

Improving family violence legal and support services for Aboriginal and Torres Strait Islander women

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Acknowledgement of Country

ANROWS acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and future, and we value Aboriginal and Torres Strait Islander histories, cultures, and knowledge. We are committed to standing and working with Aboriginal and Torres Strait Islander peoples, honouring the truths set out in the [Warawarni-gu Guma Statement](#).

The cover art features *Resilience* (2014), an ANROWS-commissioned art series by Christine Blakeney, a Wiradjuri/Yaegl woman from NSW.

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Improving family violence legal and support services for Aboriginal and Torres Strait Islander women

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ANROWS acknowledges the lives and experiences of the women and children affected by domestic, family and sexual violence who are represented in this report. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

Caution: Some people may find parts of this content confronting or distressing. Recommended support services include 1800 RESPECT–1800 737 732 and Lifeline–13 11 14.

Contents

List of tables	4
List of figures	4
Acronyms	5
Definitions and concepts	7
Executive summary	11
Research aims and design	11
Methodology	12
Key findings	13
Benefits of the research	17
Introduction	19
Approach to interview and data collection	20
Background	20
State of knowledge review	23
Methods and theoretical approaches used in this state of knowledge review	24
Understandings of family violence experienced by Aboriginal and Torres Strait Islander peoples	25
The risk factors and context of Aboriginal family violence	31
Racism: Racist exclusion, systemic, internalised, lateral and complex	32
Whose trauma? Privileging the trauma of perpetrators over that of the victims	33
The cycle of pain: Intergenerational trauma, family violence, alcohol and the removal of children from their families by governments	36
Aboriginal and Torres Strait Islander self-determination and family violence services	40

Research approach, methodologies and methods: Indigenous women as victims of violence and the research challenges.....	42
Research approach	42
Theoretical frameworks	48
Mixed methods research	50
Critical, socio-legal audit of family violence legal framework	54
Ethical considerations and risk management	55
Key findings.....	57
The severity of family violence against Aboriginal women	57
Serial perpetrators of family violence	60
Aboriginal women and their children	64
Stolen Generation and child protection	64
Barriers to support services and programs from association to child protection	65
Uneven and unfair burden of responsibility for Aboriginal mothers	66
The weaponising of children by perpetrators	68
Distrust of police, homelessness and shame: Barriers to reporting family violence	70
Availability, accessibility and acceptability of family violence legal and support services at the field sites	75
Health services	79
Homelessness and housing services	81
Audit of family violence legislation	88
Conclusion.....	98
Recommendations for policy and practice	98
References.....	103
Legislation	113

APPENDIX A:	
Table of national family violence protection orders legislation.....	115
APPENDIX B:	
Table of child protection legislative and policy provisions in Victoria and New South Wales.....	123
APPENDIX C:	
Family violence services available in Albury, Wodonga and Mildura.....	134

List of tables

Table 1: Interviews	X
Table 2: Focus groups	X
Table 3: Interviews	X
Table 4: Focus groups	X
Table 5: Perpetrator weaponisation of children	X
Table 6: Child protection mandatory reporting in New South Wales and Victoria	X

List of figures

Figure 1: Rate of substantiated notifications (number per 1000) by Aboriginal and Torres Strait Islander status and state/territory for children (0-17 years) 2016-17	X
Figure 2: Rate of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander children in out-of-home care 1999-2018 (per 1000 children)	X
Figure 3: Family violence law	X

Acronyms

ABS	Australian Bureau of Statistics
ACPP	Aboriginal and Torres Strait Islander Child Placement Principle
ADVO	Apprehended domestic violence orders
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AIJA	Australasian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
AMS	Aboriginal medical service
ANROWS	Australia's National Research Organisation for Women's Safety
AVO	Apprehended violence order
AWAHS	Albury-Wodonga Aboriginal Health Service
CA	Capabilities approach
COAG	Council of Australian Governments
DCJ	Department of Communities and Justice
DHHS	Department of Health and Human Services
DSS	Department of Social Services
DV	Domestic violence
DVDS	Domestic Violence Disclosure Scheme
DVLO	Domestic violence liaison officer
DVO	Domestic violence order
DVSAT	Domestic Violence Safety Assessment Tool
FACS	Family and Community Services
FVO	Family violence order
FVRO	Family violence restraining order
JCPR	Joint Child Protection Response (NSW)
KMS	Koori Maternity Services
MBCP	Men's behaviour change program

MDAS	Mallee District Aboriginal Services
NFVPLS	National Family Violence Prevention Legal Services
NILS	No interest loan scheme
NSWLRC	New South Wales Law Reform Commission
OOHC	Out-of-home care
RAMP	Risk Assessment Management Panel
RCFV	Victorian Royal Commission into Family Violence
RP	Respected Persons
SAM	Safety Action Meeting
SNAICC	Secretariat of National Aboriginal and Islander Child Care
VACCA	Victorian Aboriginal Child Care Agency
VALS	Victoria Aboriginal Legal Service

Definitions and concepts

Aboriginal and Torres Strait Islander

The widely used standard definition used today, and confirmed in New South Wales legislation and a High Court case,¹ was proposed first in the Constitutional Section of the Department of Aboriginal Affairs' *Report on a Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islanders* (Commonwealth of Australia, 1981 as cited in Gardiner-Garden, 2003, p. 4):

An Aboriginal or Torres Strait Islander is a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the community in which he [or she] lives.

This report uses the term Aboriginal and Torres Strait Islander in general references to the Indigenous population and uses "Aboriginal" to refer to the participants interviewed in the fieldwork locations. No Torres Strait Islander people were interviewed in this research.

Cultural safety, cultural competency

Cultural competency requires special knowledge of the histories of Aboriginal and Torres Strait Islander people, specifically the effects of colonisation and the Stolen Generations, which requires a commitment to work in partnership with Aboriginal and Torres Strait Islander people to (support them to deliver and) produce services, programs and policies (Secretariat of National Aboriginal and Islander Child Care [SNAICC], 2013, p. 12).

Culture

We use the term culture informed by the anthropological literature which generally, since the post-1970s critique of British anthropology and its development as a discipline in societies colonised by the European powers, has avoided definitions of the term. As Robert Thornton noted, "there is not much point in trying to say what culture is ... What can be done, however, is to say what culture does" (Thornton, 1988, p. 26). Many anthropologists regard culture as a process in that it involves, in human societies in any case, signifying meaning and meaning-making. In the traditional definition, especially in dictionaries, the concept of culture refers to the particular beliefs, values, traditions, ideas and practices of groups of people as well as their language; and religious, kinship and economic traditions and behaviour, including those norms that have been adopted in more recent times, and did not necessarily originate in the deep past. This is not always what is meant when people from other disciplines use the term. In the context of discussing family violence and its cultural contexts, factors and impacts, such as mental health and trauma, a useful approach to the concept of culture is provided by Aboriginal psychologists Graham Gee, Pat Dudgeon, Clinton Schultz, Amanda Hart and Kerrie Kelly (2014) in their work on Aboriginal and Torres Strait Islander social and emotional wellbeing to inform others working in the field of mental health on how to be mindful of their clients' "connection to culture":

¹ *Commonwealth of Australia v Tasmania* (1983) 158 CLR 1. In Gardiner-Garden (2003), the following is noted: "The 1981 Report gave the new definition added impetus and soon this three-part definition (descent, self-identification and community recognition) was adopted by all Federal Government departments as their 'working definition' for determining eligibility to some services and benefits. The definition also found its way into State legislation (e.g. in the NSW *Aboriginal Land Rights Act 1983*) ... and was accepted by the High Court as giving meaning to the expression 'Aboriginal race' within s 51 (xxvi) of the Constitution.."

**Culture
(Continued)**

Connection to culture, as we use the term here, refers to Aboriginal and Torres Strait Islander peoples' capacity and opportunity to sustain and (re) create a healthy, strong relationship to their Aboriginal or Torres Strait Islander heritage. This includes all of the associated systems of knowledge, law and practices that comprise this heritage. Culture is, of course, a complex concept to try and define or articulate. We ascribe to Hovane and colleagues (2013) articulation of Aboriginal culture as constituting a body of collectively shared values, principals, practices and customs and traditions ... Within this context, maintaining or restoring SEWB [social and emotional wellbeing] is about supporting Aboriginal and Torres Strait Islander peoples to maintain a secure sense of cultural identity and cultural values, and to participate in cultural practices that allow them to exercise their cultural rights and responsibilities.

This can be deeply rooted in areas of wellbeing such as connection to spirituality and land, but also might not be due to the large variation and increasing complexity of Aboriginal identity (Gee et al., 2014, p. 61).

Family violence

This research uses the definition of family violence as per the *Family Violence Protection Act 2008* (Vic), s 5(a) and (b):

Victoria

In the State of Victoria, the meaning of the term family violence is defined at s 5 of the *Family Violence Protection Act 2008*:

(1) For the purposes of this Act, **family violence** is—

- (a) behaviour by a person towards a family member of that person if that behaviour—
- is physically or sexually abusive; or
 - is emotionally or psychologically abusive; or
 - is economically abusive; or
 - is threatening; or
 - is coercive; or
 - in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

New South Wales

In New South Wales, there is no statutory definition of "family violence". The effective term is "domestic violence offence" defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) in pt 3 s 11:

11 Meaning of "domestic violence offence"

In this Act,

**Family violence
(Continued)**

(1) **“domestic violence offence”** means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—

- (a) a personal violence offence, or
- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

(2) In this section, **“offence”** includes an offence under the *Criminal Code Act 1995* of the Commonwealth.

In the *Victims Rights and Support Act 2013* (NSW) at s 20, the term “primary victim” is defined in the same way as in the Victorian legislation:

(1) A **“primary victim”** of an act of violence is a person who is injured, or dies, as a direct result of that act.

(2) A primary victim of an act of violence extends to a person who is injured, or dies, as a direct result of:

- (a) trying to prevent another person from committing that act, or
- (b) trying to help or rescue another person against whom that act is being committed or has just been committed, or
- (c) trying to arrest another person who is committing, or who has just committed, that act.

**Intergenerational
trauma**

Historical trauma is a type of trauma transmitted across generations (that is, intergenerational trauma). It is defined as the subjective experiencing and remembering of events in the mind of an individual or the life of a community, passed from adults to children in cyclic processes as “cumulative emotional and psychological wounding” (Mu’id, 2004 as cited in Atkinson, 2013, p. 5).

Service provider

Unless indicated otherwise, the term service provider is used in this report to refer to anyone who works in Aboriginal community-controlled domestic and family violence services and government and legal and services. It was necessary to use a general term to conceal the identity and protect the privacy and safety of those we interviewed and the clients and cases they spoke about. To the greatest extent possible, we have de-identified all data to comply with ethics requirements. It would be relatively easy to identify those we interviewed if we were more specific about their roles and status in the two fieldwork locations in New South Wales and Victoria: rural towns with relatively small Aboriginal populations. The research did not involve a formal evaluation of such services, but rather aimed to analyse qualitative (ethnographic, interview and observational) and quantitative data to build a picture of the experience of Aboriginal women who disclose violence in the legal and social family violence service environments available to them. Unless indicated otherwise, the term is used to refer to police and court personnel as well to protect the privacy of individuals.

Victims, perpetrators and women who have experienced violence

The research team is aware of the many variations and terminological approaches used in family and domestic violence research and policy; however, the research team based the terminology in the report on leading academic literature, Australian legal definitions of family and domestic violence, and the voices of our participants. We use the terms victims, perpetrators and women who have experienced violence throughout the report.

The term victim is used throughout this report to refer to women who have suffered an injury as a direct result of an act of violence in accordance with the legal meaning of “primary victim” in Victorian law as defined in the *Victims of Crime Assistance Act 1996* at s 7. The term is also used to refer to women who have suffered any of the legally defined types of “family violence” as defined in the *Family Violence Protection Act 2008 (Vic)*. The term victim is not generally used to mean “secondary victim” or “related victim” as defined in that Act.

In its general and non-legal usage, the term can be imprecise for research purposes; however, as Putt, Holder, and O’Leary (2017, p. 7) noted:

Much of the statistical data from service providers (e.g. police, hospitals) and from the partner services’ client profiles indicate that much of the violence experienced by women is “domestic violence”, that is, by an intimate or former intimate partner.

The term perpetrator is used in its ordinary dictionary meaning to refer to someone who has committed a crime or a violent or harmful act.

Executive summary

This report identifies priorities for reducing and preventing violence against, and improving services for, Aboriginal women in the Victorian and New South Wales towns of Mildura, Albury and Wodonga. The study contributes to the evidence base on best quality practices to strengthen Aboriginal and Torres Strait Islander communities and services in meeting the needs of women and their children experiencing family violence. This report also describes aspects of the frontline family violence workforce and services, both Aboriginal and non-Indigenous, in order to obtain an understanding of their capability to improve the safety of women and children experiencing violence.

The available data show high rates of family violence in these towns and surrounding areas. The research project was conducted during 2019 and 2020 by an Aboriginal-led research team of anthropologists, lawyers and research associates who visited these towns for various periods several times.

Reducing the levels of family violence for Aboriginal and Torres Strait Islander women and children in Mildura and Albury–Wodonga is a priority for the Victorian and New South Wales governments as well as the Aboriginal leaders and the service providers in these areas.

The researchers initiated discussions with Aboriginal people from a range of Aboriginal corporations and government agencies to assess their interest in participating in this research. With substantial Aboriginal populations, Mildura, Albury and Wodonga are regional border towns that provided the researchers with the opportunity to investigate the cross-border and multi-jurisdictional issues involved in providing services to victims. The researchers collaborated with community Elders and community members to guide the research based on community need, understand the priorities in each community and design the research questions around these recommendations.

Research aims and design

This research aimed to contribute qualitative evidence and an audit of the policy and legislative frameworks relevant to family violence to improve the safety of Aboriginal and Torres Strait Islander women and contribute to better understanding

of their engagement with police, service providers and courts and the barriers to and enablers of access to support services and the justice system.

The research was designed as an investigation into the experiences of Aboriginal and Torres Strait Islander women and specifically the experiences of Aboriginal women when accessing legal and support services for family violence, services provided by police and the courts, and support services to victims; and to gather evidence on the adequacy of and gaps in family violence service provision in cross-border contexts in two fieldwork sites in regional towns in New South Wales and Victoria. The following questions guided the research:

1. What are the differential impacts of family violence legislation and related policy (and its shifting frame) for Aboriginal and Torres Strait Islander women in different contexts?
2. What are the barriers and enablers that impact on the capacity of Aboriginal and Torres Strait Islander women to seek assistance from police and support services, to pursue court processes, and to improve their experience and satisfaction with these services?
3. Are there specific features of different support services that encourage access for Aboriginal and Torres Strait Islander women?
4. What are the historical, social, political, economic and regulatory contexts that frame Aboriginal and Torres Strait Islander family violence for Aboriginal and Torres Strait Islander people?

The research team engaged with community Elders and community members in Mildura and Albury–Wodonga to guide the research based on community need and worked collaboratively with them to understand what the priorities were across each community to build the research questions around these recommendations. These included perpetrator accountability, enhanced criminal justice responses to family violence, and better support in the Magistrates Court for victims and perpetrators of violence.

The researchers investigated intersections between services relevant to the experiences of Aboriginal and Torres Strait Islander women living in two regional areas, providing

Table 1: Interviews

Location	Participants	Sectors
Mildura	16	Health, justice, Aboriginal community-controlled, family violence, housing and homelessness
Albury-Wodonga	11	
Total	27	

Table 2: Focus groups

Location	Number	Participants	Sectors
Mildura	5	15	Health, justice, Aboriginal community-controlled, family violence, housing and homelessness
Albury-Wodonga	15	50	
Other	2	5	Justice
Total	22	70	

evidence to improve services in the justice system for Aboriginal and Torres Strait Islander families experiencing family violence, and the capacity of Aboriginal and Torres Strait Islander women to seek assistance from police and support services, pursue court processes, and enhance their experience and satisfaction with these services.

The research approach was purposefully designed to give victims and service providers the opportunity to speak about their experiences and their perspectives on how service providers in the family violence system could meaningfully address their needs and be considerate of their cultural and socioeconomic differences; diminish the negative effects of Aboriginal dealings with police, courts and child protection services; and improve outcomes for the victims.

Discussions with local Aboriginal women and service providers assisted the researchers throughout the project, and the initial research aims expanded to include particular focus on issues such as perpetrator accountability; enhanced criminal justice responses to family violence; improved support in the Magistrates Court for victims and perpetrators of violence; and the historical, cultural and social factors that contribute to high levels of trauma experienced by some Aboriginal people in these areas.

Methodology

This research was undertaken at two fieldwork sites (Mildura and Albury–Wodonga) during a number of visits from October 2018 to November 2019. The population of Mildura

is approximately 53,000, with an Aboriginal population of approximately 2.3 percent (Australian Bureau of Statistics [ABS], 2016b). Albury has a population of 51,076 in the local government area, with 1417 (2.8%) Aboriginal people, and Wodonga has a population of 39,347 with 980 (2.49%) Aboriginal and Torres Strait Islander people (ABS, 2016a, 2016c).

This qualitative ethnographic research was informed by quantitative data. The researchers used mixed methods including semi-structured interviews, focus groups and participant observation to collect qualitative data. We analysed current justice strategies by assessing whether Aboriginal women who have experienced violence in the selected fieldwork areas were being treated respectfully and were culturally safe when entering a complex system with heightened levels of existing stress.

Research participants

A total of 97 participants, including Aboriginal victims and service providers, took part in this study across both field sites. We conducted 27 individual interviews and held 22 focus groups (with a total of 70 participants; see Tables 1 and 2). There were 31 participants in Mildura, 61 in Albury–Wodonga and five in other locations.

As this was a qualitative study of an exploratory nature, we did not seek to recruit a representative sample of the population. As such, participants were selectively invited to take part using a purposive approach to provide information-rich, in-depth data for analysis.

Ethics approval

The Manager of Human Research Ethics at the University of Melbourne confirmed the ethics approval (ID 1852396) for this project from 5 September 2018 to 31 December 2018, again until 31 December 2019, and again to 31 December 2020. The ethics approval applied to all researchers and research assistants involved in the project.

An amendment allowing the researchers to give food vouchers to researcher participants was approved by the Secretary of Medicine and Dentistry HESC on 17 September 2019.

Key findings

The research findings relating to the intersection of family violence, gender, racial issues, cultural background, and the family violence legal and support service system are addressed through key themes with the aim of:

- supporting Aboriginal women experiencing family violence to improve experiences and engagement with health services
- identifying gaps in service provision, policy and legislation
- increasing the likelihood of their willingness to report family violence, either to the police, health services, or legal services.

Recommendations based on our findings are listed in the conclusion of the report.

Inadequate funding and resource allocation for the safety of victims of Indigenous family violence

Recognising the focus on family violence by policymakers and government, the research team examined the evidence of the research participants to understand where resources were allocated, and concluded that a significant proportion of overall funding was designated to programs that were not focused on women and centred more around men's rehabilitation. Of the total number of interviews conducted, only two participants are quoted in this report on the matter of resource allocation: see the interview excerpt with "Judy" at page 69 of this report, the evidence of the Djirra service at

Mildura and the Victorian Aboriginal Legal Service (VALS) at Wodonga, each of which provided clear cases of inadequate funding for essential services to victims. Under the heading "General availability, accessibility and acceptability issues at the field sites", we summarised the interview evidence as follows: the main factors negatively impacting on women's use of the services were the lack of perceived privacy in the Aboriginal community-controlled sector, the need for greater cultural safety in mainstream organisations, and the insecurity and underfunding of vital legal and support services.

We summarise the interviews about funding under the heading "The short-term, insecure resourcing of services". In 2018, in response to the Victorian Government Budget allocation for Indigenous family violence, Antoinette Braybrook identified critical areas that remained underfunded and required further improvements in policy and practice, recommending

long-term investment in culturally safe early intervention and the critical work of Aboriginal community-controlled organisations who specialise in working with victims/survivors to provide holistic, wrap-around support for Aboriginal women who are among those at highest risk of violence in our community ...

Family violence is the single biggest driver of Aboriginal child removal, with 88% of Aboriginal children in care having experienced family violence. We need to see a transformation in how the system supports Aboriginal mothers experiencing family violence as a fundamental starting point in intervening earlier to keep our children safe in their family's care ... We need a system that understands both mum and children are victims of family violence—kids aren't collateral damage to violence against mum; and mums aren't to blame for the violence they endure. (Antoinette Baybrook as quoted in Djirra, 2018)

Given the extreme need for safe accommodation for Indigenous victims of violence as identified repeatedly by the majority of research participants, the disregard for victim safety in the 2018–19 Victorian Budget is further proof of the grounds for complaint by the service providers who spoke to us: only \$7.7 million was allocated to direct measures for the safety of Indigenous victims—specifically, after-hours refuge responses for victims of family violence and an increase in family violence crisis properties—while \$47 million

was allocated to perpetrators and anti-violence education, including behavioural change campaigns for perpetrators and a Respectful Relationships initiative for children and youth, aimed at preventing family violence in Victoria (Domestic Violence Victoria, 2018).

The Australian Institute of Health and Welfare (AIHW), in its report on family violence prevention programs in Indigenous communities (2016, p. 15), reported that the barriers to effective programs include “unsustainable responses that rely solely on short-term government funding”. It is not only the inadequacy of the amount of funding, but also the short-term nature of funding for women’s safety. The AIHW also drew attention to the failure of government program funding to include funds for monitoring and evaluating outcomes (2016, p. 15).

In New South Wales, Domestic Violence NSW (2019, n.p., emphases in original) reported the following in its analysis of the New South Wales Government Budget allocation 2018–19 to domestic violence:

- In the 2018–19 NSW State Budget, no significant new money for the domestic and family violence sector was announced ...
- No new funding or an evidence-based strategy for violence **prevention** across NSW (the small-scale Domestic Violence Innovation Fund only received \$2.7m. This fund includes early intervention and crisis responses).
- No additional funding for **specialist women’s services** to meet the current demand.
- No funding to implement the yet-to-be-released **Sexual Assault Strategy**.
- Funding for prisons and corrective services rather than **preventative measures and support services** for perpetrators and re-offenders.
- A push to increase the number of adoptions from **out-of-home care**, which may be too short a timeframe for vulnerable parents to reach stability and reunification (\$17m over 2 years for the Adoption Transformation Program).
- Funding for FACS to implement multisystemic therapy for **child abuse and neglect** and **functional family therapy child welfare** services in priority locations (\$39.3m),

which is an untested approach for families experiencing domestic and family violence.

Availability, accessibility and acceptability of family violence, legal and support services at the field sites

The researchers investigated the range and extent of family violence legal and support services offered in Mildura and Albury–Wodonga, both mainstream and Aboriginal and Torres Strait Islander-specific (see Appendix C). The account of service availability, accessibility and acceptability is informed by our participants, both Aboriginal women who had experienced family violence and service providers in the family violence legal and support service sector. This aspect of the research is not intended to be an exhaustive or evaluative representation of the family violence legal and support service sector at each field site. Instead, it provides insights into how the services at each location are experienced by those using them or working within them.

The services available in the fieldwork sites include specialist services specifically for Aboriginal and Torres Strait Islander people experiencing family violence, mainstream services for all Australians experiencing family violence, and indirect sectoral services who include among their functions catering to victims of family violence. There are few support services that operate at a national level, although many support services are directly and indirectly funded by federal government departments or national not-for-profit organisations.

The legal and court support services, and in particular the Koori Court in Mildura, are described based on the evidence available to the researchers during the course of this project. Support services in the following sectors are also described: health services, homelessness and housing services, and referral and interagency networks. There are some gaps and inadequate resources identified, as well as interagency operability and related problems, and recommendations are made where necessary, including in relation to the need for greater privacy measures in the Aboriginal community-controlled sector; racism and the lack of cultural safety in the mainstream services; and the short-term, insecure resourcing of services.

The presence of Aboriginal service providers is a critically important attribute for the success of service provider agencies to make initial contact with often highly reluctant victims of violence, and to engage and remain involved with them throughout an often lengthy process of escaping from their partners or other perpetrators and re-establishing their lives in safe accommodation, while often facing the challenge of dealing with child protection services to have their children returned. Failure to have Aboriginal service providers is a major risk factor to both the agency in putting their service at risk of failure and to the victims who, when facing *any* barriers to availability, access or acceptability of services in any sector, are less likely to seek any support in times of high risk. Recommendations are made to increase support for the Aboriginal service sector, particularly for mental health and counselling services, training to retain Aboriginal personnel, and the adoption of cultural protocols and procedures for the sector. We recommend also that mainstream services improve their engagement with Aboriginal victims by adopting a cultural competence model.

Reluctance to report to services and authorities

When conducting this research, we learned that simply reporting family violence to the police, health services or legal services is not always a practical possibility for many women in violent situations that are already placing them at risk. During the fieldwork component of this research we interviewed Aboriginal women who have experienced violence, with women expressing multiple reasons why they disengaged or refused to seek help from services, instead opting to keep violence concealed. The two main themes voiced by participants were:

- the real and immediate threat of homelessness, as there was often a financial reliance on their violent partner to provide financial support to the household, and the fear of isolation from family and community
- a dominant fear of losing their children.

Health services, legal services, the police and government agencies might not immediately comprehend the significance of a woman reporting family violence, nor identify a link

between homelessness, social isolation and child protection; instead, participants identified a more general focus on cultural awareness from services and government agencies. Interviewing Aboriginal women who have experienced violence enabled us to develop a deeper understanding of the magnitude of violence occurring in Mildura and Albury–Wodonga, and a clear view of what processes and service support exist for women who want but feel afraid to leave a violent situation; it also allowed us to understand what the barriers are that disempower women experiencing violence in these areas.

Culturally appropriate services with family violence expertise

This research found that services that used culturally appropriate strategies in service delivery had the most success in breaking down barriers to access for Aboriginal and Torres Strait Islander clients. Cultural awareness and culturally appropriate services should not be superficially implemented. A detailed and highly localised understanding of what is involved must be embedded in the core values of service providers. Cultural competency requires well-researched and local knowledge of the histories of Aboriginal and Torres Strait Islander people, specifically relating to effects of colonisation and the forced removal of Aboriginal children. This requires a commitment to working in partnership with Aboriginal and Torres Strait Islander people to support them to deliver services, programs and policies (Secretariat of National Aboriginal and Islander Child Care [SNAICC], 2013).

Some of the successful measures adopted in different support and legal services included:

- the use of inclusive aesthetics such as Aboriginal art in waiting rooms and throughout buildings, Aboriginal and Torres Strait Islander-specific health promotion or other educational materials, or visible signage of local Aboriginal language
- staff who are well informed about cultural safety principles and apply them in their service provision
- Aboriginal staff, including specific Aboriginal liaison officers
- staff with in-depth knowledge of the complexity of family

violence issues—particularly Aboriginal and Torres Strait Islander family violence.

Our findings suggest that Aboriginal-specific services are most appropriate in some cases, but for others, mainstream services that are culturally safe can provide appropriate and accessible care.

Improving confidentiality and privacy provisions in the Aboriginal community-controlled sector

Research participants raised confidentiality as an issue (see section “Distrust of police, homelessness and shame: Barriers to reporting family violence” for further detail on reluctance to report), with many Aboriginal participants preferring to use a mainstream service because their perception was that their privacy and anonymity would be protected, even though the service may not be preferable in other ways, for instance in being culturally unaware. This was an issue across Mildura and Albury–Wodonga and is not isolated to a particular area, with our research showing that some Aboriginal people will choose to access mainstream services based on confidentiality. It is imperative that mainstream services offer a service that is culturally respectful and safe for Aboriginal and Torres Strait Islander clients seeking assistance with family violence issues, or general wellbeing concerns.

For many women, fear of a lack of privacy in Aboriginal organisations was a barrier to accessing their services. Although these organisations often provide the most culturally appropriate and effective support for Aboriginal women experiencing family violence, there is a clear need for greater accountability mechanisms to safeguard the privacy of victims.

Provision of universal early intervention across services and programs

The majority of support and legal services available to Aboriginal women experiencing family violence in Mildura and Albury–Wodonga are tertiary (crisis or post-crisis) services. Many women participating in the study explained the barriers to accessing services prior to crisis, and why their eventual engagement was not always voluntary. For these women, every interaction with any relevant service

provider during their experiences of violence could provide an opportunity for early intervention by identifying early signs of escalating violence. This could include visits to a general practitioner for injuries sustained, education providers recognising the signs of withdrawal in children, or maternal and child health workers noting protective or guarded behaviour.

A systematic strategy should be developed with the engagement and consultation of Aboriginal and Torres Strait Islander communities to deliver universal early intervention family violence responses. This strategy should, at a minimum, include the following:

- early childhood and young people educational programs
- adult education related to navigating the legal and support services sector
- family violence training and skill development for all related service providers on how to identify the early signs and dynamics of family violence.

There was a concern among service providers that clients are unclear about family violence terminology and what constitutes family violence, which could contribute to underreporting to services and government agencies. Victims might be normalising behaviour that they have witnessed in childhood or subsequent relationships that is considered violent, but they do not identify it as such. Improvements must be found by service providers to ensure that they are able to identify initial signs of escalating violence during their engagements with Indigenous women experiencing violence and provide referrals and other services for early intervention to prevent further violence to the victims.

Shifting accountability away from Aboriginal and Torres Strait Islander victims of family violence

Mechanisms that hold perpetrators to account for their violence are grossly inadequate at systemic, community and individual levels. Aboriginal and Torres Strait Islander women need better systemic protection from perpetrators. It is not good enough to expect them to protect themselves and their children from violence, without providing mechanisms that ensure their safety and hold their perpetrators to account.

Aboriginal and Torres Strait Islander communities need to be provided with support to shift understandings of family violence dynamics, as well as the means to protect not only the victims, but the entire community from perpetrators.

There is a need for improved mechanisms that ensure individual perpetrators are held to account for their family violence—especially serial perpetrators, who are not discouraged by existing measures. For the majority of perpetrators, it would be of great benefit to provide additional local clinical and men’s specific services, greater screening and monitoring of violent behaviour (see Langton et al., 2020). There is also a need for greater transparency and communication across services to provide women’s support services with better information about perpetrator behaviour.

In relation to the severity of violence experienced by Aboriginal and Torres Strait Islander women, we recommend the following legislative amendments and additions:

- Acts of choking, strangulation or suffocation in a family violence context should be made a separate and additional offence within the relevant state or territory legislation.
- When a person is convicted of violent crimes, previous convictions related to family violence should be allowed to be considered by the courts as an aggravating factor in sentencing decisions (this is in addition to consideration of other previous convictions).

This section prioritises the voices of Aboriginal and Torres Strait Islander women who have experienced violence. These women understand the vital necessity for greater reform and improvements to the legal and support service system they have engaged with, which enable greater opportunity to identify gaps and barriers that exist and further explore the potential solutions. The recommendations in this report reflect the severity of circumstances and dire need to remove barriers, with each attempting to provide insight that ensures the safety, support and protection of Aboriginal and Torres Strait Islander women experiencing family violence.

Benefits of the research

The primary benefit of this research is the identification of practical legal and support service reforms to better serve

the needs of Aboriginal and Torres Strait Islander women and their children. The evidence produced by the project will contribute to improved understanding and responses to Aboriginal and Torres Strait Islander family violence at the fieldwork sites and across Australia. Also, engaging frontline workers, including paraprofessional and non-professional liaison staff, facilitates a cycle of practice-informed evidence and evidence-informed practice.

The evidence produced as an outcome of the project provides vital, practical knowledge that aims to contribute to improved understanding and responses to family violence against Aboriginal and Torres Strait Islander women and their children in Australia. This research maps, depicts and explores Aboriginal and Torres Strait Islander women’s client journeys through the family violence system to allow for better understandings of where, why and how clients are engaging with the system. It further adds to the information about the barriers to and enablers for accessing related support services and the justice system. Frontline workforces, both Aboriginal and Torres Strait Islander and non-Indigenous, need evidence of the characteristics of Aboriginal and Torres Strait Islander family violence, its frequency, and the effectiveness of the criminal justice system to address the needs of women, families and communities.

A benefit for participants across the fieldwork sites who were victims of family violence was the opportunity to gain more information about the services available to them and their families, and gain empowerment through understanding that their knowledge in this area may lead to better outcomes for women in similar situations in the future. Further, any improvements to policy, legislation or service delivery that take place as a result of the study could also directly benefit these participants during their escape and recovery from family violence.

Aboriginal and Torres Strait Islander women experiencing family violence do not always access legal and support services available to them. There is currently very little evidence that identifies why this is the case, which highlights a greater need to understand how these barriers can be overcome and how services can better meet the needs of women. This project contributes to the evidence base for Aboriginal and Torres Strait Islander women’s experiences of family violence and

service response—an area of extraordinary deficiency in Australia, particularly given the extreme rates of family violence and national attention to the issue.

Reducing the levels of family violence for Aboriginal and Torres Strait Islander women and children in Mildura and Albury–Wodonga is a cross-border state priority, involving a complex combination of historical, cultural, social, legal and policy issues.

Our research approach, described in the “Research approach, methodologies and methods” section, allowed us to obtain a detailed understanding of the client journeys of Aboriginal women in Mildura and Albury–Wodonga experiencing family violence in cross-border locations, and to identify gaps in the system of responses to family violence. We analysed current justice strategies by assessing whether Aboriginal women who have experienced violence in the selected fieldwork areas were being treated respectfully and were culturally safe when entering a complex system with heightened levels of existing stress.

The severity of the violence

Some Aboriginal women participating in this research openly shared their experiences of family violence endured across their lifetimes. These experiences were often severe and enduring, and operated cyclically. Some participants had been victimised repeatedly by one or many perpetrators and had their children removed. Many had experienced drug and alcohol dependencies, and had acquired a range of acute and sustained mental and physical health conditions. Other participants had been incarcerated for retaliatory or defensive violence against their perpetrators; most women had relocated multiple times to escape their perpetrators and had contact with multiple areas of the family violence support service and justice systems, either voluntarily or mandated.

Introduction

Reducing the risk of family violence for Aboriginal and Torres Strait Islander women is a national priority and involves a complex mix of historical, cultural, social, legal and policy issues. This report outlines the experiences of Aboriginal women in regional, cross-border locations in two jurisdictions (Victoria and New South Wales) when seeking assistance from family violence legal and support services to better understand how to enhance their experience and satisfaction with these services. The research investigated the effectiveness of the changing family violence policy and legislative environment for Aboriginal and Torres Strait Islander women in Mildura and Albury–Wodonga, addressing issues of availability, accessibility and acceptability of family violence legal and support services in their respective areas.

The urgency to conduct Aboriginal-led research comes in response to the overwhelming accounts and severity of Aboriginal and Torres Strait Islander women experiencing violence, from intimate partner violence to extended family violence.

During the past three decades, there has been increased national attention on the prevalence of family and intimate partner violence in Australian Aboriginal and Torres Strait Islander communities. This has been translated in recent times into the reform of relevant legislation, new policies, prevention strategies and action plans aiming to reduce the levels of violence experienced by Aboriginal and Torres Strait Islander women and children. To effectively meet the needs of Aboriginal and Torres Strait Islander women experiencing family violence, federal and state policymakers and governments need evidence of the characteristics of Aboriginal and Torres Strait Islander family violence, its frequency, and the effectiveness of the criminal justice system to address the needs of women, families and communities.

In recent years, academic literature, government reports and Aboriginal communities have made urgent appeals for the development of more Aboriginal-led and -designed research in the area of family violence. The research informing this report outlines the findings of one such study, highlighting the reality and severity of family violence for Aboriginal women in regional areas of New South Wales and Victoria, and their experiences when navigating the family violence legal and support service systems. The research adds to our

understanding of how to improve the support and protections provided to Aboriginal women, their children and their communities, who all too frequently endure cycles of violence and trauma in silence. Reducing the risk of violence for Aboriginal and Torres Strait Islander women and children is a national priority, but achieving this requires multifaceted research, including research that is led *by* Aboriginal and Torres Strait Islander people, *in consultation* with Aboriginal and Torres Strait Islander community members, *for* Aboriginal and Torres Strait Islander women experiencing violence. Action to address family violence in Aboriginal and Torres Strait Islander communities cannot be achieved without acknowledging the complex mix of historical, cultural, social, legal and policy issues that exist.

It is important to acknowledge from the outset that violence against Aboriginal and Torres Strait Islander women does not exclusively occur in Aboriginal and Torres Strait Islander communities. It is a nationwide issue that can, and does, take place in all areas and regions of Australia, and is not exclusively perpetrated by Aboriginal and Torres Strait Islander men. The prevalence of violence against Aboriginal and Torres Strait Islander women has led to amendments to relevant legislation, new policies, prevention strategies and action plans with aims to reduce the levels of violence experienced by Aboriginal and Torres Strait Islander women and children. This is part of a broader strategy observable across states and territories to prioritise the issue of violence against women in Australia. The challenge for Australian policymakers and governments in meeting the needs of Aboriginal and Torres Strait Islander women in relation to violence is to understand the apparent and less visible differences between the nature of the violence, its impacts and how it is treated (or not) in the service sector and criminal justice system. In this report we argue that a key to successfully achieving this is by creating partnerships with Aboriginal and Torres Strait Islander communities to ensure a level of agency and respect is embedded in any decision-making that directly affects individuals and communities.

This research was Aboriginal-led, drawing on the extensive experience and expertise of the researchers conducting research in Aboriginal and Torres Strait Islander areas of focus. The project also supported and developed the skills of early-career Aboriginal researchers, promoting and increasing research

capacity in a critical area for contemporary Australian society. It is of vital importance to build Aboriginal and Torres Strait Islander research expertise in the area of family violence, and the research team provided opportunities for Aboriginal research assistants to join them.

Approach to interview and data collection

The research team undertook four fieldwork trips to Mildura and Albury–Wodonga to ensure a wide range of views on the accessibility of family violence services in these areas was captured from both victims and service providers. The research team conducted 27 one-on-one interviews and 22 focus groups, with a total of 97 total participants (see “Methodology” section for more information). As anthropologists, we are experienced in “deep and insightful interactions” with research participants and data obtained through interviews and encounters in this way “are a prerequisite for qualitative data interpretation” (Maher, Hadfield, Hutchings, & de Eyto, 2018, p. 1). “Deep listening” and precautionary measures to ensure the safety of the participants were fundamental in the approach adopted during all interviews and less formal encounters, in particular when participants may have been vulnerable.

The semi-structured interviews varied in duration and the researchers were careful to ask the research participants about this. Some interviews were extensive, and all were conducted with cultural safety and respect. Some participants were interviewed more than once, in accordance with best practice in research (see DeJonckheere & Vaughn, 2019). The interview approach was to actively listen and only engage with topics that participants felt comfortable discussing (see Bessarab & Ng’andu, 2010); this considered approach yielded evident success during the analytical research phase, noting that a significant amount of valuable and applicable data were collected (1393 pages of transcripts). The research team members have extensive experience working with Aboriginal and Torres Strait Islander people and communities.

This report uses pseudonyms to refer to all participants that took part in the study for reasons of confidentiality. This protection extends beyond a name change: the participants

are further protected by redacting their location, and ensuring an ambiguity of their profession, role and identity when cited or referred to in the body of the text. The research team elected not to state the Aboriginality of some participants to further protect participant identity.

Background

Family violence is a broad concept, incorporating a wide range of victim–offender relationships and types of violence. It includes all forms of domestic violence such as intimate partner violence; violence towards children and other members of the family and family network other than partners; financial abuse; verbal abuse; and other definitions as provided at law. In addition to the legal definitions, definitions of family violence in the nonlegal literature encompass an understanding of Aboriginal cultural and social contexts and types of violence, as well an acknowledgement of the need for wider community response to these offenses because they are deemed to be “not just against an individual, but also against the community” (Atkinson, 2002, p. 238; see also Olsen & Lovett, 2016, p. 18). This concept of family violence that encompasses types of violence beyond intimate partner violence in domestic settings has particular relevance in the context of Australian Aboriginal and Torres Strait Islander kinship and descent-based forms of social organisation, such as extended families, clans or descent groups. Aboriginal and Torres Strait Islander kinship systems construct the family in more extensive and inclusive terms than, for example, “family” or household-related data reported in the national census, or other data such as police or hospital statistics (Rigsby, 1999).

Family violence is an extremely complex issue, particularly when embedded in Aboriginal and Torres Strait Islander communities experiencing intergenerational trauma, economic and housing stress, low levels of education, unemployment and alcohol and other drug issues. Aboriginal and Torres Strait Islander women who experience family violence are reported to be 34 times more likely to be hospitalised than other Australian women (Department of Social Services [DSS], 2016). In 2013, they were five times more likely to experience physical violence and three times more likely to experience sexual abuse than other Australian women (Our Watch,

2014). Estimates suggest that up to 90 percent of incidents of violence against Aboriginal women go undisclosed (DSS, 2016; Willis, 2011).

Aboriginal and Torres Strait Islander women living in regional and remote areas are understood to be at greater risk of experiencing family violence and face additional challenges when dealing with their experiences of violence (DSS, 2016), such as confidentiality concerns in smaller communities where services may be familiar with the victim's family and friends. There are additional complexities affecting the decisions of Aboriginal and Torres Strait Islander women who live in regional and remote areas, such as varying availability, accessibility or acceptability of family violence legal and support services; poor access to information; and familial demands urging women to remain in abusive relationships (Cunneen, 2009; Blagg, Bluett-Boyd, & Williams, 2015; Blagg et al., 2018; Holder, Putt, & O' Leary, 2015; Medland, 2007; Moore, 2002). Putt, Holder and O' Leary (2017) contend that the evidence base lacks necessary detail for better responses. Their research in the Australian Capital Territory, Northern Territory and Ngaanyatjarra Pitjantjatjara Yankunytjatjara Lands suggests that Aboriginal and Torres Strait Islander women who are victims of family violence want practical and material support. They found that services need to be trustworthy, flexible and responsive to clients and have strong referral pathways to other services, and that advocacy, cultural safety, and having Aboriginal and non-Aboriginal staff working together is central to successful service delivery (Putt et al., 2017).

In response to estimates indicating that up to 90 percent of incidents of violence against Aboriginal women are undisclosed (DSS, 2016), Olsen and Lovett (2016) argue that more research is necessary to ascertain the extent of this violence. We know, however, that the available data on family violence provide a poor, at best, representation of the range and extent of family violence experienced by Aboriginal and Torres Strait Islander women and their children. Many of these datasets are flawed due to reasons such as incomplete and inaccurate collection of Aboriginal and Torres Strait Islander identity and underreporting of violence by victims, government agencies and legal and support services (Olsen & Lovett, 2016). Factors that impact on the reporting of family violence incidents for Aboriginal and Torres Strait Islander

women include distrust of institutions, poor relationships with police, and lack of police presence and police responses (Adams & Hunter, 2007; Cunneen, 2009). The *Family Violence Rolling Action Plan 2017–2020* (State of Victoria. Department of Premier and Cabinet, 2017) identified the need for more culturally appropriate responses by police and improvement of Victoria Police's response to family violence as critical areas to be addressed (Olsen & Lovett, 2016).

In summary, issues known to affect the reporting of family violence for Aboriginal and Torres Strait Islander women include distrust of institutions, poor relationships with police, and lack of police presence and police responses (Adams & Hunter, 2007; Cunneen, 2010; DSS, 2016). Residence in urban, remote and regional areas presents additional challenges affecting the decisions of Aboriginal and Torres Strait Islander women to engage with the justice system, such as low levels of confidentiality, lack of accurate information, pressure from family to stay in abusive relationships, and limited availability of support services such as transport (Blagg et al., 2015; Cunneen, 2010; Holder et al., 2015; Medland, 2007; Moore, 2002; Putt et al., 2017). Putt et al. (2017) contend that the evidence base lacks the necessary detail for better responses.

BOX 1: KEY AUSTRALIAN DATA ON FAMILY VIOLENCE FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

- Family violence occurs at higher rates in Aboriginal and Torres Strait Islander communities than in the general population (AIHW, 2018, p. 83).
- Aboriginal and Torres Strait Islander people have increased risk factors for family violence, such as social stressors including poor housing and overcrowding, financial difficulties and unemployment (AIHW, 2018, p. 83).
- In 2017, the majority of Aboriginal and Torres Strait Islander assault victims recorded by police were victims of family violence, ranging from 64 percent (2700) in New South Wales to 74 percent (3900) in the Northern Territory. In 2016–17, Indigenous people were 32 times as likely to be hospitalised for family violence, compared with non-Indigenous people (AIHW, 2019b, p. 106).
- Aboriginal and Torres Strait Islander women were five times more likely to experience physical violence and three times more likely to experience sexual violence than other Australian women (Our Watch, 2014).
- Intimate partner violence was the leading contributor to the burden of disease and the “largest cause of lost years of life” for Aboriginal and Torres Strait Islander women aged 25–34 years (AIHW, 2016, pp. 19, 83).
- Intimate partner violence for Aboriginal and Torres Strait Islander people occurs at five times the rate for non-Aboriginal and Torres Strait Islander Australians (AIHW, 2016, p. 232).
- Aboriginal and Torres Strait Islander women were 32 times, and Aboriginal and Torres Strait Islander men 23 times, as likely to be hospitalised due to family violence as other Australians (AIHW, 2018, p. 83).
- Two in five Aboriginal and Torres Strait Islander homicide victims (41%, or 32 victims) were killed by a current or previous partner, compared with one in five non-Indigenous homicide victims (22%, or 94 victims) during 2012–14 (AIHW, 2018, p. 83).
- Aboriginal and Torres Strait Islander children were approximately seven times as likely as non-Indigenous children to be the subject of substantiated child abuse or neglect (AIHW, 2018, p. 83).
- In 2017–18, 16 percent (48,300) of Aboriginal and Torres Strait Islander children received child protection services—a rate eight times as high as non-Indigenous children (AIHW, 2019b, p. ix).
- Aboriginal and Torres Strait Islander people have been found to be five times more likely to be both victims and perpetrators of incidents of homicide (Bryant & Bricknell, 2017; Bryant & Cussen, 2015; Cussen & Bryant, 2015).

BOX 2: INDIGENOUS HOMICIDES 2014–2015 AND 2015–2016

The National Homicide Monitoring Program recorded 44 Indigenous victims of domestic homicide in 34 incidents over the two years between 2014–15 and 2015–16. Of the 44 Indigenous victims, there were:

- 19 victims of intimate partner homicide
- 10 victims of filicide
- one victim of parricide
- six victims of silicide
- eight victims of other family homicide incidents.

More than half (16) of the 26 Indigenous female victims of domestic homicide were killed by an intimate partner. There were 18 Indigenous male victims of domestic homicide, with three Indigenous men killed by an intimate partner. Indigenous male victims were most commonly killed by another family member (seven victims) or by a parent (five victims; AIHW, 2019b, p. 117).

State of knowledge review

This state of knowledge review is a critical survey of relevant Australian and international literature on domestic violence, focusing on Aboriginal and Torres Strait Islander scholarship and literature, other research, and government reports and grey literature on family violence experienced by Aboriginal and Torres Strait Islander women, as well as policy and legal sources on the measures implemented to reduce the violence. As an integrative literature review aimed at identifying the acute understandings of Indigenous family violence and innovation and good practice in preventing it, it synthesises data, empirical and analytical sources as well as legal approaches to reform in this field. While there is a body of statistical data collected and reported on which much of the literature relies on, there remains much to be done to improve the collection, interpretation and reporting of data on family violence in Aboriginal and Torres Strait Islander communities.

Much of the recent research on family violence experienced by Aboriginal and Torres Strait Islander people in Australia has been undertaken from either criminological or social work perspectives. While important in designing measures to reduce violence, these perspectives often fail to account for the agency of the Aboriginal and Torres Strait Islander participants in the violence and the social and cultural drivers of their choices. Importantly for this study, there are several research reports that provide first-hand accounts from Aboriginal victims of violence and empirical evidence of their experiences, problematise violence in Aboriginal settings with an empirically based understanding of its complexity, and detail gaps in the legal and support systems from the perspective of Aboriginal and Torres Strait Islander women. An observation of Blagg and others (2015) in relation to the cultural differences of family violence in their review of innovative models used in addressing violence against Aboriginal and Torres Strait Islander women was a critical consideration for this review:

A key issue for researchers and practitioners lies in whether it is sufficient to apply the same perspectives that inform research on non-Indigenous women to the position of Indigenous women. There is now an increasing awareness that the issue requires its own range of tailored responses. Emerging practice in rural and remote Indigenous communities tends to be based on an appreciation of Indigenous law, culture and knowledge as providing a

basis for work with victims. This approach may ensure that ensuing practices differ in a number of crucial respects from orthodox domestic violence projects run by mainstream organisations in urban settings. (Blagg et al., 2015, p. 1)

As anthropologists who practice engaged anthropology or reverse anthropology, we are accustomed to the detailed ethnographic writings that explicate the lives and worldviews of Indigenous and traditional peoples. With the exception of a few works (Anderson, 2002; Atkinson, 1990, 2002, 2003; Bennett, 1997; Babidge, 2017; Blagg et al., 2015; Burbank, 2011; Cripps, 2012; Hovane, 2007; Lucashenko & Best, 1995; Olsen & Lovett, 2016; Putt et al., 2017; Robertson, 2000), the voices of victims are muted in the research literature on family violence. Hovane (2007) emphasises the importance of Aboriginal victims' voices in keeping "governments, town and city administrations, police, and other agencies on track to make services effective and geared towards women's and children's real needs. It is not an optional extra" (Hague & Mullender, 2006 as cited in Hovane, 2007, p. 5).

Moreover, the cultural beliefs, behaviours and practices that contribute to or exacerbate family violence are seldom specified and supported with ethnographic evidence in much of the family violence literature. Many of the claims made about cultural and social factors in Aboriginal contexts are not supported by direct empirical evidence. Moreover, in the absence of sufficient evidence, unsubstantiated claims are made in the literature about "causes" of violence—causality requires verifiable evidence—as opposed to contributing or contextual factors (Stanley, Kovacs, Tomison, & Cripps, 2002). There is an urgent need for more research on the cultural and social contexts of family violence and other types of domestic violence and abuse of women and children in Aboriginal settings. Before turning to the literature that best addresses family violence in Aboriginal families and communities, the integrative model and methods used in this state of knowledge review are explained.

Methods and theoretical approaches used in this state of knowledge review

This state of knowledge review was prepared using an integrative model to locate and synthesise data on the important contributions of researchers and professional contributors, especially Aboriginal scholars, to the issue of Aboriginal and Torres Strait Islander violence in Australia. As Olsen and Lovett (2016, p. 6) noted, an integrative model “allows for the incorporation of research from diverse empirical and theoretical sources including grey or unpublished literature”. Some of these key works, published in data sources such as newspapers, magazines and editorial articles, are often excluded from research reports and other publications on account of scope and/or the exclusion of particular datasets. The literature on family violence, whether scholarly or grey literature, often has particular limitations (Wundersitz, 2010, pp. 7–8), especially in the classification of what constitutes “violence” or “culture”. This is because much of the literature based in mainstream, Western science disciplines—including health, anthropology, criminology, psychology and legal fields—often fails to engage with diverse theoretical understandings of the violence experienced by Aboriginal and Torres Strait Islander women; how they understand its causes and contributing factors; and the cultural, social and political influences on their proposals for reducing violence. Olsen and Lovett (2016) similarly noted that “to exclude literature based on ‘quality’ would discount literature that may reveal important insights into the lived experience and cultural understandings of violence against women in Indigenous communities” (p. 6). In this regard, a limited review of evaluation and commissioned review reports proved to be useful (e.g. Davis, 2019; Putt et al., 2017; Tayton, Kaspiew, Moore, & Campo, 2014)

This review therefore considered not only works by significant Aboriginal authors and relevant research publications but also several reports commissioned by government departments and agencies on Aboriginal and Torres Strait Islander family violence (e.g. Al-Yaman, Van Doeland, & Wallis, 2006; Memmott, Stacy, Chambers, & Keys, 2001; Robertson, 2000) that provide a “wealth of information on Indigenous violence, gleaned from existing literature and from evidence provided by individual witnesses, public consultations and site visits”

(Wundersitz, 2010, p. 9). The inclusion of this information has significant potential for the development of theory and practical solutions aimed at reducing violence against Aboriginal and Torres Strait Islander women.

The review also focused on the legal and support sector servicing Aboriginal and Torres Strait Islander women experiencing family violence. Also canvassed were data sources and grey literature that provide statistical indicators of the prevalence of family violence (such as official crime and criminal justice data, population and self-reported surveys), and are often cited in government reports and academic papers relevant to this study.

The literature search strategies implemented included:

- searches of electronic databases of peer-reviewed literature (ProQuest; Applied Social Sciences Indexes and Abstracts [ASSIA]; ProQuest Social Science Journals; Web of Science; Scopus) using the search terms “Aborigin* or Indigenous” and “family violence or domestic violence or intimate partner violence” and “women or victim” and “Australia” with a date range of 2000–2019
- citation tracking, hand-searching and snowballing from literature sourced in the electronic database search.

Other electronic databases searched included:

- Closing the Gap Clearinghouse
- Australian Domestic and Family Violence Clearinghouse
- Australia’s National Research Organisation for Women’s Safety Limited (ANROWS)
- The Lowitja Institute
- Australian Institute of Family Studies Library
- Australian Indigenous HealthInfoNet
- Victorian Family Violence Database.

Integrative literature reviews “combine data from theoretical as well as empirical literature” (Whittemore & Knafl, 2005, p. 547). Proponents of the integrative method for literature reviews clearly advocate for an “explicit philosophical or theoretical perspective, focusing a review within a broad and diverse sampling frame, in contrast to integrative reviews that are solely descriptive of existing research” (Whittemore & Knafl, 2005, p. 548; see also Kirkevold, 1997). Torraco (2005) refers to this process as “synthesizing the literature”: the review “weaves the streams of research together to focus on core issues rather than merely reporting previous literature” (p. 362). In this way, the integrative literature review becomes less about describing existing research and more about engaging with it to enliven historical conceptions of Aboriginal and Torres Strait Islander family violence toward the development of innovative or renewed ways of understanding the issue. This is not just a theoretical exercise, but, as Cunneen and Rowe (2014, p. 5) posit, can have “profound political implications” for the primary prevention of violence in Aboriginal and Torres Strait Islander communities.

The integrative approach involves critical analysis and the development of a conceptual framework for the research design, conduct of the research, and analysis and interpretation of data. As an iterative process, it also reveals the gaps in the literature under review. Such an analysis includes “the history and origins of the topic, its main concepts, the key relationships through which the concepts interact, research methods, applications of the topic, and so on” (Torraco, 2005, p. 362).

Understandings of family violence experienced by Aboriginal and Torres Strait Islander peoples

Aboriginal and Torres Strait Islander researchers and scholars identified the problem of Aboriginal family violence in the 1990s and brought their research expertise and first-hand knowledge of cultural and social factors to the task of investigating the violence and proposing solutions. Of particular note are the research and public advocacy of Atkinson (1990, 2002), Bennett (1997), Lucashenko and Best (1995), and Robertson (2000; see also Bolger, 1991),

who examined violence against Aboriginal and Torres Strait Islander women in the context of colonisation, the breakdown and/or reassertion of traditional law, and the ongoing intergenerational trauma derived from this colonial “legacy of violence” (Atkinson, 1990, p. 7). Their research into and advocacy for the need to understand the issue of domestic violence as an issue that affects the entire community has developed into current standardised policy that now categorises Aboriginal and Torres Strait Islander domestic violence as a subset of “family violence”. Violence against Aboriginal and Torres Strait Islander women was often attributed to multiple interrelated factors, such as economic, political and social inequalities derived from histories of dispossession, disruption and trauma (Cripps & Davis, 2012).

While early government attempts to “break the silence” on domestic violence in Australia were largely driven by the surge of advocacy for women’s rights, informed in large part by global feminist movements and, more particularly, the establishment of women’s refuges during the 1980s (Murray & Powell, 2009, p. 537), Aboriginal and Torres Strait Islander advocates for women’s safety recognised that the violence in their communities involved more complexities than domestic or intimate partner violence that the women’s refuge workers in mainstream Australia reported other Australian women experiencing. Rather, they recognised the many types of violence in Aboriginal and Torres Strait Islander communities and households and the prevalence of such violence as a “community issue” (Bennett, 1997, p. 12)—one that is an offense “not just against an individual, but also against the community” (Atkinson, 2002, p. 238; see also Olsen & Lovett, 2016, p. 18). They proposed a prevention strategy that required the whole community “to be involved to make changes and find solutions” (Bennett, 1997, p. 12).

Observing what is now described as intergenerational trauma, Atkinson (1990, 2002) and others presciently regarded colonisation as a primary contributing factor in Aboriginal male violence against women. Atkinson (1990) argued that the “interdependence” between the sexes in the traditional allocation of men’s business and women’s business, as well as the joint responsibility of child-rearing, was profoundly disrupted by the processes of colonisation (pp. 9–10). She acknowledged that while rape, child abuse, incest and wife-beating were not unheard of in pre-colonised Aboriginal

society, such violence was regulated and punishable under traditional law (Atkinson, 1990, p. 11). Prior to colonisation, she asserted, “we had a more even social control and justice system to deal with such behaviour, and these methods have now been denied us, overtaken by the ruling society” (Atkinson, 1990, p. 21). Such considerations of the transgenerational impacts of colonisation on Aboriginal and Torres Strait Islander gender relations and family violence have also been incorporated into Indigenous discourses that justify or de-problematise intimate partner violence, leading to under-reporting of the extent of men’s violence against Aboriginal and Torres Strait Islander women both before and, more importantly, *after* colonisation, as later reported by Payne (1990), Bolger (1991), and Lucashenko and Best (1995). They observed that it was not so much the historic breakdown of traditional systems of law and custom that was perceived to be the problem, but their distortion as a symbolic tool through which to justify Aboriginal men’s use of violence against Aboriginal women.

It was reported in the 1990s that Aboriginal women referred to three types of systems that oppressed them: “white man’s law, traditional law and *bullshit* law” (Payne, 1990, p. 10, emphasis added; see also Bolger, 1991, p. 50). The latter “bullshit traditional violence” (Bolger, 1991, p. 50), inclusive of physical and sexual assault, rape and financial abuse, refers to violence justified on grounds “of cultural identity and as fulfilling familial obligations” (Payne, 1990, p. 10). It was reported that family and community bystanders are encouraged not to get involved (Bolger, 1991, pp. 50–51), and as violence became normalised, the very criminalising of it was further dismissed by Aboriginal men as “white man’s law”. This is the process by which violence against Aboriginal and Torres Strait Islander women became (mis)recognised as a product of Aboriginal and Torres Strait Islander cultures (see Olsen & Lovett, 2016, p. 14; Snowball & Weatherburn, 2008). Worse still is the way in which sexual violence in particular had come to constitute an expression of intimacy and affection, as reported in one study: “He’s jealous and bashes me, that’s how I know he loves me” (Lucashenko & Best, 1995, p. 21).

The role of jealousy as a practical tool of dominance and control, especially in the context of intimate partner relationships, was explained by Lucashenko and Best (1995): internalising a political and social system that privileges white men’s sexual

domination over *all* women, Aboriginal men can be seen to assert a masculinity that fulfils the very power structure denied them. Langton (1989, p. 53) argued:

Anomie, poverty and the rigours of the struggle to survive, allow Aboriginal men to use force, arbitrarily, to inhibit and terrorise women, and to cast them as whipping posts for their frustrations.

The agency of the perpetrators in choosing to be violent is rarely considered, with the exception of C. L. Atkinson (2008), so that the impact of unsubstantiated propositions about the “causes” of violence is to deem the perpetrators to be victims and privilege them over the women and children they abuse. While it is commonly argued that the roots of these practices are due to colonisation and pre-colonised traditional practices, the result is the same: violence is deployed against women as confirmation of “Aboriginal manhood”, as Lucashenko and Best put it (1995, p. 20). As a contributing factor, the low self-esteem of perpetrators must be considered in the context of the harm they cause to others, and the extent and severity of those harms. Even though the extraordinarily high rates of Indigenous family violence are measured and reported in statistical reports, reports and plans that privilege the burden of colonial impacts over the agency of perpetrators de-problematise family violence and trivialise the harms, especially the severity of the violence and impacts—such as extraordinarily high rates of child removal into out-of-home care leading to extraordinarily high rates of Indigenous juvenile detention. A greater emphasis is required on the extent of harm to victims and impacts on others in the family, and researchers should be alert to the theoretical and evidentiary rigour required in understanding the concept of family violence and how researchers report it.

Hovane’s work in the discipline of psychology is highly regarded especially with regard to prevention strategies and practice standards (Hovane, 2007; Hovane & Cox, 2011; Hovane, Dalton, & Smith, 2014). Hovane (2015) explains that Aboriginal people have their own theories about violence, its onset and the perpetuation of violent behaviours in Aboriginal settings, households and communities. She also critiques the “white privilege” that marginalises these etic explanations. She makes an important point:

Colour-blind services and practices that are not experienced

as being safe and relevant by Aboriginal victims are not “accessible” and consequently Aboriginal victims do not have fair and equitable access to them. (Hovane, 2007, p. 3)

However, one of her propositions de-emphasises the need of many victims to request police intervention to ensure their safety. The criminal justice system has been reformed considerably in Victoria and New South Wales to take into account the intersectional issues and contextual factors that present barriers to women reporting violence. Hovane (2015) contends that focusing on criminal justice responses to family violence negates self-determination by excluding Aboriginal voices and can serve to inflict further violence on Aboriginal women who see the criminal justice system as a systemic tool of abuse.

Non-Indigenous researchers who investigated aspects of family violence in Aboriginal and Torres Strait Islander settings were informed by the earlier Aboriginal and Torres Strait Islander research on violence against women and came to adopt the concept of “family violence”, as did Australian governments. The most comprehensive and astute definition of the concept has been provided by Memmott et al. (2001), who wrote in their report on violence in Aboriginal communities:

When we began this study, the term “domestic violence” was felt to be unsuitable for any analysis of violence in Indigenous households and was replaced with the term “family violence” for this report. “Family violence” was broadly defined to encapsulate not only the extended nature of Indigenous families, but also the context of a range of violence forms, occurring frequently between kinspeople in Indigenous communities. The notion of “family violence” may be summarised as follows:

- family violence may involve all types of relatives. The victim and the perpetrator often have a kinship relation
- the perpetrator of violence may be an individual or a group
- the victim of violence may also be an individual or a group
- the term “family” means “extended family” which also covers a kinship network of discrete, intermarried, descent groups
- the “community” may be remote, rural or urban

based; its residents may live in one location or be more dispersed, but nevertheless interact [and] behave as a social network

- the acts of violence may constitute physical, psychological, emotional, social, economic and/or sexual abuse
- some of the acts of violence are ongoing over a long period of time, one of the most prevalent examples being spousal (or domestic) violence. (Memmott et al., 2001, p. 1)

In 2001, Memmott et al. also remarked, “it should be noted that the majority of the literature on violence reviewed for this report was published in the 1990s, with the rest published in the late 1980s” (p. 6). And further, Memmott et al. (2001, p. 6) noted, “there are only a few items which precede the 1980s”. In contrast to the literature of the 1990s, “studies on violence in Indigenous communities are now numerous and multi-faceted”, and the majority of literature highlights “the complexity of the issues and the lack of any ready quick-fix solutions” (Memmott et al., 2001, p. 6). Memmott et al. attributed the increase in published research to

a recent interest in violence by researchers in the last decade, but it is also explained by the fact that violence in Indigenous communities has dramatically increased in certain regions, at least since the 1980s, and in many cases from the 1970s. (Memmott et al., 2001, p. 6)

Wilson et al. (2017, p. 12) reported on violence in the lives of incarcerated Aboriginal mothers in Western Australia and referred to the literature on family violence with a commentary on the contested theories in relation to the violence:

Contested theories abound in relation to the high levels of family violence experienced by some Aboriginal people. Some argue that violence existed in traditional, precontact Aboriginal cultures, where physical punishment was used to penalize “transgressions against traditional law” (Lucashenko, 1996, p. 382). This violence was generally structured, “carried out according to social rules in response to specified offenses” (Memmott et al., 2001, p. 23) and was commonly controlled and reflexive to the severity of offense, as well as the participant’s gender and age (Memmott et al., 2001; see also Hiatt, 1965).

However, the proposition that violence within contemporary Aboriginal communities reflects a simple continuation of traditional practices has been interrogated, particularly in research conducted by Aboriginal women. Although Aboriginal academic Langton (1988) postulated that swearing and fighting “constitute[d] dispute processing and social ordering devices derived from traditional Aboriginal cultural patterns” (p. 202) as well as acts of sedition to the dominant culture, she recently condemned the extent and nature of male-perpetrated violence against Aboriginal women today, as being outside cultural parameters (Langton, 2015), as do fellow Aboriginal researchers Lucashenko (1996) and Atkinson (2002). Atkinson (2002) argues that viewing violence in contemporary Aboriginal communities as “customary practice” is further problematized when “Western” views of Aboriginal violence are perceived to be “cultural”, and especially, in some cases, when this argument is used by Aboriginal people themselves to legitimize acts of violence against others.

Much of the more recent research on family violence experienced by Aboriginal and Torres Strait Islander people in Australia has been undertaken from either criminological or social work perspectives. With the exceptions of some work previously mentioned (Blagg et al., 2015; Putt et al., 2017), the firsthand testimony of Aboriginal and Torres Strait Islander victims is muted or absent.

Some Australian anthropologists have also outlined and described the extent of violence experienced in many Aboriginal and Torres Strait Islander communities, particularly that experienced by Aboriginal and Torres Strait Islander women (Burbank, 1994, 2011; Langton, 2010, 2011; Sutton, 2006, 2009). Victoria Burbank has published ethnographic work on stress (2011) and women’s aggression (1994) in Aboriginal communities. This work describes the cultural construction of anger and aggression in communities across northern Australia. Other significant research that has added to understanding of the role of culture for Aboriginal and Torres Strait Islander family violence includes McCoy’s (2008) work, which explores cultural models of sickness and health for Aboriginal and Torres Strait Islander men, and the research of Day et al. (2006, 2008) describing male Aboriginal and Torres Strait Islander anger.

Babidge’s (2017) account of funerals at Charters Towers in north Queensland as emotionally charged events exposing allegiances and cohesion along with rifts and divisions among families provides an understanding of funerals as triggers for violent episodes. Babidge (2017) also explains the cultural processes of showing respect for others in the family, drawing on shared histories and a sense of belonging to family and place. Gestures of disrespect in emotionally charged situations are often triggers for violence and understanding the Aboriginal cultural norms of showing respect can inform us in developing early intervention strategies that are responsive to events such as funerals. Langton (2011) notes the changing traditions in relation to violence, as does Burbank (2011). Whereas much of the violence in Aboriginal society was highly regulated and ritualised in the past, in recent years the extent of regulation and ritualisation has been reduced by many features of modernisation, particularly the disinhibiting impacts of alcohol and other drugs.

The results of research that is more ethnographic in approach, and especially the firsthand testimony of Aboriginal women, such as that reported by Putt et al. (2017), reveal profoundly important realisations about family violence and the limitations of Aboriginal cultural norms such as kinship obligations. In the case of Anangu women, there is reportedly almost no possibility for Aboriginal women to relocate to safe places to escape violence for a range of cultural, social and economic reasons. This was recognised by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council and informed its service model, as reported by Putt et al. (2017, p. 30):

Quite early on within the service, in the early 1990s, local women explained that traditional conflict management practices would not be appropriate for working in their communities but emphasised that a focus on safety was required, which is how the name “*Atunypa Wiru Minyma Uwankaraku*—Good Protection for All Women” came about (NPY3). Both victims and families indicated to service workers that they wanted outside authorities to deal with the issue of DFV such that the service has developed as an external authorising body that can respond to DFV and report incidents to police. As outlined in the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council recent submission to a Committee of the South Australian Parliament:

...women can often expect limited protection from their kin when other social, ritual and economic interests moderate their safety. For the women and their children whose social world is largely defined by their kin in this region, leaving a relationship and their communities is rarely a long-term option. (Ngaanyatjarra Pitjtantjatjara Yankunytjatjara Women's Council, 2015)

It is important to avoid essentialism and generalisations in considering the role of “culture” in preventing violence. While kinship obligations might provide protective bonds in some circumstances, it is far too often the case that women who are victims of violence are attacked by their own kin, especially those who are allied with the perpetrator, and subjected to disabling persecution that prevents them from reporting violence to police. If the aim of strategies built on the concept of family violence is to prevent this kind of intra-kin abuse, then the education about supporting victims over the interests of the perpetrators should be more clearly communicated. This study identified this kind of intra-kin persecution of victims as a high-risk factor.

As anthropologists who practice engaged anthropology or reverse anthropology, we are accustomed to the detailed ethnographic writings that explicate the lives and worldviews of Indigenous and traditional peoples. We have explained that the voices of the victims are often missing from the research literature and government-commissioned reports on family violence. Also, the cultural beliefs, behaviours and practices that contribute to or exacerbate family violence are rarely specified and supported with ethnographic evidence in the family violence literature, as explained further here. With the exception of contributions by Aboriginal women researchers from a range of disciplines and a few anthropologists, many of the claims made about cultural and social factors in Aboriginal contexts are not supported by direct empirical evidence. There is an urgent need for more research on the cultural and social context of family violence and other types of domestic violence and abuse of women and children in Aboriginal families and communities.

The dominance of professional and paraprofessional views over the voices of the victims in much of the literature is

remarkable, leading to the research that lacks evidence for many of its assertions, as Putt et al. (2017, p. 9) astutely observed in the following:

However, the literature review (Holder et al., 2015) revealed two obvious gaps in research and evaluation which we saw the project helping to fill. They were:

- Firstly, that there is a “thin” research base. Much of the literature canvassed for our review was found to be “descriptive, thematic, and lacking in specificity” (Holder et al., 2015, p. 25). Moreover, there is little research that has simultaneously involved both services and Aboriginal women users/clients. As a result, the research lacks the detail and specificity of what services currently do and practice, and women's views of the services.
- Secondly, a recurring refrain in reviews is the paucity of outcome evidence for Australian programs and initiatives related to the reduction and prevention of DFV against Aboriginal women (e.g. Blagg et al., 2015; Day, Francisco, & Jones, 2013; Holder et al., 2015; Olsen & Lovett, 2016). To help address these gaps, the project involved a participatory methodology to investigate and document service practice.

Memmott et al. (2001, p. 1) similarly reported on the contemporary “unscholarly” lack of empirical evidence in the literature on Indigenous violence in Australia:

It should be noted that the literature tends to be top-heavy with theory and discussion and lacks reporting of empirical evidence on violence. Whether this is because researchers have overly relied on other literature sources and anecdotal evidence, or because they have chosen not to make their evidence visible to the public for ethical reasons, is unclear. The construction of more sophisticated explanatory and causal models of Indigenous violence will depend on collecting better empirical data on episodes of violence and the underlying issues relevant to violence in specific Indigenous communities and regions of Australia.

Putt et al. (2017) detailed the complexity of Aboriginal family violence, in a welcome departure from the repetition of assumptions and assertions without supporting evidence; although these findings are again based on interviews with

service providers, they are strikingly similar to the findings of this study:

Others commented on the challenge of meeting expectations—realistic and unrealistic. Part of this was about the location (for example, “not being able to do more to lower the DV experienced on the Lands”), partly about cultural connections (for example, “conflicts of interest as I am more than often related to the women”), and partly about the nature of the violence and “being exposed to/being close to the violence [the women] experience”. Other challenges related to the services that workers tried to secure for women:

- “the challenges in communicating with the police/legal systems”
- “finding a safe place for them to live”
- “constant trauma and lack of resources”
- “barriers to other services e.g. waiting lists or lack of 100% bulk billing psychologists, schools not being aware of impacts of DV on children in classroom setting”
- “seeing lack of choice”.

Other challenges were more complex. One worker identified that women fear “telling their experience”; another worried about “non-responding clients, unable to reach clients”; and another’s challenge was “trying to assist to learn life skills to prevent ill health”. Workers were also asked what they thought were the challenges that women who experienced DFV faced in their locality. One lamented for their “clients who have experienced such profound, long term abuse that they feel utterly broken and disempowered”.

Workers reflected that women’s challenges included:

- “a massive gap between the crisis period and where to go next”
- “finding who they can trust, finding a right next step for them”
- “the lack of action taken for breaches of DV orders, and the length in time the criminal process takes when criminal charges are laid”
- “access to the resources that increase their safety”.

The workers in the urban and regional locations mentioned housing (crisis and longer term) as a dominant challenge for women. (Putt et al., 2017, p. 37)

This and other publications that detail cultural challenges based on empirical ethnographic reportage from victims and service providers demonstrate that there is an urgent need for more research on the cultural and social contexts of family violence and other types of domestic violence and abuse of women and children in Aboriginal families and communities and, especially, the measures that effectively reduce such violence. Cultural factors can assist in violence protection, for instance in the case of building self-esteem and re-connecting victims and perpetrators to their country as many healing programs do, or can be deterrents to the efforts of victims to seek safety from violent relationships, as explained below. Greater attention needs to be paid to these factors in developing strategies for violence prevention. The family empowerment program examined by Tsey et al. (2007) provides evidence of the ability of this program to enhance Aboriginal and Torres Strait Islander social and emotional wellbeing:

... an enhancement of participants’ sense of self-worth, resilience, problem-solving ability, ability to address immediate family difficulties as well as belief in the mutability of the social environment. There is also evidence of increasing capacity to address wider structural issues such as poor school attendance rates, the critical housing shortage, endemic family violence, alcohol and drug misuse, chronic disease, and over-representation of Indigenous men in the criminal justice system. Participants are also breaking new ground in areas such as values-based Indigenous workforce development and organizational change, as well as issues about contemporary Indigenous spirituality. (Tsey et al., 2007, p. 1)

In conclusion, on the basis of this critical literature review and our research findings, among the cultural factors that need further consideration in developing place-based violence prevention strategies, the following are high-priority issues:

- Conflicts of interest and confidentiality concerns that deter victims from seeking assistance from service providers arise because of the close kinship networks in place-based Aboriginal population networks. When service

providers have kinship allegiances to the perpetrators of violence, if the victims have no alternative service to turn to, they are left without options for seeking safety. It is important that women have access to more than one service. This research study found that some victims preferred mainstream services over the Aboriginal community-controlled services in fieldwork sites in Victoria and New South Wales.

- In the same way that perpetrators of family violence use financial abuse to control and harm their partners, the victim's fear of losing her home in social housing accommodation or community-controlled housing is a deterrent to leaving, reporting the violence and seeking assistance. The urgent need for more emergency and long-term accommodation for victims of family violence was reported in all research locations in this study. This is a typical risk factor in most Aboriginal settings because of the reliance on social housing among low socioeconomic populations.
- The levels of trauma suffered by victims of violence (whether intergenerational or immediate—that is, the result of their present circumstances in violent relationships) are an immediate barrier to seeking safety; victims are often so traumatised that they are unable to seek help, and if service providers become aware of their situation, they must first counsel them to give them life skills and tools for coping and eventually the ability to volunteer for assistance and to report the violence. The impact of trauma in disabling victims and limiting their agency is detailed in the section of this report titled "The severity of family violence against Aboriginal women".
- Once incidents of violence are reported to police and a family violence order is issued, the often very long periods involved in these matters being dealt with by courts and allocating resources to victims who must deal with several services and government agencies deter the victims from proceeding and they often return to violent situations with their partners. This is a key risk factor for victims; courts, police and service providers should be better trained and resourced to support victims when this is the case. A related and high-risk factor for victims is the refusal of some police to attend to calls for assistance from victims because of racism.
- Communication difficulties for Aboriginal victims are common, especially due to the formal or "high" English of

service providers and the documents involved in seeking family violence orders, emergency accommodation and social security assistance, or because of lack of access to transport, mobile phones, computers, email and other communication channels. Much greater support needs to be provided to known victims to enable them to communicate with services, especially in emergencies.

The risk factors and context of Aboriginal family violence

The factors that contribute to the high levels of violence experienced by Aboriginal women are interrelated and include economic, political and social inequalities derived from histories of dispossession; disruption to populations and family lineages as a result of the forced removal of children from their families; and the subsequent, often intergenerational, trauma (Cripps & Davis, 2012).

Risk factors resulting from low socioeconomic status include overcrowding in government-subsidised social housing and other accommodation; the poverty that places mothers in a vulnerable relationship with their partners and their accommodation in social housing at risk should she report an incident of intimate partner violence to the police (Davis, 2019, p. 171); and the great risk that her children will be removed should she report an incident to the police (Bessant, 2013; Davis, 2019; Longbottom, McGlade, Langton, & Clapham, 2019; Stubbs & Tolmie, 2009).

The women who are victims of violence may also fear that they themselves will be arrested by the police if they report incidents and also fear that they themselves may die in custody (Karaminia et al., 2007; Kerley & Cunneen, 1995; Royal Commission into Aboriginal Deaths in Custody, 1991; see also Dichter, 2013). The women may be exhibiting characteristic "battered women syndrome" in their reluctance to report intimate partner violence.

These vulnerabilities are reported in the literature (Willis, 2011). However, it is clear that much of the literature is based on reports from government and non-government agencies and domestic violence service provider workers who have raised these most pressing issues. This is likely a result of the

inability to gauge the extent of Aboriginal family violence because of the widespread refusal of Aboriginal women to report incidents to police and seek assistance from services (Willis, 2011). Moreover, as Wilson et al. (2017, p. 1) found in their study of the use of violence in a sample of 54 incarcerated Aboriginal and Torres Strait Islander mothers in Western Australia:

The “normalization” of violence in their lives and communities places them at high risk of arrest and incarceration. This is compounded by a widespread distrust of the criminal justice system and associated agencies, and a lack of options for community support.

Some of these risk factors are discussed further below, including the impacts of racism.

Racism: Racist exclusion, systemic, internalised, lateral and complex

Racism and fear of racism are contextual factors in the non-disclosure of violence by victims and the perpetration of violence. Paradies (2018, pp. 4–5) refers to the “internalization” of violence and proposes that it is arguably an expression of internalised racism which is the context for lateral violence in many social settings where one group is discriminated against by a dominant group, as is the case for Aboriginal people in Australia. Paradies (2018, pp. 3–4) has described this in the following:

Racism can be conceptualized as unfair and avoidable disparities in power, resources, capacities, or opportunities centered on ethnic, racial, religious or cultural differences (Berman & Paradies, 2010). Racism can manifest through cognitive beliefs (e.g., stereotypes), feelings (e.g., prejudice) or practices and behaviors that are discriminatory ... In Indigenous communities, intraracial racism is also known as “lateral violence” (Dudgeon, Garvey, & Pickett, 2000). Systemic racism (also called “institutional” or “organizational” racism) encompasses a range of processes, practices, and policies (Berman & Paradies, 2010). Efforts to “help” Indigenous people participate in mainstream culture (e.g., the economy, education, etc.) often fail to grapple with the ways in which Indigenous people are “prevented from enjoying the full benefits of the dominant culture through racist exclusion” (Ife, 2013) ...

In relation to Indigenous peoples, colonial practices are closely intertwined with racism. These include ecological damage; displacement; (un)intentional transmission of disease; slavery; forced labour; removal of children; violence; massacres; the banning of indigenous languages; the regulation of movement and marriage; assimilation; and the suppression of social, cultural, and spiritual practices (Paradies, 2016a).

Colonialism is an ongoing process (Wolfe, 1999) that has “often swung (and still does) between the poles of elimination and coercive exploitation” (Glenn, 2015, p. 62). Racism has also been characterized as oscillating between extermination and exploitation (Hage, 2015). It is, therefore, not surprising that societal systems of racism continue to maintain colonial structures of material and political privilege to the present day.

This is a more useful and rigorous sociological approach to understanding racism as a complex contributing factor to Aboriginal family violence and the broad range of violence experienced by Aboriginal women than the simple attribution of family violence to “colonialism” or “colonisation” as is so often asserted in the literature and by the perpetrators as a justification for their violence. The fallacy that is repeated throughout much of the literature is that racism and the history of colonisation of Aboriginal and Torres Strait Islander peoples are causative rather than contributing or risk factors (see Brondolo, Gallo, & Myers, 2009). Blagg et al. (2015, p. 4) also noted that “no singular factor can be neatly ascribed ‘causal’ status for violence in Indigenous Australian communities”.

Another expression of internalised racism—low self-esteem among Aboriginal people as a result of historical racism and “disruption of gender relationships”—has been proposed by C. L. Atkinson as a contributing factor in Aboriginal violence, drawing on the earlier work of Judy Atkinson, Faye Gale and others who first raised the alarm about the incidence of Aboriginal family violence (Atkinson, 2008, p. 18):

The disruption of gender relationships in Aboriginal Australia must be understood in the context of Aboriginal men’s historical and ongoing disempowerment, and the gradual chipping away of their individual and collective sense of self-worth by the state (Atkinson, 2002; Gale,

1978; Memmott, Stacy, Chambers, & Keys, 2001). The impact on males is particularly marked when institutional separation is added to the high rate of incarceration amongst Aboriginal males and the dysfunction caused by alcohol and substance abuse (Hunter, 1994). Aboriginal men in particular have been profoundly demeaned by mainstream society in their ability to be worthy people individually, in a family capacity as a parent, and as a husband or as a functioning member of society (Hunter, 1994; Mellor & Haebich, 2002; Memmott et al., 2001). Men have been systematically dishonoured and viewed as worthless in the eyes of non-Aboriginal society and by some Aboriginal women (Hunter, 1994; Mellor & Haebich, 2002; Memmott et al., 2001). Many Aboriginal people were taught to look down on their own people and, in particular, to fear Aboriginal men (Mellor & Haebich, 2002).

These impacts of internalised racism were also expressed in family relations with children, as C. L. Atkinson (2008, p. 18) observed:

Aboriginal men were systematically demeaned and diminished in their ability to provide for their families, as the laws and policies of the day rendered them “incapable” and “neglectful”, based on “white” ways of living (i.e., family home and husband as bread winner) (Mellor & Haebich, 2002). Fathers of children of “mixed descent” were particularly vulnerable to having their children removed, as the parents were not considered to meet the criteria of being in “gainful employment” or “conventional housing”.

Whose trauma? Privileging the trauma of perpetrators over that of the victims

Much has been said about the refusal of Aboriginal victims of violence to report incidents to the police and seek assistance and safety (Al-Yaman et al., 2006; Anderson & Wild, 2007; Willis, 2011). It has been estimated that up to 90 percent of incidents of violence against Aboriginal and Torres Strait Islander women go undisclosed (DSS, 2016; Willis, 2011). Issues speculated to impact on the under-reporting of family violence incidents for Aboriginal and Torres Strait Islander

women include distrust of and poor relationships with police, and lack of police presence and response (Adams & Hunter, 2007; Cunneen, 2008; DSS, 2016). Another oft-cited reason is the fear among many victims that by reporting perpetrators to the police they will place them at risk of being incarcerated, thereby contributing to extremely high Aboriginal incarceration rates and, even worse, placing them at risk of dying in custody (Day et al., 2008; Kerley & Cunneen, 1995). These justifiable fears are also used by family and community members to pressure victims into remaining silent (Holder et al., 2015; Nancarrow, 2010). Another issue argued to lead to under-reporting is the fear that perpetrators will go unpunished when reported due to distrust of and a loss of confidence in the police, justice system and other government agencies (Anderson & Wild, 2007; Bailey, Powell, & Brubacher, 2017; Prentice, Blair, & O’Mullan, 2017; Willis, 2011). There are also other sociocultural factors that are barriers to reducing violence. The contestations in the literature on family violence and uninformed understandings of what the term family violence encompasses exacerbate the risks to victims and inhibit effective strategies to reduce violence, as explained further here.

The efforts to explain family violence as a phenomenon shaped by its Aboriginal cultural, historical and social contexts, including intergenerational trauma, racism and disadvantage, could be argued to have the effect of diminishing feminist approaches to preventing domestic and family violence (and feminist analysis and explanation of violence)—that is, that domestic and family violence is the result of unequal power relationships (Murray & Powell, 2011, pp. 25, 37, 42, 55–56). Murray and Powell (2011) suggest this tension between feminist understandings of unequal gender relations and an intersectional approach to explain Aboriginal and Torres Strait Islander family violence can be resolved by taking a human rights approach. They cite the then-Aboriginal and Torres Strait Islander Social Justice Commissioner:

Australia has legal obligations in international human rights treaties to address the disadvantage experienced by Indigenous Australians, including in relation to family violence issues and the social and economic conditions which contribute to violence. (Murray & Powell, 2011, p. 57).

The feminist principle of greater gender equality, it is argued, again without evidence, “would reduce men’s violence against

women” (Whaley, Messner, & Vesney, 2013 as cited in Tayton et al., 2014, p. 34). The question arises in this consideration of the tension between family violence and domestic violence literature (that seems to be demarcated along racial lines) whether while family violence definitions in the literature emphasise community and societal factors as relevant to the prevalence of violence, the individual victims and their children have not been sacrificed to a sociological argument about the conditions of the Aboriginal male perpetrators as victims of history and apparently without sufficient agency in making decisions about their behaviour, such as criminal assault, abuse and so on. This tension has been alluded to by Blagg (2000), in that the conceptualisation of family violence places greater emphasis on the role of colonialism, trauma, family dysfunction and alcohol as primary causes, and understands male violence less as an expression of male power and more as compensation for lack of status and esteem. (Blagg, 2000 as cited in Tayton et al., 2014, p. 26)

The self-esteem of the perpetrators’ victims barely rates a mention anywhere in the literature. The proposition that family violence approaches are effective in early prevention strategies, while difficult to prove without a significant improvement in reporting and longitudinal data collection, is compelling at least because of its compliance with human rights standards in relation to women and children and the contribution of such programs to improving community and family safety and wellbeing. The Healing Foundation (2015) acted on the Aboriginal literature on intergenerational trauma, for instance, by asking the following questions in an evaluation of “cultural healing” services for Aboriginal men:

- What strategies would encourage our men to choose healing to rebuild their spirits?
 - What does healing mean and what does it cover?
 - Why should men find their healing?
 - What are the things that men need healing for?
 - What needs to happen for healing to occur for men?
 - How can men find healing?
 - How should men’s healing be done?
 - Who needs to be involved in men’s healing?
 - How do men currently engage in healing?
 - How can men better engage in healing?
 - What kind of healing do men need to become stronger

or change for the better and overcome issues such as family violence?

- How can we start a sustainable men’s healing program and what will it do and how should it be run?
 - What do we need to start a successful men’s healing program?
 - What will a men’s healing program mean for men?
 - What is the best way to develop a men’s healing program?
 - What should a men’s healing program include? (Healing Foundation, 2015, p. 53)

Aboriginal men’s behaviour change programs are based on addressing these issues, yet, as was found in this study, their operation is prioritised over the wellbeing and safety of the victims. Another key finding was the need for constant case management of perpetrators by service providers, and it is clear that the use of family violence concepts that enable community pressure, especially from Elders and people with cultural authority, to be applied in diverting Aboriginal men from violent responses are successful. Increased resources and focus on alcohol and drug rehabilitation would contribute greatly to improved outcomes in this area. The family violence literature mentions the role of alcohol and other drug misuse as a contributing factor to Aboriginal family violence and its increasing prevalence, but more research is required. In our study, victims and service providers raised repeatedly the diversion of Aboriginal perpetrators of violence away from custodial sentences, while strategies for ensuring the safety of Aboriginal victims remain poorly resourced especially in relation to the lack of housing accommodation for victims to provide safety for them and their children.

The likelihood, however, that family violence approaches that deflate the responsibility of serial offenders, especially those who commit extreme acts of violence, might be diverted from criminal justice systems on the grounds of their status as victims of history requires some ethical and legal review. Our findings in relation to the extremity of Aboriginal family violence in this study, the demands for increased funding of safety measures for victims, and the increasing rates of assault and homicide involving Aboriginal victims (whether due to more reporting or increased prevalence) support our

recommendation for further investigation of this problem. Much improved data, including data reporting and accessibility by courts, police and all stakeholders in the family violence prevention frameworks, are required for a rigorous evaluation of this question. Hannah McGlade (2012) addresses this question in her book on the sexual abuse of Aboriginal children, *Our Greatest Challenge: Aboriginal Children and Human Rights*, asking the critical question about Aboriginal men who claimed that they are “traumatised” by discussions about violence and sexual assault of children: are Aboriginal men the most impacted by colonisation? Whose trauma should be deemed primary—the child who is traumatised as a victim of sexual assault or the Aboriginal male rapist who pleads historical “intergenerational trauma”? We argue that the same questions should be asked in relation to violent assaults of Aboriginal women.

The New South Wales Government commissioned the evaluation report by Tayton et al. (2014) which drew attention to the public health model approach to developing policy frameworks for reducing violence against women and children. It has been influential in highlighting “the importance of reducing the prevalence of DFV through primary prevention initiatives, in addition to recognising an ongoing need for early intervention and improved tertiary responses to DFV” (p. 16) and which also draw on the *National Plan to Reduce Violence Against Women and their Children 2010–2022* (the National Plan; Council of Australian Governments [COAG], 2011) and the *It Stops Here: Standing Together to End Domestic And Family Violence in NSW* framework (NSW Government, 2014), which details the reform approach for New South Wales. Tayton et al. (2014, p. 6) stated:

A public health approach acknowledges that DFV “is preventable and should therefore be the focus of sustained government and community effort” (Walden, 2014). A socio-ecological understanding of DFV as having “multiple causes” is a key feature of the public health model (Walden et al., 2014; WHO, 2002, 2010). The socio-ecological conceptualisation of DFV, and more broadly gender-based violence and sexual assault, views it as the outcome of “multiple risk factors and causes, interacting at four levels of a nested hierarchy” (WHO, 2010, p. 7). These four levels are: individual; relationship/family; community; and wider society. This perspective recognises that each of these factors may have varying levels

of influence, in particular social, economic, biological, cultural and political contexts in the occurrence of family violence, but that gender inequality is the underlying cause (WHO, 2010).

Tayton et al. (2014) acknowledged the intersectionality analysis of Cripps and Davis (2012) in noting that “it is critical to take account of the intersection of race and gender when considering the issue of DFV” and that, among the contributing factors, “overcrowding of housing and high levels of alcohol consumption are repeatedly identified in the literature as key compounding factors in family violence in Aboriginal and Torres Strait Islander communities” (AIHW; Blagg; Steering Committee for the Review of Government Service Provision, as cited in Tayton et al., 2014, p. 25).

While acknowledging the “general agreement” on the contribution of colonisation and other detrimental historical events, Tayton et al. (2014) noted that the family violence approach, in contrast with the domestic violence approach,

has less of an emphasis on criminalisation as the primary response to DFV and less reliance on feminist analyses and explanations of violence. It places greater emphasis on the role of colonialism, trauma, family dysfunction and alcohol as primary causes, and understands male violence less as an expression of male power and more as compensation for lack of status and esteem. (Blagg, as cited in Tayton et al., 2014, p. 26)

These differences highlight the tension underlying approaches to prevention. On the one hand, in Victoria especially, there have been legislative reforms that improve prevention strategies by establishing statutory definitions of domestic violence and family violence as crimes, while on the other, the family violence literature deproblematizes assault against Aboriginal women and relegates it to a social work framework involving “healing” of perpetrators and victims in relation to the traumatic impacts of colonisation and historical burdens. This leads to courts and support services implementing strategies for diverting Aboriginal perpetrators of violence from custodial sentences while strategies for ensuring the safety of Aboriginal victims remain poorly resourced, as has been repeatedly pointed out by the research participants in relation to the lack of housing accommodation for victims.

The cycle of pain: Intergenerational trauma, family violence, alcohol and the removal of children from their families by governments

Another useful and rigorous approach to understanding the risk factors in the incidence of family violence is the elaboration of the concept of “intergenerational trauma” in the context of family relations and family violence in Aboriginal social settings. Judy Atkinson’s book, *Trauma Trails: The Transgenerational Effects of Trauma in Indigenous Australia* (2003), reported accounts from Aboriginal people’s experiences in their personal and family histories that caused psychological harms, often severe, that ruined lives and destroyed families. Atkinson (2003) also proposes “healing” practices to assist recovery, involving narrative therapy and “deep listening”.

One of the ongoing harmful practices that causes trauma and exacerbates existing trauma is the removal of children from their families by child protection agencies. The intergenerational trauma is well explained in the *Independent Review into Children in Out-of-Home-Care in New South Wales* (Davis, 2019), as “complex or endemic post-traumatic stress disorder” resulting from historical events, in the discussion and definition of key concepts:

According to the literature, intergenerational trauma is passed down through generations. Following the work of Judith Herman in 2004, Wesley-Esquimaux and Smolewski introduced a new model for trauma transmission and healing. They suggested that the presence of complex or endemic post-traumatic stress disorder in Aboriginal cultures originated as a direct result of historic trauma transmission. They described their model of trauma transmission as follows: trauma memories are passed to next generations through different channels, including biological (in hereditary predispositions to post-traumatic stress disorder), cultural (through story-telling, culturally sanctioned behaviours), social (through inadequate parenting, lateral violence, acting out of abuse), and psychological (through memory processes) channels. The authors argued that while substance abuse, mental health issues, and poverty may exacerbate the effects of intergenerational trauma, the root cause of this trauma

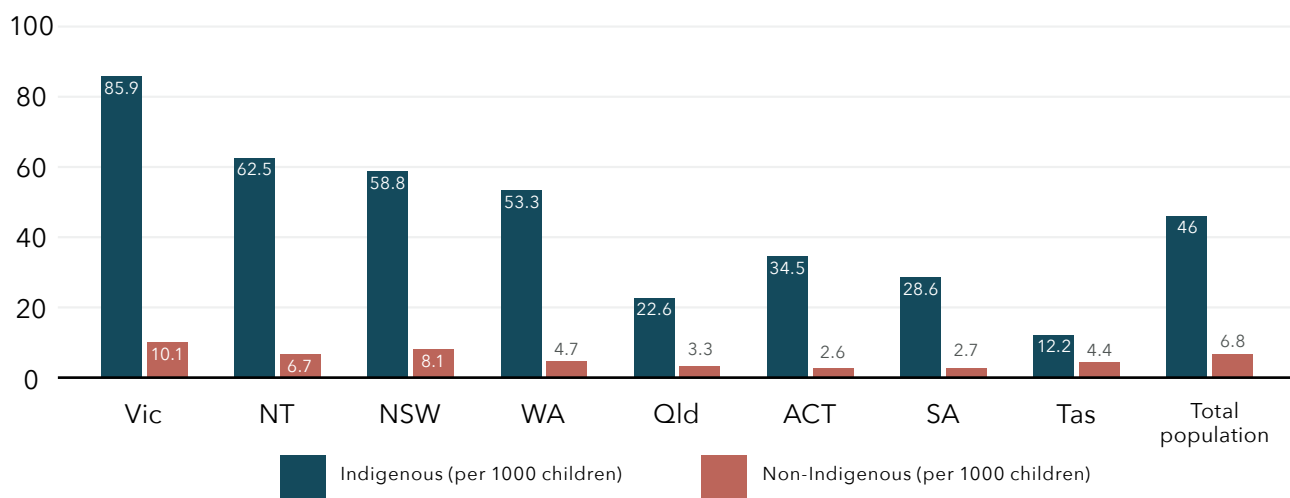
was colonisation and its subsequent effects. Currently, law, practice and policy does not address this trauma ... To say that the root cause of the trauma is colonisation is one thing. To fully understand the history of that colonisation and the phases described above in this chapter is another. In Australia, intergenerational trauma is generally misunderstood. This trauma manifests itself in behaviours that are regularly viewed as a reason to remove children, and not restore those children once they have been removed. (Davis, 2019, pp. 21–22)

The study by Wesley-Esquimaux and Smolewski (2004) in Canada developed “a comprehensive historical framework of Aboriginal trauma” (p. iii). Their historical reckoning was chronological from first “contact in 1492 through to the 1950s, with a primary focus on the period immediately after contact” (Wesley-Esquimaux & Smolewski, 2004, p. iii). Following the work of Judith Herman (1997) in *Trauma and Recovery: The Aftermath of Violence*, from domestic abuse to political terror, they conceptualised a new model for trauma transmission and healing, and cited “the presence of complex or endemic post-traumatic stress disorder in Aboriginal culture, which originated as a direct result of historic trauma transmission (HTT)” (Wesley-Esquimaux & Smolewski, 2004, p. iii). Their study illustrated how “historic trauma can be understood as a valid source of continuing dis-ease and reactivity to historical and social forces in Aboriginal communities” in Canada (Wesley-Esquimaux & Smolewski, 2004, p. iii).

Four Family Violence Prevention Legal Services jointly submitted to the *Independent Review into Children in Out-of-Home-Care in New South Wales* (Davis, 2019) about the effects of intergenerational trauma, including that “the loss of parenting skills and knowledge has contributed to an increase in the communities’ vulnerabilities of mental health, domestic and family violence, substance misuse and homelessness” (Davis, 2019, p. 22). The report noted that “the recognition of this erosion of community and familial capacity should be considered in reform efforts” (Davis, 2019, p. 21). Attention was drawn to the inadequate response to intergenerational trauma:

Rather than being judgemental about parenting practices (which is repeatedly common in the reviewed case file notes), caseworkers must recognise that many Aboriginal

Figure 1: Rate of substantiated notifications (number per 1000) by Aboriginal and Torres Strait Islander status and state/territory for children (0-17 years) 2016-17



Source: Data accessed from AIFS (2019); AIHW (2018)

parents who are in contact with the child protection system have had their parenting abilities adversely affected by intergenerational trauma and its compounding effects. For example, they may not have had safe and stable homes themselves because their parents may not have had safe and stable homes. Legal Aid NSW note[s] in its submission that, historically, trauma did not cease at the point of removal but that “many of these children also went on to experience abuse and neglect in institutions and foster families. The effects of these policies and practices reverberate today”. (Davis, 2019, p. 22)

The outcome—described as “disastrous” in the report—was the ongoing removal of children, with child protection authorities treating their circumstances as “neglect” rather than intervening to deal with the intergenerational trauma of the family and kin that had denied them parenting skills (Davis, 2019, p. 22). As the report observed:

If child protection authorities keep removing children for symptoms of neglect, rather than treating the root causes of that neglect, then numbers in OOHC [out-of-home care] will keep increasing as those children, in turn, have children who enter OOHC. The SNAICC Family Matters report indicated that one in five Aboriginal women, and over one in 10 Aboriginal men who were in OOHC, will have a child in OOHC at some point in the twenty years following their exit from OOHC. Compared with the general population, OOHC leavers are more than 10 times more likely to have their child in OOHC. (Davis, 2019, pp. 22–23)

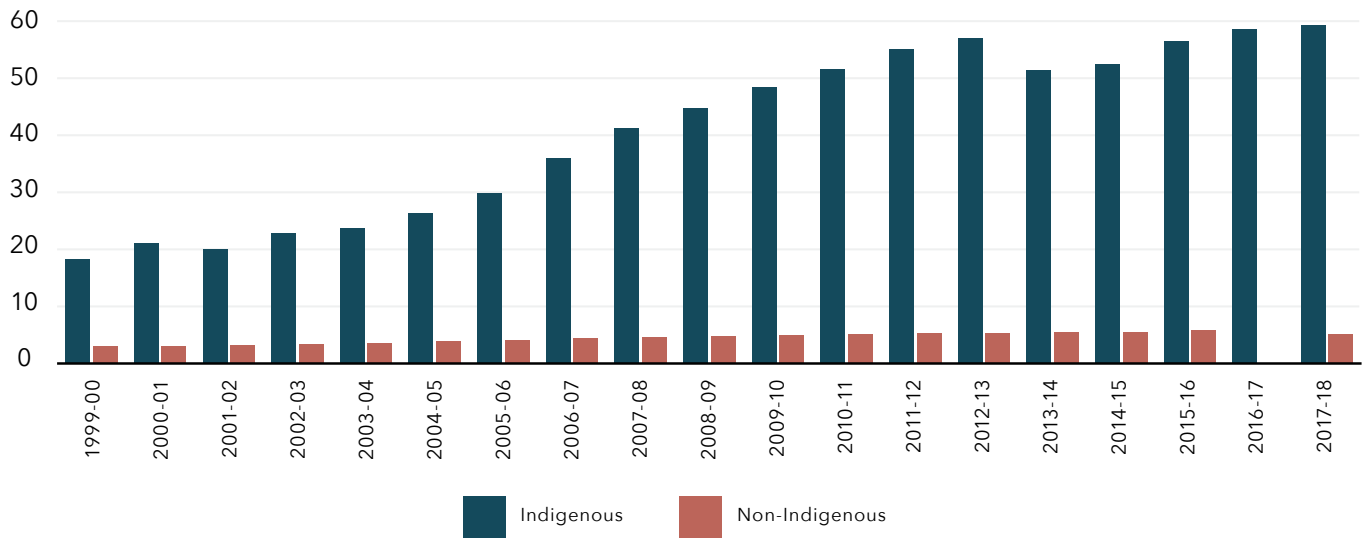
Aboriginal and Torres Strait Islander children are significantly over-represented in the child protection system, which can be illustrated by the rates of substantiated notifications in

all Australian states and territories (see Figures 1 and 2). The rates of removal of Aboriginal and Torres Strait Islander children from their families and communities has also increased exponentially over past decades. In 2001, the rate of substantiated notifications for Aboriginal and Torres Strait Islander children was 4.3 times the rate of non-Aboriginal and Torres Strait Islander children (Stanley et al., 2002). By 2019, this rate had increased to nearly seven times that of non-Aboriginal and Torres Strait Islander children (Australian Institute of Family Studies [AIFS], 2020).

In Victoria in 2018, family violence and alcohol and drug use were the primary reasons for Aboriginal children being removed from their parents and placed in out-of-home care (Commission for Children and Young People, 2016, p. 32). Similarly, in New South Wales, two of the main reasons for Aboriginal children entering out-of-home care have been recorded as due to carer drug or alcohol use and family violence. However, other primary issues included neglect, physical abuse and emotional abuse (Davis, 2019). The report drew attention to police powers in relation to removing children and a correlation with the ineffectiveness of apprehended violence orders:

Under s 43 of the Care Act, FACS [Family and Community Services] or a police officer may remove a child from a particular premises without a warrant in a number of circumstances, such as when satisfied on reasonable grounds that the child is at immediate risk of serious harm and the making of an apprehended violence order would not be sufficient to protect the child. (Davis, 2019, p. 45, fn. 209).

Figure 2: Rate of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander children in out-of-home care 1999–2018 (per 1000 children)



Source: Data accessed from AIFS (2019); AIHW (2018)

New South Wales and Victoria inquiries and reforms addressing child protection issues

In 2016, the Commission for Children and Young People (CCYP)¹ led two systemic inquiries examining Aboriginal children in out-of-home care:

- *In the Child's Best Interests: Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria* (Commission for Children and Young People, 2015)
- *Always Was, Always Will Be Koori Children: Systemic inquiry into Services Provided to Aboriginal Children and Young People in Out-Of-Home Care in Victoria* (Commission for Children and Young People, 2016).

In 2008, a *Special Commission Inquiry into Child Protection Services in New South Wales*² (Wood, 2008) investigated the types of changes and alterations the child protection system required in order to address increasing rates of child removal. The report made several recommendations that directly related to Aboriginal and Torres Strait Islander family violence, and recommended that the New South Wales Government consider the following (Wood, 2008, p. xxxii):

- assisting Aboriginal communities to consider and develop procedures for the reduction of the sale, delivery and use of alcohol to Aboriginal Communities (18.2 a)
- working with the Commonwealth to income manage Commonwealth and state payments to all families, not only Aboriginal families in circumstances where serious and persistent child protection concerns are held and

there is reliable information available that income [is] not being spent in the interests of the safety, welfare and wellbeing of the relevant child or young person (18.2 b)

- providing boarding-type accommodation that provides care and education to Aboriginal children and young people at risk of harm (18.2 e).

The New South Wales Government responded by introducing the *Children Legislation Amendment (Wood Inquiry) Recommendations Act 2009* (NSW) and developing a five-year action plan entitled *Keep Them Safe: A Shared Approach to Child Wellbeing* (NSW Department of Health, 2011).

However, an evaluation of the *Keep Them Safe* action plan conducted by Cassells et al. (2014) recommended that the child protection system centralise early intervention and needed more child-centred, holistic, multi-agency approaches. It found that its system-based approach wasted too much time on “reporting, referral and assessment rather than efforts to intervene early and provide effective, holistic multi-agency responses to vulnerable children” (Cassells et al., 2014, p. 6). The evaluation also found “significant gaps” (p. 6) between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander children across the entire system, especially in remote and isolated communities. Specific shortfalls in these communities included a lack of both mental health and substance misuse programs, particularly those providing culturally appropriate services (Cassells et al., 2014, p. 18).

In 2019, the final *Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out of Home Care in New South Wales* report included a section

1 In Victoria, the CCYP is responsible for ensuring the safety and wellbeing of Aboriginal children and young people.

2 Commonly referred to as the Wood Inquiry.

on domestic and family violence, identifying it as an area of specific concern (Davis, 2019, p. 167). It stated that the “data highlighted considerable deficiencies in the department’s response to domestic and family violence within both the child protection system, for children in care, and in respect of restoration goals and goal-setting” (Davis, 2019, p. 166). Specific recommendations 30 and 31 (Davis, 2019, p. 171) of the inquiry are summarised below:

- mandating the use of the Domestic Violence Safety Assessment Tool (DVSAT) by caseworkers with parents, and that the tool should be used to manage parents’ engagement with the Safer Pathway system
- more in-depth education provided to caseworkers and their managers about the complexities of family violence (including coercive and manipulative behaviours).

Although there have been ongoing child protection inquiries, reviews and subsequent reforms in both Victoria and New South Wales, there remains cynicism regarding the impact of reforms by many, including those within the system. The final *Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out of Home Care in New South Wales* report noted that “child protection is a well-trodden reform landscape that is littered with comprehensive and unimplemented recommendations for reform” (Davis, 2019, p. 9).

Mandatory reporting to child protection authorities

In New South Wales, the *Children and Young Persons (Care and Protection) Act 1998* includes the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP; Part 2, ss 11–14) that sets out the general preference for Aboriginal and Torres Strait Islander children to be placed in kinship care arrangements (see Table 4). However, there is also an “emergency placement” provision (ss 7–8) which states that the ACPP does not apply where the child is either at serious risk of immediate harm or if the duration of the placement will be less than two weeks. It also states that “the Secretary must consult with the appropriate Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child or young person has been secured” (s 13[7]). Section 25 sets out pre-natal reports: “a person who has reasonable

grounds to suspect, before the birth of a child, that the child may be at risk of significant harm after his or her birth may make a report to the Secretary” (s 25). The person reporting is given anonymity.

In Victoria, the *Children, Youth and Families Act 2005* sets out mandatory reporting requirements. The Act was updated after the Royal Commission into Family Violence (RCFV) findings in 2016 (State of Victoria, 2016c), thereby increasing the range of people who are mandated to make reports of child abuse or neglect. As of March 2019, people working in out-of-home care, early childhood and youth justice, as well as registered psychologists, were added to the list of mandatory reporters (State of Victoria. Department of Health & Human Services, 2019a). In January 2020, the list of mandatory reporters was expanded to include school counsellors and people in religious ministry positions. There are also additional sections (ss 162, 162e) that refer to children who require special protection but do not have mandatory reporting requirements, for example in terms of “emotional or psychological harm of such a kind that the child’s emotional or intellectual development is, or is likely to be, significantly damaged” (s 162e).

Section 18 further sets out delegation by the Secretary to Aboriginal agencies in specific situations, increasing decision-making responsibilities and self-determination when Aboriginal children are involved. One example is the Nugel Program at the Victorian Aboriginal Child Care Agency (VACCA). When an Aboriginal child is placed under a child protection order, the decision-making and case planning powers of the Department of Health and Human Services are delegated to the Nugel Program (VACCA, 2018). It is then the Nugel Program’s responsibility to make decisions regarding the child’s out-of-home care placement.

Cripps (2012, p. 30) has noted that although the primary responsibility for protecting children from abusive partners or family members falls on mothers, there was little practical assistance available to enable them to make the long-term changes required to do so. She further noted that for Aboriginal and Torres Strait Islander mothers, balancing the safety of their children with “kinship, familial, community and cultural responsibilities” (Cripps, 2012, p. 30) is complex.

Furthermore, attempts to communicate this with child protection authorities were difficult

without pathologising the mother and her individual choices, but rather appreciating the broader socio-economic and cultural spaces that she negotiates in a position of little power or influence over the individual behaviours and/or actions of others. (Cripps, 2012, p. 30)

Cripps posited instead that the state should be held responsible for the safety of both the mother and her children.

The Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-Of-Home Care in New South Wales raised this issue and noted:

Some stakeholders attributed the number of Aboriginal children in out-of-home care (OOHC) to the fact that caseworkers didn't know how to work in and with Aboriginal communities. Some stakeholders also raised the issue of racism. Some noted that racism existed in health, education and policing, and that racism influenced Family and Community Services (FACS) to remove Aboriginal children from their homes. (Davis, 2019, p. 179)

In the next section, we summarise relevant literature, legislation, policies and strategies in the family violence legal and support service sector.

Aboriginal and Torres Strait Islander self-determination and family violence services

A seat at the table: “Nothing about our mob, without our mob” (Douglas et al., 2018)

This aspiration for Aboriginal and Torres Strait Islander agency and self-determination in developing responses to family violence has a long history and factored in the increase in services designed and delivered by Aboriginal and Torres Strait Islander people. With its responsibility for research for women's safety, ANROWS has supported Aboriginal and Torres Strait Islander people (both men and women) to assist in designing responses to Aboriginal and

Torres Strait Islander family violence. At its 2nd National Research Conference on Violence against Women, held in 2018, a forum was convened “for delegates to join forces to develop a statement to be delivered at the conference”. The resulting *Warawarni-gu Guma Statement: Healing Together in Ngurin Ngarluma* (the Statement; Douglas et al., 2018) provides an “Aboriginal and Torres Strait Islander perspective on domestic and family violence including a pathway forward for Aboriginal and Torres Strait Islander communities” (Douglas et al., 2018).

The Statement's key point is that a new way is required that involves Aboriginal and Torres Strait Islander people in all aspects of policy formulation and a wide range of service responses and data sovereignty: specifically, “our way for addressing family violence in our communities; a way that recognises the impact of intergenerational trauma on our people, our families and our communities” (Douglas et al., 2018). This demand for recognition was based on the concept of Indigenous “healing”, a term increasingly used to refer to the inherited trauma that is widely attributed by Aboriginal and Torres Strait Islander people to be a primary causal factor in the incidence of family violence. The Statement demanded recognition of Aboriginal and Torres Strait Islander cultural knowledge, kinship and “skin group” relationships, Indigenous social strengths and resources, the gender-specific roles and cultural obligations rules, and the need for a “seat at the table”, “to be the architects of our own lives, our own destinies”. These issues were captured in the phrase, “Nothing about our mob, without our mob”.

There are several practical reasons for this demand from Aboriginal and Torres Strait Islander women for self-determination in tackling domestic and family violence. It is more likely that Aboriginal and Torres Strait Islander women will seek help from the range of services required to address domestic and family violence if the personnel are Aboriginal and Torres Strait Islander like themselves and more likely to understand their situation, respond without racism or condescension, and provide a culturally safe environment and response.

In addition, there is widespread agreement that policies, approaches and agencies should move from an incident

response method to a comprehensive preventative approach. This is clearly a response to the overwhelming case load of services that do not have the capacity to respond to the immediate needs of victims or perpetrators. It is also clear, however, that there is an immediate need for reform of laws, procedures, policies and programs. Other non-Aboriginal and Torres Strait Islander agencies, such as Our Watch, have also consulted with Aboriginal and Torres Strait Islander people, and recommended a preventative approach.

Research approach, methodologies and methods: Indigenous women as victims of violence and the research challenges

Research approach

Prioritising the voices of the victims

The purpose of this research—which was in large part to identify what works and what does not work to enable Indigenous women victims to escape family violence and access services in the reformed legal and policy settings in rural Victoria and New South Wales—required a methodological approach to the research that prioritised the voices of the victims themselves, and acknowledged their agency in a complex system of referrals from the police to other agencies, including child protection agencies of the governments, magistrates, court officers, court hearings, the Koori Courts, health clinics, women's shelters, counselling services, and other service providers (McKivett, Hudson, McDermott, & Paul, 2020). The methodological and theoretical approaches and methods used in this study aimed to provide an opportunity for Aboriginal women who experience family violence to participate, and to learn from and have control over their experiences. By validating these experiences, and creating space for their stories, this research aimed to identify areas of policy and practice within the justice and service sectors that require adjustment to better meet the needs of Aboriginal and Torres Strait Islander women experiencing family violence. The following questions guided the research:

1. What are the differential impacts of family violence legislation and related policy (and its shifting frame) for Aboriginal and Torres Strait Islander women in different contexts?
2. What are the barriers and enablers that impact on the capacity of Aboriginal and Torres Strait Islander women to seek assistance from police and support services, to pursue court processes, and to improve their experience and satisfaction with these services?
3. Are there specific features of different support services that encourage access for Aboriginal and Torres Strait Islander women?
4. What are the historical, social, political, economic and regulatory contexts that frame Aboriginal and Torres Strait Islander family violence for Aboriginal and Torres Strait Islander people?

The significant complexity of the research problem required a theoretical approach based in a multidisciplinary theoretical

framework using mixed methods to obtain nuanced, in-depth data related to the daily experiences of family violence legal and support services staff and Aboriginal and Torres Strait Islander women experiencing family violence.

A key consideration in adopting this theoretical approach was that the reported rates of violence against Aboriginal women far exceed those for other Australians, with a range of consequences, including higher rates of hospitalisation for assault and removal of children. Moreover, it is accepted that Aboriginal women decline to report family violence. The design of this study was theoretically informed by social anthropology, medical anthropology, cultural epidemiology and Indigenous literature. In addition, approaches from critical anthropology and development studies, combined with approaches from medical anthropology and assemblage theory (a case study approach), enabled the research team to elicit testimony of Indigenous women who have experienced family violence in rural settings on the border of Victoria and New South Wales regarding their experience of the criminal justice system, government agencies and service providers with a mandate in the complex network of family violence law, policy and practice in these two jurisdictions.

This study produces a rare body of first-hand accounts and perspectives of Aboriginal victims of violence and service providers both Indigenous and non-Indigenous that, together with the quantitative data and legal analysis, reveal the successes and failures in the system of legal and governmental measures designed to address Indigenous family violence in two rural settings in Victoria and New South Wales.

The research draws on the work of researchers from the fields of medical anthropology and anthropology and those who expound Indigenous, feminist and intersectional theories to amplify the voices of the Aboriginal victims. This furthers the aim of empowering victims to identify future improvements in the system of reporting family violence and the various measures that might follow reporting, should victims choose to access services available to them. By interviewing both the women victims of violence and personnel from the justice and service systems individually and in groups, as well as observing the interactions in many institutional settings,

this approach centred the victims as agents rather than as marginalised players in a system that was undergoing reforms. These methods allowed the research team to more adequately address the scale of the violence experienced by Aboriginal women; their cultural difference; socioeconomic disadvantages as compared with their fellow residents in rural towns, such as disparities in education, employment, access to housing and accommodation; and particularly their experience of racism.

Our research approach was purposefully designed to give victims and service providers the opportunity to:

- speak about their experiences
- provide their perspectives on how services in the family violence system could meaningfully address their needs and be considerate of their cultural and socioeconomic differences
- diminish the negative effects of Aboriginal dealings with police, courts and child protection services and improve outcomes for the victims.

The purpose of eliciting a wide range of testimony from participants in the family violence systems of these two jurisdictions is to analyse and collate their data into a larger picture that they themselves may not perceive, and share their first-hand understanding of their successes, failures, irresolvable challenges, hopes and appeals for improvements, and most importantly the specific and unique cultural and social issues faced by Aboriginal victims. Medical anthropologist Hughes (2002, p. 133) observed:

Medical anthropologists cannot heal the sick, but they can work to assist, and sometimes prod, developers in health and other fields, to ensure that cultural aspects are not over-looked, nor are political and economic processes denied.

Culture, health and complexity

As a field-oriented social science of health-related issues, medical anthropology has had a long association with epidemiology in ascertaining the patterns of diseases and containment of disease outbreaks, pandemics and epidemics, including HIV/AIDS and Ebola, and ongoing health issues

such as women's reproductive health and drug and substance abuse across cultures. Medical anthropologists bring their findings into the centre of Western scientific-based medical approaches so as to include other understandings of disease and health and enable engagement of those trained in a Western biomedical paradigm with people whose healing systems involve belief systems and practices from very different cultural contexts (Singer, Baer, Long, & Pavlotski, 2012, pp. 12, 21). Patricia Whelehan, author of *The Anthropology of Aids: A Global Perspective* (2009), noted that medical anthropologists have addressed

various bio-sociocultural factors, ethical issues, cultural factors and social reactions, gender roles and relations, socio-political and socioeconomic influences, and transnational and intergroup differences in the nature of the impact and range of responses that have developed to the pandemic. Medical anthropologists have played various roles in the global AIDS pandemic. To cite one example, they have worked closely with outreach workers to locate and recruit to research efforts hard-to-reach at-risk individuals, such as injection drug users. (Whelehan, 2009 as cited in Singer et al., 2012, p. 22)

Furthermore, medical anthropologists have identified "social and behaviour contexts in which risky behaviour is most frequent ... and have played key roles in the prevention research of syringe exchange" (Singer et al., 2012, p. 22). Cultural epidemiology of this kind has great relevance to Indigenous family violence (Castro & Singer, 2004; Inhorn & Wentzell, 2012; Scheper-Hughes, 1990, 1995).

In the case of violence against Aboriginal women, a phenomenon of epidemic proportions, medical anthropology has much to offer in understanding social relations in family and institutional settings and the kinds of responses that government and non-government agencies should offer to reduce the violence.

Some Indigenous methodologies share much with these critical approaches from anthropology and medical anthropology and feminist or gendered research approaches. Indeed, the early Indigenous critiques of Western research and methodologies (Smith, 1999) adopted these approaches and made them relevant to Indigenous settings. They share a

sense of obligation to privilege the voices of the Indigenous peoples, proposed originally by Smith (1999) as an effective means of de-colonising research. This study privileges the voices of Aboriginal women as victims while also attending to the distinctive problem of violence against women and children. The adoption of these approaches in this study were important to ensure that positivist or mechanistic readings of the legal frameworks that attempt to regulate this violence and the treatment of the victims of violence did not dominate our analysis.

Another key theoretical contribution comes from medical anthropologist Trostle (2005) who brought together epidemiology and cultural anthropology because “culture matters but should not be treated as a single variable” (p. 5). By example, a shortcoming of epidemiology with its emphasis on statistics and probabilities lies in the reductionism of “[representing] a group of people under a single variable such as ‘race’ [which] takes away from the unique attributes of each individual” (Ayeni, 2008, p. 88). Anthropologists are able to “unpack” such variables identifying the micro tendencies of individuals as opposed to macro patterns of populations as a result of their fieldwork methods such as extended and intensive interviews and participant observation techniques.

To be clear, the approach of the current study did not directly involve criminological or evaluation theory. It did involve various theoretical approaches derived from some Indigenous literature, research approaches and critiques of research methodology. The research settings are places that local Aboriginal Traditional Owners have a great attachment to, and they remain involved in caring for their countries according to their traditions. While the impacts of colonisation and post-Federation history have been profound, the resilience of local Aboriginal cultures is strong, and is expressed in the continuing use of the lexicon of their traditional languages, the use of traditional place names, their sense of community and kinship, their kinship-based social relationships and constructs that derive from their ancestors, the role of Aboriginal Elders in these communities and the deferential respect shown to them as a rule. It is a matter of methodological importance that local knowledge and ways of knowing—for example, the guidance of Elders—were incorporated into the research design for this project. The guidance of highly experienced senior Aboriginal women was

crucial to the design of our questions in the settings where victims were interviewed and to our understanding of the perspectives of service providers. The research project was led by an Aboriginal researcher and, while the membership of the research team changed during the project duration, research staff included Aboriginal women both as research officers and research assistants. Aboriginal women resident in these communities and with a sound understanding of the problem of violence were recruited as research assistants to carry out aspects of the research.

The researchers made return visits to professional and non-professional staff at several Aboriginal corporations and other services to verify the trends and behaviours that were being reported to us by other interviewees. Ongoing consultation and negotiation with Aboriginal organisations were essential components of this study’s methodology (Australian Institute of Aboriginal and Torres Strait Islander Studies [AIATSIS], 2012; Rigney, 1999). As noted by Rigney, “Indigenous peoples must now be involved in defining, controlling and owning epistemologies and ontologies that value and legitimate the Indigenous experience” (1999, p. 114). These consultations enabled us to review our research and the data we had gathered and the tentative understandings and conclusions we had drawn from the interviews, and to seek the organisations’ advice. Some of our consultations with Aboriginal and non-Aboriginal staff were not recorded or noted as they were meetings to introduce ourselves, to show courtesy and inform them when we returned to their area; or we were invited to informal events such as lunches or other gatherings.

Some Indigenous scholars insist that Indigenous methodology emphasises a “strengths-based approach” (Rigney, 1999), arguing that this is required when conducting research with disadvantaged communities and individuals (Davis, 2012a). An ethnographic exploration provides in-depth understandings of people’s experiences, behaviours, perspectives and histories in the context of personal or domestic settings (Whitehead, 2004). However, we note that inexperienced researchers—especially those without first-hand fieldwork experience or a deep understanding of statistical data—use ideas about Indigenous methodology to de-problematise the extent and severity of a range of problems, such as drug and alcohol abuse and violence (and in particular, family violence) by using rhetoric such as “strengths-based approach” inappropriately.

Our approach to research methodologies is that they are required to enable the validity and reliability of research and for peers to critically evaluate with respect to how the data were collected and analysed. The authors gave primary importance to evidence of the victims, much of which demonstrated the absence of “strengths-based approaches” in their experiences. We refused to recast our findings to suit a methodological fashion that would invalidate the evidence. Casting Indigenous victims of violence as characters in a theoretical dispute about Indigenous “methodologies” with objections to terminology appears to posit preferred outcomes as findings and other propositions that put at risk the validity of the research method and the research. Proposing preferred solutions that do not arise from rigorous research is a dangerous substitute for legitimate inquiry into how these women actually fare in a system that often fails to apprehend those who commit violence against them, removes their children from them, and leaves them homeless and without income support of any kind. Terminological disputes about “strengths-based approaches” as accepted research principles, “women who have experienced violence” versus “victims of violence”, and “Indigenous” versus “Aboriginal” do not change reality experienced by women nor the validity of their forms of expression. The authors consciously chose to use standard terminology, such as legal definitions, and terminology in the relevant legislation in the context of this study was deemed to be more important than disputed terms proposed purportedly in defence of “Indigenous methodology”. The authors thoroughly support strengths-based approaches to designing primary and secondary responses to reducing family violence, especially Aboriginal community-controlled responses.

Hence, several other related theoretical approaches were also significant in our understanding of the problem of family violence in Aboriginal families and communities and the role of governmental agencies. These included:

- the capabilities approach (Nussbaum & Glover, 1995; Sen, 2000), especially with respect to Indigenous-led or -controlled services
- theories of violence of the state (Das, 2008), especially with respect to the role of police, intergenerational trauma, and the gendered status of violence that normalises Indigenous women as victims and criminalises Indigenous men as perpetrators
- intersectionality, especially in relation to the behaviour of Indigenous women who choose to stay in violent relationships where their cultural and social commitments often confine them in violent circumstances.

The analysis of the accounts of violence against women and their experience in seeking relief from violence reported in this study used both macro and micro theoretical approaches to issues such as cultural acceptance of violence, feminist perspectives, a subculture of violence, structural stress, the role of alcohol, social location or socioeconomic status (Jasinski, 2001, p. 12). Ethnographic understandings of social, structural and family processes were critical to understanding Aboriginal cultural values, practices and beliefs, while the individual responses to the violence experienced and to the institutional contacts were analysed through the lens of “multidimensional theories of violence that take into account both social structural factors and individual characteristics” (Jasinski, 2001, p. 17). In this report, the requirement for brevity did not allow the extent of analysis possible for a very large body of data from these first-hand accounts.

The dilemma of Indigenous family violence: The risks in seeking safety

Having explained the theoretical underpinnings of our methodology briefly, we also recognise the necessity of demonstrating their relevance to the problem. Following initial visits and intensive interviews and focus groups with victims and service providers, the research approach required forming an understanding of the dilemmas faced by the victims as they struggled to choose between reporting the violence to the police—which would inevitably involve child protection agencies and the risk of having their children removed into foster care—and remaining in a violent relationship and keeping their children with them. Victims also faced the dilemma of reporting the violence to police only to be ostracised and persecuted by other members of the Aboriginal community, often their own family members, and certainly the family of the perpetrator. Participants further explained the dilemma of turning to the police who are perceived as the enemy of Aboriginal people, especially of men who are incarcerated at extreme rates.

For some victims the violence was so severe that they chose to report it to the police. Some had survived extreme violence, and gradually, with the good fortune to be assisted by family violence workers who understood their problems, they found safety. Some were able to be reunited with their children, and even pursue education and employment. Aboriginal-controlled women's shelters and services were the common factor in the cases of these women.

The strengths of this research lie in its contribution to the effectiveness of services to assist victims of violence and to protect them and their children from violence, not, for instance, in the way that the personal attributes of women as victims are described. Describing them as victims of violence does not remove the agency of these Aboriginal women but rather places them in a greater position of strength by examining their status at law and in the institutional settings where policies and programs have great power to affect their lives. Recent reforms in legislation to recognise the vulnerability of the victims and the need for paramount concern for their safety has placed them in a greater position of strength. By example, it is well understood by judicial officers that the victims are often portrayed by the perpetrators of the violence as being the cause of the violence (Chung, Green, Smith, & Leggett, 2014); that is, "she made me do it" and similar statements by perpetrators cast the victims as being at fault.

The power differential between victims and perpetrators changes when those in the system, whether in the police, the courts, child protection agencies or the many service providers (such as women's shelters), are allies of the women because of their status as victims of violence at law. Perpetrators have a wealth of excuses for their illegal behaviour and ways of dismissing their responsibilities. Chung et al. (2014) found in a study of 10 men who had breached domestic violence orders in Western Australia that the men

minimised their use of violence, externalised responsibility to "the relationship" and/or their partner, [and] minimised the role and purpose of protection orders, saying "they are just a piece of paper" and "anyone can get one". (Chung et al., 2014, p. 2)

A key theme identified in Chung et al.'s (2014) study was that participants exhibited a "lack of empathy or regard for

the safety and wellbeing of their current or former partner" (p. 2). For example, although the majority of men in the study thought protection orders were useful for those in need, they did not believe their own partners required them. Further, they found the participants were ill informed regarding the consequences of their violence, the processes and grounds for obtaining orders, and the additional penalties that can be imposed if orders are breached. Like other women, Aboriginal and Torres Strait Islander women were victims of men's "perception that protection order processes were unfair or unjust" (Chung et al., 2014, p. 2) and were impacted by minimal responses from authorities and service providers that reinforce these views.

In addition to the laws relating to domestic and family violence that, following reforms, encompass a very wide definition of forms of violence in Victoria and New South Wales, the *National Domestic and Family Violence Bench Book* states, in relation to "fair hearing and safety" (s 5):

There is a developing understanding among judicial officers in Australia that domestic and family violence rarely involves a single incident or a series of discrete incidents of physical violence. Rather, it manifests as a complex pattern of violent and abusive behaviours through which a perpetrator exercises control over the victim, often for extended periods. The facts of a particular matter and the circumstances of the affected parties are likely to have a direct and substantial bearing on the manner in which a judicial officer discharges their obligations in the conduct of proceedings and the protection of parties.

For some victims their engagement with law enforcement agencies and the courts may exacerbate or prolong the trauma they have experienced as a result of domestic and family violence. For example, absence of legal representation, lack of interpreter services, giving oral evidence, being cross examined, being present in the court room or court precinct with the perpetrator, or having to repeatedly return to court for mentions, adjournments and hearings may contribute to a victim's revictimisation or secondary abuse through the court system. Judicial officers should ensure, where practically possible and resources permit, that these factors and their adverse consequences are addressed.

It is critical that parties feel that they have been properly informed of their rights and what to expect in the court process and that they have been taken seriously and given due opportunity to be heard. For victims, it is critical that their safety and protection are assured and that they are in control of their participation in the proceedings and of choices affecting their lives beyond the courtroom. In facilitating these outcomes, a judicial officer may need to take into account a victim's individual vulnerabilities, and their specific experience of domestic and family violence or its impacts. (Australasian Institute of Judicial Administration, 2019)

This dilemma—the need to ensure safety for the victims and also to case manage perpetrators to prevent further violence by persuading them to understand their legal obligations—lies at the heart of the difficulty of administering family violence laws to protect Aboriginal and Torres Strait Islander women. This is the location of the collision of culture and the state: the “substantive freedoms” of Aboriginal and Torres Strait Islander women who are victims of violence might be achieved if their assailants are adequately regulated by legal and judicial means. This is only likely to occur when women break free of the cultural and social constraints that prevent them from seeking safety via the police and courts. This is the location of the methodological complexities of analysing violence against women: how each woman responds to the cultural constraints of motherhood and kinship in tight-knit communities is the decisive factor in her journey to safety. It always comes down to individual choice: to stay or flee. This is why there are repeated calls for Aboriginal self-determination in developing responses to family violence.

The long history of Aboriginal self-determination in the Indigenous health sector has demonstrated the success of Aboriginal community-controlled health services. Panaretto, Wenitong, Button, and Ring (2014) have researched their effectiveness and concluded the following:

- Central to efforts to build healthier communities is the Aboriginal community-controlled health service (ACCHS) sector; its focus on prevention, early intervention and comprehensive care has reduced barriers to access and unintentional racism, progressively improving individual health outcomes for Aboriginal people.

- There is now a broad range of primary healthcare data that provides a sound evidence base for comparing the health outcomes for Indigenous people in ACCHSs with the outcomes achieved through mainstream services, and these data show:
 - models of comprehensive primary health care consistent with the patient-centred medical home model;
 - coverage of the Aboriginal population higher than 60% outside major metropolitan centres;
 - consistently improving performance in key performance on best-practice care indicators; and
 - superior performance to mainstream general practice.
- ACCHSs play a significant role in training the medical workforce and employing Aboriginal people.
- ACCHSs have risen to the challenge of delivering best-practice care ... (Panaretto et al., 2014, p. 649)

Similar features of Aboriginal community-controlled family violence services, despite some room for improvement discussed elsewhere in this report, have the potential to reduce Indigenous family violence by reducing barriers to access and unintentional racism, and delivering services in a culturally appropriate manner with an informed focus on the complex needs of their clients and the understanding of the need for engaging and coordinating services to meet their needs.

The aspiration for Indigenous agency and self-determination in developing responses to family violence also has a long history and has been a factor in the increase in services designed and delivered by Aboriginal and Torres Strait Islander people. There are several practical reasons for this demand from Aboriginal and Torres Strait Islander women for self-determination in tackling domestic and family violence. The issue of under-reporting by Aboriginal and Torres Strait Islander women remains a significant barrier to strategies to reduce violence. In addition to the justified fear of having their children removed by child protection agencies, and fear of loss of access to housing, Aboriginal and Torres Strait Islander women decline to report family violence to the authorities because of their previous experience of, or fear and distrust of, state agencies, including police

forces, court personnel, child protection agencies and service agencies. Usually, they have experienced racist attitudes and discriminatory practices in previous encounters. Victims who have encountered police who have not investigated reports adequately, or been in situations “where police attending an incident have misidentified the woman as the perpetrator”, perceive “that there is little value in making a report” (Our Watch, 2018, p. 36). Another reason is the common experience of trauma as a significant factor in episodes of domestic and family violence (Our Watch, 2018).

Aboriginal advocates for improved family violence services maintain that cultural safety training for all staff in relevant agencies is a critical requirement, and yet little is done to provide this professional education. In obvious ways, the “cone of silence” that surrounds the problem of family violence in Aboriginal contexts—the refusal to report and the pressure on victims to remain silent—is similar to the challenge of effectively treating outbreaks of sexually transmitted diseases in populations where the cultural prohibition on speaking of such matters leads to very high and repeated rates of infection resulting in sterility and severe co-morbidities (Hughes, 2002). The inability of non-Indigenous service providers to understand the role of the cultural prohibition on reporting violence exacerbates the suffering of the victims and intensifies their distrust of a service that appears as a bureaucratic arm of the state that marginalises Aboriginal and Torres Strait Islander people.

Finally, it is more likely that Aboriginal and Torres Strait Islander women will seek help from the range of services required to address domestic and family violence if the personnel are Aboriginal and Torres Strait Islander people like themselves and more likely to understand their situation, respond without racism or condescension, and provide a culturally safe environment and response.

The obvious need for greater Aboriginal-led family violence services to untangle the dilemma for Aboriginal victims of violence seeking assistance from a system that has treated Aboriginal people unjustly required us to re-examine the issues raised by the victims and service providers through the lens of the capabilities approach.

Theoretical frameworks

The capabilities approach and self-determination

The capabilities approach (Sen, 1993, 2000) takes into account both substantive and procedural requirements for the achievement of social justice. Sen (2000) has described capabilities as “substantive freedoms”, which are the combination of opportunities and functional abilities individuals have access to in order to live a dignified life, or the agency a person has to do or be. Put another way, as Ingrid Robeyns (2013, p. 3) described:

Capabilities are freedoms conceived as real opportunities ... capabilities as freedoms refer to the *presence* of valuable options or alternatives, in the sense of opportunities that do not exist only formally or legally but are also effectively available to the agent.

However, “understanding capability as an opportunity concept of freedom, rather than some other kind of freedom, may undermine mistaken critiques of Sen’s work” (Kaufman, 2006). Nussbaum (2001, 2011) extended the concept, examining “real lives in their material and social setting” (2001, p. 71), and contending that there is a need for a moral and philosophical dimension to ensure a minimum level of social justice in society. The capabilities approach was developed with women’s equality as a core aim, which is one of the reasons it is a constructive theoretical approach to “diagnose, analyze, and address the problems of violence against women” (Nussbaum, 2005, p. 177). Davis, an Aboriginal human rights legal scholar, addressed the problem of self-determination discourse that has excluded Aboriginal women, drawing on Martha Nussbaum’s capabilities approach “as a complementary framework to Indigenous rights” (2012, p. 79) that could allow for a reimagining of self-determination rights. Davis encouraged others to engage in this approach by addressing the contextualised experiences of Aboriginal women specifically, to reflect “what self-determination means for Aboriginal women in their daily lives” (2012, p. 79). Davis drew attention to the Australian experience of self-determination as state-centric, “overly reliant on state acts” and “calibrated according to the male experience” (2012a, p. 79). She stated:

Consequently, the strong conditioning force of culture—

the privileging of “race” or “culture” and the concomitant marginalisation of gender—has ultimately been to the detriment of Aboriginal women’s wellbeing and bodily integrity. (Davis, 2012a, p. 79)

Research on empowerment strategies in a family empowerment program has produced evidence that enhancing the inherent capabilities of Aboriginal people whose life circumstances are dire is possible. In their 10-year study, Tsey et al. (2007) found a range of factors that had improved. Their advice is salutary:

Communities often have pockets of exceptional strength, resilience, creativity and innovation. Despite this, an assumption persists that best practice health interventions among Indigenous peoples depend entirely on the ingenuity, expertise and generosity of outsiders. This has led to repeated mistakes in “fixing up” problems for Indigenous peoples rather than supporting their existing and potential strengths.

It is therefore no surprise that despite important research contributions toward the detection, cure and management of disease and illness among Indigenous peoples, huge gaps remain between gaining research knowledge and ensuring its practical relevance and uptake by service providers, policymakers and Indigenous community sectors. This gap is most evident in the area of social determinants of health and wellbeing. Although there is now better recognition of their overarching importance, there is little evidence upon which to base interventions to improve them. Change at this fundamental level must be mediated within the community, not in clinical or other service silos. Clearly, the challenge for research aiming for better outcomes is to discover innovative ways of locating and supporting centres of Indigenous community strengths as the basis for broad health interventions. Researchers must also foster hope and positive research paradigms that support such change. (Tsey et al., 2007, p. 1)

Their study showed how a positive research paradigm involving a partnership between researchers and a community-based Aboriginal family empowerment program could increase “the capacity of program participants and their communities to take greater charge of issues affecting their health and wellbeing”

and “begin to rebuild the social norms of their families and community” (Tsey et al., 2007, p. 1). The substantiation of the right to self-determination depends on strategies such as family empowerment to unleash the social and economic potential of Aboriginal people who suffer extreme disadvantages and for whom alcohol and substance abuse are disabling factors (whether the harms impact the individual drinkers or their families and communities) and other contributing factors to the prevalence of violence. The improvement of the status of women and the greater likelihood of safety in their homes and communities is a highly significant benefit of empowerment programs.

Violence of the state

It is in this context that the normalisation of violence against women as a part of their social contract with the state, as proposed by anthropologist Veena Das as “gendered belonging to the nation state”, becomes important (2008, p. 285). Traditionally, before the advent of feminism, the foundational myths of states accorded men a political status and women a domestic one, with women subjugated to their husbands, without political rights. Das and Poole (2004) examined the experiences of marginal citizens that undermine the ideal of the state “as a transparent and rational bureaucratic form” (see Stevenson, 2007, p. 140).

In this study, the commitment of the victims to their partners revealed in our interviews, despite repeated episodes of intimate partner violence, often extreme, and their reluctance to engage the state or governmental agencies for relief cast a different meaning on their relationship to the state. As marginalised Aboriginal women, their gender and their race contributed to a weak relationship to the state. Aboriginal and Torres Strait Islander perceptions of the irrationality and violence of the state formed part of the problem to be investigated in this project—the dilemma of the Aboriginal and Torres Strait Islander victims of violence seeking respite and justice from the state apparatus that may exacerbate their suffering. Their political status—historically marginalised and, in the face of racism, self-excluding themselves from the reach of government services—became a significant issue to contend with in analysing their responses.

Intersectionality

Crenshaw (1991, p. 1242), the author who coined the term “intersectionality”, observed that “the problem with identity politics is not that it fails to transcend difference ... but rather the opposite—that it frequently conflates or ignores intragroup differences”. The differences matter, as Bartels (2010, p. 6) reported. Crenshaw (1991) noted that women of colour were made invisible in the legal system that was unable to accommodate the intersectionality of race and gender that their cases presented. In Australia, one of the fault lines in the literature on family violence in Aboriginal and Torres Strait Islander families and communities is the complicated matter of “culture”, rarely defined but often wielded as a mysterious trope. The way that cultural factors influence family violence was addressed in this report’s State of knowledge review in more detail. Along with gender and racial discrimination, Bartels (2010, p. 6) notes that

the key risk factors for Aboriginal and Torres Strait Islander women who are victims of family violence are said to be: socioeconomic status and financial difficulties; substance use; social stressors; living in a remote community; levels of individual, family and community functionality or limited functionality; availability of resources; age; removal from family; disability; and experiences of racism (Al-Yaman et al., 2006; Bryant & Willis, 2008; Cripps, Bennett, Gurrin, & Studdert, 2009; Paradies, 2006; Paradies, Harris, & Anderson, 2008).

Cripps and Davis (2012, p. 1) have referred to the multifactorial complexity of Aboriginal and Torres Strait Islander family violence when discussing issues related to the ineffectiveness of mainstream service responses:

Their focus has largely been on policing, prosecution and punishment, as well as providing safe accommodation for women and children. Mainstream responses also involve multiple agencies each with heavy workloads and limited time, and therefore effective communication between agencies can be compromised. Such agencies also generally have limited cultural awareness and/or experience working in Indigenous contexts and are often unfamiliar with the situations confronting many Indigenous families (Cripps, 2007; Gordon et al., 2002; Anderson & Wild, 2007).

These issues that add to the complexity of managing incidents of family violence—the cultural and social situations of many Aboriginal families, and particularly the social and financial vulnerability of many victims—result in extended periods of suffering when they are not recognised or addressed, and often exacerbate the conflict and violence as family members take sides in a dispute.

Many Aboriginal victims of family violence are made invisible by their own refusal to report incidents to the police and other services. Fear of police and child protection agencies and reluctance to report violence among the victims of violence we interviewed bore signs of being more than individual experiences of racism. Rather, we concluded that this fear was a macro-stressor that affects communities broadly or sub-sections of populations. Paradies, Harris, and Anderson (2008) noted that race-related macro-stressors, such as those experienced during the riots in Palm Island, Queensland, in 2005, “can lead to experiences of vicarious racism, which are then associated with ill health” (p. 11).

There is very little research on macro-stressors as a form of systemic racism, although Lauderdale’s (2006) epidemiological study of the birth outcomes of Arab–American women living in California after the September 11 terrorist attacks of 2001 outlined the impact of heightened levels of racism at the time. Lauderdale found that these women had an “increased risk of low birth weight and pre-term birth compared with similar women who gave birth a year earlier” (2006, p. 197).

Paradies et al. (2008) identified the need for research on race-related macro-stressors in Australia and “highlighted the need to better understand the effects of racist events early in life and the health implications of cumulative racist experiences over the life course” (p. 11). As our research progressed, we concluded that the fear of authority was a macro-stressor; a risk to safety and health; and one of the factors in the intersectionality of gender, violence and socioeconomic status of victims of family violence in the study sites.

Mixed methods research

We draw a distinction between methodology and methods, although they are connected in their disciplinary histories.

In this study, the researchers used mixed methods based in medical anthropology and standard ethnographic research methods, such as participant observation and semi-structured interviews, as well as research approaches developed by Indigenous researchers, some of which are labelled as “Indigenous methodologies”.

The researchers used a range of qualitative and quantitative research methods, including participant observation, semi-structured interviews, focus groups, and analysis of data from relevant organisations and government bodies. Legislative and political analyses in each jurisdiction were conducted.

Study sites and multi-sited ethnography

This research was undertaken at two fieldwork sites (Mildura and Albury–Wodonga) during a number of visits from October 2018 to November 2019. The population of Mildura is approximately 53,000, with an Aboriginal population of approximately 2.3 percent (Australian Bureau of Statistics [ABS], 2016b). Albury has a population of 51,076 in the local government area, with 1417 (2.8%) Aboriginal and Torres Strait Islander people, and Wodonga has a population of 39,347 with 980 (2.49%) Aboriginal and Torres Strait Islander people (ABS, 2016b, 2016c).

Mildura and Albury–Wodonga are regional towns that were selected by the researchers to enable the investigation of the impact of policies and programs for women and children who experience family violence and live in state border towns—that is, to enable investigation of cross-jurisdictional issues, such as the new national applicability of domestic violence orders. This allowed for comparative analysis and a close examination of the legal and policy frameworks of both jurisdictions. Magistrates Courts and mainstream family violence services operate in all locations. Our discussions with various Aboriginal and non-Indigenous family violence experts and frontline workers prior to designing the methodology of this study led us to consider regional locations and to compare the legal and policy frameworks of Victoria and New South Wales, both of which have undergone major reforms to laws and policies following the RCFV (State of Victoria, 2016c).

The locations are border towns with Aboriginal populations who have geographically widespread kinship networks and

relatively high levels of mobility across the border, giving rise to contact with both states' legal systems and service provision. Multi-sited ethnography (Falzon, 2009; Marcus, 1995) is useful in complex, multifaceted studies such as this where it is necessary to follow “people, connections, associations, and relationships across space” (Falzon, 2009, pp. 1–2). It is particularly well suited to a study investigating family violence services, policies and legislation in several locations, as it allows an in-depth exploration of the highly mobile and interconnected components and variables, including multi-jurisdictional, overlapping policy, and responses and interactions of women with services, policies and legislation in urban and regional contexts.

Recruitment and sampling

The research approach enabled a focus on stakeholder engagement and prioritisation of contact with relevant Aboriginal community organisations. This allowed for refinement of the research design based on local advice to ensure contextual, culturally appropriate inclusion or exclusion of any element as deemed appropriate. The members of the research team visited government agencies and Aboriginal service providers more than once in some cases, often to speak with women affected by family violence who were recruited to participate in the research in consultation with the relevant community organisations using a snowball sampling method. This involved asking service providers and clients to recommend other service providers and clients that we should speak to, taking into account their circumstances and wellbeing. To this extent, the sampling was purposive, although not solely on our part (as the researchers). The guidance of experienced women in these communities was essential to selecting and approaching the participants in this research.

For all participants, referrals were requested from Aboriginal organisations and other support services. In the first instance, the research team approached relevant organisations and individuals to seek input into the research. Organisations were identified from material on the public record (e.g. public advocates, bureaucrats and professionals).

Stakeholder research participants were drawn from community members and justice sector (police, legal services and court

personnel), health sector and related advocacy, support and community organisations. Data were gathered on issues including experiences of past and present family violence services, policies and programs in the community, and perceptions of barriers to and enablers for Aboriginal women accessing family violence services. The research also sought information regarding the role of police, court personnel, and professional and service personnel, and their understanding and use of the jurisdictional policy frameworks. Participant observation was conducted throughout fieldwork trips with a strong emphasis on eliciting evidence on how services respond to female victims of family violence.

Multi-sited ethnography

During field site research we conducted semi-structured ethnographic interviews, focus groups and participant observation. Evidence was sought on issues including the history of and critical issues related to family violence in the community; experiences of past and present family violence services, policies and programs in the community; and perceptions related to barriers and enablers for Aboriginal women accessing family violence services.

Semi-structured ethnographic interviews

Interviews were conducted in quiet places, where the participant felt comfortable and where they felt their privacy and confidentiality were best protected, to aid audio recording. These included locations such as private homes, private office spaces or other locations as requested by the participant. The interviews lasted for approximately one hour, with participants asked questions in general theme categories and additional questions that developed throughout the interview. Some participants were requested to participate in follow-up interviews based on data collected from the first interview. All interviews were audio-recorded and fully transcribed.

Focus groups

Focus groups (Carey & Asbury, 2012) are frequently used in the health sciences to add depth to other qualitative methods, such as interviews and participant observation. We concur with Plummer-D'Amato (2008, p. 67) that they have the potential to reveal more about participants' thinking than can sometimes be obtained in one-to-one interviews:

Focus groups are an extremely useful method for exploring people's thoughts, ideas, attitudes and experiences in relation to a particular topic. The interaction that occurs between participants in focus groups is a powerful stimulus for discussion and can encourage people to elaborate or justify a particular idea.

In the context of family violence services, especially women's shelters, focus groups may provide a familiar setting for victims of violence given the similarity of the format to group counselling and other similar services provided. We arranged focus group meetings with service providers according to their availability to assist us by contacting clients to participate and their ability to provide a safe venue. Each focus group consisted of 2–5 professionals and was audio-recorded and fully transcribed. In several instances, Aboriginal women who were victims of violence requested confidentiality and that we meet in settings that provided privacy so that their discussions would not be observed or heard by others. We arranged our meeting places after discussing the options with them, where there were options.

Consenting focus group participants were asked to participate in discussions that lasted between 60–90 minutes on a number of key themes. Focus group locations were chosen according to participant availability and appropriateness of setting according to the make-up of the group.

Participant observation

Participant observation enabled the researchers to advance understanding of how local factors (e.g. the physical location of services) shape Aboriginal women's access to and use of family violence support services and the justice system, and how this differed between sites. Participant observation included observation and informal conversation with individuals in the community at relevant sites. Data were recorded as field notes during research fieldwork visits and transcribed to digital word documents.

Research participants

A total of 97 participants took part in this study across both field sites. We conducted 27 individual interviews and held 22 focus groups (with a total of 70 participants; see Tables 1

Table 3: Interviews

Location	Participants	Sectors
Mildura	16	Health, justice, Aboriginal community-controlled, family violence, housing and homelessness
Albury-Wodonga	11	
Total	27	

Table 4: Focus groups

Location	Number	Participants	Sectors
Mildura	5	15	Health, justice, Aboriginal community-controlled, family violence, housing and homelessness
Albury-Wodonga	15	50	
Other	2	5	Justice
Total	22	70	

and 2). There were 31 participants in Mildura, 61 in Albury-Wodonga and five in other locations.

As this was a qualitative study of an exploratory nature, we did not seek to recruit a representative sample of the population. As such, participants were selectively invited to take part to provide information-rich, in-depth data for analysis.

There were three categories of participants:

1. professionals and paraprofessionals: advisors and public advocates, staff of public or not-for-profit organisations, family violence-related service providers, representatives of community groups, and government bureaucrats. An even gender balance was not actively sought for this category, as women make up a far higher ratio of the stakeholder service staff and professionals in this area of study
2. clients: Aboriginal and Torres Strait Islander women who had experienced violence. Individuals sought to participate were all female due to the focus of the study
3. Aboriginal and non-Indigenous community members: Aboriginal people—and some non-Indigenous people with kinship connections to the Aboriginal community—who were residents of the fieldwork sites, including Elders. Both men and women were included in this category.

All participants were adults and pseudonyms have been used in this report.³ The researchers recognised that it was possible that the first (professionals and paraprofessionals) and third (Aboriginal and non-Indigenous community members) categories of participants could also have been

victims or perpetrators of family violence. This was taken into account in all stages of the study.

Data analysis

All fieldwork data (notebook and journal observational entries, transcripts of digitally recorded interviews and focus groups) were stored in a collated project file and cross-checked by the Chief Investigator. All research participants were sent their interview transcripts and could request any amendments, additions or sections they would like to remove. The fieldwork data were analysed using an inductive approach to thematic analysis (Terry, Hayfield, Clarke, & Braun, 2017). This is a dynamic and flexible process, where codes and themes emerge de novo through researcher immersion in the data. As per the approach described by Terry et al. (2017), we used a six-phase approach:

1. familiarisation with the data
2. generation of codes
3. constructing themes
4. reviewing themes
5. defining and naming themes
6. writing up the data (using the data analytically and illustratively).

This method centralises the researcher in the process, as the analysis is created at the intersection of the data and the researcher's theoretical and conceptual framing, disciplinary background, and research experience and skills (Terry et al., 2017).

³ Children and young people under the age of 18 were not included in this study.

Critical, socio-legal audit of family violence legal framework

This aspect of the research focused on an audit of relevant legislation across all jurisdictions with a focus on the field site jurisdictions (Victoria and New South Wales), including legislative and major administrative changes over the past 20 years. The family and domestic violence legal and policy framework is presented in diagrammatic form with key points of analysis indicated in the section on the legal audit. This diagram presents a comparative analysis required to understand the intersection of legislative and procedural responsibilities of personnel from services such as police forces and child protection agencies and departments, as well as support services. This analysis has been incorporated into the analyses of the multi-sited ethnographic findings.

Although the National Plan and especially the initiatives undertaken by the Council of Australian Governments (COAG) aim to make treatment of family violence at law uniform across the jurisdictions, the differences in legislation, policies, responsibilities of departments, implementation, procedures and services result in complex environments that are difficult for both service providers and victims to navigate.

The mapping of the implementation of legislation and policies (see “Audit of family violence legislation”) was ascertained through interviews with personnel in departments and agencies. Their perspectives, while subjective to some extent, provided an understanding of the complexity of these arrangements and the strengths and weaknesses of laws and policies. The range of factors to be considered in this socio-legal analysis grew as the investigation proceeded and as the variations and problems that arose from the legal and administrative settings emerged in the interviews.

For example, in Victoria and New South Wales, the jurisdictions of the two fieldwork sites, relevant legislation includes:

- Victoria: *Family Violence Protection Act 2008* (Vic); *Prevention of Family Violence Act 2018* (Vic); *Family Violence Protection (Information Sharing and Risk Management) Amendment Regulations 2018* (Vic)
- New South Wales: *Crimes (Domestic and Personal Violence)*

Act 2007 (NSW); *Children and Young Persons (Care and Protection) Act 1998* (NSW).

The relevant Commonwealth legislation is the *Family Law Act 1975*. It is important to note that Commonwealth legislation outranks state legislation, so that, for instance, judicial orders or court orders under the Commonwealth family law legislation could nullify a requirement of a protection or violence order granted under state legislation. This could have the effect of endangering a victim if the rights of a perpetrator, such as access to child/ren, is placed above the safety of a victim. While the Commonwealth *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* was envisaged as complementing the laws of the states and territories, implementation of orders falls to other agencies because the Federal Court does not have a practice area specifically for domestic and/or family violence.

Geographical boundaries

In addition to the differences in legislative and administrative environments between these two jurisdictions, the differences in geographic boundaries of service areas imposed by particular government departments, agencies and non-government organisations, Aboriginal and Torres Strait Islander and private sector entities create another level of complexity. A victim may be able to access one particular government service but not another because of these boundary issues. In addition, a domestic violence or family violence crime must be dealt with in the jurisdiction in which it was committed rather than in the jurisdiction where the victim or perpetrator lives. A victim may therefore face difficulties in accessing services in a jurisdiction where he or she resides if the crime was committed in a different jurisdiction.

Timelines

The involvement of agencies depends on the point at which a victim reports an incident of family or domestic violence, and which agency the victim reports it to. If a police force is the first agency involved (rather than a support service, non-government organisation or the private sector), then the

involvement of other government agencies may become a factor in the victim's pathway through the system. For example, if children are involved in an incident in New South Wales, the police will involve the Department of Communities and Justice and Child Protection Services, which in turn may involve the Joint Child Protection Response Program. This program brings together the Department of Communities and Justice, the New South Wales Police Force and New South Wales Health:

[It] links risk assessment and protective interventions of FACS with the criminal investigation conducted by Police. NSW Department of Health provides medical examination, counselling and therapeutic services to children or young people and their non-offending parents or carers, when required. (New South Wales Department of Communities and Justice, 2020, n.p.)

Assessment

The assessment of the risks to children in a household or place where the incident of violence occurred has become an area of investigation in this project because of the great fear among Aboriginal women of losing custody of their children or of their children being removed into the out-of-home care system, and how the incidence of removal and perceptions of this in the Aboriginal community have become obstacles to reporting violence and seeking the assistance of support services.

Ethical considerations and risk management

Ethics approval was granted by the Human Research Ethics Manager at the University of Melbourne for the project, "Indigenous family violence policies, legislation and services: Improving access and suitability for Indigenous women for the application", submitted by Professor M. L. Langton and Dr K. D. Smith, with this approval granted to all personnel who worked on the project (ethics ID 1852396). The approval was granted in 2019 and extended to 31 December 2020.

Our research approach required attention to the high level of risk for those who agreed to be interviewed or participate

in a focus group, and especially for victims of violence. Wundersitz (2010) assessed the evidence of victimisation of, and offending by, Aboriginal and Torres Strait Islander people to inform and complement the work of the National Indigenous Violence and Child Abuse Intelligence Task Force. Drawing primarily on survey and administrative data and specific studies, she found gaps and limitations in the data. Wundersitz (2010) also found that only a small number of empirical studies had been undertaken at that time, and that further work, especially "in-depth, qualitative research and wide-ranging consultations" would be important in order to "document the viewpoints of Indigenous people; their everyday experience of being an Indigenous person and the kinds of violence they experience, witness and are fearful of" (p. iii). She also noted that "their perceptions of what will prevent and reduce such violence are crucial to all policies and community-based initiatives aimed at tackling violence" (Wundersitz, 2010, p. iii).

The risks for the research participants included the potential for their current or ex-partners to "punish" them or community members to ostracise them for being involved in this study. To minimise such risks, our method of questioning was informed by Astbury et al. (2000), among others, who advise that "sensitive questioning that incorporates awareness of cultural and social issues is essential to detect domestic violence and initiate appropriate assistance" (p. 427).

Risks to participants in this study were managed and minimised using multiple methods. First, the research team ensured that sufficient information about the study was provided to participants well in advance. Risks were outlined, and participants were advised not to take part if they suspected it could exacerbate their risk of experiencing harm or undue distress. Researchers were sensitive to the possibility that some participants may have had diminished capacity to determine their potential individual risk levels due to trauma, and thus sought professional advice and support from local service providers and community leaders to assist in assessing whether potential participants should be excluded.

Second, all interviews were conducted in a private space, such as a room in a building where passers-by could not observe the meeting. Discretion and care were maintained on

entry and departure to encourage and allow participants to speak freely in a safe space. This was particularly important for participants who were victims of family violence, as maintaining their anonymity may have been of particular importance to their sense of safety. We advised the participants that if at any time during their participation they felt that their privacy could be breached, they should withdraw from the study. Participants would be referred to relevant agencies to ensure their safety, as addressed in the distress protocol designed for the project. None of the research participants withdrew from the interviews or focus groups.

Third, participants' personal information was kept in a separate, password-protected computer file, maintained by Professor Marcia Langton, the Chief Investigator. Fourth, the research knowledge translation and dissemination process was explained in the plain language statement provided to participants; that is, original names and places were omitted from the original transcripts and pseudonyms were used to protect participant identity. Pseudonyms were arbitrarily attributed to names and also kept in a separate, password-protected computer file, which was maintained by Professor Marcia Langton, the Chief Investigator.

Finally, participants were directed to local services that offer counselling and other related support before agreeing to take part in the research. The researchers also verbally discussed this with both clients and professionals at the commencement of interviews and focus groups and at the conclusion of their participation. The researchers undertaking the interviews followed the study's safety and distress protocols that were developed for the research when conducting the interviews throughout the study.

Key findings

The severity of family violence against Aboriginal women

This section candidly reports victims' experiences with violence and may be triggering. We recommend caution and sensitivity when reading the following.

The family violence that some Aboriginal women participating in this research have endured across their lifetime has been severe, chronic and terrorising, and has operated in escalating cyclical patterns. Some had been victimised over decades by one or more perpetrators; their children had been removed, they had experienced drug and alcohol dependencies and had acquired a range of acute and chronic mental and physical health conditions. Several women had been incarcerated for retaliatory or defensive acts of violence against their perpetrators. Many had relocated multiple times to escape their perpetrators. They had accessed and engaged with all areas of the family violence support services and justice system, either voluntarily or by mandate. For these women, the family violence support and justice system has not been working to protect them. In the following section, we outline stories of Aboriginal women who have been victims of severe and chronic forms of violence, describing the debilitating effect it has had on their lives and the lives of those around them. This section also explains their experiences with the family violence legal and support service sector to understand better what is—and is not—working to provide better protection and support to Aboriginal women who are victims of family violence.

Sian

Sian suffered a reign of terror in silence for many years; she was choked and beaten until she was bruised and injured with physical and emotional wounds that she feels will never fully heal. She first started a relationship with her partner in her late teens and his violence against her commenced only several months after they had been together. She explained:

The first two months was okay, and then the violence started. I mean pretty bad. He kicked my mouth in, I've got a—I mean my lip in, I've got a scar here in my mouth. That's where I had to pull it out of my teeth. I have a broken wrist from him ... I've got scars on my body, bite marks ... he used to drag me, choke me. (Sian, interview,

August 2019)

Sian explained that at one point, to protect herself, she had stabbed her partner: "I've had—put him in hospital for self-defence, when he had bowled up one time. I have stabbed him in self-defence." She gave an account of one particularly violent episode. She had not remembered the attack, as she had passed out, but her partner admitted it to her years after the event:

We were having a drink at the park, and the Jim, we were having a Jim Beam, and there was like that much left [indicates amount], and he wanted it and I wanted it, so I smashed it and said, "No one's having it". And all I can remember is just seeing black. And I woke up on my back, and then I went to get up and my whole arm just flopped, like it just flopped like jelly 'cause it was broken. And I screamed, and the ambulance came, and what really happened ... I didn't know what happened, because all I see was black. After when I smashed that bottle, I was just seeing black. But when he told me [later], he said to me, "What happened was when you smashed that bottle I knocked you out cold", and he said, "When you were laying there", he continued, broken, jumping on my wrist until he had to hear it snap. And I didn't believe it, what he said, but he had to tell me to get it off his chest. I'm like you're—'cause I didn't know, all I seen was black, and I was out cold. Yeah. That's how it all—I still have problems today with it. (Sian, interview, August 2019)

Although Sian had separated from her partner during her first pregnancy to him, she returned to him afterwards and fell pregnant again. She noted that she thought having children would change her partner's violent behaviours. However, it was at this time that his violence escalated:

And he bashed me all through my pregnancy, but when I was pregnant it was black eyes, and you'd go to court, the people at [a support organisation] they would be at the court handing out pamphlets, and they would come up to me and I would say, "no", because I was stuck, like pregnant with black eyes, and I would say, "no" ... you know, "No, I don't want no—I don't want your help".

And then, from then still on, I was still bashed through my pregnancy, and then [the support organisation] got involved when welfare stood in. And he went to jail ... My son was born in 2011, I had a black eye when I gave birth. (Sian, interview, August 2019)

Sian explained that she feared that if she left her violent partner, he would kill himself—she felt trapped in the relationship, and after having children with him she felt a community responsibility to stay with him and not be liable should anything happen to him. She explained:

The reason why I stuck with him is because he'd always wanted to commit suicide, but he never did it, he always threatened me, "If you leave me, I'll kill myself". So that's why I stuck with him, that's why, you know. (Sian, interview, August 2019)

Sian said that her children were the reason she eventually accepted help, stating that she would have "killed him in self-defence, or he would have killed me, 'cause it was getting to the point where it was death coming". Sian was offered pamphlets from services each time she attended court in relation to the violence she was experiencing. She said she ignored them on multiple occasions until she realised they could help her keep her children and potentially rehabilitate her. Sian took the service support and feels glad they were persistent—but where was the accountability for the perpetrator? Sian was attending court with visible bruising and the perpetrator of the violence was released time and again. He was jailed for a series of months and then after his release, he returned, and the cycle of violence continued.

Catherine

Catherine had lived in violent relationships for most of her life. She remained in her first relationship for over a decade and had more recently escaped from another long-term relationship with a violent perpetrator. In different relationships Catherine had been drugged, tortured, severely beaten and mentally abused in a variety of extreme and horrific ways. During this time Catherine had three children, all of whom had been removed from her care. She explained that one of her children was back living with her, but she was homeless and struggling to get help to find suitable accommodation.

However, Catherine was also very worried as her child had started using "ice". Catherine had relocated to numerous towns at different times in her life, escaping the violence, but kept finding herself in relationships with men who used violence against her. Similar to the experience of Sian, Catherine explained that her first partner was "sweet at the start", and it was only afterwards that his violent behaviours emerged and escalated.

Catherine explained the details of one of her most horrifically violent relationships, where her partner locked her in an apartment in a high-rise building and tortured her:

We lived in a high-rise unit. Used to deadlock it. Told me ... if I wanted to escape, he would jump 18 floors down. Stripped me naked, stuck me in the corner, stabbed me with syringes, eat off a plate like a dog, got kicked in the face whenever he felt like it, punched in the mouth, in the head, yeah. Gave me the drug habit. Stuck the needle in my arm when I didn't want it. I didn't know what was in it. One time he shot me up with heroin to overdose me and the other time he shot me up with speed. I didn't want it. Got raped on several occasions by him. Because I didn't want to have nothing to do with him. The bruises were bottom line of the body, but he used to hit me, I broke my eye socket up here too. (Catherine, focus group, September 2019)

One of her partners, she noted, was "okay" because he used less physical violence and primarily abused her mentally. She also explained, "Oh he did crack me with a bottle in my head, skull, forehead. I still had glass in it, embedded, got a scar from it up here." At one stage in that relationship, Catherine was incarcerated for assault, in a situation she explained as self-defence: "I was a victim, but I went to prison ... due to it ... The courts blamed me for being the aggressor." She explained that she was not resentful for this, and felt she had "come out better for it" due to a helpful domestic violence course she had undertaken during her jail term.

Catherine felt like the only way to protect herself from experiencing family violence again was to avoid entering any further relationships. She noted that she had broken up with the father of one of her children for this reason, as soon as she found out she was pregnant:

When I found out I was pregnant ... that was it. It's my baby not ours. I didn't give him a chance to see what he was really like. I just brushed him off straight away because, "Oh you're going to be exactly like everybody else. You're going to try and kill me, you're going to bash me, you're going to do something to me, so this is me, I'm going with your child". (Catherine, focus group, September 2019)

After enduring severe and chronic family violence over decades, she has been left with permanent physical impairments and significant trauma. Catherine was adamant that the only factor that allowed her to escape from her extremely violent partners was their incarceration. She doesn't believe any other service or support could have protected her from the violence or enabled her to get away.

Glenys

When Glenys was a child, she was removed from her Aboriginal parents by child protection authorities and placed with a non-Aboriginal family in permanent care. In her late teens Glenys met her partner, who was significantly older. She explained that he first displayed his violent behaviours not long after they had been together:

Turned around, the first time I knew that he had that in him was, I don't know, we were doing something one day, and I said to him, "Oh, you're meant to go and get help"—oh, that's right, 'cause he took a handful of pills, I rang the ambulance on him, right, which is normal. A couple of nights after that, this is when I was [young], I remember the first time I ever got hit by him. I walked to my mum and dad's house, and he followed me. I walked into my mum's house, and she looked at me and I started crying, and she goes, "What happened?" and I said, "He just hit me". (Glenys, focus group, September 2019)

Glenys explained that over the next two decades she had several children with him, but that his violence was a constant. She said that his abuse was predominantly mental, noting:

He'd just smash my shit, like literally, he would taunt my children, call them black cunts, black dogs, whatever, and they were nothing to him, and then when he'd calm down, if he'd had—he'd turn up at 3 am in the morning, smash myself up and then drag my kids up and get them to clean

it up. He would basically, you know, get in the corner with me, and I don't like corners in houses, 'cause he would make me scared where I would have to basically throw a fist, and to be put in that situation where you know in your heart you're not that kind of person, is wrong ... So I would basically do what I'd have to, and I would yell at him and I would abuse him, and my kids would hear it, or they would see it, and they would be like, you know, crying, and I didn't have the balls to leave him. (Glenys, focus group, September 2019)

When Glenys' children were still young, she recalled an incident when one of her children was in trouble at school and her partner drove her, the child and her baby to a deserted parking area:

And we were sitting there, and he was literally going to flog the hell out of me with my baby and my son, and it was only for a farmer who pulled up, and he goes, "I'm just wondering if"—and I was just screaming, and he just looked at me and he goes, "I'm just wondering if you're okay", and [her partner] turned around and goes, "Yeah, they're fine, fuck off". That man didn't come back, and [my child] still remembers that, because dad wanted to hurt me. (Glenys, focus group, September 2019)

Glenys talked about an experience she had with the police when her partner was acting extremely violently towards her and she called a friend over to her house for support:

I had to ring one time, a friend of mine actually was there when it was happening to me, and we rang the police, and the actual head honcho was like, "What's going on, rah, rah, rah", 'cause he was the night watchman, or whatever, and she was explaining what was happening in the house, and he literally didn't believe her, and like it took like nearly an hour before the actual police came out. And she was panicking, 'cause my ex-partner was threatening to, you know, kill me, or whatever, and I knew—I didn't know, but like I just looked at him, and I said to her, "It's okay, 'cause he won't hurt me", but it was the actual thought 'cause she had to sit there and watch that and listen to that, and I'm basically a sort of person that kind of like tries not to show fear—I'll show it later. Yeah, so when the police came they have an attitude and it was a woman, and we basically took their names, and wrote a letter to

whoever it is down here in [town] and asked them to come out and give us an apology, because she said, “Well, you don’t believe anything that we said”. They came out and removed him, and he didn’t go, he was like locked in his car. (Glenys, focus group, September 2019)

Glenys said that she had rarely accessed any support services, except for two individual Aboriginal service providers that have worked to support her over the years:

I didn’t go to any other service. I’m not going. I mean I’m very good at verbally vomiting on my friends. I have a small-knit family, or small-knit friends that I actually do talk to. [Service provider A] is one. [Service provider B] is another one. But other than that, talking to other services is something that I don’t do. Not unless I really need to, ’cause I mean, talking to [Service provider A] and talking to your friends ... like you’re sitting there and you’re talking to someone in a service, and sometimes it can be really ... like you know, they don’t fully understand or they don’t fully get what you’re actually saying, and they don’t understand about the family unit and the way Aboriginals are ... (Glenys, focus group, September 2019)

One of Glenys’s primary concerns was the negative impact that the years of family violence has had on her children, who are now all young adults. One child has been incarcerated on multiple occasions and several are using different drugs, and she is worried about family violence being experienced by one of her children.

Serial perpetrators of family violence

It is well established that many family violence perpetrators (Aboriginal and non-Aboriginal) go on to re-offend, especially men (Klein, 2009; Millstead & Coghlan, 2016; Puffei & Gavin, 2004; Wooldredge & Thistlethwaite, 2005). One solicitor who often works with perpetrators at one of the study sites explained that she believed there are different categories of family violence offenders, who engage and interact with the system in different ways:

1. younger, immature offenders who cease their behaviours as they get older
2. offenders with addictions to or who are misusing drugs

and alcohol

3. mature offenders with no other known contributing factors who continue to breach protection orders (Lotus, interview, August 2019).

She also believes that many of the men in the second and third groups have mental health issues, or neurological disability. Of these different groups, Lotus contended that the first two categories made up approximately 70–75 percent of all cases she deals with. She explained that perpetrators in these categories often respond well to services such as emotional, psychological, and drug and alcohol counselling, as opposed to men’s behaviour change programs (MBCPs). However, Lotus also noted that “you might have to wait three months, four months, five months, six months to get any of those services”.

The remaining 25–30 percent in the third category of “sober and mature thinkers” were categorised as those for whom no interventions appear to have any significant impact in stopping, preventing or reducing their violent behaviours. Another legal practitioner, Jeanine (interview, August 2019), explained that it is often this group of perpetrators that persistently manipulate the system. The practitioner explained that she had noticed a pattern of older perpetrators who repeatedly appear in court over time for offences against multiple, different and progressively younger partners. Although she noted that the courts do not “go easy” on these men when they appear on family violence matters for each new relationship due to their criminal history, it often takes more time for the women to report the violence. She explained that the men will often leave the relationship once a protection order has been made, and shift to another new relationship where the pattern of violence restarts (Jeanine, interview, August 2019). Another service support worker, Rosalie (interview, August 2019), explained that many men who victimise multiple partners over time refuse to engage with any interventions that may hold them accountable, such as MBCPs. She further noted that although they may attend the programs, they show no indication of responding to them (Rosalie, interview, August 2019).

“Perpetrator accountability” is a term frequently used in policy and grey literature, yet its definition and use are often

very general and ill-defined. It is often used as an umbrella term, referring to:

1. systemic and institutional responsibility to hold perpetrators accountable
2. community responsibility to hold perpetrators accountable
3. the individual accountability of the perpetrator for their violent and coercive behaviours and actions.

Many participants in this project, both women and staff in the legal and support services, strongly believed that there are some men who are serious, serial offenders of family violence who are never appropriately held to account for their behaviours. These men regularly break protection orders, are incarcerated repeatedly, are mandated to attend MBCPs, and are case- and risk-managed, yet nothing seems to contain their violence. These men frighten people in their families, their communities and support service providers. Many shift from one partner to the next, continuing in their patterns of violence—sometimes across one community, but more frequently in locations all over the nation.

A group of Aboriginal women discussed what they saw as the inability of the family violence system to hold these specific perpetrators to account:

[Jane:] Yeah, they get arrested and there's criminal ... then they have to go to get locked up and do all these programs, behaviour change programs.

[Kay:] Yeah, but that don't stop them.

[Jane:] It doesn't.

[Kay:] When they've got AVOs [apprehended violence orders] and stuff in place. If they want to come get you and hurt you and do whatever they want to, they want to do it ...

[Maureen:] A lot of the police officers say, "It's just a paper". They even say it to you ... By locking them up all the time, they get out, they reoffend. And then it's too late because they've killed the woman, or they've killed someone else.

[Jane:] They institutionalise them, too. They make all these connections in jail, get this new identity. They come

out big and bad.

(Focus group, September 2019)

Many participants discussed how the way that family violence protection orders are insufficiently enforced, as well as the lack of serious implications for breaches, fails to hold perpetrators to account:

I think with the breaches we can have several breaches like breach after breach after breach, and perpetrators are still walking around the community. They've not been incarcerated. They've been on community corrections, things like that. These women just think, "What do these men have to do to be held accountable?" That's sort of the feeling that they have. They can do whatever they want anyway and still walk around so what's the point in having this piece of paper; and that's basically what it is to some of these women, a piece of paper. That's not in every case but this is generally the feedback that I hear from the women. (Rosalie, interview, August 2019)

Other participants explained how women experiencing family violence are often coerced and manipulated by their perpetrators to remove or dismantle orders, to protect themselves from further violence. Several participants explained the complexities involved for different victims:

Yeah, but then see, there was an intervention order but then she rescinded part of that a little, but you know women do that too to resist violence and to keep themselves safe sometimes, and to protect their kids sometimes. You know, who knows what sort of threats a woman is really getting from a violent man too. So, there's lots of reasons why an intervention order may be downgraded and things like that too. (Judy, interview, October 2018)

Aboriginal women who were victims of family violence and support service workers in this research agreed that for serious, long-term, violent offenders, protection orders are of little to no use. A case manager discussed what she had experienced working with victims of family violence:

I've been well aware of intervention orders being in place for extended period[s] of time, some indefinitely which you very, very rarely see ... indefinite intervention orders. Or as long as legally possible to be able to do it and some of

those can go up to 50 years. But in saying that, it doesn't stop them making threats to kill, it doesn't stop them getting in the car and coming down and assaulting. They don't care ... And you probably find with some of these people, if we're looking at people that have got significantly violent histories, not just family violence, or even significant histories with multiple women around family violence, they're not going to care about a piece of paper that says don't do that, you go around there and there's going to be consequences. Well they probably already served 10 years for aggravated burglary, so they actually probably don't give a shit they'll get 18 months for assaulting someone. (Margaret, focus group, October 2018)

Many women in this study who had experienced family violence discussed how frequently they felt that police did not believe them when they had called for help. One woman noted, "I think Indigenous women don't have much of a voice" (Maureen, focus group, September 2019). Another woman, Kay, explained a scenario where the police response did not equate to the gravity of risk she was experiencing from her ex-partner, placing her at great risk:

I experienced one time with a domestic, there was a party, a 60th. I was at home. I didn't go and [my ex-partner], trying to kick the door down saying this and saying that. I rang the police. Hours later they turned up. After what I told them, you'd think they would've been there like that. Hours later, knock on the door. I go, I said, "I could've been dead, all right", and he must've been watching my house because as soon as they left, he was back at my door again. I had to ring my niece to come home. I said, "You need to get home". And I rang them again. They come back another six hours ... so many hours later. I said, "This is serious". And that happened twice in one night. Two phone calls and hours later. I said, "I'm lucky to be standing at this door opening the door for you". (Kay, focus group, September 2019)

Other women spoke about the problems of dealing with police in small towns when their perpetrators were familiar with members of the force. Jane explained:

And I've had a response where they've come there and there's been a few people around, "What's going on?" And they actually know the perpetrator and they've

looked at him and gone, "Oh, hey mate". Because they know him, because it's a small town, because his family, his uncles are the coppers ... and then I'm just like this drunk woman that has no idea what she's talking about. Got too drunk. Talking too much shit. (Jane, focus group, September 2019)

Another Aboriginal woman who had dealt with police in the past for family violence issues discussed how police will not take the complaints of Aboriginal women seriously because of the way that they explain themselves:

I found that they, they took mine serious. And I think it's all a matter of how you speak, whether they understand your hidden language with it. I think some, some Aboriginals talk with slangs and a bit of, you know, traditional talk. But a lot of police will just knock them back. Oh, well, they do it all the fucking time, [saying] "I'll do something about it now, but they'll be back in there so it's going to waste my night with all the paperwork". I think it's a matter of how you talk to them. Yeah and I don't think that's fair. (Lorraine, focus group, September 2019)

Lorraine also described how police are slower to respond to reports from addresses that they have attended for family violence reasons in the past, or in specific low socioeconomic areas of the town:

And I think it depends what area you live in, and stuff like that. So, if it's a general population of public housing area they'll take a while to get there or if it's the same phone number that's rang them before, it's like, "Oh, it's just happening again". So, they're just assuming I suppose. So, in the same context I suppose some of our professionals need to be retrained in domestic violence and, and mental illnesses and stuff like that. That, you know, it's just one time you're going to go out there and there is going to be a fatality. (Lorraine, focus group, September 2019)

A support worker who engages with perpetrators explained the futility of MBCPs when men do not engage:

... there's guys that just don't care. Like, they will rock up under the influence and the group has to be stopped and that guy will be spoken to. You can tell when they come in anyway. But also, guys that they just absolutely refuse to be around other guys and talk about these issues. You

will apply stuff like motivational interviewing and that, but if you can't shift them to be able to get into the group, then they are just not suitable and you'll let whoever referred know, or you just talk to the guy [about] maybe seeing another service, and we are happy to let whoever we need to know, whoever you need us to let know, that you are just not ready for the group or you don't want to attend the group. (Joshua, interview, June 2019)

Community support of perpetrators

Many service providers and Aboriginal women discussed how they feel that their communities have often condoned or supported perpetrators and their behaviours, both directly and indirectly. Women who have experienced family violence discussed the lack of willingness of the community to call the police to come to their aid when they are in need, and how frequently their communities have harboured their perpetrators, assisting them to escape from police or avoid court orders.

Another issue raised was how some perpetrators control their victims with the assistance of their families and the broader community, who monitored their movements:

[Monica:] Or he's locked you in the house and he's watching everywhere you go ... it's like what can you do?

[Lynette:] His family watches everywhere you go. If she's been isolated here, if she comes down from [outside of town] or whatever ...

[Monica:] Yeah, especially in a small town, everyone watches you.

[Lynette:] Yeah, and they get reports back, "Hey, I saw you at K-Mart. What are you doing? Why don't you have my daughter with you? You're a fucking shit mum".

(Focus group, October 2018)

Participants said that this community monitoring is often what makes victims flee the area to maintain their and their children's safety, as they are endangered by the heightened risk of people around them that are informing on them.

Three women discussed the excuses often made in their community about why people will not intervene to call out

family violence when it is happening, or after the event:

[Janice:] Domestic violence going on, like I'm talking about screaming, you know the woman is copping a hiding. But no-one does anything. No-one rings the police. No-one, and I'm thinking how come police ain't here yet ... yeah, they just full-on diffuse the whole, like where I'm living now, I heard a woman getting abused and I'm thinking I can't, I can't sit here and not do anything.

[Lorraine:] Yeah, they're scared of retaliation but when that scream stops man you've got to put up with that trauma in your head for the rest of your life ... It's what the people say, "Oh they're at it again", "Oh God they did it last Friday night", "Oh my God they're at it again". It's like are youse for real? I mean they treat these ... "It only happens on the weekends", "It only happens when they're got money". "It only happens when, when they go to, or they lose at the pokies, it only happens when ..."

[Janice:] You know they make fun of the other people.

[Lorraine:] "She doesn't get him dope" or "If she just gets him dope it won't happen". So that's ...

[Catherine:] Or "If she just hands over his whole pension so he can get on the drugs it won't happen" ... "If she went to the pokies with him so he can win money or stand there like a douche".

[Lorraine:] "If X didn't talk back it wouldn't have happened. X didn't talk back it wouldn't have happened".

(Focus group, September 2019)

These women also noted that when perpetrators breach protection orders, people in the community "all talk, but they all want to, they all want to harbour ... the person that did the assault ... and it divides the community", saying that if you notify the authorities, "You're the victim, you're a dog for telling". Maureen, an Aboriginal woman who had experienced family violence, explained that the lack of community support in holding perpetrators accountable left her exasperated:

... community say, "I hear about that all the time. When is it ever going to stop?" Even the community talks about it, "When are they ever going to stop?" Well, help, support. Don't whinge and moan about it. Do something. That's what I said; if you had enough funding for me, mate

I'll take the law into my own hands. You take them out bush and do the old cultural way. (Maureen, focus group, September 2019)

Broader fear of perpetrators

Participants in this study identified that fear of perpetrators can be widely felt. Service providers and women who have experienced family violence identified the way that many people are afraid to engage and work with perpetrators, particularly in towns where much of the community is interconnected. Maureen explained:

I've got experience from workers here that say to me, "I've got family too". Well, I'm ringing you to get support. I don't want to hear about your issues. You leave that at home when you come into work. They said, "We've got to protect ourselves too from perpetrators because if they find out that we're helping women out with children", they reckon the perpetrators come to their house and do all this. I don't need to know all that. I'm here trying to seek support. (Maureen, focus group, September 2019)

Absence of individual perpetrator accountability

When chronic perpetrators of family violence are not held sufficiently accountable at a systemic level and are supported (directly or indirectly) at a community level, individual accountability is far less likely to occur. In these cases, MBCPs, therapeutic treatments and case management are insufficient to keep Aboriginal women, their children and their broader communities safe. Effective responses are urgently needed to protect Aboriginal women and their children from this group of intervention-resistant perpetrators, which our current systems of accountability fail to do.

Aboriginal women and their children

Although there were many factors impacting women's reluctance to report family violence, a key factor was their fear of child protection authorities removing their children. This section outlines some of the details regarding why Aboriginal women in this study hold this fear, and in many cases, rightly so. Participants from different areas across the fieldwork sites working in family violence legal and

support services had noticed the significant escalation of family violence-related child protection cases over the past decade. Some also connected this to the increase in use of the methamphetamine ice. For example, one social worker explained:

I mean, most of the clients that we see now have family violence and drug use and they're low income and lack of transport, lack of access to services. I feel like that's a lot of our clients at the moment, whereas when I first started, a child protection case, because of family violence, they were few and far between. We were lucky once every couple of months if we had a family in crisis with child protection. But now, it's probably most of our clients I should probably be reporting on. Methamphetamine is the crux of it all, possibly. That's my thought, because you become violent when you're coming down off it. And one of our mums says that her partner is her trigger for using meth because it's the only way that she can be on a level playing field with him. So, the children then become the victims of violence. So, yeah. We are seeing an increase. (Rhonda, focus group, September 2019)

The findings from this research support much of the literature highlighting the extreme fear held by Aboriginal and Torres Strait Islander victims of family violence of any involvement with child protection authorities or associated services in their lives. Transgenerational normalisation of child protection involvement in families' lived experiences regularly coincided with women's fears that their children will be more likely to be removed from their care due to factors related to their Aboriginality. Key findings emerging from this study include the racist treatment of Aboriginal mothers within the child protection system, the manipulative use of the child protection system by perpetrators, the unfair burden of responsibility placed on mothers to protect their children, and how fears of child protection authorities create a significant barrier for victims to accessing legal and support services.

Stolen Generation and child protection

Rates of Aboriginal children placed in out-of-home care are alarmingly disproportionate to those of non-Aboriginal children (see Figure 2). Further, these rates have rapidly

increased during the past decade, alongside commentary in the literature questioning whether recent policy settings and systems are creating a second Stolen Generation of Aboriginal people (Dodson, 2007; Douglas & Walsh, 2013; Funston & Herring, 2016).

In our research we found that many Aboriginal and Torres Strait Islander and non-Indigenous service providers from different sectors exhibited a heightened awareness of the fraught relationship between the historical processes that led to the Stolen Generation and current removal of Aboriginal children from their families. For example, a mental health worker noted:

We've all grown up with the [understanding that the] less child protection has to do with our families the better, because children got removed for no reason at all from a lot of our families, and the impact of that is huge, and it still is today. Our numbers in child protection today are huge, and reunification is very far and few between. (Dawn, focus group, September 2019)

Others noted that the historical atrocities of the Stolen Generation made it a particularly difficult area to navigate with Aboriginal clients experiencing family violence, as although there is great need for sensitivity, there are also high levels of risk to manage for some Aboriginal children. For example, Judy, a manager of a support service, noted:

They're complex, complex situations and I think we work with what we've got ... but we know that there are, well, Aboriginal children being removed and ending up in the system. There are more than white children.

[Interviewer:] Why is that?

Well, I don't know. Well, you'd have to think it's because of, well there's certainly some high level of violence too in some Aboriginal families. And the kids are vulnerable, and I think we have to be careful of our historic racism and history as well. I think we're all caught up in Stolen Generation and the past as well as where we're at now. (Judy, interview, October 2018)

Barriers to support services and programs from association to child protection

A regularly cited explanation for the significant under-reporting of family violence by Aboriginal and Torres Strait Islander women is fear of child removal by child protection agencies should they report incidents of family violence to the police or related services (Cunneen, 2009; Willis, 2011). Many service providers discussed how Aboriginal women are also often reluctant to use services due to their perceived connection to child protection:

... yeah, the Brighter Futures program. Sometimes they're mandated, sometimes they're referred in by child protection, because they've got no option. They've got the different tiers of support. It doesn't have to be Brighter Futures, which is like the top tier. I don't know whether it's just got a bad connotation because it has been attached. The same with Child First ... It's just got that sniffs a little bit of child protection. It just has that little bit. I think there's always this underlying thing that if you're working with these services that you could slip back into the child protection system at any second. Just a little slip and you're back in there. (Grace, interview, September 2019)

So, I guess, we're trying to work with ... there's a group of people trying to work together, so we've got child protection trying to work with Indigenous families. They have no trust in child protection at all. And then there's us and they have no trust in us because we have to work so closely with child protection. And then there's the Aboriginal agencies that are really not wanting us to go there. I feel like there's a bit of resistance to us going in there and trying to work with them. So, our social work role here on the ward has got nothing to do with child protection. It's more about advocating for clients and getting the best outcome. But yeah, I don't know what it is, but there's some stigma attached to any welfare stuff. They don't like engaging with us. (Rhonda, focus group, September 2019)

Several participants discussed the potential problem of the Orange Door co-location of family violence with child protection services. The Orange Door hub resulted from a key

recommendation of the RCFV and is a government-funded, centralised referral agency specifically servicing family violence clients. The concern was that this model had the potential to further alienate Aboriginal women experiencing family violence from support services due to their fear of child protection authorities. A legal service provider noted:

I don't think it's a bad idea to have a one-stop shop to make services more accessible for people and easier to get to where you need to be in the system. So, the less navigating you have to do the better it is. What I do see is highly problematic is having a system that says come and report your family violence to us and we will support you, that also within that service has child protection DHHS [Department of Health and Human Services] co-located, in circumstances where what's in the best interests of a child is never going to be a family violence situation so the party reporting immediately comes under scrutiny. (Jeanine, interview, August 2019)

One worker at an Aboriginal organisation noted that stronger relationships were needed between the agencies to ensure family violence incidents are reported via accountability mechanisms. She explained that not having access to the reporting of incidents relating to her clients endangers the victim, but also her relationship of trust with them:

Yeah. Just so like of any of [our] clients turn up at the police station after family violence, a family violence worker here can know about it. Because often we won't know. We know that that's what they're aiming for but it's not going great yet ... So, a lot of incidents like that will have a mum on the front page of the newspaper black and blue after DV and then—but it's never known to us have they reported it ... and then, eventually after a month, you're still in the air. Have they reported, have they not? "Na, no report's been done", just that link. And we just keep saying, "Oh, no. They would have had to report, they went to hospital, with police, they have to report. There's two mandatory reporters there" but hasn't done it and it's then ... I think it needs to be on a discharge, some sort of tick box. (Jennifer, interview, October 2018)

Another support worker also discussed the problem of the erosion of trust and disengagement of victims due to mandatory reporting—which ultimately places victims at

higher risk. She also addressed the complexities and potential subjectivity involved in mandatory reporting:

... it's always conflicted when you work in a role like mine where you are a mandated reporter as well. That sort of complicates the role a lot. I think if you're going to be prepared to ask the questions, then you need to be prepared to plan around safety and how safe is a client going to be or how at risk are they. I think in that regard, it's really important not to work in isolation. Really, hone in on the team that I work with ... just to talk about what the actual risk is and addressing the child protection trees to see whether what's happening is actually—but it's so confusing ... I find all that confusing, even because the questions, when you go to the wellbeing, the child protection trees, they can be answered either way, depending on how you look at that question that's been asked ... very subjective. I think you can make it work in or against your favour, depending on how you're looking at something ... I think sometimes, and it's more difficult too when you've known someone for a long time, or you've been working the family for a long time ... and even larger risk if you're no longer involved. If you're the only service that they trust, and are still engaging with, and they know that that's where the referral's going to come from, it makes it very difficult. That can be tricky. (Grace, interview, September 2019)

Uneven and unfair burden of responsibility for Aboriginal mothers

Our findings suggest that Aboriginal mothers often feel impeded in their safety planning due to their distress regarding potentially having their children removed by child protection services. In this context, a woman can feel as if her autonomy has been removed, as she is required to undertake a series of actions and processes to keep her children with her, while also relying on the service providers to support and respond in a manner that is timely enough to satisfy child protection requirements.

One support worker from an Aboriginal organisation explained that for Aboriginal clients, there is often insufficient investigation of situations before reports are made to child protection services. She noted:

This is going on in KMS [Koori Maternity Services] a little bit ... There was one lady I had who ... she couldn't make it to her appointments, her prenatal appointments. The non-Aboriginal workers assumed she was drinking and had that phone ready to make a DHHS report. (Kate, interview, October 2018)

Several participants felt that child protection officers made assumptions due to racist stereotyping and generalisations about Aboriginal and Torres Strait Islander people, putting children at risk of removal without understanding the dynamics of the context, with the same support worker noting:

Like I was saying before, that non-Aboriginal worker assumed that because this Aboriginal woman had drank once in her pregnancy, and thought, "Oh, she's not coming to her appointments. I'm going to make a [child protection] report" ... I actually rang her [family] and I said, "Look, I'm really worried about so-and-so, this is what's happening. If she doesn't come and see me soon, I'm really worried that these workers are going to make a report." I was getting calls after that straight away because we all know how scared Aboriginal people are of child protection, and I went around there, and I got her family involved and we got together a bit of a plan on what they could do to support each other and to protect that baby. (Kate, interview, 2018)

Your partner or your kids?

A theme that continually surfaced in our interviews at all sites was that Aboriginal mothers experiencing family violence are frequently forced by child protection authorities to make a decision between staying with their partner and keeping custody of their children.

Yeah, there have been a few clients that their child has been removed because they won't leave that partner, yep. When they've been given the choice—the mother's been offered to be moved with the child and stay with the child but, "You have to relocate from this area to Melbourne or whatever", and they've chosen not to and chosen to let the child go. Very controlling man, very, very controlling, dangerous man, kind of thing. (Jennifer, interview, October 2018)

This expectation that a mother always has a choice to leave belies what we know of the dynamics of family violence and the coercive and controlling tactics used by perpetrators (see Table 5). This assumption is structurally embedded in the child protection system and places many women in impossible circumstances. The expectation also goes against what we know about the escalation of risk for women escaping family violence, as the time immediately after she leaves her partner is when she is at the highest risk of physical danger—including homicide.

A service provider also discussed how the complexities associated with Aboriginal families experiencing family violence whom she supports are often overlooked by child protection authorities. She explained the case of a young Aboriginal woman in her early twenties who had been with her partner since her early teens. The couple had two children and their extended family groups had strong connections. However, the partner was violent towards the young mother, and she fled the state with their children when police were unable to locate him. Eventually he was found and incarcerated for family violence offences. However, as his mother was very close to his partner, she acted as her main support during his incarceration. After the partner was released, he returned to his young family and "did, said all the right things" (Jennifer, interview, October 2019). Things were going well for the family, and soon after, the young mother gave birth to a third child. However, after the third baby arrived, there was another incident of violence by the father to the mother and he was sent away to an alcohol and other drugs rehabilitation clinic. At this time, the young mother was told by child protection authorities that they would remove her children unless she stopped having anything to do with her partner. She complied with some of their recommendations—such as changing the locks, then moving to a new house, and obtaining a protection order against her partner—yet secretly she continued to see him. Eventually child protection authorities discovered this and removed all three children from her care. The support worker explained:

... like she knew what she had to say to keep her kids with her ... that she was working with us and that she was having her own personal drug screens and things like that. But she was so connected to him, and he obviously has his own issues and things. And they were so young and been together and had a history of violence as children in their

Table 5: Perpetrator weaponisation of children

Pattern of manipulation	Threat	Example participant quote
Manipulating the victim by using her fear of child protection authorities	The perpetrator threatens to make falsified or exaggerated reports to child protection authorities about the victim's neglect or abuse of the children, and that she would lose custody of the children. In some instances, this threat is heightened by claims he would get full custody of the children if the victim leaves him	They hold the children so you can't go. You need to go, but you're not going to leave your children behind ... that's why women won't get up and run and go because the man will hold the children and the woman ain't going to go without their children and they don't want to ring the police because they think, "The police are going to come and take our kids", because they've been doing it for a long time. We're not leaving without our kids. (Kay, focus group, September 2019)
Manipulating the victim by using her fear of perpetrating harm against the family (including self-harm)	The perpetrator makes threats regarding the safety of the victim's child (or the victim, or himself, or others in the family) to manipulate the mother to break her commitments to child protection authorities to leave him and have no contact with him	She recognises the signs, but she's conflicted about the relationship. He's the father of her children. There's often shame. "What will I do? How will I manage financially? What will my family say? I haven't told my work about this. He deserves to see his kids growing up." A whole lot of reasons why it may be difficult to leave a violent relationship. "If I leave, will he carry out his threat to kill the kids, kill myself, will he hang himself?" A lot of men make threats to kill themselves and things like that. (Judy, interview, October 2018)

biological families. How do we unravel that and learn and help people to grow? (Jennifer, interview, October 2019)

The weaponising of children by perpetrators

Many participants also gave accounts of family violence perpetrators using children as weapons against their victims. In these accounts, there were two general patterns of manipulation of victims by perpetrators using their children: 1) using the victim's fear of child protection authorities; and 2) using the victim's fear of the children (or other members of the family) being harmed. The threats perpetrators made against Aboriginal women in this study, as described in examples in Table 5, made it extraordinarily difficult for victims to comply with mandatory orders from child protection authorities to move and stay away from their perpetrators.

The detrimental impact of the collective under-education and racism demonstrated by child protection workers often manifested in an over-engagement with child protection authorities, creating greater stress for families, and sometimes increasing the risk of family violence. A service provider from an Aboriginal organisation explained:

A lot of our families do have a lot of contact with child protection that another family might not if they weren't Aboriginal or they weren't already known to the system. I think that does happen. (Grace, interview, September 2019)

Service providers across all sectors of the family violence system discussed their demanding workloads and inability to address early intervention factors, as the majority worked with clients in crisis. For example, Judy discussed why early intervention would be far more appropriate for their clients to divert them away from the child protection system:

And that's why we need to have at the beginning the

proactive work rather than, see we do the reactive end of the system work, so to speak. We respond to the crisis but there's a lot of work that can be done back at the beginning with families, walking beside families and things. We're not funded to do that. I mean, we get crisis service funding to respond at the end, if that makes sense. We won't even get a referral for a family if at the beginning there may be indications that this family needs a little bit more care, they might need assistance with getting their children to kinder or whatever, a whole lot of things. He might need assistance with drug and alcohol counselling. She might need parenting whatever, that's not our remit. That's for other services. (Judy, interview, October 2018)

Systems abuse: Weaponising the system

Perpetrators also manipulate their victims by “playing” the system in a specific form of weaponising their children. Legal service providers across all field sites reported to us that perpetrators of family violence against Aboriginal women regularly engage in what is known as “systems abuse”. Systems abuse refers to the manipulation of the legal system, using tactics that are “malicious, frivolous, vexatious, querulous, or an abuse of process” in order to “exert control over, threaten and harass a partner” (Reeves, 2018, p. 1). Informants explained to us that they frequently observe situations where perpetrators seek out protection orders against their victims as a form of manipulation. As staff from a legal service provider explained:

So, the bloke gets his order. He's on that side of the border. Takes it out against the woman. She can't come and get the kids, he keeps the kids ... it sounds to me a bit like the perpetrators are creating so much havoc through violence and, you know, behaviour, to warrant police involving services ... say, child protection, who then find the home unsafe for the children, and the children are removed. And it's the removal of children is actually one of the pawns the perpetrators are using to inflict, you know ... further violence. (Olivia, focus group, June 2019)

My client came. She had been separated for quite a while, but anyway, basically had recently obtained orders. He consented without admissions, before the Magistrates Court. Because she lives in [Victoria]. He lives in [New South Wales]. And she came to see me and said, “Hey,

he's made an application against me in the Albury Court. And he's made this shit up” ... And the issue is they had two kids that were moving, week about. And he just held the kids and said, “I'm making an application”. And he goes into the [New South Wales] police. He tells them this, his story. And the police go, “That's terrible”. They don't even check that there's already a goddamn order in Victoria protecting her, which might cast some doubt on what he's saying. But now, she has to go to court and defend. (Chloe, focus group, June 2019)

This form of systems abuse is another variation of perpetrator weaponisation of their children. As further explained by Olivia (focus group, June 2019):

We refer that, to that, as misidentification of offender. And what we're finding is that perpetrators will use police to get an AVO or an IV, like, in Victoria, an IVO [intervention order], against a victim. So, an example I had recently, there was an altercation between a couple. He smashed himself in the face with the wall, called the police, she's hit me. Police attend. He, she gets an intervention, well, family violence safety notice on the spot against her. She gets told to leave the house. The effect of that is that the two little kids remain in his care. And her whole position has just fallen out because of that. And so, you know, we've then had to work with her to get an intervention order for her safety and then defend her, because it was ... this is the example of your cross-border, because he—they were living in a cross-border area, and I won't say where. But, so, he did that to himself. The New South Wales police attended, and he's got an AVO against her. She then flees to her friend's house, which is in Victoria. And she gets an intervention order, so Victorian. So, they're actually navigating the two systems. Luckily, I got her organised, and we, she's going to defend these. But this is exactly where, it's exactly what you said. Particularly because we've got cross-border. They're able to, because you can.

The issue of systems abuse is not directly addressed in the literature for Aboriginal and Torres Strait Islander perpetrators of family violence, however Cunneen (2010) referred to secondary abuses in relation to judicial system failures for Aboriginal and Torres Strait Islander victims, noting the low levels of attendance of Aboriginal and Torres

Strait Islander victims and respondents at court when family violence orders are put in place. Cunneen (2010) argued, “The picture emerges that the legal system is extraneous to the issue of Indigenous violence; it is a legal system that lacks an organic connection to community” (p. 327). By extension, it can be inferred that the inability of the judicial system to engage Aboriginal and Torres Strait Islander victims (and perpetrators) in court processes related to family violence leads to similar secondary abuses. It is likely that there are further compounding factors for Aboriginal and Torres Strait Islanders engaging with the judicial system, such as cultural approaches and understandings of justice. However, this gap in the literature is another area requiring further investigation.

Distrust of police, homelessness and shame: Barriers to reporting family violence

Although the fears held by Aboriginal women in this study related to child protection authorities removing their children, the women also explained that there are many other factors that are barriers to reporting family violence. The Aboriginal women participating in this study provided a disturbingly clear picture of the magnitude of family violence occurring in Mildura and Albury–Wodonga. Further, their experiences provide evidence of features of the legal and support system that disempower Aboriginal women experiencing family violence. Reporting family violence to the police, health or legal services for many women in violent situations can place them at higher levels of risk, with Aboriginal and Torres Strait Islander women facing “complex and compounding barriers to reporting violence” and accessing support (Secretariat of National Aboriginal and Islander Child Care [SNAICC], 2017, p. 7). The barriers to reporting were explained in detail by many of the participants in this research and included distrust of the police, fear of homelessness, fear of loss of financial support, and fear of isolation from family and ostracism from community. In many instances these concerns led to women disengaging with, or refusing to seek help from, family violence legal and support services. These informants articulated the many reasons why they were reluctant to report violence, why they decided to remain in violent relationships,

and why they felt shame or guilt associated with reporting family violence.

Reporting family violence to police

In Australia, primary law enforcement at state and local levels is the responsibility of state police forces. Victoria Police and New South Wales Police provide emergency and crisis response to family violence incidents in the community.

Workers in Aboriginal organisations and service providers working with Aboriginal victims of family violence repeatedly discussed the problem of the lack of trust that women had for police regarding family violence matters. Multiple participants identified the need for culturally appropriate responses by police and improvement of Victoria Police’s response to family violence as critical areas to be addressed. A support worker for one Aboriginal organisation discussed what she perceived to be the lack of cultural safety for victims of family violence when dealing with police:

Well, I think if the police were to be a little more culturally safe in taking on domestic violence victims and carefully mapping out where they can send them, gave them the option to identify as Aboriginal, then yeah, it’d probably see more people coming in through [service provider] for domestic violence assistance. (Kate, interview, October 2019)

Many women who had experienced family violence expressed their deep suspicion of the police, and their reluctance to engage with them for family violence matters. Others explained specific examples of their encounters with the police, and what they saw to be the negative consequences of their interactions. One Aboriginal woman explained her experience:

I called the police thinking that they’d help me, but in a sense saying that I felt like I had failed my kids in that area for the simple fact that I called the police because I thought they were there to help people, but ... they reported me to the Department of [Health and] Human Services. So, I mean going through a situation like that, I mean that was my biggest fear of Community Services coming at my back because I was a ward of the state

myself and I didn't want that for my kids. (Evie, focus group, August 2019)

Evie went on to express her deep regret for contacting the police in the midst of an incidence of family violence:

But I just find like now if I didn't ring the police, I'd still have a home. You know I wouldn't have had Human Services on my back. You know these are the things women have to look at too. Because I put myself in that situation where I thought that there is support and services out there, but when I actually made that call it was the biggest mistake of my life and I regret it so much and I'm sorry that I ever rang the police, because if I didn't make that phone call then maybe like me and my kids would still have a home today. (Evie, focus group, August 2019)

This connection made between reporting family violence to police and the resulting negative outcomes, such as those experienced by Evie, featured often in women's explanations of their fear of engaging with police.

Concerns that police responses were inappropriate or disengaged were reported by many of the research informants. Those working in support services also reported to us that police often did not believe the victims or minimised their experiences by implicitly blaming Aboriginal women for the violence they had experienced. This was explained by two Aboriginal women working for Aboriginal support services:

But in my experience [for] Aboriginal women to contact the police against their loved one is, they don't do that because it's fun or do that lightly; they do that because, and it's not usually the first time, we know that's the time where they've been able to do that, and then distrusted the police anyway, and for them to do that and to call the police, and then to get a crack response that, "Oh yeah, we'll send the van around whenever we can", or, "You need to come into the police station", or, "Just go over to the court and get your own order", all that ... (Leila, focus group, October 2018)

We also see broader level issues around police responses in terms of police not believing women or minimising their experiences, or implicitly or explicitly blaming Aboriginal

women for the violence that's being experienced. (Jasmine, focus group, October 2018)

Multiple service providers and Aboriginal women in the study noted that they have experienced problems related to the interconnected relationships of people in a small town, particularly when specific police officers know the perpetrators. A legal service provider explained:

... in small communities. It's highly likely the copper plays football with the husband. Do you understand what I mean? Knows him. Copper has, fair dinkum. We've had, along the river here, arrested women and taken them and held them in cells for breaching ... [The perpetrator] knows, he knows the copper. And therefore, the copper, police, unfortunately do tend at times ... they act aggressively, they act without any facts. And we've had quite a few instances where women have been subjected to inappropriate arrests, inappropriate holding, questioning, all that sort of stuff, because there's no one to support them. (Chloe, focus group, June 2019)

Another legal service worker explained the implications for a specific client who was experiencing family violence:

It's like, as simple as, one of the people I was working with, a woman I was working with recently, she got an intervention order at the court. And the police then served that on the respondent. So, even though she made the application herself, the police serve it. She made the application Ex parte, which means that he wasn't aware of it at the time because of the need for her immediate safety. So, it came through on the fax machine at the local police station. One of the highway patrol members picked it up. "Oh, that's my mate." So, he left the police station and went and told him about the order before it was served on him. Which allowed him the opportunity to send her a text and some other things. It also, for her, she then went, "Well, I'm not going to be believed. I'm not going to report to police". (Olivia, focus group, June 2019)

These types of inappropriate actions by individual police officers can cause extreme harm for Aboriginal women experiencing violence and also for their respective communities by reinforcing general distrust of police for victims of violence.

In an attempt to improve their response to Aboriginal (and non-Indigenous) victims of family violence, both Victoria and New South Wales Police have introduced reforms over the past decade, including the creation of specialist family violence and Aboriginal liaison officer positions within their respective forces, which are detailed in the following sections.

Family violence units and liaison officers

Victoria Police have created family violence units at different stations across the state, including Mildura and Albury, to specialise in the management of family violence cases and incidents. One legal officer explained the services offered by these units for victims of family violence:

In Victoria, we've had a big overhaul of our family violence [police] members ... I had a discussion with the sergeant at court on Wednesday. And so, they are now appointing a court liaison officer, who is the same police member at court each week. So, you can build that familiarity with them. They've got a police lawyer who prosecutes the intervention order matters now, whereas previously it was just a, one of the other prosecutors. So, this person's dedicated to that role. And they're in the process of filling five detective positions for the family violence unit. So, highly specialised and educated. You know, and that's great. (Olivia, focus group, June 2019)

New South Wales Police do not have specific family violence units, but they do have domestic violence liaison officers (DVLOs) who are specialist police officers trained to manage and provide support for victims of family violence. During fieldwork, Albury Police had one DVLO. Despite only having one DVLO, an Aboriginal service provider explained the "ripple effect" this officer is having on other general police officers in Albury:

... our [local] domestic violence liaison officers ... are just fantastic. Couldn't fault them at all. They're compassionate. They understand but they also think critically. They're so willing to go into organisations or properties to make everyone feel comfortable ... It's really good because what's actually happening is because there was a few changes and stuff, obviously people take leave and stuff ... now our only DVLO had a few offsiders that would shadow her quite a bit. They are now general duty officers, like they've gone back to general duties but they're key

people that are now really, really good at addressing and working with domestic violence, that now we are getting a bigger load of general duties. (Bronwyn, focus group, September 2019)

Aboriginal police and liaison officers

Albury Police had three Aboriginal police officers working at the station and one Aboriginal liaison officer. Wodonga Police did not have a similar position in place, however recruitment for a newly created Aboriginal liaison officer role was underway during fieldwork in late 2019. There was general support from service providers and Aboriginal women regarding the improved response they receive from Aboriginal police and liaison officers. For example, a support worker at a women's housing service noted, "We're very fortunate to have a much better response from Police and that's got a lot to do with individual people. The Aboriginal liaison officer" (Sally, focus group, September 2019).

However, there were several Aboriginal women who explained that family or community politics could impact on the provision of service and individual responses. For example, Jane noted:

And you might need to go to the police station and work with the Aboriginal liaison officer and depending on relationships and in our community, if you feel comfortable speaking to that one person who represents our whole community, it's a bit hard. (Jane, focus group, September 2019)

Several service providers also noted similar concerns, with Bronwyn, a service provider for women who are victims of family violence, explaining:

There's still issues there with politics and things like that, the family ties. I've had a client recently being one extremely discriminated and shunned, away from the police station, and that was because of the family. (Bronwyn, focus group, September 2019)

Our findings suggest that although reforms to Victoria and New South Wales Police, such as the introduction of specialist family violence officers and Aboriginal liaison officers, have generally improved some responses for some

Aboriginal women at the field sites, many issues remain. The lack of understanding of the dynamics of family violence and sometimes racist responses of duty officers providing emergency and crisis responses represents a significant barrier to Aboriginal women accessing their services. Critically, when police fail to report family violence incidents appropriately or attend incidents in a timely manner and do not believe Aboriginal victims of family violence, it not only authenticates feelings of distrust, it significantly endangers the lives of Aboriginal women and their children. Most Aboriginal women in this research who had experienced family violence maintained their distrust of the police force based on their lived experiences as, time and again, contacting the police had compounded rather than alleviated their circumstances.

Fear of ostracism and isolation from families and community

A key theme in our discussions with Aboriginal women and their support service workers was the fear they have of being ostracised, shamed and made to feel guilty by the community or family members of the perpetrator. Aboriginal women articulated the lived reality of such ostracism and guilt, how it can manifest and how damaging it can be. Many women conveyed how staying with their perpetrator was easier than reporting the violence and facing the guilt and shaming from the perpetrator's family.

One Aboriginal woman in Mildura spoke about the manipulation that she endured from her former partner, and described how his family tolerated his behaviour:

I was stuck, like pregnant with black eyes, and I would say no to the [service provider], you know, no, I don't want no—I don't want your help ... It just made me feel like if he did kill himself and us split up, then I'm the one that's going to be blamed from his whole family. I said it's not going to be like, okay, you can look after the kids from now, and I come pick them up, because he uses me to get to the kids. It's always like that, he uses me. And now it's all—the blame is on me, like, oh yeah, you're not letting me see my kids, it's my fault, but he's the one that's not getting off his arse and going through the courts and lawyers. (Sian, interview, August 2019)

The prevalence of fear and the isolation felt by Aboriginal women in Mildura and Albury–Wodonga provided a detailed picture of some of the outcomes a victim of violence would potentially experience when reporting their partner. This could include ongoing harassment from family members leading to the likelihood of further harassment from the perpetrator, potentially leaving the victim more vulnerable. We found that for many Aboriginal women who have experienced family violence in Mildura and Albury–Wodonga, shame is also a major barrier to reporting family violence and accessing support.

And the shame associated with it too, don't want to tell your schoolmates or your friends or anything like that. You feel like, you know, kids will take it all on their shoulders and they'll try and protect their families, the women are ashamed to say that they're being beaten and that. (Benjamin, focus group, June 2019)

Being a part of this community, I know, and I can just say, I'll be honest, brutally honest, I've been in that situation where I was in a domestic violence relationship. I was too afraid to speak out. I was scared to say anything. I felt embarrassed. I felt shamed because I didn't want people to know that I was in that sort of situation. (Tori, focus group, August 2019)

These findings regarding the significance of the shame felt by Aboriginal women experiencing family violence in under-reporting align with those of Willis (2011), who examined intimate family violence experienced by Aboriginal and Torres Strait Islander people. However, as our research focused on the broader frame of family violence, which included, but also looked beyond, intimate partner violence, we captured a wider range of experiences with family violence. This included violence perpetrated by members of victims' extended family, with victims revealing a similar response and reluctance to report—based on guilt, shame and ostracism—to those affected by intimate partner violence. As Riley explained:

I'm a bit scared because [family member] is a very cultural man ... I don't want to make situations worse than what they are. At the end of the day, he's still my [family member]. I still love him, but he's an adult and he should know right from wrong. If you can't help them, and they can't help themselves, what else are you meant to do? You

have to turn your back on them, as much as it hurts me, it's something you have to deal with. (Riley, interview, August 2019)

Other informants noted that when intimate partner violence involves children there is an added layer of remorse and guilt, which can lead to mothers allowing the father of the children access to the children, despite protection orders in place limiting or prohibiting such actions.

Insecure housing and homelessness

Insecure housing can create a barrier for victims who are already under extreme stress, with family violence being the most common reason for “Victorians seeking assistance from homeless services in 2016–17, accounting for 35% of demand” (Aboriginal Housing Victoria, 2019, p. 27). Both service providers and victims reported to us that when a woman does decide to leave a violent situation, and enters a safe house or temporary housing, it can be extremely isolating for the family. Several Aboriginal women who had experienced family violence explained their experiences:

That's the frustrating thing at the moment is just waiting for a house to become a home where you can—because we can't have visitors at the house, so we're quite restricted. No one's actually allowed to come there, not even the caseworkers, like [service provider], can't come to the house, even though they're a part of the support network. (Riley, interview, August 2019)

... we was just living in caravan parks and cabins and that was really frustrating 'cause I was looking for private housing and I went to over 20 inspections and just could not get into any housing at all, even when I was pregnant and that. And I was begging for guys here to help me to get housing, into some sort of emergency housing. I still had no help. (Jamie, interview, June 2019)

We found that this insecurity and isolation often resulted in victims returning to abusive relationships, as becoming homeless was an expected and tangible outcome of leaving their perpetrator.

Many service providers reiterated the gravity of the housing shortage for Aboriginal women experiencing family violence

in Mildura and Albury–Wodonga. Laura, an Aboriginal support worker, noted:

Apply for house after house. So today we've gone to about six and it doesn't look like a chance. It's terrible; there's just, yeah, there's nothing around this, there's nothing for youth at all, for young people. So, there's no drop-in centres ... too bad if you are a domestic violence [victim] because these young girls, the women's refuge is just full so they can't even get in there to have a night's accommodation or a feed. It's lack of support. (Laura, focus group, June 2019)

Several officers of the court provided further details of the context related to the lack of resources for housing and consequent impact for victims:

Absolutely, but [housing shortages are] the biggest problem I've got across all the jurisdictions. So, it's driving criminal offending, there's driving child protection. It's chronic. You know even people who would normally be reasonably functional if they had ... a roof over their heads, they actually can't access that. (Jeanine, interview, August 2019)

Housing, housing is the pivotal, critical thing that we need to get right as quickly as possible. That's the bit where we can't get government to commit the moneys ... unless you've got the housing in place you can't address any of the other issues. But once you've got the housing in place you can start to get in the other services. (Barbara, focus group, August 2019)

We've got brokerage funds to help with some crisis accommodation, but that's the worst area for us to try and get any satisfaction from. We just haven't got housing anywhere, no housing stock. (Tori, focus group, August 2019)

As noted in the RCFV,

stable housing, employment, and participation in community life, are central to the wellbeing of victims of family violence and to their ability to build a good life for themselves and their families. (State of Victoria, 2016c, p. 10)

However, the relief found in quality, affordable and safe housing is not readily available to all victims, with the

AIHW (2019b) reporting that in 2017–18, “25% (15,900) [of Indigenous clients accessing specialist housing services] cited family violence as their main reason for seeking assistance” (AIHW, 2019b, p. 118).

The AIHW (2018) recorded a rise in requests for specialised domestic and family violence assistance:

In 2016–17 there were about 14,000 more requests for assistance with domestic and family violence, family/relationship assistance and assistance for trauma than in the previous year, a 9 percent rise. (AIHW, 2018, p. 15)

Further, the AIHW (2018, p. 15) reported that requests for accommodation rose between 2016–2017: “There were over 11,000 more requests for accommodation services compared with 2015–16, a 4% rise.”

Based on findings from the Victorian Aboriginal Housing and Homelessness Summit, “20.9% of Aboriginal Australians who present to homeless services do so mainly because of family violence” (Aboriginal Housing Victoria, 2019, p. 17). These data highlight the link between family violence and homelessness by confirming the dire need for safer “crisis, short- and long-term housing” (George & Harris, 2014, p. 18) for women experiencing family violence. As noted, our findings illustrate how the critical housing shortages in Mildura and Albury–Wodonga contribute directly to women’s reluctance to report family violence and that this reluctance to report is often overlooked by many within communities and the family violence legal and support services sector.

Availability, accessibility and acceptability of family violence legal and support services at the field sites

This section addresses the availability, accessibility and acceptability of family violence legal and support services for Aboriginal women experiencing family violence at each of the field sites. We refer to availability in terms of whether a service is provided, and if there are sufficient services to meet demand at each location. Accessibility is addressed by considering whether the delivery of these services is timely, geographically reasonable and provided in settings where skills

and resources are appropriate to need. The acceptability of services is examined in relation to whether Aboriginal women who have experienced family violence are satisfied with the services provided and are not deterred from using them.

Provision of family violence legal and support services to all Australians is multi-sectoral, operating at local, state and territory, and federal levels. There are specialist services specifically for Aboriginal and Torres Strait Islander people experiencing family violence, mainstream services for all Australians experiencing family violence, and indirect sectoral services, one or more of whose functions may be to cater to victims of family violence. There are few support services that operate at a national level, although many support services are directly and indirectly funded by federal government departments or national not-for-profit organisations. Exceptions include telephone hotlines such as 1800 RESPECT and Kids Helpline, the National Family Violence Prevention Legal Services (FVPLS) for Aboriginal and Torres Strait Islander victims of family violence, and the Australian Childhood Foundation.

Most government family violence services are managed at the state or territory level. These services include police, law and enforcement; maternal and child health services; parenting programs, schools and other educational services; and mainstream primary, secondary and tertiary healthcare services. A range of other specialist and general telephone hotline services are also provided in every jurisdiction, such as the Domestic Violence Crisis Service (DVCS) in the Australian Capital Territory and the Domestic Violence Line in New South Wales.

There are various local services operating in different cities, towns and communities. The Aboriginal community-controlled healthcare sector also operates across the nation and is located in most cities, towns and communities. Refuges and shelters for women and their children escaping family violence are often locally run, many by Aboriginal community-controlled organisations.

During our fieldwork in Mildura and Albury–Wodonga, we investigated the range and extent of family violence legal and support services offered in each location, both mainstream and Aboriginal and Torres Strait Islander-specific (see Appendix

C). The following sections reflect and rely on the knowledge and understandings of service availability, accessibility and acceptability as expressed by our participants, both Aboriginal women who have experienced family violence and service providers in the family violence legal and support service sector. As such, these sections do not, and are not intended to, illustrate an exhaustive representation of the family violence legal and service sector at each field site. Instead, they provide insights as to how the services at each location are experienced by those using them or working within them.

Legal and court support services

All field sites have multiple private, not-for-profit and government-funded legal services that offer legal representation for victims of family violence. However, there were few options that were accessible or appropriate for Aboriginal women experiencing family violence, due to limited availability, cost or lack of expertise and resources for their needs. The main legal services accessed by the Aboriginal women in this study included community legal services, Aboriginal-specific legal services and Legal Aid services.

At the time of fieldwork (October 2018 to November 2019) there was one community legal service, but no Aboriginal legal service or Victorian Legal Aid based in Wodonga. Participants reported that the Aboriginal legal service based in Shepparton, Victoria provided intermittent services for Aboriginal people in need of representation in Wodonga. We were informed that most legal services for Aboriginal victims are provided by the Wodonga community legal service. A key issue, as explained by our participants from the legal sector, was that the community legal service does not represent clients in criminal cases. Further, as family violence cases were held every Monday, and the Aboriginal legal service does not attend every week, there are some circumstances when Aboriginal women can be left without appropriate legal representation or have different lawyers from different services every time they attend court. When discussing this scenario, one lawyer noted:

I think that means that people who are in Victoria [i.e. Wodonga], particularly Indigenous clients, they are confused ... So, VALS [Victorian Aboriginal Legal Service], they know about the client, the client somehow or another has got through to the Victorian Aboriginal

Legal Service and says, "I've got a matter in court" and whatever. So, they'll say, "Yep, we'll have a lawyer there for you on the day". But it'll be one of the local lawyers here who gets a call from VALS and says will you look after X at court on Friday? And you do it. And they pay you, you know, you would be paid a fee by VALS to do that as agency. But the issue is, if that client has four or five matters, four or five appearances, that can be a different lawyer. Because VALS will just go to the first available lawyer. (Chloe, focus group, June 2019)

Across the river in Albury, there were no Aboriginal legal services based in town, however, a Legal Aid New South Wales service had recently opened. Similar to the context in Wodonga, the Aboriginal legal service based in Wagga Wagga sometimes provided duty services for Aboriginal clients in Albury, but we were informed that this did not occur for all cases.

There are two Aboriginal community-controlled legal services with offices in Mildura: Djirra's Aboriginal Family Violence Prevention & Legal Service and VALS. Both services operate in multiple locations across Victoria, with bases in Melbourne. Djirra is an Aboriginal-specific organisation that provides a broad range of family violence services, both legal and non-legal, such as education and early intervention family violence programs, and policy advocacy and reform. At the time of research, Djirra had several lawyers on staff who had worked at the organisation for multiple years and several local paralegal support workers who provide legal (and non-legal) education, advocacy and support to Aboriginal women and the wider community. Djirra's Mildura office is funded by the Commonwealth. The organisation, alongside many other Aboriginal organisations, experienced a significant cut to their funding when the Indigenous Advancement Strategy was introduced in the 2013–14 funding cycle. We were informed that as a result they now work on 1–3 year funding contracts, which significantly impacts their workforce and their ability to provide services to meet the demand of Aboriginal women in Mildura and the wider region (including Swan Hill and Robinvale).

Similarly to Wodonga, VALS did not have a full-time lawyer based in Mildura until August 2019, and the visiting lawyer

did not deal with family violence matters. VALS primarily referred Aboriginal women who have experienced violence to its family, civil and criminal lawyers in Melbourne for phone consultations. The Melbourne-based lawyers then provided briefings to the duty lawyers in Mildura.

Aboriginal women experiencing family violence in Mildura also use the Victoria Legal Aid service, a local community legal service or a mainstream family violence-specific service in Mildura that has a local solicitor on staff to provide counsel to women who have experienced family violence.

Several lawyers participating in the study discussed cross-border issues that arose for some Aboriginal women seeking representation, such as seeking protection orders and obtaining accurate information across jurisdictions. For example, one explained:

The way we provide advice to clients is affected. Because I work in the family violence, like, the Victorian jurisdiction. And I can recite the *Family Violence Protection Act* backwards. But then when I get a client who has an AVO for New South Wales, it's about I then have to make sure that I'm on the right track and I'm giving the right advice. But also, from a service point of view, if you have a client who is getting services from New South Wales, for example, their service worker, who may not be a lawyer, can sometimes be giving them wrong information because their experience is on New South, not Victoria. So, it's that inconsistency of information they're receiving. And as we said earlier, when they are in that position and they're so overwhelmed, it's about having really clear, precise information. And you can't do that when you've got so many different services operating [in] different jurisdictions and different, under different legislations. But even the process for getting them IVO in Victoria is different to getting an AVO in New South Wales. (Olivia, focus group, June 2019)

Court support services

Multiple government and non-government agencies provide court support services to Aboriginal women who have experienced family violence in Albury–Wodonga and Mildura, including some Aboriginal-specific services. However,

again, the availability and appropriateness of the service is context-dependent.

There is an Aboriginal liaison officer that provides support to Aboriginal people in the Wodonga Court under the Victorian Victims Assistance Program, however there is no similar role to specifically support Aboriginal people attending the Albury Court in New South Wales. In Albury, court support is provided by some of the Aboriginal community-controlled services on an ad hoc basis, for example by an outreach worker from the Aboriginal medical service who provides court support for the service's clients.

In Mildura, the Umalek Balit family violence and victim support program includes Koori support officers—both women's and men's practitioners—that provide non-legal guidance and advocacy for Aboriginal women (and men) during court processes and beyond. This program was reinstated based on Recommendation 149 of the RCFV. Further, all women who are clients of the two mainstream specialist family violence organisations are offered court support. VALS also has community support officers and client service officers that provide court support and referrals to their civil and family lawyers in Melbourne. The lawyers then brief duty lawyers in Mildura regarding individual cases.

One legal official discussed how women experiencing family violence are identified by court support officers and why some women who may need support may not receive it:

I guess, so the court staff are very good at identifying. There's also court network volunteers, and so they'll be going in and checking up with people. I think there's just a lot of people in court that hopefully can pick if somebody is distressed or in need. But that obviously shows in different ways. Some people are really distressed without being visually distressed sitting there. It's not a very nice place to be sitting around the courthouse for a couple of hours. But people are checking in. And also, I guess with notifications to services from—but that's if people have been picked up from the family violence services as well, or from the police, that there's that exchange of information that somebody might be at court and needing assistance. But there would be people who'd go under the radar. (Sharon, focus group, October 2018)

Koori Court in Mildura

The Koori Court is a specialised sentencing court for Aboriginal and Torres Strait Islander clients. It is a radical departure from the typical Magistrates Court that implements the law intending to punish offenders for committing crimes. The Koori Court's purpose is to provide a therapeutic style of justice that encourages the offenders to desist from crime and to involve the Aboriginal community in achieving better outcomes than simple punishment. The outstanding feature of the Koori Courts is the service to the courts by Aboriginal Elders. Elders and Respected Persons (RPs) are appointed to serve with the presiding magistrate: Elders hear cases, counsel offenders and victims, and advise on support services and solutions—beyond solely punishment—for longer term beneficial outcomes for perpetrators, victims and the wider community. The Koori Court has the same range of sentencing options as the mainstream Magistrates' Court. Its use of court-integrated support services providing offenders and victims with the resources to improve their family circumstances and ensure safety in the home and other settings is a significant feature of the Court's therapeutic approach.

Prior to a trial in Mildura commencing in May 2019, the Koori Court did not deal with breaches of family violence intervention orders. As a senior officer of the court explained it:

There was an anomaly in the legislation that allowed us to hear the violence that led to assault charges and injury charges, but we couldn't deal with breaches of an intervention order. (Barbara, focus group, August 2019)

Following the 2016 RCFV, the *Magistrates' Court Act 1989* (Vic) was amended to enable the Koori Court to deal with family violence breaches. At the time of writing this report, that exception had been rectified but only at the Mildura Koori Court. Barbara explained that the Mildura Koori Court “is the only gazetted court [in Victoria] that can deal with the breaches and to have the specialist [family violence] program [Umalek Balit] in place, including the men's worker and the women's worker” (Focus group, August 2019).⁴

⁴ The Geraldton Family Violence Court, or in the local language, the Barndimalgu Court, was “launched in December 2005 as one of the State Government's eight strategies to reduce Aboriginal imprisonment in Western Australia”. It is supported by the Geraldton [Aboriginal Justice Agreement](#) linking the Geraldton Aboriginal Community, the [Department of the Attorney-General](#) and the [Department of Corrective Services](#), and is designed to hear

Critical to the success of the Koori Court is the service by Aboriginal Elders. Elders serve on the Koori Courts in part-time roles and bring their strong community networks to bear on their semi-judicial duties. One of the Elders serving on the Koori Court, Elaine, is a senior Aboriginal woman with an enduring professional and personal commitment to serving the Aboriginal communities in rural Victoria and New South Wales. The willingness of Elders to undertake the role of RP speaks to their heightened concern for the future of younger generations. Elaine's understanding of the circumstances of Aboriginal families is well-grounded in her years of involvement in Koori Court matters and her professional history and involvement in community issues, especially family violence. She accepted the position as Elder because she felt that it would be

a better way for the change to be part of something brand new from the Royal Commission ... I think I had a lot to bring across and give here to the clients, as well as working with the other agencies in the partnership here. (Elaine, focus group, October 2018)

Elaine's strong networks, years of experience and deep historical understanding of the Aboriginal communities across the Mallee region and into north-west New South Wales are forms of social capital that only she and a handful of people like her hold. An Aboriginal offender facing an Elder like Elaine would recognise her power and influence in the community, and most importantly, that her opinion and judgement of his worth as an Aboriginal community member could improve and damage his life chances in a tight-knit community like this one, and indeed, his life chances across a very large area that encompasses two states. Elaine works closely with other local family violence workers and is fully aware of every family violence incident in the district.

However, it was clear that Koori Court is not perceived as a silver bullet, but as a mechanism that improves court outcomes, as a court officer explained:

So, I think that's one of the reasons [the Koori Court] works. But when you say it works, Koori Court isn't going to fix things. Koori Court sits at the top. The problems

“family and domestic violence matters involving Aboriginal people. This service provides offenders with the opportunity to complete programs to address their violent behaviour before the final sentence is delivered” (Magistrates Court of Western Australia, 2019).

are all down here and we actually need all the [support] services and everything. By the time they get to us it's almost too late. We can't fix things. All we can do is provide a better court outcome. (Barbara, focus group, August 2019)

Health services

Mildura, Albury and Wodonga all have public hospitals providing emergency, surgical and other specialist tertiary healthcare services for both in-patient and out-patient care. The public hospitals in Albury and Wodonga are run by Albury Wodonga Health, which is the first cross-border public health service in Australia and is managed by an agreement across the states. Albury Wodonga Health provides community health services at both hospitals, and a separate community health service in Albury. It also runs multiple other clinical and allied services including community rehabilitation centres, a dental clinic and mental health (including child and adolescent) services. In each of the public hospitals, there are Aboriginal-specific services in Allied Health. At the time of writing, the organisation has one full-time Aboriginal hospital liaison officer in Albury, a part-time health transition officer and a full-time Aboriginal mental health liaison officer. However, one service provider explained that although there were several Aboriginal liaison officers, they had very little visible presence in the community:

We've got Aboriginal health workers that work in the acute setting in Albury at the Base Hospital, and ... at the hospital in Wodonga ... We don't have any community health anymore ... So, for me it's the fact that we, as a service, don't have Aboriginal health workers, and the lack of visibility [at] the ones that do exist. And that includes both sides of the border, in terms of both hospitals. (Amelia, focus group, June 2019)

Multiple Aboriginal women in Albury–Wodonga questioned the acceptability of services offered at the hospitals, noting that they did not feel culturally safe when attending the public hospital in their town. For example, Kate, an Aboriginal service provider, explained:

Yep, you walk in and they'll look you up and down and a lot of this, like, I had one client saying to me, "Oh those

nurses went around the desk and they were whispering to each other and I think they were talking about me". Even if they weren't, it's pretty common courtesy that you wouldn't do that in front of somebody, especially someone who's the only black person in the room who's automatically ... like you know, they already feel different and things like that will put them more on edge. (Kate, interview, October 2018)

Other service providers in Albury–Wodonga reported that they did not think family violence incidents were accurately recorded and reported at the hospitals. For example, Bronwyn stated that "the hospitals don't report on domestic violence out of hours because they don't have social workers, so we get stats that are ridiculous" (focus group, September 2019).

In Mildura, the public hospital has an Aboriginal Health Unit that refers patients to local family violence services and provides advocacy services for patients when accessing hospital services. The hospital also has an Aboriginal Advisory Committee made up of Aboriginal Elders and respected community members. We were also informed that there were cultural awareness programs running throughout the year and that family violence education campaigns were being implemented:

... well there's flyers and everything's come out on family violence ... it's really been highlighted now. Yeah, it's something that you walk through the hospital and you see it everywhere now. (Damien, interview, November 2018)

There are Aboriginal community-controlled organisations operating a wide range of services in Albury, Wodonga and Mildura. In Albury, the Albury Wodonga Aboriginal Health Service (AWAHS) has a general health practice as well as child and family health, social and emotional wellbeing, mental health, alcohol and other drugs, suicide prevention, occupational therapy, podiatry, optometry and renal services. Most of the health specialists are either part-time or visiting practitioners. Although the main practice is located in Albury, there is also an office in Wodonga where some of the services are provided. AWAHS has outreach services, including child and family health nurses, midwives and an Aboriginal outreach worker.

Some participants raised issues regarding the accessibility of some services provided by AWAHS, noting long waiting lists for mental health services and specialist and general practitioner appointments.

There's a couple of counsellors over at AWAHS but again, you have to have a confirmation of Aboriginality to access them and it's almost impossible to get into that AMS [Aboriginal Medical Service] over there—sit on a waiting list for the next available appointment for like two months. (Kate, interview, October 2018)

So, if this is a barrier for these young ones, imagine [what] a domestic violence [victim] has to go through. Where would they go here because your AWAHS, your health service is really full, you can't get in there. You've got community health which is pretty good. I'm not sure on their waiting list what's that like, but I'm sure if you had to, you'd see them. (Laura, interview, October 2018)

In Mildura, Mallee District Aboriginal Services (MDAS) provides over 50 (health and other) services from its health and family centres across the region, including a community health clinic in Mildura that services the Aboriginal population of the region. MDAS provides specific family violence, family support, early years, youth, maternal health, alcohol and other drugs, housing, home and community care, out-of-home care and Aboriginal child specialist support services, as well as a women's shelter. As described by one participant:

We know who these people are, like, our clients, we know who our clients are. Like, you know community, you know who the clients are, you can find them, and you can engage them and support them. And it's the same with the guys too. But if you're sitting at the Orange Door and you haven't got a phone number, so what do you do? You go back to police, you do this, instead of just giving it to us and letting us deal with it. And like, finding that person, making them safe and all that, and that is the big difference in our services to mainstream. (Gary, focus group, June 2019)

MDAS also has a Koori mental health support program worker, who provides services from MDAS as well as from the Mildura Base Hospital. This role incorporates the coordination of the youth suicide prevention programs in the area. However, one gap in service provision identified by several service

providers is in the area of child mental health. The high demand for general and specialist mental health services for Aboriginal victims of family violence was repeatedly stressed by health and other service providers at all field sites. It was also often noted that there was a much higher demand than what services provided.

There are two mental health services run by Albury Wodonga Health within the region, a community mental health service in Albury and an adult mental health service in Wodonga, who employ an Aboriginal liaison officer. There is also an inpatient mental health service for adults, Nolan House, in Albury for patients requiring acute care. The Mildura Base Hospital also provides adult, adolescent and child mental health services, including a 12-bed inpatient unit, and has an Aboriginal liaison officer.

However, some service providers noted that a lot of their Aboriginal clients who have experienced family violence want to access Aboriginal-specific mental health services. For example, Kate explained:

A lot of them don't want to go and see white counsellors and do the ... what they say is the white fellas' way of healing which is all that mental health sort of stuff. A lot of them want to go and have a smoking ceremony and have a women's yarn up and have a three-day camp or something about health and wellbeing or something like that. (Kate, interview, October 2018)

Other issues of accessibility were also raised regarding timely and affordable access to mental health services at all field sites. Jeanine, a legal officer who provides services to many Aboriginal women experiencing family violence, explained the challenges these issues pose for some of her clients:

You can't get to a specialist up here; you can't get to a mental health service provider in any quick time so if you're not already a patient in a clinic you can't get in to see one. And that's just generally for health issues, let alone mental health. When you do, the[re are a] limited number of referral services around so you need your mental health plan, so that's kind of a hurdle that people have to get over. But even then, to get a bulk-billed service is really difficult so you can really then only access the other service providers if you can afford to pay the gap. Most Aboriginal people can't afford to pay the gap so what

happens is, of course, they're not getting treated through the medical profession, so they're actually self-medicating and ice is a good, feel-good drug unfortunately. (Jeanine, interview, August 2019)

Apart from public hospitals and Aboriginal community-controlled health services, another major provider of health services to Aboriginal women at the field sites are the mainstream, bulk-billing, community-based clinics that provide general practice and allied health services related to family violence for Aboriginal women. The availability of these services was reported to be very good at all field sites, however there were varying opinions regarding accessibility to specific services, particularly for people in different jurisdictions. Amy, a health service provider, explained the context in Albury–Wodonga:

So, you can have [a] child who lives on one side of the border and all of a sudden, they're over the other side of the border. And then they're back over this side of the border. It is the cross-border issue, in particular when you're in New South Wales, because here is the biggest centre, so public health services here, we're a public health ... they don't have the equivalent public health service immediately over that side of the border. Their most immediate large community health service that does the same sort of range of services that we do is in Broken Hill. So, the Far West Local Health [District] service operates [in] 194,000 square kilometres of New South Wales. It's a massive area. So, they can come over here, but they're not necessarily entitled to the services over here because they're not Victorian residents, they're New South Wales residents. And generally, services will try and find a way around that, but it's still an issue. It is absolutely an issue. (Amy, interview, June 2019)

Homelessness and housing services

As detailed in the section “Insecure housing and homelessness”, ensuring appropriate housing for Aboriginal women experiencing family violence is critical for their safety as well as their social, cultural, emotional and economic wellbeing, yet many women find that they are unable to access either short-term crisis or longer term, stable housing for themselves and, often, their children due to high demand and shortfall

of housing stock and other suitable accommodation. Short-term crisis accommodation and longer term, stable housing was in short supply at all study sites.

When Aboriginal (and other) women attempt to escape family violence, they often need to leave their family home. It is also at this time that they are at the greatest risk of experiencing the most severe forms of family violence, including homicide (Australasian Institute of Judicial Administration [AIJA], 2019, s 4.2). In the first instance, short-term crisis housing at the field sites fell into two general categories: 1) women's shelters and refuges; or 2) temporary placement in hotels or caravan parks (see examples detailed in “Insecure housing and homelessness”).

There is an Aboriginal women's shelter based in Mildura, Meminar Ngangg Gimba, run by MDAS. The women's shelter was originally established by Elders within the community to support women escaping family violence. The shelter offers temporary accommodation, as well as case management and a range of outreach services for its clients when they leave the shelter. Informants in Mildura all reported that this service provided highly acceptable services for Aboriginal women experiencing violence, but raised concerns about the availability of the service, predominantly due to under-resourcing. The shelter only has six units to accommodate women and their children, so the service regularly provides alternative short-term accommodation for women in motels and the local caravan park. Even so, the demand for the services offered at the shelter often far outweighs the needs of women in the community. The shelter is also available to Aboriginal women in need nationally, with one service provider explaining that of the approximately 200 women they provided services to in the last financial year, approximately 30–40 of these women escaping violence were from other states. Meminar Ngangg Gimba also does not provide after-hours services, thus women requiring crisis accommodation after business hours do not have access to the service. Another issue reported was that the service is unable to provide suitable support for women who are experiencing mental health issues due to the impact it has on other women and children in the shelter.

Mildura also has a mainstream crisis refuge run by the Mallee Sexual Assault and Domestic Violence Service (MSADVS).

The service is available to women in four local government areas in Victoria and for women in surrounding communities across the river in New South Wales. Unlike Meminar Ngangg Gimba, the refuge offers a 24-hour service. We were also informed that approximately one third of the service's clients are Aboriginal women.

One Aboriginal woman, Riley, who had used the service questioned its acceptability, explaining that she felt that they did not support her in the way she needed and that responses to requests for support were generally "quite delayed". For example, she noted that it took more than two weeks after she was placed in accommodation for the service to work with her on a case management plan. She also explained that after the case management plan was eventually developed, she felt that none of the intended actions, such as putting in applications for public housing, attending the police station with her to make statements and accessing mental health services, were achieved.

In Albury–Wodonga, there are no family violence-specific or Aboriginal-specific crisis shelters or refuges. The only similar service offered to women on either side of the border is Betty's Place, a women's homeless refuge. When the service first opened in the 1980s, it was a family violence-specific shelter for women, however, with changes to management, the service shifted its focus to all women at risk of or experiencing homelessness. The service offers case management and multiple programs supporting the long-term housing of its clients. As Betty's Place is not a crisis shelter, it is not available to women seeking emergency refuge. Women must be referred by another service provider and be assessed for risk to gain access to the service. The shelter operates at capacity regularly, so they also have access to brokerage funds to use motels for some clients who need accommodation.

One Aboriginal victim in the region explained that she is unable to use the services at Betty's Place, even in times of crisis, as she has sons that are over the age of 12 years, so they would not be allowed access.

The New South Wales Department of Housing provides emergency accommodation services for women in Albury;

however, our informants explained that this generally only allows for two nights of accommodation at a motel. The Centre Against Violence (CAV), a mainstream family violence-specific service, also offers emergency placements to women in Wodonga, using a disbursed refuge model, with individual properties located across the town. One health service provider noted some of the difficulties CAV experiences housing their clients in both short- and long-term accommodation:

On the Victorian side, I think that the workers on the Victorian side, such as with CAV are doing as well as they can. But the housing stock is what lets them down. So, yeah, there is no housing stock. So, we've been told that because of the increase in methamphetamine use, the houses, so the vapour from the ice, from the methamphetamine is going into paints and carpet. And so, when people are moving in, they're getting sick. So, they're taking their houses offline for eight months and having to repaint them and carpet them. (Rhonda, focus group, September 2019)

Accessing longer term, secure and stable housing for Aboriginal women at the field sites was generally challenging. Many of the Aboriginal women participating in this research explained that public and community housing was the primary source of this form of accommodation, but that the availability, accessibility and acceptability were all very poor (see "Insecure housing and homelessness").

One New South Wales program offered in Albury by Betty's Place that aims to keep women and their children in their own home while removing the perpetrator is the Staying Home Leaving Violence program. The options for women accessing this program depend on their circumstances, such as whether they own their own house, are renting privately or are in community or public housing. We were informed by service providers that Aboriginal clients who had participated in the program were "housed quite quickly and they are really considering where they're being housed and security measures and things around it" (Sally, focus group, September 2019).

Referral services and interagency networks

The Orange Door

In Mildura, the Orange Door hub is a government-funded, centralised referral agency specifically servicing family violence clients. It is an initiative that came from a key recommendation of the RCFV (recommendation 37). Opening in May 2018, the location in Mildura was one of the first five Orange Doors opened in Victoria and is a partnership between the Department of Health, Family Safety Victoria, MSADVS, Mallee Accommodation and Support Program, MDAS and Sunraysia Community Health Service. Although the service is still very much in the early stages of its development, many other service providers in Mildura raised concerns about the Orange Door creating additional barriers for Aboriginal women experiencing family violence. For example, the referral service is co-located with numerous other family violence-related services, including child protection and Child FIRST.⁵ This factor, in particular, was noted as problematic by multiple Aboriginal service providers and court officers, noting that this is a likely barrier for Aboriginal women in accessing the service (see “Barriers to support services and programs from association to child protection”). As described by one participant:

The Orange Door are calling these women, and community know that there’s Child FIRST that sit in that office; there’s all these other services. How scary for somebody to call and these women are going to be, “Oh I don’t want to talk to these people. My kids may be removed.” There’s all different other services that sit within that Hub. I think that could be a barrier as well for these women. I certainly believe that that would be for me as well, personally, if that was me. Fear of having children removed. (Louise, interview, June 2019)

Other service providers highlighted emerging issues such as potential conflicts arising in court-based support provided by Orange Door workers:

Well, it’s meant to be referral-only, but one of the things we’ve noticed is that they’ve come to court and they’ll sit, they’ll talk to both the Aboriginal woman who’s experienced family violence and the perpetrator, and then we’ll try and talk to and support the Aboriginal woman. And so then, after knowing all about it and talking to her, and telling her that they’re there for her et cetera,

they’ll go and sit in court next to, and supporting the perpetrator. That’s not what Orange Door were meant to be about, but that’s what I’ve noticed. I’ve seen that happen. (Lynette, focus group, October 2018)

Another concern raised was that women accessing Orange Door have to repeatedly discuss the violence they have experienced with multiple service providers:

So, because you’ve also got, and this is where it’s got too inappropriate to, people are telling their story to the Orange Door, then they have to come to a refuge and tell their story again, that’s inappropriate. Or to a service and nobody wants to do that, so they’re done, after they’ve told their story once. And, oh, hang on, but you need a referral to another service, and then they’ve got to go through it again. And so, I think that’s a barrier with the Orange Door. (Danika, focus group, June 2019)

Aboriginal service providers from different organisations also noted that the referrals they usually receive had dropped significantly since the Orange Door hub opened in Mildura. One service provider explained:

It’s definitely, we’ve seen a huge drop in the referrals ... It’s been a bit of a challenge ... I don’t [know] that the women, victims or survivors are receiving the appropriate services especially Indigenous women ... are they being referred to Mallee Domestic Violence, to mainstream services? I don’t know what goes on there, but we’ve definitely seen a huge drop in the referrals ... We know there’s women out there needing the service but where they’re going, where they’re being referred, whether they’re being assisted I’m not sure ... [Orange Door] have these clients. Where are they going? Or are they just being missed? Have they slipped through the gap? I don’t know ... we can’t go from this large amount of clients we’re servicing. We probably have around, monthly on average around the 50 mark, we’re down to about 34 maybe, even lower now. I think they’re down to about 32 on a monthly basis. That’s a huge drop so where are these women going? We know there’s still family violence happening. It’s happened since Orange Door has been opened. (Rosalie, interview, August 2019)

There were also incidents discussed regarding high-risk perpetrators who had not been referred to appropriate services:

⁵ See <https://services.dhhs.vic.gov.au/child-first-and-family-services>

I went to RAMP [Risk Assessment Management Panel] and I'm texting [my colleague] to say, "Have you got this client?" and, nope. The referral came across after. So, he had to ask for the referral for a RAMP client. We're talking RAMP here ... So, which we did. So, when we started going to RAMP, it was sort of, "Hello, we do this anyway". Like, having all the parties at the table and deciding how to keep that family safe and work with the guy and all that. And I went to this RAMP and he's one of the guys that should have been part of the program, but we never knew about him, he hadn't been referred from the Orange Door. And yet they've escalated him to RAMP and then they want to know what you're doing with him. We haven't got him yet. Does that make sense? (Danika, focus group, June 2019)

There are multiple other services that manage referral systems, such as the Aboriginal-specific Victorian Police e-Referral program operating out of VALS, which is offered to Aboriginal people who have come in contact with police but have not been charged. It is an early intervention referral program that aims to link people to relevant support services in their area. The referral service, although based in Shepparton, is offered to Aboriginal people across Victoria.

Interagency networks

At all field sites there were multiple interagency family violence networks, operating at local, state and multi-jurisdictional levels. Several local networks were in place to assess high-risk clients across agencies, such as the Risk Assessment Management Panels (RAMPs) that operate in both Mildura and Wodonga. RAMPs were first instated in 2016 and are generally held one to two times a month. The panel memberships are made up of senior workers from community corrections, child protection, child and family services, alcohol and other drugs services, community health services, mental health services, housing, education, specialist family violence services, Victoria police and Aboriginal community-controlled organisations. The aim of the panels is to keep victims of family violence safe by putting strategies in place to hold perpetrators accountable for their violence. Referrals are made by different services to a RAMP, which are then assessed and placed in risk categories. Depending on the level of risk, the panel will determine an interagency

action plan. On the New South Wales side of the border, Safety Action Meetings (SAMs) provide similar interagency risk assessment of high-risk family violence cases, with a comparable membership of services. However, one service provider explained that SAMs were set up much later than RAMPs and cross-border issues were not addressed:

And frustratingly though, well the SAM system only just got set up in the last 12 months here, locally. There was nothing from the New South Wales people in Sydney who developed that system about cross-border. And when the person came down to train everyone about it, the constant question was, how does it work on the border, and information sharing with the Victorian side, and intercepting? And they were just like, oh well, it's not really designed ... Frustrating things. (Leanne, focus group, October 2018)

However, RAMP and SAM committees do liaise on an ad hoc basis regarding specific cross-border clients, as explained by one service provider:

I know the New South Wales service that coordinates the SAM meetings locally, the Safety Action Meetings, if they've got a family that's hopping across from New South Wales to Victoria, they do liaise with the Victorian RAMP committee as well to let them know sort of what's going on. I don't know if that's just a local nuance or if that's happening more broadly. But there is that sort of higher level stuff happening as well. (Emma, focus group, October 2018)

Another service provider noted that there is still not enough information sharing between the two groups for people living in border towns:

The child protection legislation is different on both sides of the border, your police forces are different on both sides of the border. What one will see as important another won't see as important. Your RAMP here does not talk to the SAM there. And so, the RAMP is your Risk Assessment and Management Panel, so that is your high-risk cases, whole-family violence, so women who are at serious or imminent threat. Your New South Wales panel and your Victorian panel are different panels. It's a bridge. We can have offenders that live on one side of the border and victims that live on the other side of the border. There is

no information sharing legislation with child protection. (Amy, interview, June 2019)

In Victoria, an example of a statewide interagency network is the Dhelk Dja Action Group (formerly known as the Indigenous Family Violence Regional Action Group). This group is made up of interagency stakeholders from government and services including the Department of Justice, the Victorian Aboriginal Child Care Agency, not-for-profit family service providers, Ngwala Willumbong, Department of Premier and Cabinet, Victoria Police, Gathering Place, the Orange Door and other Aboriginal community members. The intention of this network is to provide a process by which Aboriginal communities can inform government about the progress of the Dhelk Dja strategy. An Aboriginal service provider explained that he thought some of the opportunities provided by statewide groups such as Dhelk Dja were giving local communities a voice in how family violence is managed:

But those groups are around putting community in the driver seat to, you know, like government can see the numbers come up and they can develop their programs and send it back down the chain or fund an organisation. But this gives the community, you know, I mean, the opportunity to say that we've got, you know, women's programs but we can think of our men, like, the community are saying, you know, it might be their brother they're talking about, an uncle or their dad or something, they've got nothing, you know, and they want to change, so what are we doing for them. You know, so they'll, through that CIF [Victoria's Aboriginal Communities Initiatives Fund] and through the regional action plans, through the regional groups developing their own action plans aligned with the state plan, we get to localise the needs. (Joshua, interview, October 2018)

However, some service providers expressed their frustration regarding the effectiveness of some of the statewide networks and groups they sat on. For example, one Aboriginal worker noted:

I, last night, looked, 227 [RCFV] recommendations and 120 have been rolled out ... So that's gained momentum, but how that's going to be dealt with, that's just, it's really, everybody's got different views. (Danika, focus group, June 2019)

General availability, accessibility and acceptability issues at the field sites

In the family violence legal and support sector in Mildura and Albury–Wodonga, there were several cross-sectoral issues that were identified by this research related to the availability, accessibility and acceptability of services to Aboriginal women experiencing family violence. The main factors negatively impacting on women's use of the services were the lack of perceived privacy in the Aboriginal community-controlled sector, the need for greater cultural safety in mainstream organisations, and the insecurity and underfunding of vital legal and support services. A key factor that acted as an enabling feature for women's perceived acceptability of a service in any sector was the presence of Aboriginal workers.

Greater privacy needed in the Aboriginal community-controlled service sector

Family violence support services for Aboriginal and Torres Strait Islander people in Mildura and Albury–Wodonga, delivered by both mainstream and Aboriginal community-controlled organisations, have varying degrees of enabling features and barriers to access for Aboriginal victims of family violence in these locations.

Aboriginal women and service providers from both sectors agreed that Aboriginal-specific services were more likely to deliver holistic services using culturally secure practices. Further, specific features such as higher ratios of Aboriginal workers were also noted as appealing for some Aboriginal women participating in the research. However, the main barrier to women accessing Aboriginal and Torres Strait Islander services was the perceived lack of privacy and confidentiality, which was raised during many interviews with victims, service providers and referral services. As one mainstream service provider noted:

Because it's a small community and there's so many family and so many family members that might be working within Aboriginal services as well, become known to, well ... So, knowing that this person is in there, so family members become aware and then creates tension between family members, so it creates more violence around that person. (Eliza, focus group, August 2019)

A referral service worker also discussed how many of her clients prefer not to use Aboriginal-specific services:

They're open with me too and they'll say, well, which you probably already know, it's around about, it's an Aboriginal organisation and family and extended family members work in that organisation, so we want to keep our confidentiality. (Carmen, focus group, October 2018)

One Aboriginal woman who had experienced family violence explained why she chose to use mainstream services:

Yeah and I'd never use my own services around here, Aboriginal services ... They're the biggest gossipers going. They're the most hypocritical people that have walked the earth really. You shouldn't judge people. It's got like that in this community. It's appalling this community. (Evie, focus group, September 2019)

Racism and lack of cultural safety in mainstream services

Mainstream services in Mildura and Albury–Wodonga were reported to have lower waiting times and perceived higher levels of privacy for Aboriginal people, however the acceptability of these services was regularly questioned by participants due to issues of cultural safety and racism. An Aboriginal service provider gave an example of an experience of one of her clients when accessing the local hospital:

When an Aboriginal woman, like a client of mine, a pregnant woman, was admitted to the hospital at 1 o'clock in the morning, and she was 22 weeks pregnant, she had pain all in her abdomen, so she went in there, they monitored her for, I think, three hours, gave her Panadol and sent her home. She had no license, no-one to pick her up, she told them that, "Can you just call me a taxi, or can I have a cab voucher or something like that?" "No, we can't do that." So, 3 o'clock in the morning, this woman walked it'd have to be about an hour walk home; three in the morning, pouring rain, freezing, pregnant, still in pain with nothing but Panadol in her system. That's how our hospitals are unsafe because every white person I've spoken to, and even my experience actually there, was different to how they treat those of our darker skin mob over there. (Kate, interview, October 2018)

The short-term, insecure resourcing of services

Many of the service providers participating in this study spoke of the fluctuating and short-term funding arrangements they received to resource their service. Some discussed how this impacted on workforce planning and others on the entire viability of their service provision.

The uncertain resourcing of services in the sector contributed to the complexity of services and programs offered, with names of services and the programs offered sometimes changing, services opening and then ceasing operation, or programs swapping from one organisation to another over time. As noted by Judy, a family violence-specific service provider: "The system is very complex. Can you imagine being a woman in crisis? 'Where do I go? What do I do? Who is going to help me?'" (interview, October 2018). One Aboriginal woman who had experienced family violence over many years noted, "You start with this service and then you've got to go to another service and another service and another service" (Maureen, focus group, August 2019). Thus, service reliability was reported to be of high significance for Aboriginal women experiencing family violence in this study. Often women trusted very few service providers and were reluctant to engage broadly across the sector, yet experienced very high levels of risk. If the specific legal and support services they relied on closed due to the removal or diversion of funds to another organisation, they were likely to cycle back into contexts where they experienced further violence. One service provider simply stated that "in terms of funding, just further funding and for a longer period ... that's not something our clients need to deal with, that instability" (Jasmine, interview, October 2018).

Aboriginal service providers

One feature reported to enable access to services in both Aboriginal and mainstream legal and support service sectors was the presence of Aboriginal and Torres Strait Islander workers. Aboriginal participants explained that Aboriginal workers were usually far quicker to observe and understand family violence dynamics and intersectional issues arising for Aboriginal families. Riley, an Aboriginal service provider who has also experienced violence, explained:

And that question around the male ... most of the workers realise when they go into a house and a man is there and

the man's doing a lot of the influencing, they can see that influence, especially Aboriginal workers, they're good to pick up on those cues. (Riley, interview, August 2019)

Participants from the Aboriginal service sector and women who were victims of family violence also noted how Aboriginal outreach workers from Aboriginal-specific services improved the engagement of clients by providing more holistic, cross-sectoral services. A service provider from one Aboriginal organisation noted:

... [the Aboriginal outreach worker] knows and she's got links with the police, with the lady to call at the police station who deals with the domestic violence. She sits on the panel with the police. There's a little group that meet—I'm not even sure how often. I think monthly or two-monthly kind of thing—working out ... she's fighting for—so if a police sees someone and they know that they—say that they are [our service's] clients, that that policeman can tell her so she can start offering assistance to the family ... she'll find out if the AVO's still current. She will even say—for an example, if we've got a pregnant lady about to have a baby and coming towards our service, kind of thing, she'll find out what's going on ... and the guy's been sent to prison, kind of thing ... she'll do the groundwork before they even become our client, working out when that AVO's expired, just so steps are in place. Does [the client] feel safe at home before he gets released from jail and all that sort of stuff ... they trust her, and she is able to support them way better than I can ... Court support, she'll do as well. (Jennifer, interview, October 2018)

Although Aboriginal workers generally contributed to greater acceptability for all services, a major concern noted by many of our informants was that *any* barriers to availability, access or acceptability of services in any sector made the most vulnerable women less likely to seek any support in times of high risk. As one support worker noted: “So, they stay in the home and put up with it. Complete distrust of organisations, perceived or actual racism, by mainstream organisations” (Cheryl, focus group, July 2019). Our findings indicate that to improve the availability, accessibility and acceptability of services to better enable all Aboriginal women experiencing family violence to seek and access appropriate support and legal services, there are four key factors that must be addressed as a matter of urgency:

1. The provision of greater and more secure resources: a) for the Aboriginal service sector to enable more programs and supports in areas of high demand such as mental health and counselling services; and b) to appropriately train, employ and retain more Aboriginal workers across all sectors catering to Aboriginal women experiencing family violence. These workers must be empowered to design and employ cultural protocols for their clients and their organisations, especially in the mainstream sector.
2. The development and employment of rigorous, transparent protocols and procedures in the Aboriginal service sector that effectively monitor and safeguard the privacy and confidentiality of clients experiencing family violence: for effectiveness, these procedures and protocols need to be applied at all levels of organisations from boards of directors through to administrative staff and caseworkers.
3. The development and implementation of strategies for mainstream services to shift underlying workplace cultures and practices to provide cultural safety for Aboriginal women: one strategy that could be employed in the first instance could be for services to adopt a cultural competence model that is embedded systemically, organisationally, professionally and individually (National Health and Medical Research Council, 2006).
4. “Inclusive aesthetics” and “visible signposts” based in Aboriginal cultural iconography are used in Aboriginal-controlled service settings to indicate that Aboriginal and Torres Strait Islander people are welcome in waiting rooms and throughout buildings. Trained in participant observation as anthropologists, the researchers were also bound by ethics requirements, and hence photographing the rooms of the Aboriginal services we visited would have been entirely inappropriate and intrusive. We observed and discussed in our research debriefing sessions the local art and material culture in the buildings of the Aboriginal community-controlled services we entered and for ethical reasons we cannot share the data in relation to these matters. Suffice it to say that we concluded that the abundance of local artworks, material culture and design work on posters and murals were subtle declarations of strong Aboriginal cultural and language identities whose origins predate British colonisation and, hence, a way of speaking back to the very strong sense of existential threat that Aboriginal people expressed in various ways to us. The power of Aboriginal traditional symbolism used in art

and health promotion materials is an effective means of encouraging Aboriginal people to feel a sense of belonging in an environment such as a family violence service, health service or other Aboriginal community-controlled service. In such services in Mildura, Wodonga and Albury, and at the Koori Court in Mildura, the researchers observed Aboriginal flags on flag poles or on walls in reception areas, art and handmade objects carved from wood in waiting rooms and throughout buildings, Aboriginal and Torres Strait Islander-specific health promotion and other educational materials, and visible signage of local Aboriginal languages. We should not have to say that art and mother tongue communication are universal human symbolic activities, but it is clear that this is not understood. Government, non-government and private sector services should commission local artworks, use signage in local Aboriginal languages and feature the Aboriginal flag prominently to indicate to Aboriginal clients that they are welcome. These measures do not replace the need for cultural awareness training informed by local histories and conditions for all staff in the sector.

Audit of family violence legislation

This section reports on the audit of family violence legislation conducted for this research. Family violence is regulated by an ad hoc framework of civil, criminal and administrative Commonwealth and state and territory laws, as well as governmental and police policies and procedures. It is addressed in numerous areas, including family law, intervention/protection orders and child protection, as well as criminal law, through offences including assault, manslaughter and murder. This ad hoc framework has its basis in the differing powers and responsibilities of the Commonwealth, states and territories.

Previously, federalism and the distinct and separate legal codes in each state and territory resulted in a lack of uniformity in laws and policies on family violence. For example, where child protection issues arise, families frequently come into contact with more than one court, potentially giving rise to delays and uncertainties with legal arrangements for children and others. This was addressed to some extent in 2011, when COAG created the *National Plan to Reduce Violence against*

Women and their Children 2010–2022 (the National Plan), now in its fourth iteration (DSS, 2019). The National Plan advocated for a National Domestic Violence Order Scheme that enables domestic and family violence orders (DVOs/FVOs) made in one jurisdiction to be recognised in all other jurisdictions. This scheme was initially intended to be facilitated by a national information system, the National Order Reference System, to assist in cross-jurisdictional information sharing. However, the National Order Reference System has been placed on indefinite hold. In the interim, information sharing arrangements are in place, including the use of the National Police Reference System and a range of manual processes to support the National Domestic Violence Order Scheme.

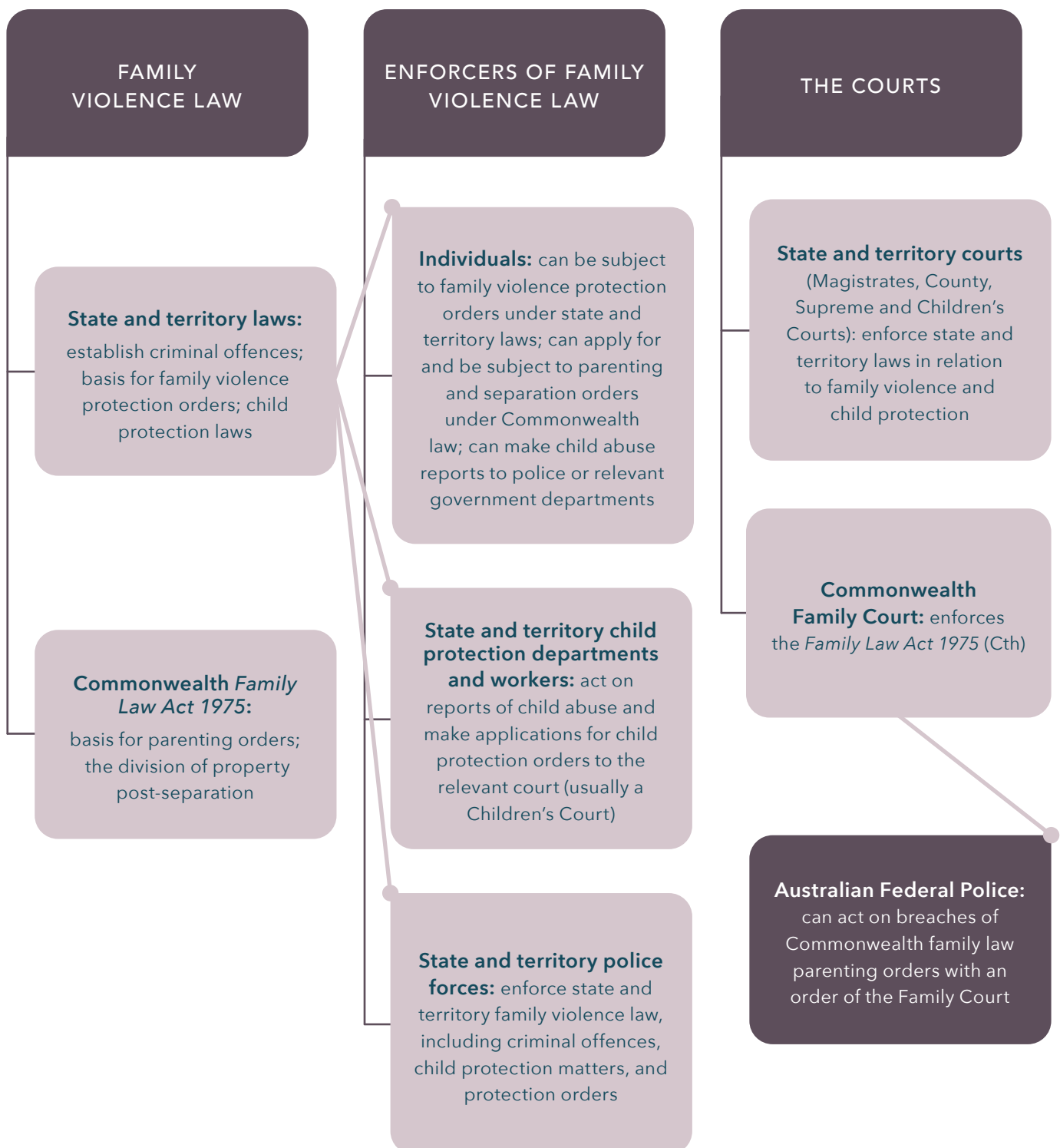
State and territory governments are to use the National Plan as a guide in their response to family and domestic violence. This has led to the creation of multiple legislative and policy responses intended to address individual behaviours that amount to family and domestic violence. Although the National Plan and the initiatives taken by COAG aim to make treatment of family violence at law uniform across the jurisdictions, the differences in legislation, policies, responsibilities of departments, implementation, procedures and services continue to result in complex environments that are difficult for both service providers and victims to navigate. Figure 3 shows the subject matter of relevant Commonwealth, state and territory laws, how these relate to each other, and how they are enforced.

Criminal law: State- and territory-based

The criminal parts of the family violence law framework are primarily *punitive*; that is, they are designed to punish perpetrators of family violence. The criminal law regulates the family violence-related offences that are charged by the state against individuals. Police almost always bring these offences under state and territory laws. The police themselves are governed by relevant criminal procedural laws and policing policies.

The criminal offences themselves are not family violence-specific—they are offences that apply to the population at large. Nevertheless, family violence makes up a significant

Figure 3: Family violence law



proportion of those crimes reported to police, despite being under-recorded for a variety of reasons, including because many people and some victims do not recognise that what is happening is, in fact, family violence; others choose not to report it or are unable to. Sometimes incidents are not recorded as family violence or are not recorded at all. (State of Victoria, 2016a, p. 18)

For example, the RCFV noted that in 2013–14,

Offences arising out of family violence incidents accounted for 41.7 percent of all crimes against the person ... Family violence-related assaults accounted for 45.7 percent of all assaults ... Family violence-related rape offences made up 34 percent of all rape offences ... Family violence-related abduction or kidnapping accounted for 41.7 percent of all abductions. (State of Victoria, 2016b, p. 5)

The most common offence specific to family violence is breach of a protection order. There have been proposals to introduce family violence-specific offences into all jurisdictions (sometimes called “coercive control laws”), in line with reforms in the United Kingdom. However, existing legislation is rarely used for prosecution in Australia, although there is a strangulation offence in Queensland and a persistent offender offence in Tasmania (Douglas, 2015).

Section 315A of the *Criminal Code Act 1899* (Qld) provides that choking, suffocation or strangulation in a domestic setting is a crime:

- (1) A person commits a crime if—
- (a) the person unlawfully chokes, suffocates or strangles another person, without the other person’s consent; and
 - (b) either—
 - (i) the person is in a domestic relationship with the other person; or
 - (ii) the choking, suffocation or strangulation is associated domestic violence under the *Domestic and Family Violence Protection Act 2012*.

Penalty—

Maximum penalty—7 years imprisonment.

- (2) An assault is not an element of an offence against subsection (1).

Douglas and Fitzgerald (2014, p. 253) observe that the charge of stalking in common law countries “provides a relevant parallel”:

Stalking offences were introduced in large part because of the concern that stalking was often a prelude to violent behaviour against intimates ... As with strangulation, most stalking victims are female and most stalking perpetrators are male. Stalking is also a well-recognised risk factor for further abuse, such as threats and physical assault, and it is incorporated in most domestic violence risk assessment tools, although it is not considered as dangerous as strangulation.

The RCFV found that the creation of family violence-specific offences would be a symbolic measure but would likely have

no impact on incidences of family violence (State of Victoria, 2016b, p. 189).

Some states and territories have specific legislative provisions about gathering evidence in family violence prosecutions. New South Wales, for example, introduced amendments to criminal procedures legislation in 2015 which

[allow] for video-recorded statements taken using body-worn cameras to be admitted as evidence. The Domestic Violence Evidence in Chief initiative aims to reduce trauma for victims, reduce difficulties associated with remembering incident details, bring the victim’s experience to the courtroom, and reduce or eliminate intimidation of the victim to change their evidence, thereby increasing guilty pleas and conviction rates. (State of Victoria, 2016c, p. 80; see also pt 4B of ch 6 of the *Criminal Procedure Act 1986* [NSW]).

Family violence legislation in Victoria and New South Wales: Definitions of “family violence”

Victoria

In Victoria, the meaning of the term “family violence” is defined at s 5 of the *Family Violence Protection Act 2008*:

Meaning of family violence

- (1) For the purposes of this Act, family violence is—
- (a) behaviour by a person towards a family member of that person if that behaviour—
 - (i) is physically or sexually abusive; or
 - (ii) is emotionally or psychologically abusive; or
 - (iii) is economically abusive; or
 - (iv) is threatening; or
 - (v) is coercive; or
 - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
 - (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

Examples to s 5(1)(b) amended by No. 33/2018 s 15.

Examples

(1) The following behaviour may constitute family violence under paragraph (a)—

- using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage;
- using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.

(2) The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—

- overhearing threats of physical abuse by one family member towards another family member;
- seeing or hearing an assault of a family member by another family member;
- comforting or providing assistance to a family member who has been physically abused by another family member;
- cleaning up a site after a family member has intentionally damaged another family member's property;
- being present when police officers attend an incident involving physical abuse of a family member by another family member.

(3) Without limiting subsection (1), “family violence” includes the following behaviour—

- (a) assaulting or causing personal injury to a family member or threatening to do so;
- (b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to engage in such behaviour;
- (c) intentionally damaging a family member's property, or threatening to do so;
- (d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;
- (e) causing or threatening to cause the death of, or injury

to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.

(4) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.

New South Wales

In New South Wales, the *Crimes (Domestic and Personal Violence) Act 2007* defines a number of relevant concepts. Section 9 sets out the objects of the Act, giving the police and courts a broad remit to deal with domestic violence and have regard to Indigenous family violence:

(1) The objects of this Act in relation to domestic violence are—

- (a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and
- (b) to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons, and
- (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and
- (d) to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.

(2) This Act aims to achieve those objects by—

- (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, intimidation (including harassment) and stalking, and
- (b) ensuring that access to courts is as safe, speedy, inexpensive and simple as is consistent with justice.

(3) In enacting this Act, Parliament recognises—

- (a) that domestic violence, in all its forms, is unacceptable behaviour, and
- (b) that domestic violence is predominantly perpetrated by men against women and children, and

(c) that domestic violence occurs in all sectors of the community, and

(d) that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years, and

(e) that domestic violence occurs in traditional and non-traditional settings, and

(f) the particularly vulnerable position of children who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future physical, psychological and emotional well-being, and

(g) the particular impact of domestic violence on Aboriginal persons and Torres Strait Islanders, persons from culturally and linguistically diverse backgrounds, persons from gay, lesbian, bisexual, transgender and intersex communities, older persons and persons with disabilities, and

(h) that domestic violence is best addressed through a co-ordinated legal and social response of assistance and prevention of violence and, in certain cases, may be the subject of appropriate intervention by the court.

(4) A court that, or person who, exercises any power conferred by or under this Act in relation to domestic violence must be guided in the exercise of that power by the objects referred to in this section.

At ss 11, 12, 13 and 14, the meaning of “domestic violence offence” is defined. It is required that a conviction is recorded as a criminal offence; stalking or intimidation with intent to cause fear of physical or mental harm is an offence, and it is an offence to contravene an apprehended violence order. The definition of “domestic violence offence” is as follows:

(1) In this Act, domestic violence offence means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—

(a) a personal violence offence, or

(b) an offence (other than a personal violence offence) that arises from substantially the same circumstances

as those from which a personal violence offence has arisen, or

(c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

(2) In this section, offence includes an offence under the *Criminal Code Act 1995* of the Commonwealth.

Also, in New South Wales, the term “primary victim” is defined in the same way as in the Victorian legislation in the *Victims Rights and Support Act 2013* (NSW) at s 20:

(1) A “primary victim” of an act of violence is a person who is injured, or dies, as a direct result of that act.

(2) A primary victim of an act of violence extends to a person who is injured, or dies, as a direct result of:

(a) trying to prevent another person from committing that act, or

(b) trying to help or rescue another person against whom that act is being committed or has just been committed, or

(c) trying to arrest another person who is committing, or who has just committed, that act.

The civil aspects of the family violence law framework are mainly *protective*, in that they prescribe methods and means by which victims of domestic and family violence are to be protected. In contrast with criminal offences, these protective measures can be brought by both police and those subject to family violence. They are generally heard by Magistrates Courts and, once granted, are enforced by police. Since 2017, all Australian states and territories have passed legislation giving effect to the National Domestic Violence Order Scheme. Under the scheme, all protection orders made in any Australian jurisdiction on or after 25 November 2017 are automatically recognised and enforceable nationally without any further action by the protected person (Australasian Institute of Judicial Administration, 2019).

The effectiveness of protection orders in protecting victims of family violence has been widely questioned. A 2018 study found that protection orders

appear to be more effective under certain circumstances, including when the victim has fewer ties to the perpetrator and a greater capacity for independence, and less effective for offenders with a history of crime, violence and mental health issues. (Dowling, Morgan, Hulme, Manning, & Wong, 2018, p. 1)

The same study found that in situations of family violence, protection orders have only a small protective effect on the frequency of victims being re-victimised, although they may have an impact on reducing the severity of future harm (Dowling et al., 2018). This is most likely because when the offender is no longer permitted within a set distance from the victim, they increase the effort the offender must go to in order to re-offend (Dowling et al., 2018).

The RCFV noted that intervention orders require the filling out of lengthy and complicated forms (State of Victoria, 2016c); also noted were challenges created by those who cause multiple delays by cross-applying for intervention orders, initiating proceedings in a different court venue, “limiting victims’ access to legal services as a result of conflicts of interest, and contributing to a misperception that the violence between family members is usually mutual” (pp. 124– 125). The RCFV was “informed that Aboriginal and Torres Strait Islander people could find courts culturally insensitive” (State of Victoria, 2016c, p. 229). There was also evidence given that “family violence training and specialisation and cultural awareness training for Magistrates was important to ensure Aboriginal and Torres Strait Islander people receive appropriate and effective legal outcomes” (State of Victoria, 2016c, p. 140).

The table in Appendix A outlines all state and territory protection order schemes. The grounds on which a protection order can be granted differs between jurisdictions, as does the definition of who can be protected by such an order. In Victoria and New South Wales, “family member” (Victoria) and “domestic relationship” are defined broadly. The Victorian *Family Violence Protection Act 2008* notes that the definition of “relative” in relation to Aboriginal

and Torres Strait Islander relationships “includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person’s relative” (s 10[b]).

Child protection: State- and territory-based

The administrative aspects of the family violence law framework relate to states’ and territories’ powers in relation to child protection and removal. Legislation in each state and territory gives relevant government departments and officials certain powers in relation to child protection, with ultimate authority usually resting with the Children’s Court of each state and territory (in the Australian Capital Territory and Tasmania, the Children’s Court is a branch of the Magistrates Court, but it is a separate court in every other jurisdiction and is known as the Youth Court in South Australia). It is widely recognised that family violence is a significant factor in an individual’s involvement in the child protection system (Family Matters, 2019). Families engaged in the child protection system might also be involved in family law proceedings, which can give rise to issues of complexity, delay and uncertainty, as highlighted above.

The key legislation in relation to child protection is set out in Appendix B. While the Commonwealth does not have legislative powers in relation to child protection, it nevertheless has implemented the *National Framework for Protecting Australia’s Children 2009–2020* (the National Framework; COAG, 2009) which all states and territories have committed to follow (Family Matters, 2019). The National Framework states that Aboriginal and Torres Strait Islander children should receive “culturally appropriate care and support ... to enhance their wellbeing” (Family Matters, 2019, p. 28). In relation to child protection, a key part of the national policy framework is the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP; Tilbury, Burton, Sydenham, Boss, & Louw, 2013). This principle was developed in the 1970s out of a “grassroots community movement initiated by Aboriginal and Islander Child Care Agencies” (Arney, Iannos, Chong, McDougall, & Parkinson, 2015, p. 4). Its goals include reducing rates of child removal, and enhancing and preserving children’s connections to family, community and culture (Tilbury et al., 2013).

In New South Wales, the *Crimes (Domestic and Personal Violence) Act 2007* provides additional measures for support and protection of children and others in proceedings at pt 9, ss 38–45. Among other things, s 38 provides for apprehended violence orders and empowers the court to issue an order for the protection of a child in a domestic relationship involving violence even though an application for the order was not made by a police officer. In a case in which a person is found guilty of a serious offence and where no order has been issued, the court must issue an apprehended violence order for the protection of a child, even though an application for the order was not made by a police officer. The court must make an interim court order against a person charged with a serious offence, “for the protection of the person against whom the offence appears to have been committed whether or not an application for an order has been made”. These reforms are necessary to protect victims of domestic violence (see *Crimes [Domestic and Personal Violence] Act 2007* [NSW], pt 9, ss 38–45).

All jurisdictions have mandatory reporting requirements, although anyone can report a potential child protection issue to the relevant services (see s 183 of the *Children, Youth and Families Act 2005* [Vic]; s 24 of the *Children and Young Persons [Care and Protection] Act 1998* [NSW]). In New South Wales, the mandatory reporting requirements apply to people working with children who provide specified services, including law enforcement, and their managers or supervisors (see Table 6). The obligation to report arises where the professional “suspects on reasonable grounds that a child is at risk of significant harm” (s 27 *Children and Young Persons [Care and Protection] Act 1998* [NSW]). This includes where a child is “living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm” (s 23). Once a report is made, however, the literature suggests that there is a widespread view that any responsibility ends (NSW Legislative Council General Purpose Standing Committee, 2017, pp. 174–175). Mandatory reporting also applies to a “pre-natal” report where there are reasonable grounds to suspect that an unborn “may be at risk of harm after his or her birth” (s 25, *Children and Young Persons [Care and Protection] Act 1998* [NSW]).

The *Children and Young Persons (Care and Protection) Act 1998* (NSW) incorporates the ACPP, which includes self-determination in relation to the care and protection of Aboriginal and Torres Strait Islander children and young people (s 11), participation in decision-making regarding the placement of children (s 12), and principles establishing a general order of placement (s 13). The Act requires that children should first be placed with extended family or kinship, then with a member of their community, then with a family near the usual family residence, and lastly with a person approved by the Secretary of the Department of Communities and Justice.

However, where there is a risk of significant harm—such as exposure to family violence—the placement principle does not apply (s 13[7]). The Aboriginal Case Management Policy provides an “operational framework for all practitioners working with Aboriginal and Torres Strait Islander children, young people and families” (NSW Department of Communities and Justice, 2019, p. 2).

In New South Wales, it has been found that one of the issues with the implementation of the ACPP is that family and community services caseworkers do not comply with the requirements under s 13 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), and they are not held accountable (Davis, 2019, p. 106). Additionally, monitoring of compliance does not focus on the broader application of the principle regarding family preservation, restoration and participation in care planning for Aboriginal and Torres Strait Islander children (NSW Child, Family and Community Peak Aboriginal Corporation, 2019).

The ACPP has been significantly compromised, however, by amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW). The Children and Young Persons (Care and Protection) Amendment Bill 2018 (NSW) was passed despite community opposition because it poses a high risk of permanently removing another generation of Aboriginal children from their families. Longbottom et al. (2019, p. 1499) noted:

[Between] 2002 and 2011, children in NSW with a history of receiving child protective services were reported to

Table 6: Child protection mandatory reporting in New South Wales and Victoria

Jurisdiction	Mandated reporters	Abuse types	Legal provisions	Aboriginal Child Placement Principle
New South Wales	Managers or workers providing healthcare, welfare, education, children's services, residential services, law enforcement who work solely or in part with children	<ul style="list-style-type: none"> Sexual, physical or psychological abuse neglect domestic violence exposure 	Sections 23, 27 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)	<p>Sections 7-8 set out preference for Aboriginal children to be placed in kinship care.</p> <p>Aboriginal families, organisations and communities must be afforded the opportunity to participate in placement decisions</p>
Victoria	Medical practitioners, nurses, midwives, teachers (including early childhood), out-of-home care workers, youth justice workers, psychologists, school principals, police officers	<ul style="list-style-type: none"> Physical injury sexual abuse or offence 	<p>Sections 182(1)(a)-(e), 184, 162(c)-(d) of the <i>Children, Youth and Families Act 2005</i> (Vic)</p> <p>&</p> <p>s 327 of the <i>Crimes Act 1958</i> (Vic)</p>	<p>Sections 10, 12-14 set out priority placement for Aboriginal children:</p> <ol style="list-style-type: none"> kinship care Aboriginal family from local community non-Aboriginal family from local area. <p>Aboriginal organisation must be consulted regarding placement decisions</p>

be 1.4 times more likely to die than children who have never come into contact with the child protection system.

The amended law provides for an arbitrary maximum period of two years within which a decision about permanent placement has to be made, guardianship orders that can be arranged without parental consent, amendments to the application process of family restoration, and removal of parental consent for adoption on permanent orders. It “conflicts with the principles of family restoration and healing for Indigenous people” (Longbottom et al., 2019, p. 1499).

For Indigenous Australian children, this new law risks a new Stolen Generation in that these new provisions are likely to enable permanent separation of another generation of Aboriginal children from their families. Given the very high rates of Aboriginal children in the child protection system currently, these new powers will add to the distress of Aboriginal parents and undermine their ability to hold their families together (see also Whittaker & Libesman, 2018).

In Victoria, the *Children, Youth and Families Act 2005* also has mandatory reporting for a wide range of abuse and neglect that is likely to result in “significant harm” (see Table 6). The best interests of the child are paramount. In relation to decisions concerning whether Aboriginal children are to be placed in out-of-home care, additional considerations come in to play in recognition of the principles of Aboriginal self-management and self-determination so that members of the Aboriginal community and other respected Aboriginal people can contribute their views (*Children, Youth and Families Act 2005* [Vic], s 12[1][a]). The ACPP is a guiding principle but is not mandatory. It requires that decision-makers have regard to the advice of a relevant Aboriginal agency and a specific placement hierarchy to maintain the child’s cultural and geographical connection to their community (ss 12–13). As of June 2019, 46 percent of Aboriginal children and young people on a contractible order in care were managed by an Aboriginal community-controlled organisation (Family Matters, 2019, p. 46).

Family violence has been found to be the single biggest cause of Aboriginal child protection involvement in Victoria (Aboriginal Family Violence Prevention and Legal Services Victoria, 2015, p. 4). Section 323 of the *Crimes Act 1958* (Vic) places restrictions on the making of a permanent care order in respect of an Aboriginal child with a non-Aboriginal carer. It mandates that the relevant authority be satisfied that the court order will accord with the ACPP (s 323[a][iii]), that the court has received a report from an Aboriginal agency recommending the making of the order (s 323[b]), and that a cultural plan for the child has been prepared (s 323[c]).

Numerous barriers to implementation of the ACPP occur in practice. Arney, Iannos, Chong, McDougall, and Parkinson (2015, pp. 7–8) wrote on concerns in all jurisdictions in relation to:

- shortage of Aboriginal and Torres Strait Islander foster and kinship carers
- poor identification and assessment of carers
- inconsistent involvement of, and support for, Aboriginal and Torres Strait Islander people and organisations in child protection decision-making
- deficiencies in the provision of cultural care and connection to culture and community
- practice and systemic issues impacting the operation of Aboriginal and Torres Strait Islander child care agencies
- inconsistent quantification, measurement and monitoring of the ACPP across jurisdictions.

Furthermore, Arney et al. (2015, p. 11) highlighted that consultation with Aboriginal agencies and individuals is being implemented as a “tick the box” exercise.

Family law: Commonwealth-based

In Australia, family law is regulated by the Commonwealth’s *Family Law Act 1975*. The Act regulates the dissolution of marriage (except in Western Australia, which is regulated by the *Family Court Act 1997 [WA]*) and de facto relationships, and makes orders in relation to parental responsibility for children and the division of finances and property. According to the *Family Law Act 1975* (Cth), family violence is “violent, threatening or other behaviours by a

person that coerces or controls a member of the person’s family ... or causes the family member to be fearful” (s 4AB). These behaviours include assault; stalking; repeated derogatory taunts; damaging property or animals; withholding finances; stopping a family member from connecting with family, friends and culture; and depriving a person of their liberty (s 4AB). The Act specifies that a child is exposed to family violence when they witness family violence, comfort a family member victim of family violence, clean up after a family violence incident, or are present when police or an ambulance attend a family violence incident (s 4AB[4]). The Act also specifies that a child can be subject to child abuse where they are exposed to family violence (s 4).

Changes made to the *Family Law Act 1975* (Cth) in 2006 were criticised for being seen to place the rights of parents over the right of children to be protected from harm (Australian Law Reform Commission [ALRC] & New South Wales Law Reform Commission [NSWLRC], 2010). For example, the concept of “equal shared parental responsibility” (s 61DA), introduced into the Act in 2006, mandates that the court presumes that it is in the best interest of children for their parents to have equal shared parental responsibility (although not necessarily equal time) for their care. For many parents, this provision is still misunderstood as equating to equal parenting time (Parkinson, 2013). While the legislation specified that this consideration does not apply in case of child abuse or family violence (s 61DA[2]), because the majority of parenting orders are made without the scrutiny of a court via Family Dispute Resolution services, some criticised the provision for placing undue pressure on parents subject to family violence (mothers in particular) to agree to arrangements not in their children’s best interest because of power differentials between these separating parents, and because of the time and cost of lengthy court battles. For example, Cleak, Schofield, and Bickerdike (2014) stated:

Implementation of family mediation policies in the context of family violence is nevertheless fraught. Research suggests that family violence is not always recognised by mediation practitioners and that even when it is recognised, appropriate actions aimed at creating or preserving safety are not always taken. Furthermore, practitioners express concern about the high percentage of families presenting with disclosed problems of family violence. For instance, 90% of couples attending divorce mediation reported

partner violence in one study and only about 7% of cases were actually screened out of mediation. (Cleak et al., 2014, p. 4, footnotes omitted)

The effects of the introduction of the concept of “equal shared parental responsibility” were ameliorated to some extent in 2011 with the addition of a definition of family violence and provisions stating that the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence should be given greater weight than the benefit to the child of having a meaningful relationship with both of the child’s parents (s 60CC[2A]), and that the court must, to the extent that it is possible to do so consistently with the child’s best interests, ensure that any parenting order made is consistent with any FVO, and does not expose a person to an unacceptable risk of family violence (s 60CG).

Despite the 2011 changes, Patrick Parkinson argued that “there still remains a need for greater clarity in the law about when family violence ought to lead to orders for sole parental responsibility and restrictions on contact” (Parkinson, 2013, p. 12). Attending Family Dispute Resolution services is compulsory before litigating in the Family Court in relation to parenting orders. While the provisions in relation to these services specify that they are not appropriate for cases involving family violence, the Australian and New South Wales Law Reform Commissions (2010) noted that many people experiencing family violence are nevertheless sent to these services.

However, the *Family Law Act 1975* (Cth) does not have any power to make or vary child protection or family violence protection orders. This means, as illustrated by Figure 3, that a child at risk of violence or abuse frequently comes into contact with more than one court, which may include any combination of the Children’s Court, Magistrates Court, another state court dealing with criminal proceedings following a violent incident, and the Family Court. The duplication of proceedings gives rise to uncertainty and delay, which are detrimental to a child’s wellbeing (ALRC & NSWLRC, 2010, p. 897). Additionally, issues raised in the RCFV included the following:

- Navigating the state and federal systems is often confusing for court users and can jeopardise the safety of people affected by family violence ...
- In addition to the complexity, expense and confusion they experience, their engagement with different courts requires them to re-tell their story and re-justify their position ...
- The involvement of so many parts of the justice system may also result in victims falling into the gaps. (State of Victoria, 2016b, pp. 181, 190, 191)

Family violence and child protection legislation as well as Commonwealth family law are inconsistent within jurisdictions and between jurisdictions. A more detailed review may identify other critical issues for reform and for further research and consideration. Measures to alleviate confusion and lengthy, complex court processes for family violence victims and perpetrators are particularly urgent, because of the risk that both victims and perpetrators will lose confidence in the police, justice and service systems, with the outcome that family violence will increase rather than diminish. Further details that demand attention are discussed in the recommendations below.

Conclusion

The body of evidence produced as an outcome of this research comprises critical and practical knowledge, analysis and insights into the experiences of Aboriginal women experiencing violence and the police, courts and other service providers who engage with them. This research contributes to our understanding of family violence against Aboriginal women and their children in regional areas of New South Wales and Victoria. The potential of this research and the recommendations to reduce Aboriginal family violence in Mildura, Wodonga and Albury, and further afield—especially in rural areas—is great if the recommendations and understandings are adopted by the Victorian and New South Wales governments.

The report prioritises the voices of Aboriginal and Torres Strait Islander women who have experienced violence. These women understand the vital necessity for greater reform and improvements to the legal and support service system they have engaged with; this enabled greater opportunity to identify gaps and barriers that exist and further explore potential solutions. It was an honour to work with the research participants, to gain a better understanding of the issues they raised, and to make recommendations that could reduce family violence and increase safety at home and in communities for Aboriginal women and children. We especially want to thank the research participants, both the victims and service providers, who were generous in giving their time and attention to this research.

The methodology adopted in this study provided an opportunity for Aboriginal women who experience family violence to participate, learn from and have control over their experiences. By validating these experiences, and creating space for their stories, this research has identified areas of policy, process and practice within the family violence legal and support service sector that should be improved to meet the needs of Aboriginal and Torres Strait Islander women experiencing family violence.

The recommendations that follow summarise the most urgent issues that the family violence service sector, police and courts require to improve the outcomes in reducing Aboriginal family violence. Aboriginal-specific family violence services across a range of service sectors, especially

mental health services, for victims and perpetrators require increased funding urgently.

Recommendations for policy and practice

The recommendations in this report were considered and conceptualised in the context of the severity of circumstances and dire need to remove barriers, with each attempting to provide insight that ensures the safety, support and protection of Aboriginal and Torres Strait Islander women experiencing family violence. Recommendations are made to increase support for the Aboriginal service sector, particularly for mental health and counselling services, training to retain Aboriginal personnel, and the adoption of cultural protocols and procedures for the sector. We recommend also that mainstream services change to improve their engagement with Aboriginal victims by adopting a cultural competence model (see Fredericks et al., 2017).

Aboriginal-specific family violence services for victims: Increased funding urgently required

There is an urgent need for increased funding to the Aboriginal-specific family violence services in Mildura, Wodonga and Albury. Increased accommodation and women's shelters are the most urgent and greatest needs. Both Indigenous victims of violence and service providers identified the extreme need for safe accommodation for victims, usually women and their children. Other Aboriginal-specific services are also in dire need, and these include legal services for Aboriginal victims of violence and general health practitioners and health workers able to provide holistic treatment and referral, psychiatric services for those with neurological disabilities, mental health services, and alcohol and other drugs services. Culturally appropriate services as a prerequisite for Aboriginal family violence responses are essential to achieve a reduction in the high rates of Aboriginal family violence. More effective measures for holding perpetrators of Aboriginal family violence accountable for their behaviours and to stop their violent behaviour are urgently required. At present, all measures are grossly inadequate, at systemic, community and individual levels. Aboriginal and Torres Strait Islander mothers, in particular, need better systemic

protection from their perpetrators. Further legal reform is required, especially to protect Aboriginal children and reduce the rates of their removal from their families. Further research is required to adequately detail the areas of need in the legislative environment in which Aboriginal victims of violence are seeking safety for themselves and their children. The researchers encountered problems with the quality and availability of data in some instances, although without the resources to investigate this further, our simple recommendation is that the rigour and accessibility of data relating to family violence in Aboriginal and Torres Strait Islander populations require urgent attention and research to enable much improved monitoring and evaluation of all programs in this sector.

Mental health: An increase in services urgently required

We recommend increased support, as a matter of urgency, for the Aboriginal service section in Mildura, Albury and Wodonga, and in rural areas of New South Wales and Victoria, particularly for mental health and counselling services, including diagnosis and treatment, for victims and perpetrators of Indigenous family violence.

We recommend that services for child mental health be increased in Mildura, Wodonga and Albury. The high demand for general and specialist mental health services for Aboriginal victims of family violence was repeatedly stressed by health and other service providers at all field sites.

We recommend that whenever possible Aboriginal-specific mental health services be provided to Aboriginal clients who have experienced family violence.

It is particularly important to provide timely, affordable and appropriate mental health and counselling services to Aboriginal victims of violence experiencing mental health issues in refuges due to the impact it has on other women and children in the women's shelters.

The long waiting lists for mental health services, specialist and general practitioner appointments are causing distress among Indigenous female victims of violence and deterring

perpetrators from seeking assistance and improving their behaviours.

Some Aboriginal women participating in this research reported often severe, enduring violence from intimate partners that recurred frequently. Some participants had been victimised repetitively by one or many perpetrators and had their children removed. Most of the women who participated in the interviews had relocated multiple times to escape their perpetrators, adding further to their stress.

These women also reported that their children suffered as a result of being removed from their families and being witnesses to the violence. They also reported suffering trauma, as did the service providers.

Intergenerational trauma is a recurring problem that contributes to the inability of both victims and perpetrators to create safe family homes and stop the violence. We recommend that the governments of Victoria and New South Wales engage key organisations and Indigenous professionals in the Aboriginal community-controlled sector to design and implement mental health and healing strategies to overcome intergenerational trauma among Indigenous family violence victims and perpetrators.

Many of the Aboriginal women who had experienced violence also had or continue to have alcohol and other drug dependencies, and have acquired a range of acute and sustained mental and physical health conditions.

We recommend increased services and access to services for Aboriginal people seeking assistance for rehabilitation and counselling for alcohol and other drug use and addictions in Mildura, Wodonga and Albury.

One of the preventative measures for reducing violence and increasing safety for women and children is constant case management of serial perpetrators of family violence. It was reported to the research team that many of the male offenders have alcohol and other drug addictions or are misusing alcohol and other drugs, and this can accelerate the violence. Other mature offenders with no other known contributing factors continue to breach protection orders,

and service providers regard these mature repeat offenders as having undiagnosed mental health issues or neurological disabilities. Some service providers in Mildura reported that 70–75 percent of all cases involve alcohol and/or other drug addiction or misuse. It was reported that perpetrators respond well to services such as emotional, psychological, and alcohol and other drugs counselling, as opposed to MBCPs. However, the waiting lists for these mental health and alcohol and other drugs services are too long, often as long as six months. The provision of these services remains urgent because of the high risk of violence against Aboriginal women that untreated alcohol and other drugs and mental health conditions pose to them.

Culturally appropriate services as a prerequisite for Aboriginal family violence responses

This research found that services that used culturally appropriate approaches to their delivery had the most success in breaking down barriers to access for Aboriginal and Torres Strait Islander clients. Some of the successful measures adopted in different support and legal services included:

- the use of visible signposts that indicate Aboriginal and Torres Strait Islander people are welcome in waiting rooms and throughout buildings. These included artworks, Aboriginal and Torres Strait Islander-specific health promotion or other educational materials, or visible signage of local Aboriginal language
- staff that are well informed about cultural safety principles and apply them in their service provision
- Aboriginal staff, including specific Aboriginal liaison officers
- staff with in-depth knowledge of the complexity of family violence issues, and particularly of Aboriginal and Torres Strait Islander family violence.

Our findings suggest that Aboriginal-specific services are most appropriate for some women, but for others mainstream services that are culturally safe can provide appropriate and accessible care.

Improving confidentiality provisions in the Aboriginal community-controlled sector

For many women, fear of a lack of confidentiality in Aboriginal organisations was a barrier to accessing these organisations' services. Although these organisations often provide the most culturally appropriate and effective support for Aboriginal women experiencing family violence, there is a clear need for greater accountability mechanisms to safeguard the privacy of victims.

Provision of early intervention across services and programs

The majority of support and legal services available to Aboriginal women experiencing family violence in Mildura and Albury–Wodonga are tertiary (crisis or post-crisis) services. Many women participating in the study explained the barriers to accessing services prior to crisis, and why their eventual engagement was not always voluntary. For these women, every interaction with any relevant service provider during their experience of violence could provide an opportunity for early intervention by identifying early signs of escalating violence. Douglas and Fitzgerald (2014, p. 231) provide national and international evidence for understanding strangulation as an indicator of escalating violence: “In risk assessment tools used by domestic violence workers and police, strangulation, short of causing death, is considered a ‘red flag’ for future serious abuse and fatality.”

Other opportunities for registering signs of violence and escalating violence include victims visiting general practitioners for injuries sustained; these too should be a “red flag” and victims should be referred to an Aboriginal community-controlled service or non-Indigenous social worker who can assist the victim to report to the police or seek safety. Also, education providers should be trained to recognise the signs of withdrawal in children, and maternal and child health workers to note protective or guarded behaviour. A systematic strategy should be developed with the engagement and consultation of Aboriginal and Torres Strait Islander communities to deliver universal early intervention family violence responses. This strategy should, at a minimum, include the following:

- early childhood and young people educational programs

- adult education related to navigating the legal and support services sector
- family violence training and skill development for all related service providers on how to identify the early signs and dynamics of family violence.

Shifting accountability away from Aboriginal and Torres Strait Islander women who have experienced family violence

Mechanisms that hold perpetrators to account for their violence are grossly inadequate, at systemic, community and individual levels. Aboriginal and Torres Strait Islander mothers, in particular, need better systemic protection from their perpetrators. It is not good enough to expect them to protect themselves and their children from violence, without providing mechanisms that ensure their safety, and hold their perpetrators to account.

Aboriginal and Torres Strait Islander communities need to be provided with support to shift understandings of family violence dynamics, as well as the means to protect not only the victims, but also the entire community from perpetrators.

There is a need for improved mechanisms in Victoria and New South Wales that ensure individual perpetrators are held to account for their family violence, especially serial perpetrators who are not discouraged by existing measures. For the majority of perpetrators, it would be of great benefit to provide additional local clinical and specific men's services, as well as greater screening and monitoring of violent behaviour. There is also a need for greater transparency and communication across services to provide women's support services with better information about perpetrator behaviour.

In relation to the severity of violence experienced by Aboriginal women in Victoria and New South Wales, we recommend the following legislative amendments and additions:

- Acts of choking, strangulation or suffocation in a family violence context should be made a separate and additional offence within the relevant state or territory legislation.
- When a person is convicted of violent crimes, previous convictions related to family violence should be allowed to be considered by the courts as an aggravating factor in

sentencing decisions (this is in addition to consideration of other previous convictions).

Further legal reform required

The audit of key legislation revealed that family violence and child protection legislation as well as the Commonwealth family law are inconsistent within jurisdictions and between jurisdictions. The following issues should be the subject of research and legal analysis by experts to develop recommendations to the governments of Victoria and New South Wales to alleviate confusion and lengthy, complex court processes for family violence victims and perpetrators. The authors, while mentioning some need for legislative reform, are aware that the legal audit conducted in the course of this project was generally limited to the statutory provisions for domestic and family violence rather than the actual use and impacts of the legislation in New South Wales and Victoria. A more detailed review may identify other critical issues for further research and consideration.

Implementation of domestic and family violence legislation in different jurisdictions can lead to incorrect information being provided to victims (or perpetrators), if they move across jurisdictional borders. Despite the national register for the recognition of protection orders, the lack of uniformity in legislation means that both perpetrators and victims could breach an order because of their lack of understanding of different jurisdictional family violence law requirements. For example, New South Wales law criminalises conduct and behaviour defined as domestic or personal violence, while Victoria and all other states and territories do not.

Further, in relation to border towns such as our field sites, a person residing in New South Wales could perpetrate domestic or family violence in Victoria deliberately to avoid the civil or criminal responses under New South Wales family violence legislation.

Family violence has been found to be the single biggest cause of Aboriginal child protection involvement in Victoria (Aboriginal Family Violence Prevention and Legal Services Victoria, 2015, p. 4). As previously mentioned, the following barriers to the implementation of the ACPV were identified:

- shortage of Aboriginal and Torres Strait Islander foster and kinship carers
- poor identification and assessment of carers
- inconsistent involvement of, and support for, Aboriginal and Torres Strait Islander people and organisations in child protection decision-making
- deficiencies in the provision of cultural care and connection to culture and community
- practice and systemic issues impacting the operation of Aboriginal and Torres Strait Islander child care agencies
- inconsistent quantification, measurement and monitoring of the ACPP across jurisdictions
- consultation with Aboriginal agencies and individuals being implemented as a “tick the box” exercise (Arney et al., 2015).

It was noted in the legal audit section that changes made to the *Family Law Act 1975* (Cth) in 2006 in relation to “equal shared parental responsibility” (s 61DA) were criticised for placing undue pressure on parents subject to family violence (mothers in particular) to agree to arrangements not in their children’s best interest because of power differentials between these separating parents, and because of the time and cost of lengthy court battles. Although these effects were partly ameliorated in 2011, there remains “a need for greater clarity in the law about when family violence ought to lead to orders for sole parental responsibility and restrictions on contact” (Parkinson, 2013, p. 12).

The difficulty for victims with children seeking safety lies in the complexity of the state and federal systems and the confusion this complexity causes for court users. Confusion, uncertainty, delays and costs can jeopardise the safety of people affected by family violence (State of Victoria, 2016b). Their engagement with different courts requires them to re-tell their story and re-justify their position (State of Victoria, 2016b). Duplication of proceedings gives rise to uncertainty and delay, which are detrimental to a child’s wellbeing (ALRC & NSWLRC, 2010, p. 897). The involvement of so many parts of the justice system may also result in victims falling into the gaps (p. 191).

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Legislation

Children Legislation Amendment (Wood Inquiry) Recommendations Act 2009 (NSW)

Children and Young Persons (Care and Protection) Act 1998 (NSW)

Children and Young Persons (Care and Protection) Amendment Bill 2018 (NSW)

Children, Youth and Families Act 2005 (Vic)

Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (Vic)

Crimes (Administration of Sentences) Act 1999 (NSW)

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

Crimes Act 1958 (Vic)

Criminal Code Act 1899 (Qld)

Criminal Procedure Act 1986 (NSW)

Domestic and Family Violence Act 2007 (NT)

Domestic and Family Violence Protection Act 2012 (Qld)

Family Law Act 1975 (Cth)

Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)

Family Violence Act 2004 (Tas)

Family Violence Protection Act 2008 (Vic)

Family Violence Protection (Information Sharing and Risk Management) Amendment Regulations 2018 (Vic)

Firearms Act 1996 (NSW)

Intervention Orders (Prevention of Abuse) Act 2009 (SA)

Magistrates' Court Act 1989 (Vic)

Prevention of Family Violence Act 2018 (Vic)

Problem Gambling Family Protection Orders Act 2004 (SA)

Residential Tenancies Act 2010 (NSW)

Restraining Orders Act 1997 (WA)

Victims of Crime Assistance Act 1996 (Vic)

Victims Rights and Support Act 2013 (NSW)

Weapons Prohibition Act 1998 (NSW)

APPENDIX A:

Table of national family violence protection orders legislation

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Victoria	<p><i>Family Violence Protection Act 2008</i> (Vic)</p> <p>Orders are known as a family violence intervention order</p>	<p>“Family member” is defined very widely. It includes a current or former spouse, domestic partner, or person who is or has been in an intimate personal relationship (whether or not it is sexual in nature); a parent, a child, a relative (including immediate and extended family). It also includes people who, when looking at the social, cultural, financial and emotional context in which the relationship occurs, are considered to be a family member. The legislation gives the example that “a relationship between a person with a disability and the person’s carer may over time have come to approximate the type of relationship that would exist between family members” (s 8).</p> <p>The legislation specifies that “relative” also covers a wide range of people, including “for an Aboriginal or Torres Strait Islander person—includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person’s relative” (s 10[b])</p>	<p>The legislation specifies that an intervention order can cover a wide range of subject matters, including:</p> <ul style="list-style-type: none"> prohibiting the respondent from committing family violence against the protected person prohibiting the respondent from the protected person’s residence prohibiting the respondent from contacting the protected person requiring the respondent to attend counselling revoking or suspending any licence/permit to carry or use firearms (see Alexander, 2019)
New South Wales	<p><i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)</p> <p>Orders are known as apprehended domestic violence orders</p>	<p>“Domestic relationship” is defined to include a person who is a current or former spouse, de facto partner, or person who is or has been in an intimate personal relationship (whether or not it is sexual in nature); is living or has lived in the same household (not in a correctional centre as outlined in the <i>Crimes [Administration of Sentences] Act 1999</i> or a detention centre as outlined in the <i>Children [Detention Centres] Act 1987</i>); currently or previously had</p>	<p>The legislation specifies that the court may impose any such prohibitions or restrictions on the behaviours of the respondent as they deem necessary, including prohibiting or restricting:</p> <ul style="list-style-type: none"> approaching the protected person access to any premises occupied by the protected person, place of work or place frequented by the protected person

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
<p>New South Wales (continued)</p>	<p><i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)</p> <p>Orders are known as apprehended domestic violence orders</p>	<p>a relationship involving the dependence on ongoing paid or unpaid care of the other person; currently or previously a relative; for Aboriginal and Torres Strait Islander peoples the other person is or has been part of the kin or extended family according to their kinship system (s 5).</p> <p>The legislation specifically covers carers and their dependents. An apprehended domestic violence order can be made against a paid carer for the protection of a dependent but not the other way around (s 5A[2][b]).</p> <p>The meaning of a “relative” covers a range of direct, in-law and step-relations of the person and a de facto partner’s relations (s 6)</p>	<ul style="list-style-type: none"> • approaching the protected person or a place within 12 hours of consuming illicit drugs or alcohol • locating the protected person • interfering, damaging or destroying the protected person’s property • specific behaviour by the respondent which may affect the protected person (s 35) <p>The respondent is prohibited in every apprehended violence order from:</p> <ul style="list-style-type: none"> • assaulting or threatening the protected person or someone with whom they have a domestic relationship • stalking, harassing or intimidating the protected or someone with whom they have a domestic relationship • damaging or destroying any property of the protected person or someone with whom they have a domestic relationship whether intentionally or recklessly (s 36) <p>The <i>Firearms Act 1996</i> (NSW) provides for automatic suspension of a firearms licence when an interim apprehended violence order is made (s 23) and automatic revocation of a licence upon a final order being made (s 24). The <i>Weapons Prohibition Act 1998</i> (NSW) provides for automatic suspension of a permit when an interim apprehended violence order is made (s 17) and automatic revocation of a permit when a final order is made (s 18).</p> <p>The <i>Residential Tenancies Act 2010</i> (NSW) terminates the tenancy of a tenant or co-tenants upon a final order being made (s 79)</p>

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Queensland	<p><i>Domestic and Family Violence Protection Act 2012</i> (Qld)</p> <p>Orders are known as domestic violence orders</p>	<p>The aggrieved person can be protected by a domestic violence order along with their child, a child who lives with them, a relative or an associate of theirs. Associates could be a current partner, work at the same workplace or live at the same place as the aggrieved person (s 24).</p> <p>A “family relationship or relative” means a person connected by blood or marriage, current or former. The wider concept of a relative as understood in Aboriginal and Torres Strait Islander communities may be recognised as a relative within this act if the person regards or did regard the person as a relative or they consider themselves to be a relative of the first person (s 19)</p>	<p>Conditions which can be imposed on a domestic violence order include preventing the respondent from:</p> <ul style="list-style-type: none"> going to, or within a certain distance, of the aggrieved person’s place of work or residence living with the aggrieved person locating the aggrieved person, family, friends or a place where they are staying specified behaviour towards the aggrieved person’s children (which could include prohibition of the presence of the respondent in locations associated with the children) going to places frequented by the aggrieved person’s children having contact with the aggrieved person or other people named on the order <p>It can also include:</p> <ul style="list-style-type: none"> compelling the respondent to return property or provide access to a place to retrieve personal belongings protecting an unborn child of the aggrieved person (see Legal Aid Queensland, 2017)
South Australia	<p><i>Intervention Orders (Prevention of Abuse) Act 2009</i> (SA)</p> <p>Orders are known as intervention orders and must specify if they are domestic or not</p>	<p>An intervention order can be issued to protect any person whom it is suspected the respondent will commit an act of abuse against or any child who may hear, witness or be exposed to the effects of the respondent’s act of abuse against a person (s 7).</p> <p>The legislation refers to “abuse” in a domestic and</p>	<p>An intervention order can include terms prohibiting or compelling the respondent to do things, including:</p> <ul style="list-style-type: none"> prohibiting the respondent from going to the protected person’s residence, work, places frequented by the person, going to specific locations or approaching the protected person prohibiting contact, harassment, threats, intimidation or allowing another person to behave in such a way

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
South Australia (continued)		<p>non-domestic context to mean physical, emotional, psychological or economic abuse.</p> <p>“Domestic abuse” specifically refers to an act of abuse which is committed by the respondent against someone they are currently or formerly in a relationship with. This means the two people are married, domestic partners, in an intimate relationship, one child is a child, stepchild, grandchild or under guardianship of the other partner or former partner, they are siblings, are related by marriage, blood or domestic partnership or adoption, are related in accordance with the Aboriginal or Torres Strait Islander kinship rules or one is the carer of the other (s 8[8])</p>	<ul style="list-style-type: none"> prohibiting the respondent from being on rented premises where they previously resided, and the respondent is a party to the rental agreement requiring the respondent to surrender any firearms, licence or permit, suspend firearms licence and disqualify the respondent from having a firearm while the intervention order is in place issuing a problem gambling family protection order under the Problem Gambling Family Protection Orders Act 2004 (SA) requiring the respondent to participate in a program for problem gambling, substance abuse, other behavioural problems or mental impairment prohibiting the respondent from damaging, taking possession of, or allowing another person to damage or possess property of a protected person requiring the respondent to surrender, return property or provide access to a place to retrieve personal belongings (see Legal Services Commission of South Australia, 2016)
Western Australia	<p><i>Restraining Orders Act 1997</i> (WA)</p> <p>Orders are known as family violence restraining orders (FVROs)</p>	<p>“Family member” is defined to mean two people in a relationship who are currently or were married to one another, in a de facto relationship or related to one another; one of the people is a child who currently or has resided with the other person or regularly resides with the other person; one of the people is or was the guardian of the other person; or they have had an intimate or personal relationship with one another (s 4[1]).</p>	<p>The legislation specifies that an FVRO can restrain the respondent’s behaviour, as the court deems fit, including:</p> <ul style="list-style-type: none"> prohibiting the respondent from being on or near where the protected person lives or works prohibiting the respondent from going to a location prohibiting the protected person being approached by the respondent prohibiting the respondent from stalking the protected person

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Western Australia (continued)		A personal relationship is of a domestic nature when lives of the persons are or were interrelated considering social, religious and cultural backgrounds (s 4[2])	<ul style="list-style-type: none"> prohibiting the respondent from communicating with the protected person preventing the respondent from obtaining or using the protected person's personal belongings prohibiting the respondent from distributing intimate images of the protected person prohibiting the respondent from causing or allowing another person to engage in conduct mentioned above (s 10G)
Northern Territory	<p><i>Domestic and Family Violence Act 2007</i> (NT)</p> <p>Orders are known as domestic violence orders</p>	<p>"Domestic relationship" is defined to mean a person whom the protected person is or has been in a family relationship with; currently or previously had custody, guardianship or access to the person; ordinarily resides or resided with the other person or someone in a family relationship with that person; currently or previously was in a family relationship with the child of the other person; an intimate relationship with the other person (engaged, sexual relationship and other factors are considered [s 11]); or in a carers relationship with the other person (one person is dependent on the other person's ongoing care [ss 12, 9]).</p> <p>A family relationship means the two people are spouses, de facto partners or a relative. For Aboriginal people this is per Aboriginal tradition or contemporary social practice (s 10)</p>	<p>A domestic violence order can include different conditions depending on the needs of the parties, including:</p> <ul style="list-style-type: none"> non-contact orders prohibiting or imposing conditions on the respondent regarding contact to the protected person and children non-intoxication orders which can prohibit the respondent contacting the protected person while under the influence of drugs prohibiting the respondent from exposing the protected person, children on an order or the protected person's property to be threatened, damaged or abused prohibiting the respondent from stalking the protected person requiring the respondent to return the protected person's belongings to them any other orders which the court deems appropriate (see Fauls, 2018)

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
<p>Tasmania</p>	<p><i>Family Violence Act 2004</i> (Tas)</p> <p>There are two types of protective orders, namely Police FVOs (issued by police for up to 12 months), and FVOs (granted by a court)</p>	<p>The <i>Family Violence Act 2004</i> (Tas) specifically provides for spouses or partners, and any affected children.</p> <p>The definition of family violence in the Act refers to any of the following types of conduct committed by a person, directly or indirectly, against that person’s spouse or partner: assaults including sexual assault, threats, coercion, intimidation, verbal abuse, abduction, stalking and bullying, economic abuse, emotional abuse or intimidation, damaging property, and attempting or threatening conduct towards their partner or spouse (s 7).</p> <p>“Spouse or partner” means the person currently or previously was with a person in a family relationship (marriage or significant relationship; s 4). An affected child means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence (s 4).</p> <p>Affected children can be named on Police FVOs and court-made FVOs</p>	<p>Police FVOs</p> <p>Orders granted by police may require the person to whom it is issued to do any or all of the following:</p> <ul style="list-style-type: none"> (a) vacate any premises, whether or not that person has a legal or equitable interest in the premises (b) not enter any premises or only enter premises on certain conditions, whether or not that person has a legal or equitable interest in the premises (c) surrender any firearm or other weapon (d) refrain from harassing, threatening, verbally abusing or assaulting an affected person, affected child or other person named in the order (e) not approach, within a specified distance, an affected person, an affected child, or other person named in the order or certain premises (f) refrain from contacting an affected person, affected child or other person named in the order directly or indirectly or otherwise than under specified conditions (s14) FVOs <p>An FVO may include such conditions as the court considers necessary or desirable to prevent the commission of family violence against an affected person or to protect any other person named in the order.</p> <p>Without limiting the nature of the conditions which may be included in an FVO, the court may require the person against whom the FVO is to be made to do one or more of the following:(a) vacate premises, not enter premises, or only enter premises on certain conditions, whether or not that</p>

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Tasmania (continued)			<p>person has a legal or equitable interest in the premises</p> <p>(b) [Section 16 sub-s 3 amended by No. 50 of 2017, s 6, Applied: 12 Dec 2017] not possess firearms specified in the order or forfeit or dispose of any firearms in his or her possession</p> <p>(c) [Section 16 sub-s 3 amended by No. 50 of 2017, s 6, Applied: 12 Dec 2017] submit to being electronically monitored by wearing and not removing, or always carrying, an electronic device which allows–</p> <ul style="list-style-type: none"> (i) the Commissioner of Police (ii) a police officer, State Service officer, State Service employee or other person, or a person of a class of persons (whether police officers, State Service officers, State Service employees or other persons), authorised by the Commissioner of Police—to find or monitor the geographical location of the person (s 16) <p>A court may also:</p> <ul style="list-style-type: none"> • terminate an original tenancy agreement • terminate and establish a new residential tenancy agreement for the benefit of the affected person and any other party who was a party to the terminated agreement, other than the person against whom the FVO is to be made; or • terminate the original agreement and establish a new residential tenancy agreement for the benefit of the person against whom the FVO is to be made and any other party who was a party to the terminated agreement, other than the affected person (s 17) <p>In practice, conditions in FVOs are often of a similar nature to those listed in s14</p>

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
<p>Australian Capital Territory</p>	<p><i>Family Violence Act 2016</i> (ACT)</p> <p>Orders are known as FVOs</p>	<p>“Family member” is defined by the legislation to mean a current or former domestic or intimate partner, a relative of the person, a child of the current or former domestic partner or the parent of a child of the person (s 9).</p> <p>The meaning of a “relative” covers a range of direct, in-law and step-relations of the person. For Aboriginal and Torres Strait Islander peoples this means someone whom the person has responsibility for or someone the person has responsibility, or an interest in, in accordance with their traditions and they regard as a relative, someone they have a family-like relationship with and anyone reasonably considered to be a relative (s 11)</p>	<p>The legislation specifies that an FVO can cover a wide range of subject matters, including:</p> <ul style="list-style-type: none"> • prohibiting the respondent from going to the protected person’s residence, work or premises they are likely to be • prohibiting the respondent from going to a specific place • requiring the respondent maintain a certain distance from the protected person • prohibiting the protected person from locating or contacting the protected person • prohibiting the above actions in relation to a child of the protected person, or any other child which may be at risk of being exposed to family violence • prohibiting the respondent from taking property necessary for the protected person or a child of theirs • require the respondent to engage in a program for counselling, training, rehabilitation or assessment • prohibit the respondent from physically, sexually, emotionally or economically abusing, threatening or coercing the protected person (s 38)

APPENDIX B:

Table of child protection legislative and policy provisions in Victoria and New South Wales

New South Wales legislation/policy	Relevant term	Key sections relating to Aboriginal and Torres Strait Islander children and family violence	Summary of key sections
<i>Crimes (Domestic and Personal Violence) Act 2007</i>	Apprehended violence orders to protect children	Part 9, ss 38-45	Among other things, s 38 provides for apprehended violence orders, and empowers the court to issue an order for the protection of a child in a domestic relationship involving violence even though an application for the order was not made by a police officer. In a case in which a person is found guilty of a serious offence and where no order has been issued, the court must issue an apprehended violence order for the protection of a child, even though an application for the order was not made by a police officer. The court must make an interim court order against a person charged with a serious offence, “for the protection of the person against whom the offence appears to have been committed whether or not an application for an order has been made”. These reforms are necessary to protect victims of domestic violence
<i>Children and Young Persons (Care and Protection) Act 1998 (NSW)</i>	Mandatory reporting	<p>Section 27: Mandatory reporting</p> <p>Mandated reporters are required to report on reasonable grounds that a child is at risk of significant harm.</p> <p>Mandated reporters are people who in the course of their professional work or paid services deliver the following services to children:</p>	<p>Abuse and neglect types that must be reported are:</p> <ul style="list-style-type: none"> • physical abuse • sexual abuse • emotional/psychological abuse • neglect • exposure to domestic violence (AIFS, 2017) <p>Part 2, s 23: Child or young person at risk of significant harm</p>

<p>Children and Young Persons (Care and Protection) Act 1998 (NSW) (continued)</p>		<ul style="list-style-type: none"> • health care • welfare • education • children’s services • residential services • law enforcement <p>Also, a person who holds a management position in an organisation and has either direct supervision of, or direct responsibility for children in:</p> <ul style="list-style-type: none"> • health care • welfare • education • children’s services • residential services • law enforcement <p>A state-regulated service does not include:</p> <ul style="list-style-type: none"> • babysitting, playgroup or child-minding service that is organised informally by the parents of the children • a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised • a service principally conducted to provide instruction (e.g. sports, music, culture or religion; Children [Education and Care Services] Supplementary Provisions Act 2011, s 4) 	<p>(1) A person is at risk of significant harm if there are concerns for the safety, welfare or well-being of a child due to ...</p> <p>(d) the child or young person living in a house which has reported incidents of domestic violence and as a result the child is at risk of serious physical or psychological harm</p>
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<p>Children and Young Persons (Care and Protection) Act 1998 (NSW) (continued)</p>		<p>Section 29A: A person who has made a report in compliance with pt 2 is not prevented from helping the child or young person in the course of their employment otherwise</p> <p>Section 32: Initial identification—Aboriginal and Torres Strait Islanders</p> <p>If the Secretary believes that a child or young person who has been reported is Aboriginal or Torres Strait Islander, then they are to make reasonable inquiries to determine if they are</p>	
	<p>“Risk of significant harm” report for unborn child (mandatory reporting does not apply)</p>	<p>Section 25: A person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of harm after his or her birth may make a report to the Director-General.</p> <p>Note: The intention of this section is to provide assistance and support to the pregnant woman to reduce the likelihood that her child, when born, will need to be placed in out-of-home care. The principle is that of supportive intervention rather than interference with the rights of pregnant women</p>	
	<p>Aboriginal Child Placement Principle</p>	<p>Part 2 s 11: Aboriginal and Torres Strait Islander self-determination</p> <p>(1) Aboriginal and Torres Strait Islander people are to have as much self-determination in the care and protection of their children and young people as possible.</p> <p>(2) The Minister may negotiate with Aboriginal and Torres Strait Islander people to agree on programs and implementations strategies.</p>	<p>Section 13(7) of the Act provides that where there is a serious risk of immediate harm then the general placement principle will not apply.</p> <p>Section 23 outlines that “serious risk of immediate harm” includes where a child or young person is living in a home which has had reported family violence incidents.</p> <p>Where family violence is present the general placement principle will not be followed</p>

**Children and Young Persons (Care and Protection) Act 1998 (NSW)
(continued)**

Section 12: Aboriginal and Torres Strait Islander participation in decision making:

- The opportunity to participate in decisions regarding the placement of the children and young people of Aboriginal and Torres Strait Islander people is to be given to their families, kinship groups, representative organisations and communities, where possible.

Section 13: Aboriginal and Torres Strait Islander Child and Young Persons Placement Principle

(1) ... the general order of placement for an Aboriginal or Torres Strait Islander child or young person is:

- (a) a member of the child or young person’s extended family or kinship group to which they belong; or
- (b) If (a) is not practicable or it is not in the best interests of the child or young person then they should be placed with a member of the Aboriginal or Torres Strait Islander community to which they belong; or
- (c) If (a) or (b) is not practicable or it is not in the best interests of the child or young person then they should be placed with an Aboriginal or Torres Strait Islander family living in the vicinity of their usual residence; or
- (d) If (a), (b) or (c) is not practicable or it would be detrimental to the child or young person’s safety, welfare or wellbeing then they should be placed with a suitable person approved by the Secretary after consultation with members of the child or young person’s extended family or kinship group and any Aboriginal or Torres Strait Islander organisations deemed appropriate.

(2) The expressed wishes and self-identification (whether they identify as Aboriginal or Torres Strait Islander) of the child or young person should be considered when determining where to place them.

Children and Young Persons (Care and Protection) Act 1998 (NSW)
(continued)

3) If a child or young person has parents from different Aboriginal or Torres Strait Islander communities the general order for placement under subsection (1) should be followed but should have regard to the best interests of the child or young person.

(4) Where a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal or Torres Strait Islander parent then the child may be placed with the parent with which their best interests would be served.

(5) If subsection (4) applies and the child or young person is placed with a non-Aboriginal or Torres Strait Islander family or community then there must be arrangements to ensure the opportunity to contact their Aboriginal and Torres Strait Islander family, culture and community; or

(6) If the child or young person is placed with an Aboriginal or Torres Strait Islander family then there must be arrangements to ensure the opportunity to contact their non-Aboriginal and Torres Strait Islander family, culture and community.

(7) If an Aboriginal or Torres Strait Islander child or young person is placed with a carer that is not Aboriginal or Torres Strait Islander then it will be subject to their best interests with the objective to reunite the child or young person with their family/community and there must be continuing contact between the child or young person and their Aboriginal or Torres Strait Islander family, culture and community.

(8) Subsection (1) does not apply to an emergency placement to protect a child or young person who is at serious risk of immediate harm or if the placement is for less than 2 weeks

<p>Children and Young Persons (Care and Protection) Act 1998 (NSW) (continued)</p>	<p>Referrals/non-mandated reporters</p>	<p>Section 24: A person who believes on reasonable ground that a child or young person is at risk of significant harm may make a report to the Secretary.</p> <p>Section 25: A person may make a report to the Secretary if, prior to the birth of a child, a person has reasonable grounds to suspect that after the birth they may be at risk of serious harm.</p> <p>Section 26: A report made under sections 24 or 25 may be made anonymously</p>	<p>As s 23 outlines that “serious risk of immediate harm” includes where a child or young person is living in a home which has had reported family violence incidents, anyone can report if they have reasonable grounds to suspect the child or young person may be at risk of significant harm</p>
<p>Aboriginal Case Management Policy</p>		<p>Targeted at ss 11-14 of the <i>Children and Young Persons (Care and Protection) Act 1998</i>. It is an operational framework for all practitioners working with Aboriginal and Torres Strait Islander children</p>	<p>The Aboriginal Case Management Policy aims to prevent harm and preserve families, promoting child safety and wellbeing, facilitates Aboriginal family-led decision making and case management that delivers holistic services tailored to the needs of Aboriginal children and families</p>

Victorian legislation/ policy		Key sections relating to Aboriginal and Torres Strait Islander children and family violence	
Children, Youth and Families Act 2005 (Vic)	Mandatory reporting	<p>Section 182: Mandatory reporters</p> <ul style="list-style-type: none"> • registered medical practitioners • nurses including midwives • Victorian police officers • registered teachers and school principals • out-of-home care workers (excluding voluntary foster and kinship carers) • early childhood workers • youth justice workers • registered psychologists <p>Legislation passed on 10 September 2019 to include people in religious ministry. School counsellors to be mandated from 31 Jan 2010.</p> <p>Section 184: Failure to report is a summary offence by fine of up to \$1611.90 (as at 1 July 2018)</p>	<p>Abuse and neglect types that <i>must</i> be reported:</p> <ul style="list-style-type: none"> • physical injury • sexual abuse • sexual offence (AIFS, 2017) <p>Note: it does not explicitly refer to family violence; other jurisdictions do (New South Wales, Tasmania and Northern Territory)</p>
	Aboriginal Child Placement Principle	<p>Part 1.2, div 4: Additional decision-making principles for Aboriginal children</p> <p>Section 12: in deciding or taking an action in relation to an Aboriginal child:</p> <ul style="list-style-type: none"> • an opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views; • a decision re: placement of an Aboriginal child, or other significant decision, should involve a meeting by a DHHS-approved Aboriginal convener and be attended by the child, the parents, extended family, appropriate members of the Aboriginal community that parents choose; 	<p>DHHS provides family violence support via:</p> <ul style="list-style-type: none"> • Indigenous Family Violence Strategy—a community-led initiative to develop a whole-of-government response to family violence in Aboriginal and Torres Strait Islander communities. It is jointly managed by Aboriginal Affairs Victoria, the department and the Office of Women’s Policy (DHHS, 2019a) • Code of Practice for Investigation of Family Violence (Victoria Police, 2019) • Child Safe Standards (DHHS, 2019b) • Assessing children and young people experiencing family violence practice guide

Children, Youth and Families Act 2005 (Vic) (continued)

- when deciding about out-of-home care, an Aboriginal agency must first be consulted, and the Aboriginal Child Placement Principle must be applied

Section 13: Aboriginal Child Placement Principle: If it is in best interests of an Aboriginal child to be placed in out-of-home care, then regard must be had to:

- advice of the Aboriginal agency
- priority criteria:
 - (a) extended family or relatives
 - (b) a local Aboriginal community family
 - (c) an Aboriginal family from another community
 - (d) last resort, a non-Aboriginal family in close geographical proximity to natural family—must ensure ongoing culture and identity through contact with child’s community
- Where a child care agreement is made with the parent, then advice of the Aboriginal agency does not apply

Section 14: Further principles for placement:

- must take into account whether the child identifies as Aboriginal and the expressed wishes of the child.
- where parents from different communities must consider priority criteria from s 13, and child’s own sense of belonging
- if child placed with one parent’s community, then child must have continuing contact with the other
- if one parent is non-Aboriginal, then best interests of child is primary
- if placed with a non-Aboriginal family or community, then arrangements must ensure continuing contact with Aboriginal family, community and culture

Children, Youth and Families Act 2005 (Vic) (continued)

Section 18: DHHS may authorise the Aboriginal principal officer of an Aboriginal agency to undertake specified functions and powers in relation to a Children’s Court protection order for an Aboriginal child or young person.

Section 162:

(1) A child needs protection if:

(a) abandoned by parents and no other suitable and willing carer;

(b) parents are dead or incapacitated and no other suitable person;

(c), (d), (e) child has suffered significant harms: physical, sexual, emotional/psych and parents have not protected/unlikely to protect;

(f) child’s physical development or health has been/or likely to be significantly harmed and parents unlikely to provide, arrange or allow basic care or effective remedial care

(2) harm may constitute a single act, omission or accumulation of those for (1)(c)-(f)

(3) (3) qualifies the terms “likely/unlikely” to err on side of safety

Sections 228–239: DHHS can apply for an order to investigate whether a child needs protection without leave of the court

Sections 242–243: Only DHHS initiates protection applications; in urgent cases with or without a warrant; in non-urgent cases, giving notice to the parents of a hearing

<p>Children, Youth and Families Act 2005 (Vic) (continued)</p>		<p>Section 323: Restrictions on the making of permanent care order in respect of an Aboriginal child:</p> <ul style="list-style-type: none"> • not unless a disposition report states that DHHS is satisfied the order the court order will accord with the Aboriginal Child Placement Principle; and • the court has received a report from an Aboriginal agency recommending the making of the order; and • a cultural plan has been prepared for the child 	
	<p>Referrals/reports</p>	<p>Section 183: Report to protective intervener</p> <ul style="list-style-type: none"> • anyone who reasonably believes that a young person needs protection may report the circumstances to the DHHS or to the police; and • must be in good faith (Fitzroy Legal Service, 2020) 	<p>Non-mandatory referrals:</p> <p><i>Anyone</i> can contact child protection if a child has been or is at risk of child abuse and neglect.</p> <p>Child FIRST, as the access point for family services, is progressively transitioning to the Orange Door. The Orange Door is the new access point for families who need assistance with the care and wellbeing of children, including those experiencing family violence, to contact the services they need to be safe and supported.</p> <p><i>Anyone</i> concerned about the well-being of a child, but not for their immediate safety, can refer to Child FIRST, or the Orange Door, for example where families:</p> <ul style="list-style-type: none"> • are experiencing significant parenting problems that may be affecting the child’s development; • are experiencing family conflict, including family breakdown; • are under pressure due to a family member’s physical or mental illness, substance abuse, disability or bereavement; • are young, isolated or unsupported; • are experiencing significant social or economic disadvantage that may adversely impact on a child’s care or development (DHHS, 2019)

***Children, Youth and
Families Amendment
(Permanent Care and
Other Matters) Act 2014***

**A review of
amendments will begin
in 6 months**

Amendments include:

- identifying and removing delays and barriers to achieving permanent placements for children
 - to provide stability
 - for most children permanency is achieved through family preservation or reunification
- the authorisation of carers to make decisions on specified issues about the children in their care, which commenced on 17 November 2014

APPENDIX C:

Family violence services available in Albury, Wodonga and Mildura

Albury (NSW only)					
Service	Location	Category	Aboriginal-specific	Target	Description
NSW Police	Albury	Government	No	Women and men	<ul style="list-style-type: none"> • Emergency/crisis response to domestic violence incidents in the community • domestic violence education and support • apprehended domestic violence order (ADVO) court support
Southern Women’s Domestic Violence Court Advocacy Service	Albury	Legal	No	Women	<ul style="list-style-type: none"> • Central intake assessment and referral service for public and police • court advocacy support for victims of domestic violence
YES Unlimited–Betty’s Place Women’s Refuge	Albury	Housing	No	Women	<ul style="list-style-type: none"> • Intake/assessment/crisis accommodation, case management and counselling for victims of domestic violence (onsite and outreach) • secure location in Albury
Mission Australia Albury Family Services	Albury	Family	No	Women and men	Intensive, in-home crisis intervention, practical assistance, counselling and skill development to support families with children that are placed in OOHC, or an authorised carer where a child in OOHC has been placed in their care, or a family restoration following a child’s entry into OOHC
Riverina Murray Family Referral Service	Albury	Referral	No	Women and men	Assists in linking vulnerable children, young people in need of assistance, and their families, with the most appropriate available support services, including domestic violence support services and counselling
Woomera Aboriginal Corporation	Albury	Community-controlled	Yes	Women and men	Promotes Aboriginal leadership within the community through a range of family services including social housing. Provides a single point of access to information, resources, services and support

Centacare	Albury	Mental health	No	Women and men	Social service agency providing a range of community education courses, mental health services, and family and relationship counselling
Aboriginal Legal Service	NSW statewide	Legal	Yes	Women and men	Statewide Aboriginal controlled service that provides free legal work in criminal law, children's care and protection law and family law
NSW Government–Domestic Violence Line	NSW statewide	Government	No	Women	Statewide phone crisis counselling and referral service for women. Referrals to police, hospital care, AVOs, safety plans, emergency accommodation
NSW Government–Victim's Services	NSW statewide	Government	No	Women and men	Provides counselling, recognition payment (of criminal offence such as assault), financial assistance (e.g. relocation assistance)
Wodonga (Victoria only)					
Service	Location	Category	Aboriginal-specific	Target	Description
Victoria Police	Wodonga	Legal	No	Women and men	<ul style="list-style-type: none"> • Emergency/crisis response to domestic violence incidents in the community • domestic violence education and support • ADVO court support
Centre Against Violence	Wodonga	Mental health; homelessness; legal	No	Women and men	<ul style="list-style-type: none"> • Family violence services and sexual assault services for women and children • intake/assessment, crisis support and housing assistance • secure locations • men can access sexual assault services and can also participate in restorative justice program
Gateway Health	Wodonga	Health	No	Women and men	<ul style="list-style-type: none"> • Provides women's domestic violence outreach counselling, and women and children's family violence counselling • behaviour change program for men who use violence
Junction Support Services	Wodonga	Family violence-specific	No	Women	Women and children's family violence support program providing counselling, children's support and children's resource programs for agencies

Mungabareena Aboriginal Corporation	Wodonga	Community-controlled	Yes	Women and men	Provides a range of services for the Aboriginal community including a program specifically aimed at family violence and aiding people with support, information, education and techniques put in place at early intervention that empower individuals to make safe decisions for themselves and their families
Rural Housing Network	Wodonga	Housing	No	Women and men	<ul style="list-style-type: none"> • Short-term crisis accommodation for men who have been excluded from the family home via intervention orders • also provides housing assistance to women and children experiencing family violence in partnership with Centre Against Violence
Merri Health	Wodonga	Health	No	Women and men	Intake, assessment and referral, case management for victims of crime, including men who are experiencing family violence
Upper Murray Family Care (UMFC)	Wodonga	Financial	No	Women and men	Financial counselling for men and women who have been affected by family violence
Women's Health Goulburn North East/No Interest Loan Scheme (NILS)	Wangaratta	Health/financial	No	Women	NILS program provides no-interest loans for women on low incomes for essential goods and services
Djirra (Aboriginal Family Violence Prevention Legal Service)	Vic statewide	Community-controlled; family violence-specific	Yes	Women and men	Community-controlled organisation working on preventing and addressing family violence in Aboriginal communities, including programs supporting Aboriginal women's journey to safety and wellbeing
Victorian Government–Child Protection Crisis Line	Vic statewide	Government	No	Women and men	Statewide phone line to report concerns for the welfare of children due to family violence or other factors
Victoria Legal Aid Helpline	Vic statewide	Helpline	No	Women and men	Statewide phone line and internet service providing free legal advice and referrals
Women's Legal Services Victoria	Vic statewide	Legal	No	Women	Provides free legal services to women experiencing disadvantage or legal issues due to relationship breakdown or family violence
Victoria Aboriginal Legal Services (VALS)	Vic statewide	Community-controlled; legal	Yes	Women and men	Community-controlled organisation providing legal referrals, advice and case work assistance to Aboriginal people

Albury-Wodonga (cross-border)					
Service	Location	Category	Aboriginal-specific	Target	Description
Women's Centre for Health and Wellbeing Albury Wodonga	Albury-Wodonga	Health; mental health	No	Women	Women-specific counselling, medical services, support groups and referrals related to family violence
Hume Riverina Community Legal Service	Albury-Wodonga	Legal	No	Women and men	<ul style="list-style-type: none"> Provides assistance on a range of legal issues including family law and family violence offers specific Invisible Hurdles project aimed at providing better legal outcomes for young people experiencing family violence in north-east Victoria
Albury Wodonga Aboriginal Health Service (AWAHS)	Albury-Wodonga	Community-controlled; health	Yes	Women and men	Community-controlled organisation providing culturally appropriate health services for local Aboriginal community to enhance health outcomes
Albury Wodonga Health	Albury-Wodonga	Health; mental health	No	Women and men	<ul style="list-style-type: none"> Cross-border public health service including hospitals in Albury and Wodonga initiated Strengthening Hospital Responses to Family Violence (SHRFV) project building the capacity of staff to better deal with patients in relation to family violence
Mildura (Vic)					
Service	Location	Category	Aboriginal-specific	Target	Description
Victoria Police	Mildura	Government	No	Women and men	<ul style="list-style-type: none"> Emergency/crisis response to domestic violence incidents in the community domestic violence education and support ADVO court support

Orange Door	Mildura	Referral	No	Women and men	<ul style="list-style-type: none"> • Outsources services for victims and perpetrators of family violence • connects people involved in family violence with services they require such as refuge services, Aboriginal services, family services and perpetrator services
Dardi Munwurro *Closed July 2019	Mildura	Community-controlled	Yes	Men	<ul style="list-style-type: none"> • Focuses on the prevention of family violence by offering men's behaviour change programs to Aboriginal men • these programs aim to address intergenerational trauma, change behaviours related to family violence and equip men with the skills to be leaders within their communities
Mallee District Aboriginal Services (MDAS)	Mildura	Community-controlled; health; mental health	Yes	Women and men	Community-controlled organisation that provides health and family services including behaviour change programs for Aboriginal male perpetrators of family violence, and also includes Meminar (see below)
Mallee Domestic Violence Services	Mildura	Homelessness	No	Women and men	Provides specialist family violence services to victims and survivors of domestic violence, including immediate crisis care and emergency housing, advocacy and referrals
Mildura Base Hospital– Aboriginal Health Unit	Mildura	Health; mental health	Yes	Women and men	Sector of the hospital run by Aboriginal staff that aims to improve the health outcomes of Aboriginal patients. Refers patients on to local family violence services as required and advocates on behalf of patients when accessing these services
Sunraysia Community Health Services	Mildura	Health	No	Women and men	Health provider that offers a men's behaviour change program that aims to prevent male family violence and promote the safety of women and children
Meminar Ngangg Gimba	Mildura	Community-controlled; housing	Yes	Women	<ul style="list-style-type: none"> • Provides a range of support services, including 24-hour crisis support and accommodation for Aboriginal women and children experiencing family violence • also provides services to connect clients with their culture to help them make positive life changes

Umalek Balit	Mildura	Government; legal	Yes	Women and men	<ul style="list-style-type: none"> Dedicated Koori family violence and victim support program that is designed to address the specific barriers faced by Aboriginal people when attending court and interacting with the justice system Includes practitioners that guide men and women through the court's family violence-related response
Mallee Family Care	Mildura	Health	No	Women and men	Provides a range of human services including family support, legal support, foster care, mental health and homelessness support
Djirra (Aboriginal Family Violence Prevention Legal Service)	Vic statewide	Community- controlled; legal; FV specific	Yes	Women and men	Community-controlled organisation working on preventing and addressing family violence in Aboriginal communities, including programs supporting Aboriginal women's journey to safety and wellbeing
Victorian Government–Child Protection Crisis Line	Vic statewide	Government	No	Women and men	Statewide phone line to report concerns for the welfare of children due to family violence or other factors
Victoria Legal Aid Helpline	Vic statewide	Legal	No	Women and men	Statewide phone line and internet service providing free legal advice and referrals
Women's Legal Services Victoria	Vic statewide	Legal	No	Women	Provides free legal services to women experiencing disadvantage or legal issues due to relationship breakdown or family violence
Victoria Aboriginal Legal Service	Vic statewide	Community- controlled; legal	Yes	Women and men	Community-controlled organisation providing legal referrals, advice and case work assistance to Aboriginal people in the state of Victoria
National					
Service	Location	Category	Aboriginal-specific	Target	Description
1800 RESPECT–National Domestic Violence and Sexual Assault Help Line	National	Helpline	No	Women and men	<ul style="list-style-type: none"> National domestic violence and sexual assault help line provides counselling, advice and resources on healthy relationships, violence and abuse, and links to help and support
Centrelink–Social Work Department	National	Government; mental health	No	Women and men	Government service providing short-term counselling, information and referrals to people experiencing family violence and a range of other situations

Safe Steps Family Violence Response Centre	National	FV-specific	No	Women	Provides a range of services supporting women and children experiencing family violence including reporting hotline, advice, court support services and recovery services
Men's Line Australia	National	Helpline	No	Men	National telephone and online support hub, information and referral service for men with family and relationship concerns
No To Violence—Men's Referral Service	National	Referral; FV-specific	No	Men	<ul style="list-style-type: none"> • Works to bring about the changes needed to eliminate men's use of family violence • works directly with men who use family violence to support them to change

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