

**North Australian Aboriginal
Family Legal Service**



Response to the inquiry into missing and murdered First Nations women and children

Prepared by the North Australian Aboriginal Family Legal Service (NAAFLS)

12 December 2022

Darwin

1800 041 998

(08) 8923 8200

32 Dripstone Road, Casuarina NT 0810

PO Box 43104, Casuarina NT 0811

admin@naafls.com.au

Nhulunbuy

0477 400 116

Suite 1, Endeavour House,

81 Chesterfield Circuit, Nhulunbuy NT 0880

PO Box 1616, Nhulunbuy NT 0881

Katherine

1800 184 868

(08) 8972 3200

16 Katherine Terrace, Katherine NT 0850

PO Box 240, Katherine NT 0851

kadmin@naafls.com.au

About the North Australian Aboriginal Family Legal Service

The North Australian Aboriginal Family Legal Service (**NAAFLS**) is an Aboriginal Community Controlled Organisation and independent Family Violence Prevention Legal Service. We have offices in Darwin (Larrakia land), Katherine (Jawoyn, Dagoman and Wardaman land) and Nhulunbuy (Yolngu land), and service over 40 remote communities within the Top End region spanning from the Tiwi Islands down to Lajamanu, Wadeye across to Borroloola.

We provide culturally sensitive legal representation and support to Aboriginal and Torres Strait Islander people in Top End communities who have experienced domestic, family and sexual violence. Our lawyers work alongside client support officers and case workers, which are Aboriginal and Torres Strait Islander identified roles, to ensure that our service is culturally safe and holistic. Our primary areas of legal practice include child protection, family law and domestic violence orders.

NAAFLS is the only victim-based Aboriginal legal service in remote communities in the Northern Territory.

Acknowledgment of Country

NAAFLS acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water and community and thank them protecting this land and sea since time immemorial. We pay respects to Elders past and present and recognise that sovereignty was never ceded.

Throughout this submission the term 'Aboriginal' is in reference to, and includes, 'Aboriginal and Torres Strait Islander Peoples'.

Introduction

NAAFLS welcomes the Senate inquiry into missing and murdered First Nation women and children (**Senate inquiry**) as a starting point to further a more substantive investigation. We will focus our response on domestic, family and sexual violence (**DFSV**) in regional and remote Aboriginal communities from the perspective of victim-survivors.

Australia is dealing with endemic levels of DFSV across both Indigenous and non-Indigenous communities. However, Aboriginal women are facing higher DFSV related mortality rates, which until now, has been largely ignored by the settler state. We have been working with victim-survivors in remote Aboriginal communities for over 15 years and the systems, policies and enforcement mechanisms put in place to

prevent DFSV violence against Aboriginal women are failing at every level, with some women ultimately paying with their lives.

Missing and Murdered Women

“In Canada they call it genocide. There, the widespread killing and disappearances of Indigenous Women has been blamed on the state itself. But here we do not even bother to keep data on the hundreds of Aboriginal women murdered or who go missing”.¹

A recent Four Corners investigation estimates that at least 315 Aboriginal or Torres Strait Islander women have either gone missing or been murdered or killed in suspicious circumstances since 2000.² Whilst national homicide rates are declining, Aboriginal women continue to be murdered at eight times the rate of non-Indigenous women.³ In some regions of Australia, this figure is up to 12 times the national average.⁴ Currently Australia does not have a standardised method for investigating missing person cases and there is no national database tracking missing or murdered Aboriginal women, so the figures we have available underestimate the true scale of violence.

The experiences of Aboriginal women experiencing DFSV and disadvantages – particularly in remote communities – is also missing from the national consciousness. This is of little surprise in a country that continues to ignore its true history. For example, *‘The Choice – Violence of Poverty’* by Anne Summers AO, which explores the intersections of domestic violence and single motherhood, does not include data in relation to Aboriginal women.⁵ Summers has said that this was due to a “sampling problem”, in that the personal safety survey did not disaggregate their data between Aboriginal and non-Indigenous women.⁶ “Inaccurate and incomplete information on missing [Aboriginal women] ... [makes] it more difficult to spread information across the country that could potentially solve those cases”.⁷

Prior to the national inquiry into missing and murdered Indigenous women and girls in Canada (**Canadian national inquiry**), there was also no accurate recording of missing and murdered Indigenous Canadian and Native American women. So much so, that in 2016 there was a staggering 5,596-person difference in “logged” missing women cases between the National Crime Information Centre and U.S. Department of Justice databases.⁸ In 2016, it was reported that Indigenous women made up just 4% of Canada’s female population but represented 16% of women murdered in the country.⁹ In the wake of the Canadian national inquiry, community led databases grew in popularity and began keeping track of missing and murdered

¹ Bridget Brennan, The murdered women Australia doesn’t count, *ABC News Daily* (Podcast, 2022) <[ABC News Daily: The murdered women Australia doesn't count on Apple Podcasts](#)>.

² Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman, How many more? The killings and disappearances of Indigenous women across Australia is a crisis hidden in plain sight, *Four Corners* (Online, 24 October 2022) <[The killings and disappearances of Indigenous women across Australia is a crisis hidden in plain sight - ABC News](#)>.

³ Australian Associated Press, Murder rate of First Nations women eight times higher than for non-Indigenous counterparts, *The Guardian* (Online, 5 October 2022) <[Murder rate of First Nations women eight times higher than for non-Indigenous counterparts | Indigenous Australians | The Guardian](#)>.

⁴ Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman, as above n 2.

⁵ Lily Brown, Why we need to educate journalists about Aboriginal women’s experience of family violence, *The Conversation* (Online, 25 November 2016) <[Why we need to educate journalists about Aboriginal women's experience of family violence \(theconversation.com\)](#)>.

⁶ Ibid.

⁷ Braeden Waddell, Incomplete Data Complicates the Search for Missing Native American Women, *U.S. News* (Online, 1 November 2021) <[The Link Between Missing Indigenous Women and Missing Data \(usnews.com\)](#)>.

⁸ Native Hope Webpage, Missing and Murdered Indigenous Women (Web Page) <[Missing and Murdered Indigenous Women \(MMIW\) \(nativehope.org\)](#)>.

⁹ John Paul Brammer, Why thousands of indigenous women have gone missing in Canada, *Vox* (Online, 5 July 2016) <[Why thousands of indigenous women have gone missing in Canada - Vox](#)>.

Indigenous women and girls. This was part of a broader Canadian movement to "decolonise data"¹⁰ and to encourage the investigation and recognition of missing and murdered Indigenous women.

Colonisation

Aboriginal and Torres Strait Islander people had been thriving in this country for over 60,000 years before the arrival of European colonial settlers who perpetrated heinous crimes against Aboriginal peoples, cultures and lands. This truth must be acknowledged before meaningful conversation on the crisis of DFSV and missing and murdered Aboriginal women in this country can take place.

The history of this country is marked by massacres of Aboriginal people, the stealing of Aboriginal children from their families and the removal of Aboriginal people from their traditional lands. Aboriginal children were held in foster and institutional care under removal policies that continued until the 1960s. They suffered physical and sexual abuse, were prohibited from speaking their own language and prevented from maintaining contact with their families. Clan groups were forced onto missions with others that spoke different languages and held different cultural beliefs, which has led to violence that can still be seen in some communities today. Colonisation has interfered with kinship structures which have traditionally prevented violence; languages have been lost and cultures have been destroyed.

Aboriginal people continue to face the traumas of colonisation within their communities today. This trauma is highly complex and deeply embedded. Settler interference in Aboriginal communities continues to result in the dispossession of land and culture, breakdown of families, rising poverty, structural racism and continued disempowerment. The policies, laws, processes and structures of the settler state that are imposed as 'solutions' has only worked to further embed disadvantage. Aboriginal family structures continue to be eroded by the state removal of children and over-policing of communities. Aboriginal people are inadequately housed, impoverished, unemployed, face poor health outcomes and die in custody. These are all interrelated drivers of violence and are directly linked to settler interference.

We refer to the forward in the Australian National University Report, *'The Answers Were There Before White Man Come In' 2020 (The Answers Before Report)* by Professor Tom Calma AO who wrote on the issue of DFSV and said:

"Colonisation and related violence enacted on Aboriginal and Torres Strait Islander peoples and communities, perpetrated by intergenerational trauma and the undermining of traditional gender structures, is at the root of [DFSV] violence."¹¹

Key Recommendations

1. NAAFLS recommends that significant investment must be made into consulting and listening to Aboriginal Elders and Aboriginal women in leadership in respect of violence in their communities.

¹⁰ Ibid.

¹¹ Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), *The Answers Were There Before White Man Come In: Stories of Strength and Resilience for Responding to Violence in Aboriginal and Torres Strait Islander communities – Family and Community Safety for Aboriginal and Torres Strait Islander Peoples Study Report*, The Australian National University College of Health and Medicine, p. 7 < [CHM200082 TAWTBWMCI v9 WEB 1.pdf \(anu.edu.au\)](#)>.

2. NAAFLS recommends the government undertake a full review of the Northern Territory police force and implement policies and procedures to ensure the consistent, proper and culturally safe response to DFSV in remote communities.
3. NAAFLS recommends that improving financial security across Aboriginal communities would directly reduce the rates of DFSV.
4. NAAFLS recommends that improving housing conditions and availability would directly reduce the rates of DFSV in remote Aboriginal communities.
5. NAAFLS recommends that any response is based on the government adequately funding the Aboriginal Community Controlled and designed responses to DFSV.
6. NAAFLS recommends that the government significantly increase culturally appropriate crisis housing in remote Aboriginal communities for both victim-survivors and perpetrators.
7. NAAFLS recommends significant investment in behavioural change programs for perpetrators, particularly those designed and delivered by Aboriginal organisations and in remote communities.

Aboriginal Led and Controlled Solutions

NAAFLS recommends that significant investment must be made into consulting and listening to Aboriginal Elders and Aboriginal women in leadership in respect of violence in their communities.

Aboriginal women in leadership know what decisions and directions are best for, and will be accepted, by their communities. Prioritising their recommendations is critical if we want to effectively address DFSV. The experience of non-Indigenous women experiencing DFSV cannot be used as a valid point of consultation; the experiences for both groups are significantly different. NAAFLS recognises the strength, cultural richness and foresight of Aboriginal communities who have the fortitude and wisdom to improve outcomes for themselves. We are aware that there are already leaders working towards DFSV solutions in a number of Top End communities.

We refer to Teela Reid's – a Wiradjuri and Waliwan woman and lawyer – essay, *'The Power of the First Nations Matriarchy'* in 2022 in which she writes:

"LET'S BE CLEAR: the First Nations Matriarchy prospered long before the Western world violently invaded Indigenous lands and waters, and it continues to endure the test of time. The existence of First Nations Matriarchs on this ancient sovereign soil is the resistance that threatens the legitimacy of the white patriarchy".¹²

NAAFLS reinforce that any government interventionist approach that is absent of Aboriginal consultation and direction will be unsuccessful. We strongly affirm that the government cannot expect any

¹² Teela Reid (2022), *The Power of the First Nations Matriarchy in Acts of Reckoning*, *Griffith Review* 76, p. 50.

improvements based on isolated settler state initiatives. The current systems have already failed Aboriginal communities. The government does not have the lived experience, nor has it ever been a safe or protective authority for Aboriginal communities.

The Complexities with Settler States

We witness the complexities faced by Aboriginal people navigating colonised states, laws and policies every day. Aboriginal people are forced to live in disparate worlds; the colonised world is built on systems and structures that are created, maintained, and prioritised for settlers at the cost of Aboriginal communities. This creates constant and impossible tensions with Aboriginal people trying to navigate inherently problematic, and culturally misaligned settler systems.

Aboriginal communities risk discrimination particularly with any legislative, policy and state response. It is beyond the scope of this submission to adequately address the breadth of embedded unfairness faced by Aboriginal communities when interacting with the state. We encourage the Senate Committee to prioritise the review of submissions prepared by Aboriginal Community Controlled Organisations and Aboriginal community members.

Rates of DFSV in the Northern Territory

The Northern Territory has the highest rate of DFSV and DFSV related homicides in the country. There were 5,733 victims of DFSV in the Northern Territory in 2021 – the number of victims has grown by more than 2,000 in three years.¹³ On a typical day in the Northern Territory there are 61 domestic violence incidents.¹⁴ Close to 90% of victims of DFSV related assaults in the Northern Territory are Aboriginal.¹⁵ This is despite the Aboriginal population making up only 27% of the total Northern Territory population.¹⁶

There is much research around why the rate of DFSV is higher in Aboriginal communities and why Aboriginal women experience violence at such a disproportionate rate. Violence against Aboriginal women must be understood and seen within the context of the state-imposed continuum of ongoing racial violence, abuse and socio-economic disadvantage.¹⁷ This violence has included dispossession of land, murder, slavery, rape, sexual exploitation, removal of children and denial of culture, language, identity and connection to land. The experiences of Aboriginal women facing violence in the Northern Territory is compounded by additional barriers and challenges such as limited infrastructure, inadequate housing, financial insecurity, previous experiences of violence and intergenerational trauma.¹⁸

¹³ Australian Bureau of Statistics (2022), Recorded Crime – Victims, Canberra: Australian Capital Territory < [Recorded Crime - Victims 2021 | Australian Bureau of Statistics \(abs.gov.au\)](#) >.

¹⁴ Northern Territory Government (2018), The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018–2028, p. 12 < [Domestic -Family- and Sexual Violence Reduction Framework.pdf \(nt.gov.au\)](#) >.

¹⁵ Northern Territory Council of Social Service, Domestic, Family & Sexual Violence in the Northern Territory (Web Page) < [Domestic Family and Sexual Violence - NTCOSS - Northern Territory Council of Social Service](#) >.

¹⁶ Australian Bureau of Statistics (2022), as above n 16.

¹⁷ Our Watch (2018), Changing the picture, Background paper: Understanding violence against Aboriginal and Torres Strait Islander women and their children, p. 25 < [Changing the picture: Background Paper \(ourwatch.org.au\)](#) >.

¹⁸ Chay Brown, Sarah Homan, Carmel Simpson and Loksee Leung (2021), Rante-rante ampe Marle and Urreye "Safe, Respected and Free from Violence" projects evaluation, Australia's National Research Organisation for Women's Safety, p. 11 < [RF.20.1-Brown-et-al-Eval-of-PP-EQI-RR.pdf \(netdna-ssl.com\)](#) >.

NAAFLS is aware that there is a misconception that violence perpetrated against Aboriginal women is only perpetrated by Aboriginal men.¹⁹ Whilst there is no available data on the cultural and ethnic background of men who perpetrate violence against Aboriginal women, anecdotal evidence – including from the inquiry into the protection of Aboriginal children from sexual abuse (2007) – suggests that non-Indigenous men make up a significant proportion of perpetrators of violence against Aboriginal women in regional and remote communities.²⁰

Institutional Responses to Violence

The structures that generate violence are overwhelmingly created by the settler state that maintains grossly unfair systemic conditions for Aboriginal communities. The inequitable responses have been articulated in the litany of reporting on the social justice crises across Aboriginal communities. Despite decades of reporting, there has been a failure to actively listen to or invest in Aboriginal led community decision making. Unfortunately, mainstream social service delivery is often complicit in this approach and often fails to adequately incorporate the voices and viewpoints of Aboriginal communities into the design and delivery of services. Therefore, in order to adequately address this systemic issue in its entirety, a holistic approach to service delivery must be adopted – one that prioritises Aboriginal community led initiatives and combines both preventative and remedial interventions.

Systemic Racism in the Police Force

NAAFLS recommends the government undertake a full review of the Northern Territory police force and implement policies and procedures to ensure the consistent, proper and culturally safe response to DFSV in remote communities.

NAAFLS is the primary provider of DFSV and family law services for Aboriginal people in the Top End, East Arnhem and Big River regions of the Northern Territory. In our work we observe the daily ‘*dual discrimination*’ faced by Aboriginal women.²¹ That is, ‘*discrimination by virtue of being Aboriginal and discrimination as a consequence of being a woman*’.²² We are acutely aware that violence against Aboriginal women is rooted in invasion and the continued project of settler colonialism; invasion being the total disregard of consent for bodies or over land.²³

Larissa Behrendt – a Eualeyai and Kamillaroi lawyer and academic – has noted:

*“[Historically Aboriginal women] were positioned as commodities or objects of currency on the land ... positioned as sexually available (‘highly rapeable’) or able to be sexually violated with impunity (‘unrapeable’)”.*²⁴

¹⁹ Our Watch (2018), as above n 21, p. 20

²⁰ Ibid.

²¹ Professor Megan Davis, Indigenous women ‘invisible’ to justice, *UNSW Newsroom* (Online, 20 September 2012) <Indigenous women ‘invisible’ to justice | UNSW Newsroom>.

²² Ibid.

²³ Deathscapes, Indigenous Femicide and the Killing State (Web Page) <[Indigenous Femicide and the Killing State – Deathscapes \(2016-2020\)](#)>.

²⁴ Larissa Behrendt in Deathscapes, as above n 27.

Paola Balla – a Wemba Wemba and Gunditjmara artist, curator and researcher – has said that because Aboriginal women were depicted in the media as ‘loose’ and ‘existing only for the pleasure of men’, they ‘became currency in the colonial project’.²⁵

This narrative still underpins the colonised state today, as Aboriginal women’s lives continue to be undervalued.²⁶ The calls for addressing this undervaluing has aired across prime media in recent weeks with Four Corners reporting on the deaths of Ms R. Rubunjta and Ms R. Curry as devastating examples of system failures. In this report, domestic violence researcher and academic Chay Brown expressed her frustration at the “systems failure”. She said:

*“How can a man repeatedly stab women, severely injure women and receive sentences as short as 12 months? [...] There’s no speeches in Parliament decrying and saying “we need to end violence against First Nations women”. There are no social media campaigns. There is just silence”.*²⁷

Interaction between state enforcement and Aboriginal communities is inherently problematic. It is beyond the scope of this submission to adequately address these interactions as we remain focused on the failure of police to adequately respond to DFSV in Aboriginal communities. We would, however, like to acknowledge Noongar human rights lawyer and legal researcher – Hannah McGlade’s – comment that:

*“[Aboriginal] women know the Australian state was built on violence and that the instruments of law, the police and courts, can never really be trusted to protect black women’s bodies. We know that the Australian legal system’s tolerance of sexual violence towards Indigenous women is deeply seated in Australian history”.*²⁸

Aboriginal victim-survivors report various intersecting failures of police response to DFSV. Whilst there is no clear statistic on how many times police have failed to respond to DFSV calls from Aboriginal women in the Northern Territory, our clients report that when police do respond it is held in bias, discrimination and preconceptions. This is evidenced by a recent inquiry into Queensland police service responses to DFSV (**Queensland inquiry**).²⁹ The Queensland inquiry heard that police often make derogatory and dehumanising remarks about female (Indigenous and non-Indigenous) victim-survivors, including that “domestic violence is just foreplay”, “she’s too ugly to be raped” or “I can see why he does it to her — if I was in his position, I’d do that”.³⁰ The Queensland inquiry also heard that the “more times a person became known as a “regular [caller]” the less support and empathy they receive”.³¹

An inquest into the shooting of Warlpiri teenager Mr K. Walker heard that the arresting officer Zachary Rolfe often referred to Aboriginal people as “n***as”, “c**ns”, and “neanderthals”.³² In another exchange Rolfe said he “like[d]” to “towel up” Aboriginal people, meaning he liked to “beat [Aboriginal] people up”.³³ NAAFLS was disturbed to learn that Rolfe was involved in 46 use-of-force reports before Mr K. Walker’s

²⁵ Paola Balla in Deathscapes, as above n 27.

²⁶ Brooke Fryer, Vanished: The Unresolved Cases of First Nations Women, *SBS Feed* (Online) < [Vanished: The unsolved cases of First Nations women | SBS The Feed](#) >.

²⁷ Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman, as above n 2.

²⁸ Hannah McGlade in Deathscapes, as above n x.

²⁹ Ben Smee and Eden Gillespie, Queensland police inquiry hears allegations of recruits being taught racism, officers being raped, *The Guardian* (Online, 6 October 2022) < [Queensland police inquiry hears allegations of recruits being taught racism officers being raped | Queensland | The Guardian](#) >.

³⁰ Ciara Jones, Queensland police response to domestic and family violence inquiry hears of ugly comments, crews avoiding call outs, *ABC News* (Online, 14 July 2022) < [Queensland police response to domestic and family violence inquiry hears of ugly comments crews avoiding call outs - ABC News](#) >.

³¹ *Ibid.*

³² Samantha Jonscher, ‘Blatantly racist’ and ‘disgraceful’ texts between Zachary Rolfe and colleagues read out at Kumanjyi Walker inquest, *ABC News* (Online, 14 September 2022) < [‘Blatantly racist’ and ‘disgraceful’ texts between Zachary Rolfe and colleagues read out at Kumanjyi Walker inquest - ABC News](#) >.

³³ *Ibid.*

death in 2019 but no action was taken to discipline him.³⁴ This finding directly implicates the Northern Territory police in Mr K. Walker's brutal murder, which left the superintendent formerly in charge of central desert remote communities no choice but to admit at the inquest that Rolfe's behaviour was part of a "broader issue. Broader than an isolated issue".³⁵

NAAFLS Case Study

A woman from a community in Arnhem Land came to NAAFLS for assistance with a Domestic Violence Order (DVO) application. She was a victim of domestic violence perpetrated by her partner and had left the home she shared with her partner and moved in with her mother. She wanted to end the relationship. The woman asked local police to accompany her to the house she used to share with her partner so that she could collect her belongings without compromising her safety. The response she received from police was, "we're not removalists". When the NAAFLS lawyer and client support officer returned to the community on their next trip, the woman directed them to withdraw her DVO application because she felt that the DVO was pointless if police were not going to come to her aid.

Northern Territory Communities are Overincarcerated

NAAFLS reinforces that the imprisonment of DFSV perpetrators is not reducing reoffending or violence in the Northern Territory. Research suggests that harsher punishments, such as longer prison sentences, do not prevent crime and make it more likely that people will reoffend.³⁶ It is well established that the "severity of punishment, known as marginal deterrence, has no real deterrent effect, or the effect of reducing recidivism."³⁷

The Northern Territory has the highest imprisonment rate in the country, at 970.6 prisoners per 100,000 people.³⁸ In 2018, the Alice Springs Local Court recorded a 93% sentencing rate for DFSV related offences – 80% of which were repeated offenders.³⁹ In 2017-2018 over 60% of Northern Territory prisoners were reincarcerated within 2 years of release. This is the highest rate in the country.⁴⁰

Since 1992, the Northern Territory has imposed mandatory minimum sentences for repeat DVO breaches under the *Domestic and Family Violence Act 2007* (NT) (DFV Act). If a person is convicted of contravening a DVO for a second or subsequent time, the person will face mandatory imprisonment for at least seven days.⁴¹ This is despite there being no evidence that prison terms attached to DVO breaches have been effective in reducing violence, and few rehabilitative programs being available to prisoners.

There should be no doubt that mandatory incarceration laws have failed Aboriginal communities. They have provided no additional protection for Aboriginal women and victim-survivors of DFSV and have failed

³⁴ Melissa Mackay, Kumanjaji Walker inquest hears Constable Zachary Rolfe was 'repeatedly engaging in concerning behaviours' before shooting death, *ABC News* (Online, 1 November 2022) < [Kumanjaji Walker inquest hears Constable Zachary Rolfe was 'repeatedly engaging in concerning behaviours' before shooting death - ABC News](https://www.abc.net.au/news/2022-11-01/kumanjaji-walker-inquest-hears-constable-zachary-rolfe-was-repeatedly-engaging-in-concerning-behaviours-before-shooting-death-abc-news/10123456789)>.

³⁵ Sarah Collard, Kumanjaji Walker inquest: racism a 'broader' issue in NT police, superintendent says, *The Guardian* (Online, 27 September 2022) < https://www.theguardian.com/australia-news/2022/sep/27/kumanjaji-walker-inquest-racism-a-broader-issue-in-nt-police-superintendent-says?fbclid=IwAR2Lvg1r4GES_D1fLC4I-eWIPCc7BQYZPmDiy9KQsNyF47ncOPTz0Z9IZL0>.

³⁶ Ben Knight, Do harsher punishments deter crime? *UNSW Newsroom* (Online, 16 July 2020) < [Do harsher punishments deter crime? | UNSW Newsroom](https://www.unsw.edu.au/newsroom/content/2020/jul/16/do-harsher-punishments-deter-crime)>.

³⁷ Ibid.

³⁸ Sentencing Advisory Council Victoria, Australia's Imprisonment Rates (Web Page) < [Australia's Imprisonment Rates | Sentencing Council](https://www.sentencingcouncil.vic.gov.au/australias-imprisonment-rates)>.

³⁹ Department of the Attorney-General and Justice (2018), Pathways to the Northern Territory Aboriginal Justice Agreement: Aim One Reduce reoffending and imprisonment rates of Aboriginal Territorians, p. 55 < [Aim one - Reduce reoffending and imprisonment rates of Aboriginal Territorians](https://www.dagj.nt.gov.au/Pathways-to-the-Northern-Territory-Aboriginal-Justice-Agreement-Aim-One-Reduce-reoffending-and-imprisonment-rates-of-Aboriginal-Territorians)>.

⁴⁰ Sentencing Advisory Council Victoria, as above n 41.

⁴¹ *Domestic and Family Violence Act 2007* (NT), section 121.

to rehabilitate offenders. Incarcerated persons are cut off from identity, community, culture and social welfare. They often face considerable upset and blame across community and family on release and are left without the support and resources to address behaviours. Instead, incarceration perpetuates violence and reoffending by institutionalising offenders into a highly regulated and anti-social way of life.⁴² Over 63% of inmates in Northern Territory jails are being held on DFSV charges and almost 75% of them will go on to reoffend on release.⁴³ Incarceration removes connection to culture, land and spirituality which is intrinsic to Aboriginal identity⁴⁴ and essential for *“resilience, enhance self-esteem, engender pro-social coping styles [which] has served as a protective mechanism against mental health symptoms”* for Aboriginal people.⁴⁵

There have been widespread calls to repeal mandatory sentencing under the DFV Act.⁴⁶ The Northern Territory Legal Aid Commission, amongst others, has said that the mandatory sentencing provisions are *“particularly restrictive”* as there are *“no option(s) for a partially suspended sentence for a person who has a prior for breaching a DVO and sentences must be cumulative on other sentences. This results in unjust sentences as well as courts artificially reducing an appropriate sentence to arrive at a just result, rather than merely applying the sentencing principle of totality”*.⁴⁷ The North Australian Aboriginal Justice Agency (NAAJA) has similarly noted that the ‘exceptional circumstances’ exception to mandatory sentencing disproportionately disadvantages Aboriginal defendants: *“To qualify as ‘exceptional’ a circumstance ‘need not be unique or unprecedented, or very rare, but it cannot be one that is regularly, or routinely, or normally exceptional’. Given the extreme disadvantages of Aboriginal persons and limited access to therapeutic programs and services in remote communities it is very difficult to meet this threshold”*.⁴⁸

NAAFLS welcomes the *Sentencing and Other Legislation Amendment Bill 2022* (NT), and we look forward to working with government, stakeholders and community to ensure this critical amendment is realised.

Lack of Investigation into Missing Aboriginal Women

The Canadian national inquiry found undeniable prejudice in police response to missing Indigenous women.⁴⁹ Families of missing and/or murdered Indigenous women and girls told the Canadian national inquiry that the police failed to question certain important witnesses, did not search the scene for evidence, did not run tests to determine whether the victim had been sexually assaulted and some families received documents in a language they could not comprehend.⁵⁰ It is our experience that these same threads of racism and/or unconscious bias inform police response (or lack of) to missing Aboriginal women in the Northern Territory.

⁴² Jarryd Bartle, We know that prison doesn't work. So what are the alternatives? *The Guardian* (Online, 16 August 2019) < [We know that prison doesn't work. So what are the alternatives? | Jarryd Bartle | The Guardian](#)>.

⁴³ Domestic Violence: Northern Territory considers coercive control laws to reduce domestic violence, *NT News* (Online, 26 August 2022) < [Subscribe to NT News](#)>.

⁴⁴ Victorian Equal Opportunity and Human Rights Commission and Commission for Young People and Children (2018), Aboriginal cultural rights in youth justice centres, State of Victoria, p. 5 < [Aboriginal-cultural-rights-in-youth-justice-centres-WEB-180718.pdf \(ccyp.vic.gov.au\)](#)>.

⁴⁵ Stephane M Shephard et. al. (2017), 'The Impact of Indigenous Cultural Identity and Cultural Engagement on Violent Offending', *BMC Public Health* 18(50), p. 1.

⁴⁶ See: *Sentencing and Other Legislation Amendment Bill 2022* (NT).

⁴⁷ Northern Territory Legal Aid Commission, Submission No. 3 to the Northern Territory Law Reform Committee Inquiry into the mandatory sentencing and community-based sentencing options (2020), p. 5 in Northern Territory Law Reform Committee (2021), Final Report into Mandatory Sentencing and Community-Based Sentencing Options, p. 41 < [Final Report - Mandatory Sentencing and Community-based Sentencing Options](#)>.

⁴⁸ North Australian Aboriginal Justice Agency, Submission to the Northern Territory Law Reform Committee Inquiry into the mandatory sentencing and community-based sentencing options (2020), 3.2 in Northern Territory Law Reform Committee (2021), Final Report into Mandatory Sentencing and Community-Based Sentencing Options, p. 41 < [Final Report - Mandatory Sentencing and Community-based Sentencing Options](#)>.

⁴⁹ National Inquiry into Missing and Murdered Indigenous Women and Girls (2020), Reclaiming Power and Place: A Supplementary Report (Volume 2), p. 113 < [EXEC cover \(mmiwg-ffada.ca\)](#)>.

⁵⁰ Ibid, p. 111.

Our clients have told us that police do not always take their reports of violence and/or reports of missing kin seriously. This initial indifference to missing kin report results in a failure to start searching for Aboriginal women in the first 24-48 hours.⁵¹

This impact of delay was illustrated in Ms J. Anderson's disappearance from Mataranka, Northern Territory in 2014. It was reported that a police search was held off for three weeks.⁵² We understand this failure to respond was based on stereotypical assumptions that Aboriginal women go 'walkabout'. Of this, Yamatji-Noongar woman and Federal Senator Dorinda Cox recently observed that, "[There] is a very, very large view that [Aboriginal women] just lead a very casual life and therefore have just taken off or gone walkabout".⁵³

It is also no coincidence that Aboriginal women are being murdered in remote areas, on the fringes of towns or on highways. The roads and highways have historically been a space of "vulnerability and violence", where Aboriginal women and girls were stolen from their families and trafficked across borders.⁵⁴ Of the Canadian experience, Katherine Morton has criticised state responses to Indigenous women and girls' safety.⁵⁵ "Multiple billboards along the Highway of Tears (Canada) present hitchhiking as a dangerous mode of mobility that threatens the safety of Indigenous women and girls in particular, but the actual threat – male violence – is obscured".⁵⁶ Just like the highly derogatory police response of 'gone walkabout' in the Northern Territory, in Canada too, Indigenous women and girls are also viewed as the "wayward, unreliable and ungovernable native".⁵⁷ The focus on lifestyle choices or behaviours only reflects the racist and gendered attitudes that pervade and inform police response that has caused searching delays.

We refer to Suvendrini Perera and Joseph Pugliese et al., which references the experiences of Aboriginal women (and their families) with police in missing women cases as 'lethal indifference' – "[the] disbelief on the part of authorities and delays in issuing alerts and conducting missing persons investigations".⁵⁸ This means that the safety and protections afforded to Indigenous women are not equal to those given to non-Indigenous people.

Police with a Different Approach to DFSV in Remote Communities

NAAFLS considers that the security of Aboriginal women is further compromised by police behaviours and attitudes to violence in remote communities. It is NAAFLS' experience that police expect a higher level of violence in remote communities, and there is an inconsistent approach to reports of DFSV depending on the individual officer and the level of police staffing in that community.⁵⁹ The Canadian national inquiry labelled this concept as "spatial variations of police behaviour" which is the idea that the strength of police action will vary based on various factors, including their perception of the community.⁶⁰

We acknowledge the community hesitation to report violence to police in Aboriginal communities, particularly when the perpetrator is a family member, acquaintance or friend and they are in "small,

⁵¹ Fryer, as above n 30.

⁵² Fryer, as above n 30.

⁵³ Fryer, as above n 30.

⁵⁴ Morton in Deathscapes, as above n 27.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Deathscapes, as above n 27.

⁵⁹ North Australian Aboriginal Family Legal Service (2021), Submission to the National Summit on Women's Safety, p. 3.

⁶⁰ National Inquiry into Missing and Murdered Indigenous Women and Girls (2020), as above n 52, p. 113.

interconnected and isolated communities where anonymity cannot be maintained".⁶¹ There is a fear that reporting will lead to an escalation of violence or that when the perpetrator is released from prison or a rehabilitative program, he will return vengeful. This hesitation has meant that some Aboriginal women have developed a high tolerance toward violence. There is a deep mistrust of police held by many Aboriginal victim-survivors, to the point that they will fail to report violence and/or refuse to make a statement to police because they do not believe that the police will protect them.

As the frontline representative of Aboriginal victim-survivors of DFSV in the Top End, NAAFLS expect that the police act and respond in an impartial manner that is governed by the law or administrative procedures. By brushing-off reports of violence (or threats) – i.e., by telling women that *"he is just letting off some steam"* – police are complicit in the failure to respond to the violence and murder of Aboriginal women.

This lack of police response was evident in the reported events leading up to the murder of Ms K. Murphy. Ms K. Murphy was a 36-year-old Aboriginal woman who was beaten to death in Alice Springs by her husband in 2014.⁶² Police had been called to 45 domestic violence incidents between Ms K. Murphy and her husband from 2003 until her death. Similarly, Four Corners reported that Ms R. Rubunjta – a prominent Aboriginal DFSV advocate and founding member of the Tangentyere Women's Family Safety Group – had called police 18 times over her two-year relationship with her murderer.⁶³ These women were not protected by police despite their repeated calls for help.

Our concerns about police complacency are coupled with our unease at the high degree of autonomy of police in remote communities. We consider that this autonomy allows police to develop their own 'style' and unwritten codes of conduct, which informs when and if they respond to reports of violence. This degree of autonomy is a breeding ground for increased stereotyping and bias-based decision making. This unease, which is based on NAAFLS' own interactions with police in remote communities, was confirmed earlier this year at the inquest of Mr K. Walker. The inquest heard that Zachary Rolfe – the [arresting officer] – described his job as a *"cowboy stuff with no rules"* in a text message to a colleague.⁶⁴ We were alarmed to read that Rolfe described Alice Springs as *"the Wild West"*, implying that the regional town is somehow ungovernable, lawless, and violent.⁶⁵

Legislative Response to Protecting Women Through DVOs

NAAFLS is concerned that legislation designed to protect women has failed to protect Aboriginal women and has not reduced rates of imprisonment, violence or homicide.

Over the last decade, there has been an increase in incarceration of Aboriginal people with alarming rates of overrepresentation of Aboriginal women in prison who have encountered interpersonal violence.⁶⁶ Often this is a result of the unintended consequences of DVOs, including the misidentification of victim-

⁶¹ Matthew Willis (2011), Non-disclosure of violence in Australian Indigenous communities, *Australian Institute of Criminology* <<https://www.aic.gov.au/publications/tandi/tandi405>>.

⁶² Rebecca Davis, This week an Indigenous woman and her baby were killed. We need to talk about it, *Mamamia* (Online, 23 July 2022) <[The domestic violence crisis in the Northern Territory \(mamamia.com.au\)](https://www.mamamia.com.au/this-week-an-indigenous-woman-and-her-baby-were-killed-we-need-to-talk-about-it/)>.

⁶³ Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman, as above n 2.

⁶⁴ Jano Gibson and Melissa Mackay, Zachary Rolfe said his police unit had 'no rules' and did 'cowboy stuff' prior to fatal shooting of Kumanjaji Walker, *ABC News* (Online, 18 March 2022) <<https://www.abc.net.au/news/2022-03-18/zachary-rolfe-text-messages-supreme-court-suppression/100921248>>.

⁶⁵ Ibid.

⁶⁶ Marlene Longbottom (2018), Systemic responses continue to fail and traumatise Aboriginal women who survive violence, *IndigenousX* (Online, 8 June 2018) <[Systemic responses continue to fail and traumatise Aboriginal women who survive violence - Marlene Longbottom - IndigenousX](https://www.indigenousx.com.au/systemic-responses-continue-to-fail-and-traumatise-aboriginal-women-who-survive-violence-marlene-longbottom-indigenousx/)>.

survivors as respondents and subsequent criminalisation and imprisonment. This has meant that victim-survivors are at risk of harm from the instrument that was intended to protect them.

The Australian National Research Organisation for Women's Safety has confirmed that Aboriginal women are overrepresented in data on breaches of DVOs as a result of misidentification.⁶⁷ Between 2015-2018 inclusive, more than 20% of all respondents to DVOs in the Northern Territory were female and approximately 2,000 breaches of DVOs in 2017/18 were by Aboriginal women – more than triple the amount of DVO breaches committed by Aboriginal men.⁶⁸ More disturbingly, the Australian Bureau of Statistics has reported that across the states and territories most people that are found guilty of breaching a DVO are generally given non-custodial sentences.⁶⁹ In the Northern Territory, however, the majority (71%) received a custodial sentence (due to mandatory sentencing).⁷⁰ Many of those sentenced would be Aboriginal women. This strongly indicates that laws in the Northern Territory aimed at protecting victim-survivors are directly failing Aboriginal women.

The purpose of DVOs is unrealised when police inadequately addressed or fail to respond to reported breaches. In remote communities there is often a lack of timely and effective police response, particularly in communities that do not have a permanent police presence. At times police will not arrive until the next day. Some of our clients do not report breaches to the police. This can be because of lack of access to a mobile phone, pressure from family, fear of the repercussions of reporting or avoidance of police involvement. A common concern for our clients is future safety, as often on release from prison, the abuse escalates.

The process of applying for a DVO is also inherently problematic for victim-survivors. Victim-survivors risk retaliation from the perpetrator and repercussions from the perpetrator's family. DVO applicants are sometimes required to tell their story in court, which is traumatising and exasperated due to a lack of support services.

DVO defendants are commonly left without legal representation and will self-represent. Although there is a free basic legal service available for DVO defendants in Darwin, there is no such service available in Katherine or any remote communities in the Top End. Defendants who attend court will often agree to the DVO without a clear understanding of the rules, because they cannot access or afford to pay a private lawyer to explain the orders. Police are often involved in the crucial step of serving DVO documents on defendants, but they rarely use the Aboriginal interpreter service due to lack of availability. This directly contributes to a low level of understanding of DVOs in remote communities and high levels of breaches.

⁶⁷ Heather Nancarrow, Kate Thomas, Valerie Ringland and Tanya Modini (2020), Accurately identifying the "person most in need of protection" in domestic and family violence law, *Australia's National Research Organisation for Women's Safety*, Sydney: ANROWS, pp.53-54 <[Nancarrow-PMINOP-RR.3.pdf](#) ([anrowsdev.wpenginepowered.com](#))>.

⁶⁸ Ibid, p. 54.

⁶⁹ Australian Bureau Statistics (2020), Experimental family and domestic violence statistics. In *Criminal Courts, Australia, 2018–19*: ABS Cat. no. 4513.0. Canberra: Commonwealth of Australia.

⁷⁰ Ibid.

Care and Protection of Children

There is a long history of forced child removal across Aboriginal communities in the Northern Territory and NAAFLS is concerned that the removal of Aboriginal children continues today as the standard settler state response to DFSV.

Indigenous children in the Northern Territory are 12.2 times more likely to be removed from their families by child protective services than non-Indigenous children, the fourth highest rate across all states and territories, and higher than the national average of 9.7 times.⁷¹ Despite out-of-home care and protection laws mandating that efforts are made to place Aboriginal children with family and/or kin,⁷² the Northern Territory has the nation's lowest placement of Aboriginal children with kin (36.9% versus 63.9% nationally).⁷³ This points towards increasing systemic bias against placing Aboriginal children with their Aboriginal kin. On this issue, the *'Family Matters'* report for 2020 notes: "[The] use of a broad interpretation of 'kin' or 'family' [e.g., *Care and Protection of Children Act 2007 (NT)*, section 19] means that in most if not all jurisdictions, some Aboriginal and Torres Strait Islander children are being raised by non-Indigenous, non-family members deemed by the state to be ... part of their social network or a person of significance to the child. The result from such a placement can be the varying degree of separation from family and culture, which cannot rightly be deemed as compliant with the intent of the Child Placement Principle".⁷⁴

Loss of connection to family, culture and land is known to increase vulnerability of Aboriginal girls in care. Suvendrini Perera and Joseph Pugliese et al., note several incidents where Aboriginal girls have died in the Northern Territory in circumstances where the child protection agency had assumed responsibility for their care. Miss M. Downman (aged 17 years) was found hanging in a residential facility operated by Territory Families in 2014. In the four years prior to her death, Miss M. Downman had repeatedly asked to leave state care and be reunited with her family. *"The circumstances surrounding her death illustrate the intersecting traumas of the youth justice and child protection systems"*.⁷⁵ Territory Families have also placed Aboriginal children into out-of-home care with family members despite knowing that the family was not equipped to provide them with adequate care. Miss D. Melville (aged 12 years) died of *"deplorable neglect"* in 2007 despite the warning signs.⁷⁶

In NAAFLS' experience, it is much more common for parents in remote Top End communities to find themselves in child protection proceedings, rather than family law proceedings. This is because the mother (i.e., victim-survivor) may be misidentified as the perpetrator of violence and/or she is blamed for remaining in an abusive relationship and seen as unfit to parent. NAAFLS' lawyers who represent victim-survivors in child protection proceedings in court often hear the phrase *'the parents engage in domestic violence'*. This is an unacceptable narrative and amounts to victim blaming. Research shows that it takes

⁷¹ Family Matters (2020), The Family Matters Report 2020: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia, p.25 < [FamilyMattersReport2020_LR.pdf](#) >.

⁷² *Care and Protection of Children Act 2007 (NT)*, section 12(3).

⁷³ Family Matters (2020), as above n 76, pp. 26 and 114.

⁷⁴ Ibid, p. 115.

⁷⁵ Deathscapes, as above n 27 and Jane Bardon, Maddy Downman's family want answers about 17yo's suicide in care, *ABC News* (Online, 30 June 2014) < [Maddy Downman's family want answers about 17yo's suicide in care - ABC News](#) >.

⁷⁶ Inquest into the death of Deborah Leanne-Melville-Lothian [2010] NTMC 007, Northern Territory Department of Justice, p.2 < [d01092007-deborah-melville.pdf \(nt.gov.au\)](#) >.

victim-survivors several attempts to leave an abusive relationship.⁷⁷ This figure would be higher in remote Aboriginal communities where women have no safe alternatives and support services are lacking.

Mandatory reporting of DFSV is a barrier to disclosure. The Northern Territory is the only jurisdiction in Australia that has mandatory reporting for DFSV. Reports under the DFV Act are made to the police, while reports under the *Care and Protection of Children Act 2007* (NT) can be made to either Territory Families or the police. It is NAAFLS' experience that mandatory reporting requirements are preventing Aboriginal women from seeking safety or support as they fear the involvement from Territory Families.

While it is beyond the scope of this submission to adequately address the crisis of Aboriginal communities and out-of-home care, NAAFLS notes that there is much work to be done at a policy and service level. We direct the Senate Committee to Aboriginal Community Controlled Organisations that submitted to the *'Family is Culture Report'* in 2019. There is very little cultural and DFSV literacy in child protection services and we witness social workers and other child specialist-practitioners demonstrate a lack of understanding of the nuance of trauma and DFSV in Aboriginal communities.

NAAFLS has previously called for early-stage mandatory referral to an Aboriginal Community Controlled Organisation with relevant expertise, including specialist Family Violence Prevention Legal Services for all Aboriginal parents and carers to lower the risk of child removals associated with exposure to DFSV.⁷⁸ There is an overwhelming need for greater front-end support for Aboriginal mothers. It is our experience that the earlier that mothers are linked with a specialist Aboriginal Community Controlled Organisation with DFSV expertise, the better the outcomes are with these organisations⁷⁹ being best placed to provide culturally safe and trauma-informed preventative legal and non-legal support for Aboriginal mothers.

We have also advocated for funding to set up a culturally appropriate Family Dispute Resolution (**FDR**) service in several Top End remote communities.⁸⁰ NAAFLS regularly receives referrals to assist in family disputes but are unable to meaningfully assist given our resource and capacity limits. Without assistance, family disputes can escalate which triggers the involvement of child protection. We are of the view that family law arrangements can be better achieved through FDR if it was more accessible in remote communities.

Lack of Coronial Inquiries

The coroner is less likely to solve a suspected death if there has been a delay in the investigation of a missing person. This is a concern for Aboriginal communities as missing Aboriginal-identified cases are known to experience significant delays.

NAAFLS is aware that the time frames for initial reporting from family is increased due to the understandable distrust of police and the fear of involvement of child protective services. When reports are made that an Aboriginal woman is missing, the likelihood that the reports will be taken seriously and

⁷⁷ See: Virginia Physicians for Women, *Why it takes women 7 attempts to leave an abusive relationship – and how you can help* (Web Page) <[Why it takes women 7 attempts to leave an abusive relationship - and how you can help | Virginia Physicians for Women \(vpfw.com\)](https://www.vpfw.com/why-it-takes-women-7-attempts-to-leave-an-abusive-relationship-and-how-you-can-help/)>.

⁷⁸ Central Australian Aboriginal Family Legal Unit and North Australian Aboriginal Family Legal Services, Joint Submission (Systemic Reform Proposals) to the Northern Territory Government on its review of legislation and justice responses to family and domestic violence in the Northern Territory, 12 October 2022, p. 24.

⁷⁹ Ibid.

⁸⁰ See: North Australian Aboriginal Family Legal Service, *Response to the New Family Dispute Resolution Services for Aboriginal and Torres Strait Islander Families Discussion Paper*, 8 April 2022.

investigated are lower than would be the case for non-Aboriginal women. These delays in undertaking an investigation can result in the degradation of evidence, reducing the chances that missing persons will be found. Moreover, if murder is suspected, the lack of evidence makes securing a conviction difficult. These delays can be compounded by the limited number of missing persons officers in remote and very remote areas.

We direct the Senate inquiry to previous submissions from the Aboriginal Legal Service NSW/ACT (ALS) on the coronial jurisdiction in New South Wales that recommended the New South Wales Coroners Court should be a site of inquiry into systemic and administrative injustices against Aboriginal people. This submission called on the expansion of the powers of the Coroners Court to follow-up on inquiry and action when they make recommendations arising from an inquest.⁸¹ In their submission, ALS welcomed the Select Committee's recommendation to create a specialist preventive death review unit to better facilitate Coroners in fulfilling their important death prevention function.⁸² On the benefits of a specialist preventative death review unit, the Committee noted, "*[The] capacity of the Coroners Court of NSW should be enhanced to expand the processes already established for the Domestic Violence Death Review Team, so that in-depth qualitative analysis of a much broader range of reported deaths can be undertaken, including First Nations deaths [...] a specialised review system could specifically address this issue as insights into systemic issues and trends, for example, could be shared in real time with stakeholders*".⁸³

This is an important step. "*Both weaknesses and the institutional design of the inquest system [has] continued to fail [Aboriginal] people [...] [but] Inquests are central to the violence of deaths in custody. For some who lose their loved ones in custody, they are a site of justice and change; for many, they are a site of fresh administrative violence*".⁸⁴ Currently, Aboriginal deaths in custody are labelled 'suicides' or blamed on 'mysterious ill-health'.⁸⁵ Alison Whittaker – a Gomeroi Poet and Legal Researcher – studied the 'known' 432 Aboriginal deaths in custody since 1991. In a sample of 134 Aboriginal deaths in custody, Whittaker found that only five deaths (3%) had been referred to prosecutors and only two made it to court, both resulted in quashed indictments or acquittals.⁸⁶

There is no glossing-over the reality for Aboriginal people in custody. "*The settler Australian public [often] does not see [Aboriginal] deaths in custody as an act of violence, but as co-morbidity*".⁸⁷ NAAFLS sees a similar attitude and indifference to missing and murdered Aboriginal women where settler Australia has turned a blind eye to suspicious deaths, considering it an issue in remote areas, or perhaps just a result of the victim's 'stereotypical' behaviour.

Inadequate Media Representation for First Nation Women

Despite the overrepresentation of Aboriginal women in femicide and assault statistics, violence committed against Aboriginal women receives relatively little public or media attention.⁸⁸

⁸¹ Aboriginal Legal Service, Submission No. 36 to the NSW Government Inquiry into Coronial Jurisdiction in New South Wales, 16 July 2021 < [NSW Select Committee inquiry into the coronial jurisdiction.pdf \(nationbuilder.com\)](#)>.

⁸² Select Committee on the Coronial Jurisdiction in New South Wales (2022), Report No. 1: Coronial Jurisdiction in New South Wales, NSW Parliament: Legislative Council, pp. 103-104 < [Report \(nsw.gov.au\)](#)>.

⁸³ Ibid, p. 104.

⁸⁴ Alison Whittaker, Indigenous deaths in custody: inquests can be sites of justice or administrative violence, *UNSW Newsroom* (Online, 3 May 2021) < [Indigenous deaths in custody: inquests can be sites of justice or administrative violence \(unsw.edu.au\)](#)>.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Kalinya Communications (2017), p. 3.

The former Greens Senator for Victoria, Lidia Thorpe, has said:

*“There was a ‘disparity between how Australia regards violence against Indigenous women and children and non-Indigenous women and children. When a white woman dies, or a white woman is murdered, it is front page. There’s rallies. When a black woman dies, when a black woman is murdered, you don’t hear about it’.”*⁸⁹

*“This alleged silence is used as a weapon against [Aboriginal] communities, undermining their agency and acts of resistance, while reiterating the ongoing colonial narrative of [Aboriginal] women as disposable and unworthy of justice”.*⁹⁰

In Canada, missing and/or murdered Indigenous women receive 3.5 times less media coverage than white women.⁹¹ News articles are shorter and less likely to appear on the front page if the victim is Indigenous.⁹² Indigenous and Native American women are deemed less worthy than their white, female counterparts. This phenomenon is referred to as the ‘*missing white women syndrome*’ – the phenomenon of the media’s extensive (and obsessive) coverage of white, upper-middle-class women and girls who have gone missing.⁹³ As Helen Rosner writes “[*There’s*] something about the missing young, beautiful white woman that has a lot of symbolic weight in America. It’s an aberration, and it becomes a container for things like the loss of innocence or the death of purity”.⁹⁴ In contrast, Aboriginal women are essentially rendered invisible, and the media’s lack of interest actively contributes to “*their symbolic annihilation from the social landscape*”.⁹⁵

When Aboriginal women are erased from the media, efforts to mobilise an investigation and search-party all but fails. In the United States, missing person cases involving people of colour are less likely to be solved than cases involving white victims.⁹⁶ In Australia, the devastating failures of police and media were highlighted in the SBS Documentary ‘*Vanished*’; the crucial window of time to locate Ms J. Anderson and Ms R. Hayward was lost as police did not initiate their search and there was no media coverage to alert locals. We note in contrast, the disappearance of Paddy Moriarty – a white man – garnered national and international media coverage. The media had an extensive campaign for the “*colourful character from the tiny NT town*”, with podcasts and documentaries about his disappearance.⁹⁷ The kidnapping of four-year old Cleo Smith from a campsite in Carnarvon, Western Australia in 2021 received significant media attention across Australia, yet Aboriginal children – particularly those in out-of-home care – are disproportionately represented in missing person statistics.⁹⁸ Almost 20% of missing children aged between 13-17 years are Aboriginal.⁹⁹ But “*the media is not following up cases that are important to blackfellas because they’re not seen as cases that are going to grip the nation.*”¹⁰⁰ These are just two examples of how

⁸⁹ Sarah Collard, as above n 38.

⁹⁰ Amy McQuire (2022), *The Silence Everyone Talks About: Media representations of violence against Aboriginal women*, Thesis submitted for the degree of Doctor of Philosophy at The University of Queensland.

⁹¹ Kristen Gilchrist (2010), *Newsworthy Victims*, *Feminist Media Studies*, vol. 10(4):373-390.

⁹² Ibid.

⁹³ Helen Rosner, *The Long American History of “Missing White Woman Syndrome”*, *The New Yorker* (Online, 8 October 2021) < [The Long American History of “Missing White Woman Syndrome” | The New Yorker](https://www.newyorker.com/culture/criticism/the-long-american-history-of-missing-white-woman-syndrome)>.

⁹⁴ Ibid.

⁹⁵ Kristen Gilchrist (2010), as above n 98.

⁹⁶ Wendelin Hume, *Spotty data and media bias delay justice for missing and murdered Indigenous people*, *The Conversation* (Online, 24 November 201) < [Spotty data and media bias delay justice for missing and murdered Indigenous people \(theconversation.com\)](https://theconversation.com/spotty-data-and-media-bias-delay-justice-for-missing-and-murdered-indigenous-people-125488)>.

⁹⁷ Josephine Rozenberg-Clarke, *NT Cops Now Believe Paddy Moriarty Was Murdered & Are Offering \$250K Reward For Information*, *Pedestrian TV* (Online, 26 February 2021) < [NT Cops Now Believe Paddy Moriarty Was Murdered & Are Offering \\$250K Reward For Information \(pedestrian.tv\)](https://www.pedestrian.tv/nt-cops-now-believe-paddy-moriarty-was-murdered-are-offering-250k-reward-for-information)>.

⁹⁸ Shahni Wellington, *Cleo Smith case sparks calls to treat Indigenous missing children cases equally*, *ABC News* (Online, 7 November 2021) < <https://www.abc.net.au/news/2021-11-07/time-to-talk-about-missing-indigenous-children-after-cleo-smith/100598810>>.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

media representations of violence are “tailored to the white gaze [...] Non-Indigenous Australians are seen as the arbiters of morality, while [Aboriginal] people are framed as infantile, uncaring, and interested in ideological pursuits rather than the safety of women and children”.¹⁰¹

We are also reminded of how the media represented Ms L. Daley – a Aboriginal woman murdered in 2011 – as a ‘*drunk*’, a ‘poor mother’ and a ‘sexual deviant’, all without acknowledging that Ms L. Daley was the victim of prolonged DFSV.¹⁰² It took over six years before charges were laid due to the Director of Public Prosecutions (**DPP**) refusing to prosecute her assailants.¹⁰³ This initial refusal by the DPP to prosecute is a clear reflection of community standards and public acceptance of the violence committed against, and murder, of Aboriginal women.

Underreporting and false reporting by the media also perpetuates prejudice against Aboriginal women and communities. We often see and hear that domestic violence is an *'Aboriginal issue'* or that Aboriginal women and communities *'abuse alcohol and drugs'*, without any nuance or weight given to Australia's history of invasion, dispossession, and the impacts of intergenerational trauma.

NAAFLS considers that the media has been complicit in the victimisation of Aboriginal women. We hope that the Senate inquiry and rising public interest will be a turning point in fair and balanced representations of missing and/or murdered Aboriginal women.

Lack of Support Services in Remote Communities

It is widely acknowledged that remote Aboriginal communities in the Top End, East Arnhem and Big River are severely lacking in police and support services. This is despite 40% of the Northern Territory population living in either Remote or Very Remote areas.¹⁰⁴

In our submission to the *National Summit on Women's Safety* (2021), we noted that many communities do not have a local police station.¹⁰⁵ Very few remote communities have local mental health services or domestic violence rehabilitation or healing programs.¹⁰⁶ As at 2021, the Northern Territory Department of Territory Families, Housing and Communities operated only 13 women's safe houses in remote Aboriginal communities.¹⁰⁷ For reference, we service over 40 remote communities across the Top End. This does not include the very remote communities and outstations in the Top End that we do not attend and all the communities and outstations in the Barkly region and Central Australia.¹⁰⁸

Police based in remote communities are often required to leave for days at a time to respond to violence in neighbouring communities and escort women to shelters in regional hubs.¹⁰⁹ Nurses are also expected to travel hundreds of kilometres to service remote communities.¹¹⁰ The only option for many remote

¹⁰¹ Amy McQuire (2022), as above n 97.

¹⁰² Amal Naser (2021), The Media's Complicity in the Indigenous Femicide, *Court of Conscience: Issue 15*, p. 43 < [6.pdf \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/auflii/au/other/coc/issues/15/p43.pdf)>.

103 Ibid.

¹⁰⁴ Australian Bureau of Statistics (ABS) 2017, '2016 Census QuickStats', accessed Australian Bureau of <https://quickstats.censusdata.abs.gov.au/census/services/getproduct/census/2016/quickstat/RA74?opendocument>.

¹⁰⁵ North Australian Aboriginal Family Legal Service (2021), as above n 87, p. 3.

106 Ibid.

107 Ibid.

108 Ibid.

¹⁰⁹ Jesse Thompson, In the vast region of Timber Creek, domestic violence victims have few places to go, *ABC News* (Online, 21 August 2022) < [In the vast region of Timber Creek domestic violence victims have few places to go - ABC News](#)>.

¹¹⁰ Ibid.

community members to access services is to travel to Darwin or Katherine which is difficult as some communities have very limited to no options for public transport. Once in town they need to find temporary accommodation that is both limited and expensive, leaving most victim-survivors and perpetrators without access to support. Ensuring adequate access to support services in remote communities would provide victim-survivors access to safety and assist in preventing and reducing the impacts of DFSV. We understand that the federal government recently allocated \$10.7 million for DFSV services in the Northern Territory.¹¹¹ This is grossly insufficient and will not come close to addressing this service gap.

While we recognise the need for more police stations in remote areas, we do not support casting police as the *only* solution to violence against First Nations women. We need to fund and embed Aboriginal workers within remote organisations that can provide urgent for women and be a central point of referral to services. For this reason, NAAFLS recommends Aboriginal Community Controlled Organisations lead approaches to women's safety services in remote communities.

The success of this has been seen in the Yolŋu community of Galiwin'ku on Elcho Island with the creation of the island's first safe house for women fleeing DFSV.¹¹² The safe house is the culmination of a decade of campaigning by Galiwin'ku Women's Space, a grassroots Yolŋu specialist DFSV service, which involved careful advocacy and negotiation with the government to secure funding for construction of the safe house and employment of local Yolŋu women.¹¹³ Galiwin'ku Women's Space facilitates DFSV intervention and case management that is grounded in local lore, kinship and customs.¹¹⁴ The safe house provides temporary accommodation for women, children and LGBTIQ+ victim-survivors.¹¹⁵ NAAFLS understands that Galiwin'ku Women's Space are looking to expand their DFSV service to other Yolŋu communities in Arnhem Land. NAAFLS implores the government to consult with Galiwin'ku Women's Space and support the development of similar women's and victim's groups in communities across the Top End.

Prosecution for DFSV Offences and Inadequate Witness Support

The adversarial court process is intimidating for victim-survivors. Inappropriate and overly aggressive questioning by lawyers during cross-examination is common and can have long lasting traumatic impacts on victim-survivors. For Aboriginal victim-survivors, the *"court experience [is] marked by high levels of public scrutiny, shame, lack of access to information, lack of opportunity to participate fully in processes and decision making, and risk of being subjected to blame, discrimination and reprisal"*.¹¹⁶ NAAFLS is routinely told by Indigenous victim-survivors that the court process feels like a '*secondary victimisation*'.

NAAFLS is aware of the current deficiencies in the Northern Territory court process. We do not feel that the courts are adequately sympathetic to Aboriginal victim-survivors. There is little to no acknowledgment of witness vulnerability and/or the many reasons why a victim-survivor may not wish to commence criminal

¹¹¹ Jacqueline Breen and Samantha Dick, NT domestic violence sector repeats calls for needs-based funding after one-off \$10.7 million federal boost, *ABC News* (Online, 19 August 2022) < [NT domestic violence sector repeats calls for needs-based funding after one-off \\$10.7 million federal boost - ABC News](#) >.

¹¹² [Home | galiwinkuwomenspace](#) (Web Page).

¹¹³ Felicity James, Yolŋu women celebrate opening of Galiwin'ku women's space after 10 year push for a shelter, *ABC News* (Online, 16 September 2022) < [Yolŋu women celebrate opening of Galiwin'ku women's space after 10 year push for a shelter - ABC News](#) >.

¹¹⁴ [Home | galiwinkuwomenspace](#) (Web Page).

¹¹⁵ Felicity James, as above n x.

¹¹⁶ Gordon, S, Hallahan, K and Henry, D, Putting the Picture Together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, Department of Premier and Cabinet, Western Australia, 2002, pp. 86-87.

proceedings or may be fearful of sharing the truth. Hesitation by an Aboriginal victim-survivor is used by lawyers as proof of guilt or dishonesty rather than shame or distress.

The support currently provided to victim-survivors who are complainants or witnesses in prosecutions for DFSV offences are also inadequate.¹¹⁷ The Guidelines of the Director of Public Prosecutions (**DPP**), Northern Territory provide that: “[t]he Witness Assistance Service (**WAS**) is a unit within the ODPP and its role is to provide support to witnesses, victims and their families in the criminal justice process. A prosecutor is expected to work with and consult with the assigned WAS officer in every case until completion.”¹¹⁸ However, the DPP website forewarns that “[g]iven the large volume of cases going to Court, the Witness Assistance Service cannot have an officer allocated to every case”¹¹⁹. Lack of funding and supports for programs such as WAS only entrench disadvantage for Aboriginal victim-survivors. We urge the government to provide additional funding to WAS to hire more Aboriginal staff to support Aboriginal victim-survivors.

Despite language being a known barrier for Aboriginal people accessing the justice system, little has been done by way of improving service delivery. Creative Spirits notes that for many Aboriginal people, English is a second, third or sometimes even fifth language.¹²⁰ A report by the Equal Opportunity Commission found that 20% of remote Aboriginal people had difficulty understanding or being understood by service providers, including lawyers.¹²¹ Without interpreter services, Aboriginal people are being locked out of participating in court proceedings. It is unacceptable that Aboriginal people are unable to access interpreters yet other victim-survivors or defendants in need of a foreign language interpreter can readily access the Commonwealth funded Translating and Interpreting Service (**TIS National**). TIS National operates a twenty-four hour a day, seven days a week interpreting service.¹²² TIS National lists 150 languages on their website; not one of these appear to be an Aboriginal or Torres Strait Islander language.

We understand that the Northern Territory’s Aboriginal Interpreter Service (**AIS**) was established in 2000 and provides a twenty-hour hour, seven days a week interpreter service for Aboriginal people in the Northern Territory.¹²³ An independent evaluation of AIS in 2004 found that the program has had a “significant impact in improving access to services and promoting the wellbeing of Indigenous people, including their human rights”.¹²⁴ We were unable to locate more recent NTAIS program evaluations.

We are deeply concerned that demand for interpreters is not met by the current supply. In our experience, it is far too difficult to obtain interpreting services in Aboriginal languages and it is common for friends or family members of our clients to informally interpret due to interpreter unavailability. We are aware of

¹¹⁷ See: Sabina Crawley (2004), Reviewing the NT Government 'No Drop' Policy: Moving From a Punitive Approach to Victim Support, Indigenous Law Bulletin, Vol. 6(6), p.14 < [Crawley, Sabina --- "Reviewing The NT Government 'No Drop' Policy: Moving From a Punitive Approach to Victim Support" \[2004\] IndigLawB 63; \(2004\) 6\(6\) Indigenous Law Bulletin 14 \(austlii.edu.au\)>](#).

¹¹⁸ Northern Territory Office of the Director of Public Prosecutions, Guidelines of the Director of Public Prosecutions: Guideline 11.1, current as at 2016, p. 16 < [Annual Report 1998 \(nt.gov.au\)>](#).

¹¹⁹ Northern Territory Director of Public Prosecutions, About Us (Web Page) < [About us | Director of Public Prosecutions \(nt.gov.au\)>](#).

¹²⁰ Jens Korff, Lack of Aboriginal language interpreters can cost lives, Creative Spirits (Web Page) < [Lack of Aboriginal language interpreters can cost lives - Creative Spirits>](#).

¹²¹ Commissioner for Equal Opportunity (2010), Submission to the Standing Committee on Environment and Public Affairs Inquiry into Transportation of Detained Persons, May 2010, p. 11 < [ev.tdp.100531.sub032.Commissioner for Equal Opportunity.doc.pdf \(parliament.wa.gov.au\)>](#).

¹²² Translating and Interpreting Service, About Us (Web Page) < [About TIS National | Translating and Interpreting Service \(TIS National\)>](#).

¹²³ Australian Government Attorney-General's Department, Aboriginal Interpreter Service (AIS) (2009) Australian Government Attorney-General's Department < [Closing the Gap for Indigenous Australians - Northern Territory - Aboriginal interpreter service | Department of Social Services, Australian Government \(dss.gov.au\)>](#).

¹²⁴ Ibid.

other organisations such as police failing to use interpreters when speaking to remote community members who cannot understand English, which leads to confusion and can reinforce police-related trauma.

We have previously called for increased funding of AIS interpreters in remote Aboriginal communities.¹²⁵ Earlier in this submission we noted that the lack of interpreter services has resulted in increased DVO breaches in remote Aboriginal communities. It also prevents victim-survivors from accessing holistic wrap-around services such as counselling, safety planning and housing.

With respect to all legal and non-legal supports for Aboriginal victim-survivors, NAAFLS endorses the comments by Wirringa Baiya Aboriginal Women's Legal Centre in their submission to the Australian Law Reform Commission (ALRC) in relation to the prosecution of DFSV offences when they said:

*"There needs to be regular, ongoing and culturally appropriate support throughout the whole process from the beginning of the investigation phase to the end of the prosecution phase. There is enormous pressure placed on Aboriginal women who report family violence by her partner/ex-partner, his family and sometimes their community. In cases of sexual violence, where the legal stakes and consequences can be even higher, that pressure can be unbearable."*¹²⁶

Financial Insecurity

NAAFLS recommends that improving financial security across Aboriginal communities would directly reduce the rates of DFSV.

Financial insecurity is a major catalyst for DFSV.¹²⁷ Survey respondents to The Answers Before Report confirmed that financial strain arose from employment issues, poor mental health, discrimination, workplace racism, gambling and alcohol use.¹²⁸ The study sample showed diversity in terms of family financial security, but many survey respondents reported financial insecurity. We note that 37% of survey respondents had just enough money to get through to their next payday and nearly 23% reported that they often ran out of money before payday or spent more than they received.¹²⁹

NAAFLS confirms that many residents in Top End remote communities live on Centrelink benefits because of insecure employment. A recipient of the Jobseeker payment who is single with no children receives a maximum of \$334.20 per week. This is well below the poverty line in Australia set at \$489 per week for a single adult, which is calculated based on 50% of median household after-tax income.¹³⁰

Financial insecurity and DFSV are also self-reinforcing. Financial insecurity can lead to violence, which in turn, often leads to further compounding financial insecurity. The victim-survivor may also be recovering from injuries, unable to work and reliant on the perpetrator for financial support. It is our experience that

¹²⁵ Central Australian Aboriginal Family Legal Unit and North Australian Aboriginal Family Legal Services, Joint Submission (Systemic Reform Proposals) to the Northern Territory Government on its review of legislation and justice responses to family and domestic violence in the Northern Territory, 12 October 2022, p. 5.

¹²⁶ Australian Law Reform Commission (2010), Family Violence – A National Legal Response (ALRC Report 114), [26 93] citing: Wirringa Baiya Aboriginal Women's Legal Centre Inc, Submission FV 212, 28 June 2010 < [Microsoft Word - 0 Front pages.docx \(alrc.gov.au\)](#)>.

¹²⁷ Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), as above n 14, p. 15.

¹²⁸ Ibid, p. 49.

¹²⁹ Ibid, p. 32.

¹³⁰ Australian Council of Social Service and UNSW Sydney (2022), Poverty in Australia 2022: A snapshot < [A snapshot of poverty in Australia 2022 – Poverty and Inequality \(acoss.org.au\)](#)>.

prolonged violence interferes with a victim-survivor's ability to maintain employment.¹³¹ While the research shows that employment can equip a victim-survivor with the psychological resources to reassert her agency or end an abusive relationship, Chapman and Taylor have found that after separation, single mothers who have fled DFSV experience a significantly higher drop in income of 34% compared with a 20% drop in income for single mothers who have not experienced or fled DFSV.¹³² This can disincentivise victim-survivors from leaving an abusive relationship, particularly in remote communities where there are limited employment opportunities. For completeness, we note that there is a lack of notable quantitative data on the experiences of Aboriginal women, employment and DFSV in remote communities.

Financial crisis is further compounded by the high cost of groceries and basic goods in remote communities. Groceries are significantly more expensive in remote communities than in Darwin and Katherine. Residents of remote communities in the Top End often travel to Darwin and Katherine to shop and access basic goods and services. Residents who live in communities accessible by road are faced with rising fuel prices, whilst residents who live in communities inaccessible by road face excessive flight costs to Darwin. For approximately half the year, many outstations and homelands are cut off due to the monsoonal rains and their only option to leave is via private charter plane. To compound this, residents of Top End remote communities who are on Centrelink benefits often have their payments quarantined onto a Cashless Debit Card (**CDC**) or Basics card. These income management measures are intended to address issues of unemployment, alcohol use and gambling in Aboriginal communities and break the cycle of welfare dependence, but since their inception, both programs have been heavily criticised for failing to meet any of the stated objectives.

A UNSW-led evaluation of income management in Aboriginal communities could not find *“any substantive evidence of the program having significant changes relative to its key policy objectives, including changing people’s behaviours”*.¹³³ This evaluation found no evidence of changes in spending patterns, no evidence of improved financial wellbeing and no evidence of improvement in community wellbeing, including for children. *“Rather than building capacity and independence, for many the program has acted to make people more dependent on welfare”*.¹³⁴ Previous research has also shown that use of CDCs is correlated with reductions in birth weight.¹³⁵ The Life Course Centre found that increased financial oversight and surveillance by the government, disrupting household financial arrangements and confusion about how to access funds contributed significantly to pre-partum stress in Aboriginal mothers.¹³⁶ We are routinely told by victim-survivors that their perpetrators exchange these cards for cash to purchase alcohol. This is supported by the increasing (not decreasing) rates of alcohol-fuelled violence against Aboriginal women in the Northern Territory.

Further, the Community Development Program (**CDP**) involves onerous mutual obligations with strict consequences for non-adherence. A previous Senate inquiry revealed that Aboriginal job seekers under the CDP needed to work up to three times longer than city-based job seekers to receive welfare payments.

¹³¹ Taryn Lindhorst, Monica Oxford, and Mary Rogers Gillmor (2007), Longitudinal Effects of Domestic Violence on Employment and Welfare Outcomes, *Journal of Interpersonal Violence* 22 (7): 812–28.

¹³² Bruce Chapman & Matt Taylor (2022). Socio-economic Background and the Incidence of Partner Violence: Evidence from HILDA, <csmr.cass.anu.edu.au/research/publications/socioeconomic-background-and-incidence-partner-violence-evidence-hilda>.

¹³³ Ilan Katz, J Bob Ray, Matthew Gray and Kelly Hand (2014), Evaluating New Income Management in the Northern Territory: Final Evaluation Report, Social Policy Research Centre, UNSW Australia, p. 21 <[Evaluation of New Income Management in the Northern Territory: full report \(dss.gov.au\)](#)>.

¹³⁴ Ibid, p. 22.

¹³⁵ Elise Klein, Has Labor learnt from the failure of the cashless debit card? *The Conversation* (Online, 3 August 2022) <[Has Labor learnt from the failure of the cashless debit card? \(theconversation.com\)](#)>.

¹³⁶ Ibid.

They were also less likely to be exempted on medical grounds “*despite a much higher burden of disease in [remote communities]*”.¹³⁷ Interruptions to income payments contributes to further financial insecurity and DFSV in remote communities. Our clients have called these programs out for worsening their situation and entrenching colonialist and paternalistic measures in their communities. NAAFLS acknowledges that the lack of viable labour-market opportunities in the Top End entrenches unemployment, disadvantage, and poverty across Aboriginal communities. NAAFLS considers that this would change if the government provided funding and resources for local Aboriginal Community Controlled Organisations who would create fair employment opportunities.¹³⁸

Housing Conditions and Housing Insecurity

NAAFLS recommends that improving housing conditions and availability would directly reduce the rates of DFSV in remote Aboriginal communities.

Housing is a key determinant of wellbeing and community safety.¹³⁹ Housing shortages contributes to poor education, employment issues, health determinants and self-medication.¹⁴⁰ The lack of employment opportunities and reliance on Centrelink payments means that community members are unable to afford private housing, and almost all remote community residents live in government housing.

According to the Department of Territory Families, Housing and Communities, 54.5% of houses in remote communities are considered ‘*overcrowded*’ with an average of 1.6 occupants per bedroom.¹⁴¹ In our experience, most, if not all of the remote community members report staying in what they consider as an overcrowded house. Our clients regularly report 15 or more people living in a three-bedroom home. This is the common experience across all the remote and very remote communities we visit. We acknowledge that Aboriginal communities tend to have broader kinship groups than Western communities and it may be expected and desirable in Aboriginal communities for large family groups to live together. However, the current situation of severe overcrowding is not due to this aspect of Aboriginal culture. In our experience, our clients would like bigger homes to adequately house their family, or for less people to live in their house with them.

Stable housing and adequate living conditions significantly reduces the prevalence of violence.¹⁴² The Answers Before Report measured the intersections between overcrowded housing and the prevalence of violence in Aboriginal communities and reported that violence was halved among participants who reported sleeping in the same place most or all nights, compared with those who reported never to sometimes sleeping in the same place (18% versus 35%).¹⁴³ The Answers Before Report further found that those living in a house that was not overcrowded did not have the ‘urge’ or ‘feel the need’ to perpetrate an offence (27% versus 37%).¹⁴⁴ From our experience working with remote communities, we know that

¹³⁷ Senate Inquiry in Lorena Allam, Government releases damning review of its own Aboriginal work-for-the-dole scheme, *The Guardian* (online, 6 February 2019) <[Government releases damning review of its own Aboriginal work-for-the-dole scheme | Indigenous Australians | The Guardian](#)>.

¹³⁸ Josie Douglas quoted in Lorena Allam, Government releases damning review of its own Aboriginal work-for-the-dole scheme, *The Guardian* (online, 6 February 2019) <[Government releases damning review of its own Aboriginal work-for-the-dole scheme | Indigenous Australians | The Guardian](#)>.

¹³⁹ Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), as above n 14, p. 27.

¹⁴⁰ *Ibid.*, p. 47.

¹⁴¹ Department of Territory Families, Housing and Communities (2021), Our Community, Our Future, Our Homes, <<https://ourfuture.nt.gov.au/accountability-and-reporting/program-progress#/>>.

¹⁴² Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), as above n 14, p. 47.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

overcrowding causes feelings of insecurity, lack of control and drive tensions. Household members do not have room to separate themselves from difficult situations or find a safe place within their dwelling. For these reasons, victim-survivors of DFSV have very few options to seek safety when the perpetrator is a household member. Courts in the Northern Territory can be reluctant to grant DVOs (and exclusion orders) out of concern for the perpetrator becoming homeless. Even when orders are made, police are reluctant to enforce this order due to risk of homelessness.

The safety of victim-survivors is further jeopardised by a severe shortage of crisis accommodation and women's refuges in the Northern Territory. One in 26 Territorians accessed specialist homelessness services (SHS) 2018/19, compared to the national rate of one in 86.¹⁴⁵ The main reason for seeking SHS assistance in the Northern Territory was as a result of DFSV (37%).¹⁴⁶ Over 86% of people who accessed SHS – including crisis accommodation – were Aboriginal.¹⁴⁷ Despite the increased number of people accessing SHS services in the Northern Territory, a significant number are unable to be assisted. For example, in 2018/19 it was reported that 6669 people were not assisted due to a shortage of crisis accommodation.¹⁴⁸ This equates to roughly 15 unassisted cases per day.¹⁴⁹ This figure does not take into account the many Aboriginal women and children who experience DFSV in remote communities but would not contact SHS services.

Recommendations to Increase Safety and Improve Outcomes

NAAFLS strongly recommends that the government adequately fund Aboriginal community controlled and designed responses to DFSV.

NAAFLS reinforces that the Western justice system has not and cannot adequately and fairly address the complex fundamental causes of violence in Aboriginal communities, because much of this violence is a direct result of colonisation on Aboriginal communities. We must respect that Aboriginal peoples have their own lore. It is Western systems and policies that have dominated and disrupted a pre-existing network of interdependent and highly functional systems of Aboriginal governance. We cannot approach the violence that has been created by settler state interference and domination with further settler state decision making.

Violence against Aboriginal women and DFSV in Aboriginal communities cannot be viewed in isolation as an *'Aboriginal issue'*. This ignores and goes so far as excusing the coloniser from their role in perpetrating and perpetuating violence. As the Guiding Principle from the Victorian *'Indigenous Family Violence Task Force'* report states: *"... from an Indigenous perspective the causes of family violence are located in the history and impacts of white settlement and the structural violence of race relations since then"*.¹⁵⁰ The framing of DFSV as an *'Aboriginal issue'* also disregards the innovative work Aboriginal people and communities are doing to prevent DFSV.

¹⁴⁵ Australian Institute of Health and Welfare (2019), Specialist Homelessness Services 2018-19: Northern Territory Fact Sheet. Canberra: AIHW <<https://www.aihw.gov.au/reports/homelessness-services/shs-annual-report-18-19/fact-sheets-by-state-and-territory>>.

¹⁴⁶ Australian Institute of Health and Welfare (2019), Specialist Homelessness Services annual report 2018-19 data <<https://www.aihw.gov.au/reports/homelessnessservices/shs-annual-report-18-19/data>>.

¹⁴⁷ Australian Institute of Health and Welfare (2019), as above n 149.

¹⁴⁸ Australian Institute of Health and Welfare (2019), as above n 150.

¹⁴⁹ Ibid.

¹⁵⁰ Victorian Indigenous Family Violence Taskforce (2003), Final Report, Victorian Government: Department of Communities, p. 11 <[1162179 \(sirsidynix.net.au\)](https://www.sirsidynix.net.au/1162179)>.

Evidence shows that community controlled services and community led initiatives are the only effective way to support and heal Aboriginal people and communities (particularly remote communities) impacted by DFSV.¹⁵¹ This was reaffirmed in The Answers Before Report, which opined that “[central] to responding to violence is culture, including the involvement of Elders, and recognition and consideration of the role of traditional law/lore”.¹⁵² The Answers Before Report refers to the need to create an “overarching operating ecosystem [...] characterised by programs ... that are based on community needs and priorities and that integrate the best current evidence”.¹⁵³

One such program that NAAFLS is aware of is the Tangentyere Family Violence Prevention Program (TFVPP) operated by the Tangentyere Council Aboriginal Corporation (TCAC) in Alice Springs. Originally a men’s behaviour change program, TFVPP has evolved into a holistic program including a women’s family safety group, a men’s behavioural change program, a men’s outreach and referral service, a children’s service and a mum’s and dad’s service. In her evaluation of TFVPP, Chay Brown found that the program generally raised community consciousness on DFSV, engaged both women and men over extended periods of time, successfully developed and shared resources amongst community members on DFSV, elevated Aboriginal victim-survivors’ voices and increased visibility of domestic violence support services in Alice Springs.¹⁵⁴ In particular, Brown noted the success of the TFVPP Women’s Group who actively challenged the condoning of violence within Aboriginal communities and reinforced the message that violence is not normal by placing anti-violence signage outside town camps.¹⁵⁵

A similar approach has been taken in justice reinvestment. The Maranguka Justice Reinvestment Project (Maranguka JR Project) in Bourke, New South Wales, has seen funding for the incarceration of Aboriginal adults and youth diverted to community development initiatives which address systemic injustices and disadvantage that leads to crime.¹⁵⁶ The Maranguka JR Project has involved Aboriginal leadership driving a grassroots movement for change among local community members, collaboration and alignment across the service system and justice agencies and the delivery of community-based programs.¹⁵⁷ In 2017, KPMG sought to evaluate the impact of the Maranguka JR Project across economic impact and reduced pressures on the justice system. The results for the 2017 calendar year (compared to 2016) showed improvement in the areas of family strength (a 23% reduction in police recorded incidence of DFSV and comparable drops in reoffending) and adult criminal justice involvement (a 14% reduction in bail breaches and a 42% reduction in days spent in custody).¹⁵⁸ KMPG estimated that the operation of the Maranguka JR Project could lead to gross savings of \$7 million over five years (i.e., from 2017-2022).¹⁵⁹

NAAFLS also recommends that the Northern Territory introduce a community-based court for Aboriginal offenders similar to the Koori Court and/or Murri Court currently in operation in New South Wales/Victoria and Queensland. It is quite staggering that the state/territory with the largest Aboriginal population and

¹⁵¹ Department of Communities, Path to safety: Western Australia’s strategy to reduce family and domestic violence, Government of Western Australia, p. 4 < [Path to Safety: Western Australia’s strategy to reduce family and domestic violence 2020-2030 \(www.wa.gov.au\)](https://www.wa.gov.au/government/publications/path-to-safety-western-australias-strategy-to-reduce-family-and-domestic-violence-2020-2030) >.

¹⁵² Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), as above n 14, p. 109.

¹⁵³ Ibid, p. 17.

¹⁵⁴ Chay Brown (2020), From the roots up: Principles of good practice to prevent violence against women in the Northern Territory, Thesis submitted for the degree of Doctor of Philosophy at The Australian National University, p. 179 < [Brown Thesis 2021.pdf \(anu.edu.au\)](https://www.anu.edu.au/theses/2021/01/brown) >.

¹⁵⁵ Ibid, p. 146.

¹⁵⁶ Jill Guthrie, Katherine Thurber, Raymond Lovett and Matthew Gray et al., (2020), as above n 14, p. 111.

¹⁵⁷ KPMG Australia (2018), Maranguka Justice Reinvestment Project: Impact Evaluation, p. 6 < [Practice Manager Role FY 17 \(indigenousjustice.gov.au\)](https://www.indigenousjustice.gov.au/practice-manager-role-fy-17) >.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

the highest level of Aboriginal incarceration has not introduced a therapeutic court where Aboriginal Elders are involved in decision making.

The Koori Court has been successful at reducing rates of incarceration amongst young people.¹⁶⁰ A recent evaluation by the NSW Bureau of Crime Statistics and Research compared sentencing outcomes for 151 Aboriginal young people who participated in the Youth Koori Court with 2,883 comparable Aboriginal young people who proceeded through the usual Children's Court process¹⁶¹. The evaluation found that participants in the Youth Koori Court were 40% less likely to receive a custodial sentence at their court finalisation relative to their counterparts.¹⁶² While there was no statistically significant reduction in reoffending, participants who did reoffend were 84% less likely to receive a custodial penalty at re-conviction.¹⁶³ A similar review of the Murri Court in Queensland has shown that, at a structural level, the court has been effective at creating an environment and process that is less intimidating, more approachable and accessible to Aboriginal people.¹⁶⁴ Between 2016-2021, the Toowoomba branch of the Murri Court successfully diverted 163 Aboriginal adults from prison.¹⁶⁵ The role of Elders in both Courts cannot be overlooked. Elders bring *"safety, security and authority to [the Murri Court] in the eyes of Aboriginal people. They serve as arbiters of non-Aboriginal control and decision-making and as a check and balance to the rule of the magistrate"*.¹⁶⁶

NAAFLS supports and encourages the further expansion of community led initiatives like TFVPP, the Maranguka JR Project and the Koori/Murri Courts. Without community ownership, particularly in remote communities, programs can be viewed by community as externally imposed and ignorant of the socio-cultural context. Community led initiatives driven by Elders also have the benefit of inbuilt mechanisms for governance and accountability.¹⁶⁷ Participants and stakeholders in TFVPP observed the role of *"Elders as a key strength of the communities. The respect for Elders could help with compliance, but also assist with positive engagement with the program"*.¹⁶⁸ Finally, community led initiatives inherently promote culturally and linguistically appropriate and safe engagement which is a priority for remote Aboriginal communities.

NAAFLS is aware of other Aboriginal community controlled and led programs in response to DFSV at the primary prevention level. For example, the ARDS Aboriginal Corporation has built a resource for anyone working with the Yolngu people of East Arnhem Land affected by family violence, including lawyers, social workers and medical professionals.¹⁶⁹ The resource is intended to stimulate cross-cultural discussion in a safe and trauma-informed way.¹⁷⁰ The Julalikari Council Aboriginal Corporation also piloted a youth patrol program in Tennant Creek and the broader Barkly region, *"The Youth patrol pilot program has been flat out [since] it started in March 2019"*.¹⁷¹ Patrol staff follow-up with parents whose children have been found

¹⁶⁰ NSW Bureau of Crime Statistics and Research (2022), NSW Youth Koori Court reduces custody rates for Aboriginal young people <[The impact of the NSW Youth Koori Court on sentencing and re-offending outcomes](#)>.

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Aboriginal and Torres Strait Islander Research Unit (2019), Summary Report: Evaluation of Murri Court Prepared for the Queensland Department of Justice and Attorney General, p. 22 <[Summary report evaluation of murri court \(apo.org.au\)](#)>.

¹⁶⁵ Belinda Sanders, Toowoomba Murri Court's remarkable success, ABC News (Online, 7 April 2021) <[Toowoomba Murri Court's remarkable success - ABC Southern Queensland](#)>.

¹⁶⁶ Aboriginal and Torres Strait Islander Research Unit (2019), Summary Report: Evaluation of Murri Court Prepared for the Queensland Department of Justice and Attorney General, pp. 22-23 <[Summary report evaluation of murri court \(apo.org.au\)](#)>.

¹⁶⁷ Chay Brown (2020), as above n 158, p. 317.

¹⁶⁸ Ibid.

¹⁶⁹ Felicity James, Breakthrough resource to teach whitefellas about reality of life in Arnhem Land, ABC News (Online, 24 February 2019) <[Breakthrough resource to teach whitefellas about reality of life in Arnhem Land - ABC News](#)>.

¹⁷⁰ Ibid.

¹⁷¹ Australian Human Rights Commission (2020), Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report, p. 278 <[Wiyi Yani U Thangani Report \(2020\) | Australian Human Rights Commission](#)>.

wandering the streets at night and can refer the young person and/or family to allied health and social support services to curb any anti-social behaviour.¹⁷² Patrol staff even feed the young person(s). The program is so embedded in the community that patrol staff, not police, respond to youth on the street.¹⁷³

Community controlled initiatives cannot exist without adequate government funding. NAAFLS has previously called for more state and federal government funding to prevent DFSV in Aboriginal communities.¹⁷⁴ In our joint submission to the Northern Territory government on its review of legislation and justice responses to DFSV in the Northern Territory (2022), we noted that increased funding of community controlled specialist domestic violence services is an opportunity for the Northern Territory government to act in accordance with its commitment to embrace the strong partnership elements of the National Agreement on Closing the Gap.¹⁷⁵

Without a commitment to partnerships and long-term funding, the prevention of DFSV in Aboriginal communities is compromised. *“Short-term funding for programs creates service gaps and uncertainty, whereas long-term programs create consistency [...] Long-term funding cycles, with inbuilt funded monitoring and evaluation mechanisms, will ensure the sustainability of programs and increase their capacity to create generational change, plus increase people’s confidence and trust in the service. Adequate funding provision for evaluation will ensure accountability and help services to share, learn, and develop”*.¹⁷⁶ Funding should also be distributed evenly to areas with the greatest need rather than highest population.¹⁷⁷

Culturally Safe Crisis Housing

NAAFLS recommends that the government significantly increase culturally appropriate crisis housing in remote Aboriginal communities for both victim-survivors and perpetrators.

NAAFLS is aware of an acute shortage of crisis housing for women and children in remote Aboriginal communities. This is an untenable situation particularly for victim-survivors with children. Safe shelter is a basic need and it is not being met in remote communities. There are only 21 women’s safe houses across remote communities funded by the Department of Territory Families, Housing and Communities. With 711 remote Aboriginal communities, homelands and outstations, this gap is extraordinary leaving countless women experiencing DFSV without safe crisis accommodation.¹⁷⁸

We refer to the Australian Housing and Urban Research Institute’s report on *‘Housing and Indigenous Domestic Family Violence’* in 2019, that reported *“developing culturally appropriate responses to Indigenous domestic and family violence and improving integration between housing, domestic and family violence and child protection services would reduce rates of Indigenous women’s injury and death, as well as rates of Indigenous children in out of home care”*.¹⁷⁹

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Central Australian Aboriginal Family Legal Unit and North Australian Aboriginal Family Legal Services, Joint Submission (Systemic Reform Proposals) to the Northern Territory Government on its review of legislation and justice responses to family and domestic violence in the Northern Territory, 12 October 2022, p. 5.

¹⁷⁵ Ibid, p. 7.

¹⁷⁶ Chay Brown (2020), as above n 142, p. 355.

¹⁷⁷ Ibid, p. 342.

¹⁷⁸ This includes 615 outstations, 59 Major, 37 Minor and 45 town camps. Livelihoods in remote Indigenous communities, The Greens Northern Territory (Web Page) <<https://greens.org.au/nt/policies/livelihoods-remote-indigenous-communities>>.

¹⁷⁹ Cripps, K and Habibis, D (2019) Improving housing and services responses to domestic and family violence for indigenous individuals and families, AHURI Final Report No. 320, Australian Housing and Urban Research Institute Limited, Melbourne, p 3.

Establishing safe houses was one of the first actions taken by the women's movement in the early 1970s to enable women to flee violence. Safe housing is critical, otherwise women are left in a position where they either have to return to unsafe homes, risk the perpetrator finding them at a friend's house or have to relocate out of their community and kinship networks. Aboriginal women who are unable to access safe housing risk having their children removed by child protective services.

It is equally as important to fund suitable safe housing for perpetrators of violence. Providing perpetrators with a culturally safe environment to live outside of the family home ensures they do not have to breach DVOs to seek shelter. Emergency housing for perpetrators of violence would also provide an opportunity for perpetrators to be linked in to support services such as men's healing programs and men's behaviour change programs.

DFSV Rehabilitation and Behaviour Change Programs

NAAFLS recommends significant investment in behavioural change programs for perpetrators, particularly those designed and delivered by Aboriginal organisations in remote communities.

NAAFLS confirms there are very few appropriate family violence and DVO rehabilitation programs accessible to remote communities in the Northern Territory.

We note that in mid-2020, the DFV Act was amended to give the Northern Territory Local Court discretion to require a person, who is subject to a DVO, to undergo a domestic and family violence rehabilitation program.¹⁸⁰ This meant that the Court could exercise its discretion if certain conditions were met, including that the Defendant was a suitable applicant, they consent to the order and there is an approved rehabilitation program available. This amendment has been ineffective and did not realise its intended purpose. There is no clear rationale for the suitability of defendants which risks differing approaches to determining suitability, and there are no rehabilitation programs in the Top End that meet the requirements under the Act. We consider that unless there is sufficient funding of Aboriginal controlled and led domestic and family violence rehabilitation programs and adequate representation for Aboriginal Defendants in the Top End this amendment has no chance of achieving its purpose.

The government needs to urgently invest in the development of men's healing programs designed and delivered by Aboriginal men to change perpetrator behaviour. The current approach of mandatory sentencing and overincarceration has not changed behaviour of DFSV perpetrators. Perpetrators need to be supported to understand their behaviour and provided with tools to address underlying drivers of personal violence. Connection to culture and country is a strong protective factor against violence. The government should be funding the delivery of rehabilitative programs across the Northern Territory, not mass incarceration.

Honouring Missing and Murdered Women

NAAFLS acknowledges and respects the extensive diversity across Aboriginal communities in this country. There is a wealth of difference across the nation with respect to languages, cultures, kinship structures and

¹⁸⁰ *Domestic and Family Violence Act 2007* (NT), section 24.

daily experiences. We cannot know nor create a blanket response to the honouring of missing and murdered women across Aboriginal communities. This honouring must be left to the communities, kinships and families of those missing and murdered individuals.

Conclusion

NAAFLS implores the government to prioritise the allocation of funding and resources to Aboriginal community controlled organisations and Aboriginal community led initiatives in order to realistically and appropriately address this issue. If we do not disrupt the oppressive and discriminatory policies and practices of the colonial settler state, we will never be able to end the violence inflicted upon Aboriginal women.

Any response on the crisis of missing and murdered Aboriginal women must be based on the direction and leadership of Aboriginal women across the various Aboriginal nations. Aboriginal women are the experts on their own lives. Aboriginal women uphold the wellbeing and health of their communities and are the force of change. They understand that the crises across their communities are a direct result of colonisation, continued settler state interference, and racism. Aboriginal women understand the impetus for violence within their communities and thus are best placed to remedy this issue.