in our earlier submission the need for the way Court is done to be Aboriginal designed and led with restorative justice options and ways of doing court that include a triage of needs and are wholistic. Innovative Courts that should be considered by an Aboriginal led committee include Nunga Courts in SA, the Specialist Indigenous Lists in the Federal Circuit Court and Family Court of Australia, Barndimalgu Court in WA and Marram Ngala Ganbu in Victoria

9. Counselling/ Education and Support Services for Aboriginal peoples:

Aboriginal – lived experience supports are best:

We are told time and again how difficult it is to go to so many services, repeat stories and feel nothing changes. Supports are so very siloed whereas wholistic, wrap around support is needed.

As some of our Aboriginal staff say – *if you are serious about preventing violence, find out what are the underlying issues and work on those*. It could be physical, emotional, mental health or neurological issues, it could be alcohol and drugs fueled by trauma, find the cause and work on that in a culturally appropriate way with wraparound supports. That works.

Wraparound support includes assistance with all areas in life. Lives for Aboriginal people are hard. They experience poverty, huge care loads due to high level of illness in Aboriginal

¹⁶ Brady, Byrne, Henderson 'Which bloke would stand up for Yalata?: the struggle of an Aboriginal community to control the availability of alcohol, Australian Aboriginal Studies, Canberra 2003/ 2 (see attached to this submission)

¹⁷ J Tregenza, 'Toward establishing a Restorative Justice Project on the Anangu Pitjantjatjara Yankunytjatjara Lands, A Scoping Study for a strategy to combat substance abuse, 2007

communities, huge grief loads due to the low life expectancy and high numbers of suicides and early deaths all coupled with the daily racism, discrimination and systemic barriers in place. Supports for struggling families should be flexible and needs driven – from driving children to school to negotiating with housing or Centrelink, from assistance with grocery shopping to transporting to counselling appointments. This will relieve pressure and add support.

We are told of the deep need to talk with someone who understands. For Aboriginal people – this is nearly always another Aboriginal person. We hear from clients that when they go to non-Aboriginal services, they have to repeat their story over and over; they feel misunderstood as non-Aboriginal people don't understand what Aboriginal people go through. They feel a lack of empathy or understanding of the issues they face with stolen generation, displacement, alcohol and drug use, overcrowded homes and homelessness. When they inevitably display trauma in a loud or expressive (even aggressive) way, services don't understand their trauma and reject them.

In many areas, men need men and women need women – both for cultural freedom to open up as well as to prevent jealousy issues that can arise.

People need people with lived experience, others cannot truly understand. We are told of men and women who listen to advice but cannot connect as the trainer/ counsellor has not experienced what they have been through.

Sadly, there are too many barriers preventing lived experience support – organisations cannot employ someone without a Working with Children or vulnerable person clearance – but so many people who have lived experience of trauma have turned to alcohol, drugs and through this, had children removed or amassed criminal records. They have then come through, turned around but cannot shake their past. Aboriginal people need other Aboriginal people who have overcome lived experiences to help them through – barriers need to come down to enable this.

While many Aboriginal people express a need for an Aboriginal service, in some cases due to family of the either of the couple being part of the service, another option is needed. We are told that some Aboriginal people who approach these services feel put off by the person who greets at the door or who answers the phone – there must be training of all staff of trauma informed approaches and care and cultural sensitivity.

Modes of counselling:

We are told that sitting in an office to have counselling or in a group room often does not work. Re-living experiences does not work. Talking alone hurts. Some tell us that physical exertion while thinking about their trauma is needed. Others tell us what works is going fishing/ on country/ doing an activity with strong men or women and talking broadly about issues before being ready to talk deeply about trauma and the violence received or perpetrated. Yarning, sitting around a fire or doing an activity like carving or weaving works best. People feel enclosed in an office and need an environment they can feel relaxed in.

Services include alcohol/ drug counselling, but many of these run on models that cannot connect with Aboriginal people. They too work best on an activity like fishing/ camping/ activity and talking model.

Whole family support:

Many families want whole family counselling – to be holistic and available for men, women and children. Separate counsellors (men for men and women for women) but brought together at times, particularly for ensuring all members of the family agree on strategies for preventing violence (e.g. one walk away and the other not follow).

ALRM staff consider where one party has counselling, the other should too before any return to living together as both parties have experienced trauma and need healing and to learn how to navigate the relationship in a healthy way. We consider it is dangerous to do otherwise. We have seen men learn to respond in a way that will reduce likelihood of violence, for example to go for a walk to settle but without understanding this the women follow and argue, this does not enable positive change. Both need to work through trauma and learn how to move forward together if that is their wish.

Families too need to be involved, to know how to respond and encourage different responses. In this way families can learn what to say and how to respond. We have had the 'are you okay' campaign to reduce suicide, similar campaigns and education are needed specifically for Aboriginal families and communities seeking to support families where violence is present.

Children:

Children of Aboriginal families have life experiences that mirror their families displacement, exclusion, removal of children, systemic barriers and racism. Many live in homes that are overcrowded, have experienced homelessness, have experience of adult alcohol, drug and violence issues. They need support, but in a way that reaches them, yarning and activity based with people who understand and do not judge them. Children need support when there is violence, if they do not learn it is wrong or have support through it, they will grow up to continue it.

Some of our staff feel schools could talk about this issue in class, otherwise children do not know violence is wrong. Schools could provide compulsory lessons for Dads with kids and Mums with kids where issues like violence are discussed in a therapeutic and non-blaming manner, with education packs for families.

A note of caution about schools – we are told they are places where Aboriginal children and families often feel judged. An example was given of a grandmother caring for many children but with few resources, she was given notes home about children with messy hair/ forgotten lunch or wrong clothes – holes in shoes and odd socks. Her and the children's experiences were dismissed. They can never see the school as a support.

Education:

We are told time and again by those who have experienced violence and those who have perpetrated it that educating one side and not the other about trauma, family violence and ways to protect each other does not work.

There is a need for regular, targeted education spread through the community to include where to go to if you need help. So many people experiencing violence feel isolated and don't know where to turn to, fliers don't work, community meetings don't get attended – but some staff suggest school meetings may work, such as classes parents need to attend with their children (women teaching children and mother and man teaching children and father – separately).

Some women suggest self-defense classes could help, to strengthen girls and women to protect themselves.

Aboriginal designed and led:

Aboriginal designed and led services and models that are based in place are needed. These are best offered by Aboriginal people due to a shared understanding of culture, obligations and realities of life where there is racism and systemic barriers faced daily. At times they may need to be offered by non-Aboriginal people if Aboriginal people feel unable to use the services their own or their partners' families work in, but the design and training needs to be through ACCOs. Funding needs to be secured and services need to be flexible, holistic and available to assist as they see need.

ALRM staff spend time showing we care, building rapport, looking at the whole person, empowering and giving confidence. There are so many shame issues that need support.

Organisations or places that may have clients come who are experiencing/ perpetrating violence also need training in the way to respond and deescalate. As said earlier, in trauma, clients express trauma and this in turn means services turn them away due to perceived insult or aggression.

There have been many good services and good programs come and go but lack resourcing. This is a familiar story for Aboriginal communities and organisations. Real assistance, walking alongside to put in applications, meet grant reporting targets and overcome governance issues are required. ACCOs do not have the resources that Government or larger NGO agencies can rely on and need support.

There are many good programs, some programs recommended by our staff include: Footsteps, Aboriginal Sobriety group with men and women's farms, Bush camps with Elders and respected leaders, KWY programs. Perhaps a way forward is to bring ACCOs and other groups providing services together to the table to listen to one another.

10. Care for Aboriginal Staff:

Aboriginal people working with Aboriginal people in family violence situations need care and support. They also need special training and support including in vicarious trauma, requirements of confidentiality and how to support or refer on clients where family or community obligations conflict.

It needs to be acknowledged that Aboriginal workers never finish work. They are on call by their communities well beyond hours due to cultural obligations to be available. They are answerable for the systems in place that are imposed on them. They are expected to know details of what is happening for families (even next appointment dates with third parties), they are expected to have answers, counsel, support and perform their role at any hour, any day. Sometimes they will be on the phone counselling community members or attending with them until the early hours of the morning – then be expected to perform at peak level at 9am in the office later that morning. They go out for a meal or to grocery shop and are stopped for help, holidays or days off are not relaxing. Traditionally pay is low due to lack of funding. Aboriginal workers burn out, become ill, overwhelmed and need to leave.

Aboriginal workers at ALRM are often called on by Judiciary, court officials, lawyers and others to resolve situations between Aboriginal people, or give advice, support and assistance to court staff and court clients well beyond their pay level. They are called on to visit programs and input into them but are not acknowledged for this and in the meantime take time away from their day job – resulting in longer, unpaid hours.

On top of this, for many, the very issue they are supporting with has been a lived experience leaving trauma within their own lives. They hear stories of trauma reflecting their own. They hear stories of treatment by support workers in other services or of racism/ bias they too experience.

They need wrap around support themselves. They need proper pay. We need to find ways of supporting and caring for Aboriginal workers.

Aboriginal workers build relationships and if they leave, those they support may give up as they rely on the supportive relationship which in times of trauma cannot be transferred.

Final Words:

The experiences and stories we have shared in this submission unequivocally highlight the importance of viewing the elements of prevention, early intervention, response, recovery and healing of domestic, family and sexual violence for Aboriginal people, through an Aboriginal lens.

Aboriginal designed, led and place-based responses are essential. In considering place-based responses, we must remember that so many Aboriginal people are displaced, and their cultural connections remain in the regions. For example, the former mission stations such as Point Pearce, Raukkan and Koonibba are still viewed as the heartland of those regional communities but more of their people live in the regional towns. The views and experiences of those communities must be listened to.

For Aboriginal people experiencing and perpetrating domestic, family and sexual violence, a fundamentally different approach is needed and we call on the Royal Commission to ‘make serious attempts to enable Aboriginal and Torres Strait Islander community organisations to design a system for them and by them’.¹⁸

We thank you for considering this submission. You are welcome to contact our policy and advocacy unit if you have any questions about this matter at [REDACTED]

Signed:



Deputy Chief Executive Officer
Aboriginal Legal Rights Movement

¹⁸ Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., Parsons, J., Prior, G., Idagi, L., Bruce, R., Twist, A., Gray, T., Hostalek, M., Gibson, J., Mitchell, B., Lea, T., Miller, C., Lemson, F., Bogdanek, S., ... Cahill, A. (2023). You can't pour from an empty cup: Strengthening our service and systems responses for Aboriginal and Torres Strait Islander children and young people who experience domestic and family violence (Research report, 01/2023). ANROWS (pages 7-9, 59).

ABORIGINAL LEGAL RIGHTS MOVEMENT ('ALRM')

Supplementary Paper to the Royal Commission into Domestic, Family and Sexual Violence on ALRM's proposed diversionary model – the 'Julia Lansley model'

ALRM refers to our submissions to the Royal Commission into Domestic, Family and Sexual Violence in which we discussed the "Julia Lansley model". In our first submission in response to the discussion paper dated 16 August 2024 we referred to the model on page 14 and in our further submission of 31 October 2024 we referred to it on page 15.

The model was a successful restorative justice model that was set up in Ceduna in the 2000's by Julia Lansley who had been the legal practitioner for the Ceduna Aboriginal Family Violence Prevention Legal Service in the early 2000's. It was her model, we admired it and we worked with it.

It enabled equal representation of both the people by competent legal practitioners, both from Aboriginal Community Controlled Organisations. ALRM considers that equal representation of victims and accused in domestic and family violence legal matters is important, in terms of basic equality before the law and in equal access to justice. Access to justice for Aboriginal people includes being empowered to be represented by ACCO legal services.

Like all diversionary processes, its ultimate success depended upon the suitability, workability and practical application of the therapeutic process which it endorsed. At the time that the Julia Lansley model was applied in Ceduna in the early 2000s, it is believed that the FVPLS had some resources to enable these programs to be carried out.

This paper is directed towards analysing current court processes to determine whether the Julia Lansley model can be adapted to and applied to the Magistrates Court as it presently operates.

In many ways the Julia Lansley model is much like other diversionary court programs, like the Treatment Intervention Program for mental illness and drug addiction, in that the finalisation of the charges is held pending allowing for the defendant to undergo counselling/ treatment for their underlying mental health or drug addiction issues. Therefore, it would appear that the Julia Lansley model could be used as a basis for a Family and Domestic Violence diversionary court.

Rule 14.6 of the Joint Criminal Rules already allows for a Family Violence Court List:

14.6—Magistrates Court

The following lists are established—

- (a) Treatment Intervention Court list—for hearings in matters where drug addiction is a criminogenic factor suitable to be managed with a view to the defendant's rehabilitation before determination of sentence;

- (b) Family Violence Court list—for hearings in matters where family violence is a criminogenic factor suitable to be managed with a view to the defendant’s rehabilitation before determination of guilt or sentence.

It is of great significance that rule 14.6 (b) allows for the matter to be managed with a view to the defendant's rehabilitation before determination of guilt or sentence.

Clearly, the Julia Lansley model leading to the therapeutic program without necessarily an admission of guilt or guilty plea, could be accommodated within this rule. It would also allow for resolution of the matter by withdrawal of the charges, if that were considered by the parties to be a suitable outcome. The position of the victim is crucial to this.

ALRM suggests that the only effective criterion should be the free, prior and informed consent of the victim¹. This principle, abbreviated to FPIC, whilst not formally applied by the Declaration on the Rights of Indigenous People to the position of domestic violence victims, seems equally suitable to victim’s decision-making upon legal advice in relation to domestic violence Court process.

Of course, only focusing on the Defendant’s rehabilitation before sentence will not provide the same outcomes as the Julia Lansley model in which victim’s voices are being represented through competent, independent legal counsel. That is not to say that Rule 14.6b could not be amended to reflect the broader Aboriginal family wide therapeutic outcomes and the effective desistance from family violence by the perpetrator which the Julia Lansley model suggests.

However, if that competent, independent legal counsel does not have standing to appear and a framework within which they can work collaboratively and cooperatively with the prosecuting authority as to the attitude of the victim to the proceeding and the appropriate outcome, then the aims of the model will not be achievable.

At present there is only one limited allowance for victims in a matter to be represented by an appropriate representative and that is pursuant to section 32A of the *Victims of Crime Act 2001*. That is limited to representation to exercise any right granted to a victim under that Act on behalf of that victim. Whilst those rights include the right to fair and dignified treatment in the court process, (s6 of the *Victims of Crime Act*) this would not extend to

¹¹ United Nations Declaration on the Rights of Indigenous People article 19 which appears to refer to the implementation of the model itself. **Article 19**

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

In addition, article 22 refers to the particular rights of elders, women, youth, children and persons with disabilities in the implementation of the Declaration **Article 22**

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. 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.

or ensure that victims are represented and have any input into the outcome of criminal proceedings.

For victims to be properly represented by competent, independent legal counsel in a criminal proceeding, it would need to be done under the Joint Criminal Rules 2022. Those rules govern how criminal matters are prosecuted. The *Criminal Procedure Act 2001* only allows for the laying of an Information in accordance with the Rules either by the Informant personally or by a legal practitioner. It is generally assumed that in criminal proceedings, the party laying the information is responsible for the conduct of the matter to its conclusion. It is that assumption which we must re-examine in light of the Julia Lansley model.

Division 3 of Part 4 of the Joint Criminal Rules 2022 provides for the representation of the Commissioner of Police as an Informant in Criminal Proceedings, that is someone who can lay an Information, being the SAPOL Prosecution Branch.

25.1—Right of representation of Commissioner

The Commissioner of Police as an informant, or as an applicant or respondent in a variation or revocation or enforcement proceeding governed by Chapter 8, may be represented in a proceeding by the SAPOL Prosecution Branch.

25.2—SAPOL Prosecution Branch acting for Commissioner

- (1) If the SAPOL Prosecution Branch representing the Commissioner of Police files a document in a proceeding, the SAPOL Prosecution Branch must be shown in the filing party details box as the “law firm/office”.

Rule 25.3 of the Joint Criminal Rules allows for SAPOL Prosecution Branch to nominate a responsible legal practitioner. This can be an individual sworn police prosecutor or prosecuting legal practitioner or a different individual.

25.3—Responsible legal practitioner

- (1) If the SAPOL Prosecution Branch is representing the Commissioner of Police, it may, but is not required to, nominate an individual sworn police prosecutor or prosecuting legal practitioner who has the overall responsibility for representation of the Commissioner of Police in the proceeding (the **responsible legal practitioner**).

Note—

The fact that a sworn police prosecutor is not a lawyer does not prevent the prosecutor being regarded as the “responsible legal practitioner”.

- (2) The SAPOL Prosecution Branch may file a notice of acting nominating a different individual as the responsible legal practitioner.
- (3) An individual nominated as the responsible legal practitioner continues to have overall responsibility for representation of the Commissioner of Police in the proceeding unless and until the SAPOL Prosecution Branch files a notice of acting nominating a different individual as the responsible legal practitioner.

Subrule (3) allows SAPOL prosecution Branch to nominate different people as the responsible legal practitioner, however if this is done, they remain the representative of the Commissioner of police, not the victim. As a party, the Commissioner of Police acts in the public interest for the prosecution by proof of the commission of a crime in court and submissions on sentence directed to co-design punishment.

This is not necessarily the same interest as would be served by a legal practitioner acting for an Aboriginal victim of domestic violence. Such a victim may seek a therapeutic outcome through desistance from domestic violence by their partner and wish for the maintenance of their family and family home as a safe environment for the restored family.

That is not all victims. Some victims would simply wish to have their case prosecuted to conclusion and if necessary that the perpetrator be imprisoned. In those cases, the victim would not seek the application of the Julia Lansley model, rather the matter would proceed to conclusion in the ordinary way.

The Joint Criminal Rules allow for the joinder of parties to criminal proceedings.

Part 4 Division 1 rule 23.1(6) specifies that

The Court may, if it thinks fit, join another person as an interested party in a proceeding or appellate proceeding.

Under rule 23.3(1)

The Court may at any stage order the joinder or disjoinder of a party to a proceeding or appellate proceeding on such conditions as it thinks fit.

Under the Rules, the initial laying of the Information and all provision of disclosure would remain with SAPOL until a matter is moved to that Family Violence list. SAPOL must be involved in order to lay the initial Information and to provide disclosure so that the matter can be properly considered as to whether it is suitable for the Family Violence List.

Accordingly, when all of the parties agree; that is, police prosecutions, defence and the legal practitioner for the victim, that the matter is suitable to go into the Family Violence Court list, there appears to be power under the rules for the victim to be joined as a party to the proceedings. Questions of standing in individual cases for individual victims could be subsumed within general rules of court as to the operation of the list, and upon the nature of the interests to be put before the court by the victim under the Julia Lansley model. In that regard, it is noteworthy that under rule 23.3 (1) the order of the court allowing joinder of the victim as a party may be made under such conditions as the court sees fit.

Rules as to representation in a proceeding by a law firm are governed by Division 2 rule 24.1 and following, including the rules about responsible legal practitioners. As such, a Family Violence Prevention Legal Service or other legal service dedicated to the interests of Aboriginal victims would fit the criteria, provided that it was constituted as a law practice under Part 3 Division 3B of the *Legal Practitioners Act*.

A statement of Agreed Facts as between the lawyer for the victim and the lawyer for the accused could, in some cases be provided to the court as the basis upon which both the matter was put into the Family Violence List. However, where facts are not agreed, or where the charges are disputed, the matter would never get into the Family Violence List

because they would be dealt with in the ordinary way through disputed facts hearings or through trial.

The conduct of the matter within the list would be in the hands of the nominated legal practitioner for the victim and the legal practitioner for the accused. There would be a protocol and procedural steps for the undertaking of therapeutic programs in the list and the question of the ultimate disposition of the matter would be a matter dealt with as between all parties and the court.

There remains the problem of ultimate responsibility for the prosecution. A MOU would need to be prepared to encapsulate an understanding that the prosecution of the alleged perpetrator by police was in the hands of SAPOL but that the specific conduct of the matter would be under the instructions of the victim through the victim's legal practitioner who appears for the victim.

Acting through a MOU, it would be expected that the SAPOL prosecuting legal practitioner would respect the wishes of the victim.

For example, there would be some cases whereby the victim gave free informed and prior consent for the withdrawal of the prosecution upon the basis of a successful outcome and a reconciliation between the parties.

There might be other cases whereby a guilty plea was considered essential for an acknowledgement by the accused of the nature and seriousness of his or her conduct.

Sentencing: Taking into account the therapeutic program and its effectiveness is an essential part of the process of the proposed Family and Domestic Violence court. Conditional discharge with a good behaviour bond might be entered into by the defendant, with or without the suspension of a sentence of imprisonment. There is much settled law on this question in the interpretation of the *Criminal Law Sentencing Act* in these regards and it would be applied in the ordinary way.

In summary, ALR M suggests that the restorative Justice model for family violence cases involving Aboriginal families applied by Julia Lansley and ALRM in Ceduna can be adapted and applied to family and domestic violence cases involving Aboriginal families, through existing processes under South Australian law. The specific representation by victims in the court process is the novel characteristic.

The model is not the same as the Nunga Court arrangements under the *Magistrates Court Act*. That is exclusively a sentencing court, and the provisions in the *Magistrates Court Act* do not make allowance for the involvement or representation of victims. However, there is a particular model for an Aboriginal sentencing court in Port Lincoln which does take into account the interests of victims and the trialing of the Julia Lansley model in that court is a possibility which could be considered.

Carrie Demertzis and Christopher Charles
ALRM 29 April 2025

Reply To: Adelaide

Your Reference:

Our Reference:

20th December 2012

Ms Marjorie Todd
Assistant Secretary
Legal Assistance Branch, Social Inclusion Division
Commonwealth Attorney General's Department
Robert Garran Offices
BARTONACT 2601.

Dear Ms Todd,

Re: Relationship between ATSILS and Family Violence Prevention Legal Services

Further to the performance meeting of the 11th of December 2012 I write at your request to advise you about the model for collaboration between ATSILS and Family Violence Prevention Legal Services which was commenced by Ms Julia Lansley formerly of the Ceduna Family Violence Prevention Legal Service in the early to mid-2000s. She worked in collaboration with our former Ceduna solicitor Karl Kirsten.

Ms Lansley was a very experienced Solicitor, originally from Canberra who for a period worked for that legal service. At the same time ALRM had Karl Kirsten based in Ceduna. It was notorious that the Ceduna Magistrates Court frequently had serious Aboriginal family violence cases. The cases came from the Aboriginal community in Ceduna and from Koonibba. Koonibba community is 40 kilometres west of Ceduna and was originally a Lutheran mission.ⁱ

There almost certainly were cases from Yalata, 200 Kilometres west of Ceduna however because Ananguⁱⁱ who live on that community were not so articulate in communicating with police, it is likely that there was significant under reporting of domestic cases from Yalata community. In the 1990s ALRM, on occasion acted for women to get a restraining orders in the Yalata Magistrates Court, when there was no other assistance available. I am aware, from Ms Lansley that despite their requests the Ceduna Family Violence Service was not allowed to extend its services to Yalata community at that time.

The Lansley model

The Lansley model worked on the assumption that where there was a case of domestic violence the South Australian police would prosecute the alleged perpetrator for assault or aggravated assault upon a family member in the ordinary course. That occurred regardless of the marital status of the parties, though many Aboriginal couple in the region were in domestic de facto marriage relationships.

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ALRM would act for the accused and would get them bail, often on the basis that they left the family home. There then came into play a memorandum of understanding between the Family Violence Prevention Legal Service (FVPLS) and the South Australian police (SAPOL) prosecutions unit in Ceduna. Under that memorandum of understanding, it was understood that the prosecution of the alleged perpetrator by police was in the hands of SAPOL but that the specific conduct of the matter would be under the instructions of the victim through the FVPLS Solicitor.

The Solicitor would advise police of any steps to take place in the litigation on the basis of their signed instruction from the alleged victim. In practical terms this often meant that the matter would be adjourned and or remanded for some time in the Magistrates Court. That would occur, possibly with conditions of bail allowing for a return to the domestic relationship under strict conditions of non-violence and that the alleged perpetrator should undergo counselling and anger management programs and related conduct designed to improve the domestic relationship. A therapeutic and relationship improvement model was thus adopted.

If the court were satisfied by affidavit evidence that the alleged perpetrator had completed certain programs, and had changed his approach to the domestic relationship, it was possible that under certain circumstances the prosecution could be withdrawn by police upon the written instructions of the alleged victim as relayed through the FVPLS solicitor. Under this model, it was emphatically not the case that domestic violence cases were withdrawn by prosecutions, upon the basis of overt or covert subornation or moral pressure upon the victim by the accused or his family.

Withdrawal of a prosecution was by no means a foregone conclusion and some cases would result in guilty pleas and usual punishments imposed by a court. I am not aware of cases where there were significant disputes as to the facts on the cases as to justify a trial on the facts. In fact I suspect that they are rare if they occurred at all. It is likely that written agreement as to the factual basis would have underpinned guilty pleas or the withdrawal of charges.

This arrangement between ALRM and the Ceduna FVPLS resulted in the equal representation of both parties by competent solicitors.

Effectively SAPOL as the body laying charges and prosecuting the case, acted as the agents of the FVPLS lawyer in the conduct of litigation, notwithstanding that charges had been laid by SAPOL under usual police processes. I am not aware of whether the FVPLS solicitor ever sought locus standi to represent the victim separately, but on the face of it this was not necessary. I do not have access to the Memorandum Of Understanding that was made between the FVPLS and SAPOL.

To my knowledge this model only proceeded for as long as Ms Lansley was in Ceduna and I believe that she retired sometime around 2005. I am not confident of these dates however. I have not been able to keep in touch with her, but she was a practitioner for whom I had a high regard.

It is ALRM's submission that this was a very good model because it allowed for appropriate and equal representation before the courts of both sides of a domestic violence case. It also allowed for therapeutic interventions within the family such that in some cases that litigation could be withdrawn or in some cases it could result in guilty pleas and resolution by ordinary court process.

To my knowledge it has not been renewed in Ceduna since the departure of Ms Lansley .

It is submitted that this model is well worth considering in so far as it can be applied to other cases and other situations.

The model carried out the intentions of the Commonwealth by allowing for separate but effective representation of Aboriginal victims by a Legal Service parallel with but separate from ATSILS. Conflict of interest within the ATSILS service was thus avoided. The model had the advantage of allowing both for equal representation and for the appropriate separation of representation in domestic violence cases. The *Victims of Crime Act 2001*, now operating in South Australia, should not prevent the Lansley model from being used in the future; to the contrary, the legislation should encourage it. See sections 5 & 6 *Victims of Crime Act 2001*.

Yours faithfully

Christopher J. Charles LLB
Legal Practitioner,
Director of Legal Services
Aboriginal Legal Rights Movement Inc.
[REDACTED]

" Liability for this Practitioner limited by a scheme approved under Professional Standards Legislation"

ⁱ Outback Ghettos by Peggy Brock Cambridge University Press 1993.

ⁱⁱ Anangu is the personal collective noun used by southern Pitjantjatjara people to describe themselves. Yalata was set up, again by the Lutherans in the 1950s as a response to the resettlement of the Pitjantjatjara from Ooldea, after the closure of the OAM Mission and the commencement of nuclear tests.