



NATIONAL FAMILY VIOLENCE PREVENTION
LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Submission to the ALRC Inquiry into
Incarceration Rates of Aboriginal and Torres
Strait Islander People

September 2017

1. Executive Summary

- Given the urgent need to address the disproportionate and rapidly increasing rate of Aboriginal and Torres Strait Islander women's incarceration, the National FVPLS Forum welcomes the specific and detailed consideration of Aboriginal and Torres Strait Islander women in Part 4 of the Discussion Paper.
- There is an intrinsic link between family violence and the over-incarceration of Aboriginal and Torres Strait Islander men, women and young people. Any measures designed to reduce the over-imprisonment of Aboriginal and Torres Strait Islander men and women must therefore also target the reduction of rates of violence against Aboriginal and Torres Strait Islander women.
- National FVPLS Forum members deliver a range of successful programs across the country that target women and men in prison, on remand and on community-based orders, as well as highly successful and innovative programs that prevent and respond to family violence against Aboriginal women which are critical to addressing family violence as a key underlying and/or contributing factor to the criminalisation and incarceration of Aboriginal and Torres Strait Islander men and women. Central to the best practice elements of these programs is the fact that these programs are designed and delivered by Aboriginal and Torres Strait Islander organisations. Successful programs take a cultural and strength-based approach and target the underlying causes of contact with the criminal justice system in the first place.
- The availability of and access to Aboriginal and Torres Strait Islander legal services (including FVPLSs) must be increased by recognising and responding to the specific barriers to accessing justice faced by Aboriginal and Torres Strait Islander peoples, and in particular women, as well as ensuring that any Aboriginal or Torres Strait Islander woman regardless of their geographic location has access to culturally safe, specialist, holistic services and supports.
- Aboriginal and Torres Strait Islander women encounter a diversity of experiences across metro, regional, rural and remote areas, and accordingly measures designed to reduce over-imprisonment must take into account these different geographic contexts.
- The complex cycle of poverty, child protection, family violence and adult incarceration requires much more detailed consideration in the ALRC's final report.
- While the National FVPLS Forum supports policies aimed at minimising the over-incarceration of Aboriginal and Torres Strait Islander people and diverting Aboriginal and Torres Strait Islander people from the criminal justice system, we are of the view that the question of abolishing short sentences of imprisonment requires further consideration and consultation. The protection of victims/survivors of family violence necessitates a variety of sentencing options being retained for the family violence context. This is important to enable judicial officers to have at their disposal a variety of alternatives, including in some instances a short sentence of imprisonment for a family violence perpetrator where necessary and appropriate to protect Aboriginal and Torres Strait Islander women and children.

2. Introduction

This submission is made by the National FVPLS Forum. The National FVPLS Forum works collaboratively with our 14 Family Violence Prevention Legal Services (FVPLSs) across the country. FVPLSs were established over 16 years ago in recognition of the significant gap in access to legal services for Aboriginal and Torres Strait Islander victim/survivors of family violence and sexual assault. The primary function of FVPLSs is to provide culturally safe and holistic legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victims/survivors of family violence. FVPLSs also provide essential community legal education and early intervention and prevention activities. While FVPLSs are not gender exclusive, more than 90% of our clients are Aboriginal and Torres Strait Islander women.

Through our extensive work with Aboriginal and Torres Strait Islander women and their children to address the multitude of interrelated issues that our clients face, FVPLSs have developed a deep understanding of the inherent links between family violence, the child protection system and the criminal justice system. Family violence is a leading cause of child removal for Aboriginal and Torres Strait Islander children.¹ Family violence is also a significant underlying cause of children and young people being exposed to youth detention, and is both a cause and consequence of imprisonment in adult life. It is critical to note that almost 90% of Aboriginal and Torres Strait Islander women in prison have experienced family violence, sexual abuse or both – and many have experienced multiple forms of abuse over many years.²

Accordingly, any consideration of strategies and initiatives to reduce imprisonment rates necessarily involves consideration of measures to reduce and prevent family violence. The ability of Aboriginal and Torres Strait Islander women and their children to access quality, holistic, culturally safe legal services and supports is essential in this regard.

This submission predominately addresses two specific questions and proposals contained in the Discussion Paper:

- the availability and effectiveness of prison programs for Aboriginal and Torres Strait Islander women (Discussion Paper Question 5-2); and
- the provision of legal services and supports for Aboriginal and Torres Strait Islander women (Discussion Paper Question 11-2).

This submission also touches on a number of specific issues including: approaches required for different geographic locations; the cycle of poverty, child protection, family violence and incarceration; and short sentences of imprisonment in the family violence context.

The National FVPLS Forum otherwise **endorses** the detailed submission provided by the Change the Record Coalition on other aspects of the Discussion Paper. The National Forum also refers to and endorses the 2017 report, *Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment*, prepared by the Human Rights Law Centre and Change the Record Coalition. We note and welcome this report's extensive citations throughout the Discussion Paper's section on Female Offenders (Part 4 of the Discussion Paper).

¹ Australian Institute of Health and Welfare, Child Protection Australia 2014-15, 2016, page 54, table 5.4, available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>.

² Corrections Victoria, "Prisoner Experiences of Family Violence", *Handout provided to Family Violence Steering Committee (6 September 2016)*, 2016, page 5.

3. Experiences of Aboriginal and Torres Strait Islander Women

Despite comprising only 2% of the national population, Aboriginal and Torres Strait Islander women are now the fastest growing group of prisoners in Australia, representing more than one third of the total prison population.³ The National FVPLS Forum therefore welcomes the specific and detailed consideration of Aboriginal and Torres Strait Islander women in Part 4 of the Discussion Paper. There is an urgent need to address the disproportionate and rapidly increasing rate of Aboriginal and Torres Strait Islander women's incarceration.

It is clear that the intersectional and intergenerational experiences of Aboriginal and Torres Strait Islander women are underlying factors behind the causes of Aboriginal and Torres Strait Islander women's incarceration.⁴ These causes are very often different to the causes of imprisonment of Aboriginal and Torres Strait Islander men. Through our frontline service provision and engagement with Aboriginal and Torres Strait Islander women across the country, FVPLSs witness the intrinsic links between the imprisonment of Aboriginal and Torres Strait Islander women and:

- experiences of family violence – noting the high numbers of Aboriginal and Torres Strait Islander women in prison who have experienced violence or abuse;
- children being removed from their home – noting that family violence is one of the single biggest drivers of child protection intervention and removal of Aboriginal children;
- negative health and well-being outcomes;
- lower employment opportunities;
- cycles of poverty;
- the experience of homelessness;
- the loss of connection to land and culture;
- the impacts of colonisation and ongoing trauma; and
- marginalisation and systemic discrimination.

Each of these factors are direct causal and contextual factors increasing Aboriginal and Torres Strait Islander women's vulnerability to criminalisation and incarceration – as well as being significant **consequences** of imprisonment. Imprisonment, even for short periods of time, has major, far-reaching and multiple impacts for Aboriginal and Torres Strait Islander women and their children, often contributing to further trauma and socio-economic disadvantage and increased risk of child removal.

³ FVPLS Victoria Submission to the *Victorian Royal Commission into Family Violence*, pg. 18-19. Available: <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>

⁴ Royal Commission into Family Violence, Volume V, Report and Recommendations, Chapter 34 Women in Prison, pg. 240, March 2015. Available: <http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-V.pdf>

3.1 Relationship between family violence and incarceration

There is a strong link between the high incarceration rates of Aboriginal and Torres Strait Islander women and their experience of family violence. Research demonstrates that an overwhelming majority of women in prison have experienced family violence.⁵ While experiencing family violence is not a direct cause of Aboriginal and Torres Strait Islander women's incarceration, it is a precursor to a range of conditions that can lead to imprisonment. Indeed, one NSW study found that over 80% of female Aboriginal and Torres Strait Islander prisoners reported that their incarceration was an indirect result of their victimisation.⁶ Further information about the links between family violence and incarceration is contained in the FVPLS Victoria submission to the Royal Commission into Family Violence, including case studies about police raising outstanding warrants when Aboriginal women seek to report family violence to police.⁷

Importantly, it must be acknowledged that Aboriginal and Torres Strait Islander women experience family violence by men from all cultural backgrounds, not just Aboriginal and Torres Strait Islander men. The Inquiry therefore needs to ensure that when analysing the links between family violence and incarceration, this is not framed as an 'Aboriginal issue' but rather an issue arising from the structural inequality Aboriginal and Torres Strait Islander women experience on the basis of their Aboriginality and their gender.

The National FVPLS Forum, through the Redfern Statement process and jointly convened NATSILS-NFVPLS Justice and Family Violence Workshop, has proposed the establishment of a National Taskforce to investigate the deaths of Aboriginal and Torres Strait Islander women in contact with the justice system. Given the recommendations of the seminal Royal Commission into Aboriginal Deaths in Custody were largely silent on Aboriginal and Torres Strait Islander women, such an inquiry is long overdue and could have significant impact on addressing the needs of criminalised Aboriginal and Torres Strait Islander women and those at risk of incarceration. A national taskforce would be able to identify opportunities to better intervene and prevent death, injury and poor outcomes for Aboriginal and Torres Strait Islander women. In particular, the investigation could shine a light on the role of systemic discrimination and failings across police, courts, child protection and/or other agencies, and the service system, and uncover the prevalence and contribution of family violence or other causal factors in the trajectory leading to Aboriginal and Torres Strait Islander women's deaths.

⁵ See Australian Institute of Family Studies, *Addressing women's victimisation histories in custodial settings* (2015) Canberra, Australian Government, available at <http://www.aifs.gov.au/acssa/pubs/issue/i13/i13b.html>; K. P. Moloney, B. J van den Bergh & L.F. Moller 'Women in Prison: The central issue of gender characteristics and trauma history' (2014) 123 *Public Health*, 426-430; Holly Johnson, *Drugs and Crime: A Study of Incarcerated Female Offenders*, Research and Public Policy Series (2014) No. 63, Canberra, Australian Institute of Criminology; WIPAN (2014) *Women in Prison - Primary Document for a Public Forum surrounding Women in Prison* being hosted by WIPAN, Community Justice Coalition (CJC) and the International Commission of Jurists (ICJ) at NSW Parliament House on 13 August 2014, 16. Kilroy, D. *The over-representation of Aboriginal and Torres Strait Islander women in prison*, *Sister's Inside*, April 2013, 3.

⁶ NSW Aboriginal Justice Advisory Council, *Holistic Community Justice: A proposed response to Aboriginal family violence*, 2001, page 7 available at <http://pandora.nla.gov.au/pan/25329/20020709-0000/www.lawlink.nsw.gov.au/ajac.nsf/pages/family+violence+discussion+paper.pdf>

⁷ The FVPLS Victoria submission is available at <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20Royal%20Commission%20-%20FINAL%20-%202015Jul15.pdf>.

4. Programs for Aboriginal and Torres Strait Islander Women

The Discussion Paper identifies (at paragraph 9.13) that there remains a lack of available evaluations of 'what works' in terms of reintegration of Aboriginal and Torres Strait Islander female prisoners and offenders. In response to the Discussion Paper's request for information regarding the availability and effectiveness of prison programs for Aboriginal and Torres Strait Islander female offenders and remandees, the following case studies are examples of successful programs delivered by National FVPLS Forum members across the country.

Case study: Strong Women, Strong Mother

The program is delivered by Aboriginal Family Law Services in WA in the East Goldfields Regional Prison and is designed to educate participants about family violence, healthy relationships, the emotional wellbeing of children and creating stronger children for the community.

The program addresses the forms and signs of family violence by:

- promoting respectful relationships;
- providing awareness and education;
- identifying problems and learning how to overcome those problems; and
- promoting a positive attitude and achieving goals.

Case study: Strong Men, Strong Families

The Strong Men, Strong Families program works with Aboriginal men to develop an understanding of the signs and effects of family and domestic violence. The program is delivered by Aboriginal Family Law Services in WA on a fortnightly basis in the Roebourne Regional Prison and supports participants who have experienced or are experiencing family violence to acknowledge the services that can help them develop positive, healthy and strong relationships within their families and communities.

This program is about raising awareness and providing a better understanding to the participants about all aspects of domestic and family violence through:

- building confidence and trust within the group to get the participants to talk openly about family violence;
- acknowledging their involvement that may have been identified within their family or community;
- understanding how respecting their partners, families and children will allow them to have a positive, healthy and strong relationship within their community; and
- educating participants about the negative effects of alcohol and drugs.

Case study: Dilly Bag

The Dilly Bag Program is an intensive women's cultural strengthening program delivered by the Aboriginal Family Violence Prevention and Legal Service (Victoria) that targets Aboriginal women, and has been adapted to work with women on community based orders. The program assists Aboriginal women with recovery from trauma they may have experienced in their lives. Dilly Bag builds on cultural strength and experiences to explore ways to increase self-esteem and enhance emotional, physical and spiritual well-being, which strengthens the ability of Aboriginal women to reduce their vulnerability to family violence. It is a residential program in a community setting that highlights the important roles Aboriginal women play in their community as leaders and nurturers.

Dilly Bag was developed in response to an identified gap in therapeutic programs that provide culturally-based healing for Aboriginal women where the program has been developed and delivered for and by Aboriginal women. An external evaluation of the program determined that it has significant beneficial impacts, including increased self-esteem and well-being, strengthened relationships and networks, increased knowledge and understanding of family violence and the supports available, and significant changes to participants' lifestyles such as living arrangements, matters relating to custody of children and personal care.

Case study: Prison Support Program *Name pending

The FVPLS Victoria Prison Support Program is delivered to Victorian Aboriginal women at the Dame Phyllis Frost Centre and Tarrengower Prison who are survivors of violence or abuse. The program provides culturally safe and holistic support and links women into a range of services and supports to address a broad spectrum of legal and non-legal needs, including for example legal advice for family violence, child protection or victims of crime assistance; family violence counselling, housing, drug and alcohol services, parenting programs and more.

The program also facilitates the provision of community legal education to provide information to Aboriginal women in prison about their legal rights and the services available.

The majority of the women supported through this program are on remand, and aged between 18 and 34. The program can also support women preparing to exit prison and post-release to ensure women have a network of supports and plans in place to address safety and risk, and reduce vulnerability to further victimisation or criminalisation upon release.

Through this program, FVPLS Victoria has seen a profound transformation in many of the women we work with – from an attitude of despair or having given up hope for the future, to one of renewed motivation to address the issues that led to imprisonment.

Case study: Men's Wellbeing Program

The Men's Wellbeing Program looks at the Behaviours of Fathers (Men) in a family relationship context. To promote and educate participants to have a full understanding of the signs and effects of family domestic violence.

To encourage and support participants who have experienced or who are experiencing family violence to acknowledge the services that can help them to develop positive, healthy and strong relationships within their families and communities.

This program is delivered by Aboriginal Family Law Services in WA and promotes healthy relationships within the person's self, kin, and family relationship setting and how he contributes to the family network.

To address the forms and signs of family and domestic violence:

- By promoting respectful relationships;
- Providing awareness and education;
- Identifying problems and learning how to overcome those problems;
- And promoting a positive attitude and achieving goals;

Creating better fathers and role models for the community and reinvestment for the individual's lifestyle and home settings.

Based on the above case studies, the National FVPLS Forum identifies the following best practice elements of programs for Aboriginal and Torres Strait Islander people, especially women:

- programs for Aboriginal and Torres Strait Islander people need to be designed and delivered by Aboriginal and Torres Strait Islander organisations with relevant experience and expertise;
- programs must take a strengths-based approach that incorporates culturally-based healing and builds resilience and reduces the vulnerability of participants, particularly women who are victims/survivors of family violence;
- programs should focus on building participants' self-esteem and well-being;
- programs must include a strong local community focus that strengthens friendships, relationships and connections within the community;
- activities should support participants to develop and undertake leadership roles and speak out on issues within their community; and
- programs should increase participants' awareness of and access to support and legal services within their community, both mainstream and Aboriginal and Torres Strait Islander-specific services.

The National FVPLS Forum also submits that **there is no reason why Aboriginal and Torres Strait Islander women should only have access to such programs once they are in prison or have been diverted from the criminal justice system.** All Aboriginal and Torres Strait Islander women, regardless of their geographical location, must have access to culturally safe, holistic supports and services. Programs such as FVPLS Victoria's Sisters Day Out is an example of a successful activity that builds resilience, strengthens relationships and breaks down barriers to accessing services and

supports. Sisters Day Out is a one-day workshop that provides a culturally welcoming and safe space for Aboriginal and Torres Strait Islander women and focuses on self-care and well-being, awareness-raising and connecting women to services and supports.

5. Access to Justice

This section of the submission discusses access to justice issues, and in particular responds to the Discussion Paper's consideration of the provision of legal services and supports (at pages 202-204). In particular, Question 11-2 asks "in what ways can availability and access to Aboriginal and Torres Strait Islander legal services be increased?"

Reducing the imprisonment of Aboriginal and Torres Strait Islander women can only be achieved with genuine commitment to an informed, integrated and committed government approach. This approach must necessarily prioritise culturally safe and targeted approaches which address Aboriginal and Torres Strait Islander women and children's unique needs, perspectives and barriers to getting assistance. Specialist and culturally safe frontline legal (and non-legal) supports and services for Aboriginal and Torres Strait Islander victims/survivors are best placed to respond to the needs of Aboriginal and Torres Strait Islander women.

In response to Question 11-2, the National FVPLS Forum submits that availability and access to Aboriginal and Torres Strait Islander legal services can be increased by:

- recognising and responding to the specific barriers to accessing justice faced by Aboriginal and Torres Strait Islander peoples, and in particular women; and
- ensuring that any Aboriginal or Torres Strait Islander woman has access to culturally safe, specialist, holistic services and supports.

5.1 Barriers to accessing justice

Aboriginal and Torres Strait Islander women face multiple and complex barriers to accessing justice, which contributes to spiralling rates of incarceration. These barriers need to be recognised as a distinct component and driver of Aboriginal and Torres Strait Islander women's incarceration and over-representation.

Our FVPLS members' frontline experience demonstrates that Aboriginal and Torres Strait Islander women face a wide array of complex and compounding barriers to accessing support, including the reporting of family violence. Those barriers include:

- a lack of understanding of legal rights and options and how to access advice and support;
- mistrust of mainstream legal, medical, community and other support services and their ability to understand and respect the needs and wishes of Aboriginal and Torres Strait Islander women;
- a lack of cultural competency and experiences of direct or indirect discrimination across the support sector, including by police and other agencies such as child protection;
- a lack of access to interpreters or support for people with low levels of literacy;
- fear of child removal if disclosing experiences of violence and/or risk of criminalisation;

- particular cultural or community pressures not to go to the police, such as perceived threats to cultural connection (especially for children) or to avoid increased criminalisation of Aboriginal and Torres Strait Islander men; and
- poverty and social isolation.

Many of these barriers are unique to Aboriginal and Torres Strait Islander women, which highlights the importance of ensuring the availability of and access to culturally safe, specialist Aboriginal and Torres Strait Islander legal and non-legal services and supports, such as FVPLSs.

5.2 Support for early intervention and prevention programs

As identified in the Discussion Paper and earlier in this submission, multiple and complex risk factors contribute to higher rates of imprisonment for Aboriginal and Torres Strait Islander women.

Accordingly, a range of strategies and services are required to respond to and address the causes of over-imprisonment.

Early intervention and prevention strategies are a core part of this range of strategies and services. The FVPLS model recognises that a combination of preventative education, community engagement, support services and legal assistance (as both early intervention and response) are all crucial parts of the continuum of services required to address and reduce family violence against Aboriginal and Torres Strait Islander women and children, and the same goes for reducing rates of imprisonment.

In addition to legal assistance and casework, Aboriginal and Torres Strait Islander legal services such as FVPLSs undertake important early intervention and prevention, such as women's support groups and community safety services, counselling services, support for children who are often caught up in family violence situations; and programs that invest in services at the front-end to build stronger and resilient families and promote healthy relationships. These vital supports and services build the strength of Aboriginal and Torres Strait Islander women and reduce their vulnerability to contact with the criminal justice system.

The expert, tailored and holistic service models used by FVPLSs have been identified as being crucial to support Aboriginal and Torres Strait Islander women and their children to access and benefit from these services.⁸ However, funding constraints substantially limit the effectiveness of important activities undertaken by Aboriginal and Torres Strait Islander legal assistance services for early intervention and prevention.⁹

As identified in the PriceWaterhouseCoopers report, *Indigenous Incarceration: Unlock the Facts*, new economic modelling that shows the cost to the Australian economy of Indigenous incarceration is almost \$8 billion (\$7.9 billion) per year and rising, and that if nothing is done to address disproportionately high rates of Indigenous incarceration, this cost will rise to \$9.7 billion per year in 2020 and \$19.8 billion per year in 2040. This highlights the importance of investing in successful early intervention and prevention programs, such as the work undertaken by FVPLSs. The PWC report identifies that closing the gap between Indigenous and non-Indigenous rates of incarceration would generate savings to the economy of \$18.9 billion per year in 2040.

⁸ The Allen Consulting Group (2012) *Review of Family Violence Prevention Legal Services: Final Report* (Report to the Australian Government Attorney-General's Department), page x.

⁹ Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services* (2013), page xviii.

5.3 Role of FVPLSs

A number of inquiries and evaluations in recent years have repeatedly highlighted the need for and effectiveness of FVPLSs in responding to and addressing family violence against Aboriginal and Torres Strait Islander women and children.¹⁰ These comprehensive reviews have identified a number of key defining characteristics of FVPLSs:

- their ability to reduce barriers to Aboriginal and Torres Strait Islander women and children accessing legal assistance services;
- an effective integrated, holistic wrap-around service delivery model; and
- the importance of culturally specific services given many of the limitations of mainstream services.

These essential characteristics of FVPLSs make them well placed to provide legal assistance services to Aboriginal and Torres Strait Islander women, particularly victims/survivors of family violence. While FVPLSs do not provide criminal law assistance, given the inherent links between experiences of family violence and imprisonment, as discussed above, it is essential that services such as FVPLSs receive adequate funding to provide culturally safe, specialist, holistic services. Our services and supports play a key role in the continuum of support that is needed to prevent the incarceration of both Aboriginal and Torres Strait Islander women and men.

5.4 Lack of availability of Aboriginal and Torres Strait Islander legal assistance services and supports

Aboriginal and Torres Strait Islander women represent one of the most legally disadvantaged groups in Australia. Yet funding for frontline legal services for Aboriginal and Torres Strait Islander women, including for victims/survivors of family violence, remains manifestly inadequate. Some FVPLSs report that up to 30-40% of women contacting their service seeking assistance are turned away because there is insufficient capacity to support them.¹¹

Furthermore, FVPLSs collectively service an area that currently only covers approximately half of the Aboriginal and Torres Strait Islander population. Much of this coverage in remote areas is extremely limited and often consists of only one or two days per month.¹² Accordingly, there remains very high levels of unmet demand for legal assistance services among a significant number of Aboriginal and Torres Strait Islander communities. These service gaps exist in urban, regional and remote communities.

The consequences of inadequate funding for Aboriginal and Torres Strait Islander legal assistance services are devastating and must be addressed by Federal and state and territory governments.

¹⁰ These reports include: Review of the National Partnership Agreement on Legal Assistance Services (Allen Consulting Group, 2013); Family Violence Prevention Legal Services – Research and Needs Analysis Report (prepared for the Commonwealth Attorney-General's Department by Nous Group, 2013); Access to Justice Arrangements Inquiry Report (Productivity Commission, 2014); Review of the Family Violence Prevention Legal Service Program (Allen Consulting, report released 2012).

¹¹ Based on an internal survey.

¹² Nous Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report* (2013), page 5.

6. Police Accountability

Aboriginal and Torres Strait Islander women are “simultaneously over-policed as offenders and under-policed as victims/survivors of family violence”.¹³ Multiple issues contribute to this situation, including:¹⁴

- a fear of reporting family violence to the police;
- a strong sense that reports of family violence are not taken seriously by police;
- failures to act by police, including action in relation to breaches of intervention orders; and
- failing to refer victim/survivors to legal assistance and support.

In order for police to work better with Aboriginal and Torres Strait Islander communities to reduce family violence, the National FVPLS Forum submits that:

- All jurisdictions must implement strengthened, systematic training for all police officers to improve cultural awareness and family violence sensitivity, led by and in consultation with Aboriginal and Torres Strait Islander organisations with frontline expertise assisting Aboriginal and Torres Strait Islander victims/survivors of family violence, such as FVPLSs;
- There must be increased investment from both Federal and State and Territory Governments for frontline, culturally safe services for Aboriginal and Torres Strait Islander victims/survivors of family violence;
- Implement data collection training and system strengthening within Victoria Police to ensure appropriate collection of data on Aboriginality of victims/survivors and provision of appropriate referral pathways; and
- Establish fully independent, robust and accessible oversight and review mechanisms of police in all jurisdictions.

7. Other Issues

The National FVPLS Forum identifies a number of additional issues to bring to the attention of the ALRC.

7.1 Different geographic locations require different responses

FVPLS member organisations work with Aboriginal and Torres Strait Islander women and their children across the entire country. Our on-the-ground experience demonstrates that Aboriginal and Torres Strait Islander women encounter a diversity of experiences across metro, regional, rural and remote areas. The experiences of our clients across the National FVPLS Forum indicate that each cohort faces unique and significant barriers to accessing their legal rights regardless of their location.

¹³ Human Rights Law Centre and Change the Record, *Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women’s Growing Over-Imprisonment (2017)*, page 5.

¹⁴ See FVPLS Victoria submissions to the Victorian Royal Commission into Family Violence at pages 46-53 and to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria, available at <http://www.fvpls.org/images/files/FVPLS%20Victoria%20submission%20to%20inquiry%20into%20external%20oversight%20of%20police%20corruption%20and%20misconduct%20-%20FINAL%20pdf.pdf>.

While the commonality of their experience remains that they are women who identify as being Aboriginal or Torres Strait Islander, it is clear that different geographic locations require different responses.

7.2 Cycle of poverty, child protection, violence and incarceration

Aboriginal people often face significant and multiple layers of disadvantage. Nationally, Aboriginal and Torres Strait Islander children are 9.5 times more likely to be in out-of-home care than non-Aboriginal children.¹⁵ In Victoria, for example, family violence is a cause in up to 90% of cases involving Aboriginal children and out-of-home care.¹⁶ Aboriginal children who experience out-of-home care are more likely to engage with the youth justice system.¹⁷ As outlined above, family violence is one of the single biggest drivers of Aboriginal children being placed in out-of-home care.

While the Discussion Paper acknowledges the relationship between child protection and adult incarceration in the Introduction, we consider that this issue requires much more detailed consideration. This cycle needs to be clearly mapped out both within a law reform context and associated practice and policy change context across legal and Government sectors. A holistic and intersectional approach needs to be taken as part of the Inquiry that more comprehensively addresses the underlying cycles of incarceration.

In this regard, the NFVPLS Forum has been advocating since 2015 for the establishment of an Aboriginal and Torres Strait Islander Child Protection Notification and Referral system. This proposal was also recommended and supported through the jointly convened NFVPLS-NATSILS Justice and Family Violence Workshop as part of the Redfern Statement Workshop. A nationally consistent mandatory notification and referral system (akin to the Custody Notification System) should be established to refer Aboriginal and Torres Strait Islander families in contact with the child protection system to culturally appropriate supports and services, including legal assistance at the earliest possible opportunity, especially where family violence is a factor in potential child removal. Access to independent, culturally safe, preventative legal services at the earliest possible stage would support families to understand their legal rights and take proactive action to avoid or minimise Aboriginal and Torres Strait Islander children being removed from families and placed in out-of-home care.

7.3 Short sentences of imprisonment

The National FVPLS Forum acknowledges the important discussion of short sentences of imprisonment in the Discussion Paper. In principle, we acknowledge the impacts caused by short terms of imprisonment, particularly where imprisonment is unnecessary or ineffective. The National FVPLS Forum also acknowledges that there are many successful community based programs that work with perpetrators of family violence such as the Wulgunggo Ngalu model in Victoria for example.

¹⁵Family Matters Campaign Report “Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal” Available: http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf.

¹⁶ Commission for Children and Young People, 2016, ‘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, p 47, available at <http://www.ccyp.vic.gov.au/downloads/always-was-always-will-bekoori-children-inquiry-report-oct16.pdf>.

¹⁷ Commission for Children and Young People, 2016, ‘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, p 144, available at <http://www.ccyp.vic.gov.au/downloads/always-was-always-will-bekoori-children-inquiry-report-oct16.pdf>.

However, in many instances, there are issues regarding the accessibility and availability of these programs. In the family violence context, the ability of judicial officers to have at their disposal a variety of alternatives, including a sentence of imprisonment for a family violence perpetrator where necessary and appropriate, may sometimes be required to protect the safety of victims/survivors of family violence, or women who are at risk of family violence. The National FVPLS Forum submits that the abolition of short sentences of imprisonment therefore warrants further detailed consultation and careful consideration particularly in the family violence and Aboriginal and Torres Strait Islander community context.

The National FVPLS Forum also emphasises the importance of adequate funding to ensure that quality, community-led and culturally safe programs are available and accessible for both perpetrators of family violence and victims/survivors of family violence, including programs which build the strength and resilience of Aboriginal and Torres Strait Islander women and reduce their vulnerability to violence. While short prison sentences might in some situations provide a brief period of safety for the victim/survivor of family violence, there needs to be increased access to programs that address the violent behaviour of perpetrators, and are delivered in community.

The Barndimalgu Court in Geraldton, Western Australia, is a specialist, culturally appropriate and therapeutic court-based model for addressing family violence experienced by Aboriginal and Torres Strait Islander people. The model aims to address the over-representation of Aboriginal and Torres Strait Islander people in prison on family violence related offences by providing specific programs to address perpetrators violent behaviour before a final sentence is delivered. If this program is successfully completed, the perpetrator may be given a community sentence instead of time in prison. While this initiative is one that needs further development, it is a model which could be adapted to meet the needs of communities in other jurisdictions and to ensure perpetrators are linked into rehabilitative programs and the needs of victims/survivors adequately supported.