Aboriginal
Legal
Rights
Movement

**Submission to the Australian Law Reform Commission**

**Re: Issues Paper 49, April 2024**
**Justice Responses to Sexual Violence**

**31 May 2024**

## Acknowledgement of Country

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

ALRM recognises that the cultural and heritage beliefs are still as important to the living Kaurna people today and pays tribute to elders and leaders past, present and emerging.
We pay our respects to the cultural authority of Aboriginal people from other lands & waters of South Australia and Australia.

## About the Aboriginal Legal Rights Movement

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

The logo of the Aboriginal Legal Rights Movement (ALRM) shows an Aboriginal shield with designs painted upon it. The shield very much represents the role of ALRM. We are there to protect Aboriginal people, to shield them by using the legal system to protect them and their interests from harm and to help them to assert their rights to establish their proud Aboriginal identity as citizens of the state of South Australia.

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

## Our Vision

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

**ALRC – Justice Responses to Sexual Violence**

ALRM recognizes the seriousness of sexual violence in our communities and the impact on Aboriginal women, children and families – and the men who grow up to perpetrate a violence that is not within culture.

ALRM understands the ALRC are consulting widely, researching widely and considering many submissions. The ALRC are also cognisant of the appalling statistics concerning Aboriginal women as victims of sexual violence – each statistic representing a person, family and community impacted.

We also understand the ALRC held a round table discussion at which the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) were heard.

We therefore limit our submission to some key points that we request be factored into the considerations.

ALRM Overall Recommendations:

1. That the ongoing call for long term, adequate, ongoing funding to Aboriginal and Torres Strait Islander organisations to continue with already established programs and to commence further trauma based, culturally appropriate, place based responses. There have been too many requests that have been denied for too long – leading to the appalling rate of sexual violence against Aboriginal people. We quote:
    a. "The evidence for what works is there, there's just not enough of them. "There is sufficient evidence that localised healing programs that respond to family violence work, and community members and service providers do not want to dedicate any more time or resources to proving that such an approach in its concept is effective. Instead, healing programs need to be adequately resourced with secure long-term funding. There is need for investment in existing programs and investment to create and expand programs that are non-carceral, preventative and that cater to people with disabilities and LGBTQIASB+ people."[1]

2. Police need to stop charging Aboriginal women with offences when they go to report incidents of family and domestic violence, other violence and sexual violence against them.

3. The need for all involved in the judicial system including lawyers to receive specific and ongoing training and written guidance on the ongoing impact on Aboriginal people of colonisation, dispossession and the many laws and policies that have severely impacted Aboriginal people including the removal of children, culture, country and stolen wages. Training must also be provided by Aboriginal experts in cultural obligations, need for interpreters and issues which are also raised in this submission.

4. That the Julie Lansey model set out in part 9 of this submission be supported.

5. That Interpreters be utilised – taking care as set out in Part 7 of this submission.

[1] Carlson, B., Day, M., & Farrelly, T. (2024). What works? A qualitative exploration of Aboriginal and Torres Strait Islander healing programs that respond to family violence (Research report, 02/2024). ANROWS p16

6. That Aboriginal people be provided self determination as to who will support them and that there be recognition of the need for Aboriginal people to be supported by other Aboriginal people.

**We turn now to responding to some of the issues raised:**

**1. Reporting experience of sexual violence safely – and police responses (Questions 1-7)**

The research on reporting found that it **"**is estimated that 90 per cent of family violence incidents against Aboriginal women are not reported." Carlson et al 2024 [2]

The research (well summarised in Carlson et al in 2024) and our experience suggests the reasons for this include [3]:

1. Suspicion of mainstream organisations because interactions lead to 'criminalisation of the perpetrator, as opposed to the integration of the individual into the healing process' – i.e. can result in imprisonment.

2. Reporting of any violence against an Aboriginal woman means a child safety organisation becoming involved – with eventual removal of their children.

3. That when Aboriginal women report to police, this can lead to that women's own imprisonment. For example, police find the woman has an outstanding warrant, fines or is wanted for questioning and pursue that issue rather than the violence that she is facing.

   Further, Aboriginal women may not be the protype victim that non-Aboriginal people expect and her trauma responses lead to the woman herself being detained for violence against the man instead of the other way around. The Carlson research summaries this well: "It is well known that police commonly arrest Aboriginal women who call for assistance when they are experiencing family violence".[4]

4. 'The majority of research into this field of study has imposed a contextual framework for reporting domestic, intimate partner, or family violence, which is consistent with experiences of non-Indigenous women, which fails to account for historic contexts, and the continuing impact of colonialism and systemic racism. Poverty, isolation, shame, and a lack of appropriate support services contribute to under reporting.'[5]

Unless police stop arresting and charging Aboriginal women when they report as victims and unless there is a complete systems change designed and led by Aboriginal people for reporting crime – there will be no change in reporting.

[2] Carlson et al 2024, p 22 – citing Anderson et al., 2017; Arney & Westby, 2012; Braybrook, 2015; Cripps & Adams, 2014; Lowitja Institute, 2019; QCFDVR, 2019
[3] Carlson et al 2024, p 31-2 citing Green, 2019; Lewis, 2023
[4] Carlson et al 2024, p 60 citing Langton et al., 2020; McGlade & Tarrant, 2021
[5] Carlson et al 2024, p 22 citing Anderson et al., 2017; Arney & Westby, 2012; Braybrook, 2015; Cripps & Adams, 2014; Lowitja Institute, 2019; QCDFVR, 2019

2. **The trial process (questions 11-13)**

Whilst ALRM would like to see the trial process de-traumatised for complainants, nothing should be done that gives the decision maker a view that the presumption of innocence of an accused has been removed and that the burden of proof has been shifted.

The presumption of innocence is a fundamental human right, as enshrined in article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) and article 40(2)(b)(i) of the Convention on the Rights of the Child (CRC). The presumption of innocence is a keystone in the rule of law. ALRM does not support the shifting of the burden of proof onto the defendant nor the removal of the defendants right to silence.

3. **Special measures for particularly vulnerable witnesses eg pre-recorded evidence/ cross examination (Questions 14-15)**

ALRM supports the proposal to record interviews with complainants but emphasises the need to ensure that only trained experts are used to conduct interviews. This is fundamental to ensure complainants are not further traumatised through all the processes involved in bringing an initial complaint through to any trial or appeals.

Investigators must be properly trained in trauma informed approaches and cultural safety for the Aboriginal peoples with whom they are working so that they can collect all necessary evidence from the complainant at the initial stages to lessen the chances of re-traumatisation from having to tell their story over and over again in difficult settings.

We refer to the questions relating to interpreters here.

**4. Special measures for particularly vulnerable witnesses e.g. intermediary to put questions to complainants (Questions 16-17)**

ALRM submits that vulnerable witnesses include Aboriginal people who face structural racism and systems that are not designed for them, even more so Aboriginal people who do not have English as their first language – who are in fact fluent in other languages.

Aboriginal people with a disability face higher barriers, Aboriginal and Torres Strait Islander people with disability experience “intersectional inequality” due to the intersection of discrimination that is both Aboriginal and Torres Strait Islander and disability related. [6]

Aboriginal people often look for another Aboriginal person to feel comfortable and supported and this is a necessary component to consider in supporting vulnerable witnesses.

[6] Carlson et al 2024, p 27 citing Avery, 2018

All Aboriginal people should have self-determination over whether or not they have an intermediary and who that person would be.

We further refer to the questions relating to interpreters here.

**5. Assessment of Credibility and reliability of complainant – trauma now understood to impact memory, changes to laws re directions to jury … (Questions 18-20)**

ALRM is of the view that current jury directions as set out in section 34N of the Evidence Act (South Australia) are adequate and do not require amendment.

We refer to research that suggests jurors can often struggle to understand instructions given by judges, ALRM supports the use of the model directions in the South Australian Criminal Trials Bench Book that form the core of directions on consent. The current model directions adequately take into account reports by jurors that suggest that the length of directions, language (avoidance of uncommon words, jargon, double negatives), sentence length and complexity, active voice, and provision of written copies of instructions can all strengthen juror understanding.[7]

In our view, the Evidence Act should ensure Judges are given the flexibility to expand upon directions as they apply to each particular case. We do not think it necessary that a Judge must give a direction on every matter relating to consent, or misconceptions about sexual violence in every trial. ALRM is of the view that the Evidence Act should maintain the discretion of the Judge to provide a direction where they form a view that such a direction is necessary given the specific facts of the trial.

It would be appropriate for a  Bench book to provide guidance on how directions can be utilised at earlier opportunities to overcome misconceptions and inaccurate narratives in trials. We refer to Victorian research on this issue.[8] ALRM suggests that judicial officers should be appropriately informed of the importance of timing and jury directions, with the Evidence Act ultimately maintaining their discretion as to when to provide a direction to the jury based on the evidence presented.

Guidance should be complemented by judicial training to ensure Judges are aware of their own misconceptions and are fully informed by experts in the field, including psychologists, rape crisis centre workers and victim support advocates.

Crucially for Aboriginal victims and accused, much more needs to be done to ensure that Aboriginal cultural issues are understood, by lawyers, Judiciary and juries.

In February 2023 the *Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia* reported to the State Attorney General's Department (the 2023 Advisory Commission). This report clearly and plainly sets out the need for greater understanding of

[7] See, https://www.bocsar.nsw.gov.au/Publications/CJB/cjb119.pdf
[8] See, https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/39-2-5.pdf

Aboriginal people within the justice system, their cultures and issues that impact Aboriginal people. The Advisory Commission reported:

> "Too often, non-Aboriginal people are making decisions that impact Aboriginal people and communities despite not having knowledge about Aboriginal people and culture, or a full understanding of the ongoing impacts of colonialism. This lack of knowledge leads to unconscious biases, racist behaviours and poor decision-making." [9]

A trial involving an Aboriginal complainant or defendant must involve evidence for the sake of education of the judicial officer and the jury of the unique aspects of Aboriginal cultures, both where the victim is an Aboriginal person and / or when the accused is an Aboriginal person.

6. **Judge alone trials (Questions 21)**

If trials are held by Judge alone, ALRM considers that the Evidence Act (South Australia) should require judges to give themselves the directions mandated by various provisions of the Evidence Act (SA), despite it being expected that the trial judge would turn their mind to such matters in reaching a decision.

ALRM supports it being put beyond doubt, through introduction of legislation to this effect, that Judges should give themselves the same directions as they would a jury.

The considerations as to education about Aboriginal cultural issues in the response above also apply here.

**7. Interpreters (Questions 25-26)**

Interpreters are crucial. Consideration of whether or not they are required is an important issue. We find that Aboriginal people fluent in a language other than English but not English, are regularly expected to give evidence in English when their English language competence appears to be good enough in the context of general conversations and situations that are less formal than a court room.

Aboriginal people must be provided interpreters when English is not their main language of fluency.

Of fundamental importance in the context of trials involving an Aboriginal complainant and/or defendant is the need to ensure that where interpreters are required, consideration is given to cultural safety and obligations in regard to the gender of the interpreter used.

[9] Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia, 2023 p. 11.Available at: www.agd.sa.gov.au/law-and-justice/advisory-commission

Likewise, the kin relationships needs to be carefully considered by the interpreter and assurance that they are free to interpret for the person they are interpreting for is required. There is likely to need to be different interpreters for defendant and complainant along with their witnesses within the one trial.

**8. Specialisation training of judges and counsel (Questions 33) – need for specialist courts/ training for judges and lawyers?**

ALRM submits that judicial and legal training to address misconceptions held by society must involve cultural competency training and education in relation to Aboriginal peoples and cultures.

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

> That, in accordance with recommendation 96 of the Royal Commission into Aboriginal Deaths in Custody, the National Judicial College of Australia and the Australasian Institute of Judicial Administration mandate ongoing professional development for judges and magistrates in the areas of cultural competence and unconscious bias, including systemic and institutional racism and intergenerational disadvantage of Aboriginal people. Training should be tailored to the region and delivered by Aboriginal Community Controlled Organisations and / or Aboriginal Elders and community leaders.[10]

The Report clearly and plainly sets out the need for greater understanding in the justice system of Aboriginal people, their cultures and issues that impact Aboriginal people. As earlier quoted the report says:

> "Too often, non-Aboriginal people are making decisions that impact Aboriginal people and communities despite not having knowledge about Aboriginal people and culture, or a full understanding of the ongoing impacts of colonialism. This lack of knowledge leads to unconscious biases, racist behaviours and poor decision-making." [11]

Particular consideration should be given to educating those involved in decision making to address misconceptions or ignorance about behaviours, sharing of stories, and cultural obligations.

Particular consideration should further be given to the current trauma faced by Aboriginal and Torres Strait Islander peoples, we quote:

> "Colonisation was an extremely violent process with Aboriginal and Torres Strait Islander men, women and children harmed through state-sanctioned violence including removal from their land, massacres, widespread sexual violence and

[10] Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia, 2023, p.54

[11] Report of the Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia, 2023, p. 11.

abductions of women, forced labour, segregation and exclusionary processes resulting in the forced and systemic removal of Aboriginal children from their families, and garnering of wages up to the 1970s.

Three significant inquiries provide insight into the trauma faced by Aboriginal and Torres Strait Islander people:

- the Royal Commission into Aboriginal Deaths in Custody
- the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families
- the Royal Commission into Institutional Responses to Child Sexual Abuse.

These inquiries and their associated reports identify previous government policies as a major cause of current and ongoing trauma. They also highlight efforts to eradicate culture and destroy parenting practices including through the institutionalisation of children in harsh, inhumane and abusive conditions (Healing Foundation, 2018a).

The level of intergenerational trauma this has resulted in is seen as one of the major drivers of the ongoing cycle of violence experienced by Aboriginal and Torres Strait Islander people and communities (Healing Foundation, 2017). The links between colonisation, intergenerational trauma and subsequent violence are described by Victoria's former Commissioner for Aboriginal Children and Young People, Andrew Jackomos:

The cause of family violence, I believe, is to do with the breakdown of our society's values and norms, traditions and culture that has increased over the past 30 or 40 years and is cumulative harm and dysfunction is happening for many families generation after generation. The impact of past government policies and programs have had a devastating effect on my community that continues to this day. But there is no, and will never be, any justification for family violence. Family violence that is ripping apart families and ripping apart children from their culture and heritage. (Our Watch, 2018, p. 56)

These causal links were also noted in the Victorian Health Promotion Foundation's Violence against women in Australia: An overview of research and approaches to primary prevention (2017):

> From a Victorian Aboriginal community perspective, the experience of family violence is understood in the historical context of white settlement and colonisation and their resulting and continuing impacts: cultural dispossession, breakdown of community kinship systems and Aboriginal law, systemic racism and vilification, social and economic exclusion, entrenched poverty, problematic substance use, inherited grief and trauma, and loss of traditional roles and status. (Aboriginal Affairs Victoria, 2008 as cited in Victorian Health Promotion Foundation, 2017, p. 8)

The damage perpetuated since colonisation has fractured family and community relationships, amplifying harm across generations with limited availability of culturally safe and trauma-informed services to facilitate healing and recovery."[12]

[12] Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., Parsons, J., Prior, G., Idagi, L., Bruce, R., Gray, T., Jia, T., Hostalek, M., Gibson, J., Mitchell, B., Lea, T., Clancy, K., Barber, U., Higgins, D., ... Trew, S. (2022). New Ways for Our Families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people (Research report, 06/2022). ANROWS page 10-11

Research considered in relation to the training in our view should at least include:

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

- Langton, M; Smith, K; Eastman, T; O'Neill, L; Cheesman, E; and Rose, M, 2020, Improving family violence legal and support services for Aboriginal & Torres Strait Islander women. Sydney: ANROWS, ANROWS-Langton-RtPP-Improving-services.pdf (anrowsdev.wpenginepowered.com)

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

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

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

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

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

**9. Guilty pleas – ways to encourage – are laws preventing this through increased max penalties/ sex offenders register etc (Questions 36-38)**

In the experience of ALRM, laws are preventing guilty pleas, in particular in SA:

- The sex offender register;
- Young people being labelled/ placed on the sex offenders register when having a sexual relationship with peers;
- The matrix of sentencing including the High Risk offender regime with its extended supervision orders and continuing detention orders which continue well after the sentence is completed;

- Ongoing bills such as the Sentencing (Serious Child Sex Offenders) Amendment Bill 2024 by which triggering offences would lead to indefinite prison sentences.

ALRM has put forward to the Commonwealth Attorney General and within its submissions for ongoing funding the need for a relationship between ATSILS and Family Violence Prevention Legal Services and with police. ALRM and FVPLS worked collaboratively in early to mid-2000s in Ceduna under what became known as the Julia Lansley model. We submit this should be considered in both the issue of guilty pleas and sentencing:

The model for collaboration between ATSILS and Family Violence Prevention Legal Services was commenced by Ms Julia Lansley formerly of the Ceduna Family Violence Prevention Legal Service in the early to mid-2000s.She worked in collaboration with ALRM's former Ceduna solicitor Karl Kirsten.

At that time there were a number of serious family violence cases before the Ceduna Magistrates Court involving Aboriginal parties.

<u>The Lansley model</u>

The Lansley model worked on the assumption that where there was a case of domestic violence the South Australian police would prosecute the alleged perpetrator for assault or aggravated assault upon a family member in the ordinary course.

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

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

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

Withdrawal of a prosecution was by no means a foregone conclusion and some cases would result in guilty pleas and usual punishments imposed by a court. I am not aware of cases

where there were significant disputes as the facts on the cases as to justify a trial on the facts. In fact, I suspect that they are rare, if they occurred at all. It is likely that written agreement as to the factual basis would have underpinned guilty pleas or the withdrawal of charges.

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

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

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

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

The model carried out the intentions of the Commonwealth by allowing for separate but effective representation of Aboriginal victims by a Legal Service parallel with but separate from ATSILS. Conflict of interest within the ATSILS service was thus avoided. The model had the advantage of allowing both for equal representation and for the appropriate separation of representation in domestic violence cases.

**10. Sentencing – inclusive of victim? (Questions 39-42)**

We submit that the victim of the offence should have legal representation along with social service supports to ensure the victim is heard within the sentencing process. The above Julia Lansley model allows for this, we refer to our response to questions 36-38.

**11. Civil proceedings/ other justice responses: (Questions 45-56)**

ALRM supports restorative justice approaches that are place based, Aboriginal designed and led.

In a recent ANROWS report, the researchers explain the underlying causes and consequent needs this way:
"Family violence within Aboriginal and Torres Strait Islander communities is increasingly being understood to be shaped by the specific context of colonialism, systemic disadvantage, cultural disruption, forced removal of children, and the intergenerational

impact of trauma. This understanding recognises that family violence in Aboriginal and Torres Strait Islander communities has specific causes and complexities. There is growing consensus that policies should be distinct and tailored, and must be guided by the experiences and viewpoints of Aboriginal and Torres Strait Islander peoples. Many Aboriginal and Torres Strait Islander peoples have advocated for a community-led approach to family violence."

It goes on "Participants were anxious to stress that violence against women and children is not an acceptable part of Aboriginal and Torres Strait Islander Law and Culture. Participants said that in actuality, it is the discouragement of Culture, the inability to carry out cultural obligations, and interruptions in passing values and expectations down to younger generations which causes social dysfunction and violence. Health and wellbeing are also compromised when cultural obligations are not fulfilled."[13]

The research concludes that the underlying issue for Aboriginal peoples involved in family and domestic violence is colonisation, dispossession and resulting trauma, a very different concept to the underlying issues for non-Aboriginal families. This means healing and overcoming domestic and family violence need to be trauma and culturally informed and not dictated by a non-Aboriginal model. [14]

We note that local Justice Reinvestment responses are key and have been an ongoing recommendation of the Australian Law Reform Commission, including in the Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133 (2017) – Recommendation 4-1 and 4-2.

We refer here again to the Carlson report 2024 especially pages 16-23 and 26-50 – justice reinvest must be designed by Aboriginal peoples for their communities. In summary, she writes:
"The literature overwhelmingly advocates for a holistic approach to family violence healing, which includes both those who experienced and those who have perpetrated family violence, as well as family and community (see Blagg et al., 2018; Cheers et al., 2006; Closing the Gap Clearinghouse, 2016; Cripps & Davis, 2012; Memmott et al., 2006; Olsen & Lovett, 2016; Our Watch, 2018; QCDFVR, 2019; Aboriginal Affairs Victoria, 2008). This research project also found that addressing family violence in Aboriginal and Torres Strait Islander communities requires thoughtful engagement with both those who have experienced and those who have perpetrated family violence, and families as a whole. This was felt to be an element of "what works" with healing programs that respond to family violence"[15].

ALRM points out here that there has been much research, many pilot programs, many organisations funded and de-funded and a stop – start approach to the work of ACCOs in this area. Carlson reports:
"Participants reported that many healing programs that respond to family violence rarely receive secure, ongoing government funding if they receive funding at all. They are either run by community members through their own generosity and ingenuity, or they are attached to a

[13] Australia's National Research Organisation for Women's Safety. (2020). Understanding the role of Law and Culture in Aboriginal and Torres Strait Islander communities in responding to and preventing family violence: Key findings and future directions (Research to policy and practice, 19/2020). Sydney: ANROWS pg 2 & 4
[14]Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N. (2018). Innovative models in addressing violence against Indigenous women: Final report (ANROWS Horizons, 01/2018). Sydney: ANROWS. 4.3-Blagg-Final-Report.pdf (anrowsdev.wpenginepowered.com)
[15] Carlson et al 2024, p 60-61

larger organisation. Many participants expressed frustration at seeing mainstream organisations given the resources to service Aboriginal and Torres Strait Islander communities yet fail to deliver appropriate and effective programs."[16]
"There is sufficient evidence that localised healing programs that respond to family violence work, and community members and service providers do not want to dedicate any more time or resources to proving that such an approach in its concept is effective. Instead, healing programs need to be adequately resourced with secure long-term funding. There is need for investment in existing programs and investment to create and expand programs that are non-carceral, preventative and that cater to people with disabilities and LGBTQIASB+ people". [17]

ALRM considers that it is time to provide long-term funding to ACCOs currently providing services. This funding should be at an equal level to government departments and the parameters of programs should be set by the ACCO not the government.

Aboriginal people know best what works for their own peoples and communities and must be supported.

We thank you for considering this submission.

You are welcome to contact our policy and advocacy unit if you have any questions about this matter at: policyandadvocacy@alrm.org.au

Signed:

[redacted]
Christopher Larkin

Chief Executive Officer

Aboriginal Legal Rights Movement

[16] Carlson et al 2024, p13
[17] Carlson et al 2024, p 16