



natsiwa

NATIONAL ABORIGINAL AND
TORRES STRAIT ISLANDER WOMEN'S ALLIANCE

Submission: Inquiry into family violence orders 2024

Standing Committee on Social Policy and Legal Affairs

National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA)

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Introduction

The National Aboriginal and Torres Strait Islander Women's Alliance (NATSIWA) is the peak body for Aboriginal and Torres Strait Islander women in Australia.

We have 20 organisational and 1307 individual members across Australia. All are First Nations women. Membership is free.

The NATSIWA leadership team comprises nine First Nations women directors representing each state and territory and the Torres Strait.

Our Directors' professional expertise includes multidisciplinary health, law/justice, education, business leadership, cultural consultancy, family and domestic violence support, and child protection. We support our women in diverse communities throughout Australia via placed-based, culturally safe projects. Much of our consultation and support happens face to face.

Executive summary

Family violence is an acute crisis in many Aboriginal and Torres Strait Islander communities. It is a key barrier to achieving multiple Closing the Gap targets.

FVOs should be a life-saving tool and the Inquiry acknowledges the need to improve their accessibility and effectiveness.

For First Nations women, the biggest barrier to accessing and benefiting from FVOs is reluctance to report violence. Their reasons include distrust of police and fear of community retribution. Overcoming this must start with tackling systemic racism and prejudice in the justice and law-enforcement systems.

Responses to family violence against First Nations women must be contextual – based on an understanding of the intersecting impacts of intergenerational harm and trauma, mental health issues, poverty, lack of housing, and disadvantage among First Nations people. These are the effects of colonisation and cultural dispossession.

A continuing theme among First Nations women is a desire to address violence by investing in First Nations men and boys. This will depend on funding for First Nations-led organisations and based on self-determination.

Beyond these issues, NATSIWA members suggest:

- hearings via video link for safety and convenience
- independent FVO support system
- expansion of Victoria's Family Violence Safety Notices (or similar) to all states and territories.

Response to Term of Reference 1

1. *The risk of an escalation in the aggressive and violent behaviour of the perpetrator and heightened risk to the partner and children during family court proceedings.*

Family violence safety notices

Victoria Police can issue Family Violence Safety Notices, an immediate short-term intervention with the same range of conditions as FVOs and lasting for 14 days. When police issue an FVSN, they also file an FVIO application.

FVSNs or similar could be implemented in all Australian jurisdictions. They could be extended until FVO court proceedings are finalised in order to keep women and children protected.

Video links

Court proceedings could be made far safer and less traumatic if the protected person(s) and respondent attended via video link. This would also reduce travel and disruption for families and security requirements for the court. It would remove a barrier to First Nations women reporting abuse and feeling able to go through with the court process.

Reduce presumption of bail

The majority of FVO applications for First Nations applicants nationally are made by police¹ who have arrested a violent perpetrator. But too often, the perpetrator is released from custody before the victim has had enough time to organise their affairs and move to safety.

"If a male has a history of crimes of violence, of any form of domestic violence, coercion, physical, emotional, they should not have the presumption of bail. They should not get bail at all...[women] need to have that offender taken off the street to give them breathing space to get away to a women's refuge...You don't need a Royal Commission. That money needs to go into frontline services now."²

—Vincent Hurley, Macquarie University criminology professor and former NSW police detective, Q&A ABC TV, 1 May 2024

¹ <https://theconversation.com/how-indigenous-women-have-become-targets-in-a-domestic-violence-system-intended-to-protect-them-102656>

² https://www.youtube.com/watch?v=CRL5_qTC5lc

Response to Term of Reference 2

2. The current barriers for litigants in the family law system to obtain and enforce FVOs, including but not limited to:

a) the additional difficulty for victims of violence in the family law system to attend multiple courts for their family law order proceedings and an FVO

Barriers to reporting

The biggest barrier for First Nations women is reporting family violence in the first place.

A NATSIWA member says,

“Many Aboriginal women don’t report the severity of the violence they are experiencing due to a number of factors: fear of having children removed, losing housing and being isolated from family and/or community as result of reporting it.”

A survey of perceptions of First Nations community safety found fear of further violence and “payback”, or culturally related violent retribution, was a common reason for women not reporting violent victimisation³. So is shame and loyalty to mob, of whom their violent partner is a member.

Lack of privacy and confidentiality is another deterrent⁴. In a small community, a woman may not seek support because the staff at the available Aboriginal services are related to, or otherwise associated with, the perpetrator. This means she must choose between leaving her community to escape, or staying with a violent partner.

For women who want to end the violence but save the relationship, there is inadequate support to educate them about how FVO conditions can be varied to suit their circumstances.

Discriminatory stereotypes and police ignorance

First Nations women are among Australia’s most marginalised and traumatised people. Every day, our women live with intersecting barriers to justice: racism, gender-based violence, cultural loss, and socio-economic disadvantage.

Police, the justice system and correctional-facility staff repeatedly fail to grasp this. There is a need in those professions for significant, compulsory and ongoing education to address structural racist and sexist attitudes. They need to understand the intersecting impacts of intergenerational harm and trauma, mental health issues, poverty, lack of housing, and disadvantage among First Nations people.

Statistically, First Nations women who are victims of family violence or murder receive less media attention than non-First Nations victims. Compounding this is a tendency for reporting to portray them as at fault, or as drunks or criminals first and victims second.

There are no government programs specifically to combat this stereotype, which is continually reinforced. However, non-government resources such as the OurWatch tips for reporting on Violence against First Nations women⁵ provide thorough and well informed dos and don’ts for the media.

Their principles could be amplified by government communications and adapted for police, the justice system and all legal and non-legal support services. The principles should be reviewed in consultation with Traditional Owners throughout Australia to ensure they are culturally appropriate wherever they are used.

³ Willis M 2010. Community safety in Australian Indigenous communities: Service providers’ perceptions. Research and public policy series no. 110. Canberra: Australian Institute of Criminology <https://www.aic.gov.au/publications/rpp/rpp110>

⁴ Aboriginal Family Violence Prevention Legal Service Victoria (FVPLS Victoria) 2010b. Strengthening law and justice outcomes for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault and women and children: National policy issues—a Victorian perspective. Collingwood: FVPLS Victoria

⁵ <https://www.ourwatch.org.au/media-and-reporting/resources/reporting-on-violence-against-aboriginal-torres-strait-islander-women>

Police are seeking FVOs against misidentified victims

Many First Nations women justifiably feel distrust and lack of confidence in police including because they are too often misidentified as perpetrators on protection orders, particularly in family violence situations where they have defended themselves. A 2020 study⁶ shows that this happens more to First Nations than non-First Nations women, partly because First Nations women are statistically more likely to use violence to resist violence perpetrated on them⁷.

The study says,

“Aboriginal and Torres Strait Islander women very often do not fit the ideal victim stereotype. They are more likely than other women to use weapons and to be uncooperative when police intervene...”

[First Nations] Women participating in this research explained that their reluctance to cooperate with police was based on prior experience of an inappropriate response, feeling intimidated, experiences of racism and mistrust of the police in general. Some police understood the difficulties faced by women torn between loyalty and self-preservation, while others were dismissive and irritated by uncooperative victims/survivors.”

A First Nations study interviewee said:

“I was flogged to a point where I couldn’t even brush my own hair. Couldn’t...lift my arm up. The female officer...tried to talk to me but because I wouldn’t talk to her...she went and spoke to him. I was sent to the hospital too because of my injuries...But because I didn’t talk, that order went out against me.”⁸

It is encouraging to see studies on identifying the person most in need of protection in domestic and family violence law. However, more must be done to educate police to recognise the contexts of a family violence situation. A more trauma-informed response to seemingly uncooperative victim/survivors is needed.

It is no wonder that First Nations women distrust police. Ultimately, the FVO system and the justice culture must assure First Nations women that it is worth reporting violence.

The Elizabeth Morgan House Aboriginal Women’s Service says,

“The court system can be disempowering, frustrating and defending yourself isn’t easy. Often, women are left more traumatized from the process.”

Video links

Options to attend FVO hearings via video link would reduce time, trauma, travel and security requirements.

⁶ Accurately identifying the “person most in need of protection” in domestic and family violence law (Research report) / Nancarrow et al. Sydney : ANROWS, 2020 <https://apo.org.au/node/309729>

⁷ Boxall, H., Dowling, C., & Morgan, A. (2020). Female perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence. Trends and Issues in Crime and Criminal Justice (no. 584). Retrieved from https://www.aic.gov.au/sites/default/files/2020-05/ti584_female_perpetrated_domestic_violence-v2.pdf

⁸ Accurately identifying the “person most in need of protection” in domestic and family violence law (Research report) / Nancarrow et al. Sydney : ANROWS, 2020 <https://apo.org.au/node/309729>

b) the intersection between FVOs and parenting orders, including that a family court parenting order may override an FVO

If a parent has been found guilty of violence, then FVOs must override parenting orders.

FVO conditions could allow parent offenders to maintain contact with children via video link. Scheduled, supervised video meetings are a safe and controllable way to maintain relationships, providing children are willing and it is in their best interests.

A safe app monitored by a domestic violence team could also be appropriate. It would keep data secure, much like a dating app, and allow parents and children to share text, photos and video. Content could be vetted for suitability by the domestic violence team to ensure it is free of any form of violence or abuse.

As well, NATSIWA members call for compulsory government-funded counselling or behaviour-change programs for offenders with FVOs.

Multiple court systems enable systems abuse

By nature, FVOs don't hold weight in the Family Court, and Family Court orders can have terms that contradict FVOs but must be adhered to.

NATSIWA members' experience is that this can contribute to a perpetrator's sense of power over their victims, including children. Family Court terms can result in a perpetrator justifying continued behaviour patterns that put victims and children at risk of further conflict and harm.

These behaviours are not limited to aggressive and violent incidents; they also include financial abuse, coercive control, psychological abuse and emotional neglect.

The separate court systems (Family Court for parenting orders, civil court for FVOs and Criminal Court for FVO breaches) and the time it takes to work through the systems simultaneously enable systems abuse.

Examples include:

- poorly worded family court orders that do not uphold safety for victims and children – ones that continually reprimand both adults for behaviour uncondusive to shared parenting based on an inaccurate assumption that shared parenting is possible for all adults when, in fact, the best hope in victim/perpetrator parenting arrangements is parallel parenting where the two adults have no contact, which upholds FVOs
- the use of child support systems and Centrelink to exert power and perpetrate financial abuse
- the onus on victims to address breaches of a Family Court order by seeking a contravention, an enforcement order, or some kind of injunction on what is being breached, meaning the victim does all the work and carries the trauma
- the absence of the child's voice about the abuse they experience and what they need for prevention and support throughout their childhood.

As well, having to attend multiple courts means victims are constantly re-telling traumatising incidents and facts and bouncing in and out of supports (where they are available). There is a lack of consistency in court systems and, hence, court supports.

c) the availability of wrap-around support services and security for victims of violence.

First Nations women are more than 33 times more likely to be hospitalised, and 6 times more likely to die from assault related to family violence than non-First Nations women⁹.

Overall, much more investment is needed in safe houses, refuges and support systems to:

- encourage women to report violence
- offer choices of provider and location
- support women to rebuild their lives and their health.

NATSIWA members call for continued funding for First Nations-led research into the best ways to deliver these services for First Nations women, including in mainstream organisations.

Not all First Nations women need First Nations-specific support services, and some willingly attend mainstream ones if they are culturally respectful and safe. Some women perceive that a mainstream service will more likely offer confidentiality.

Therefore, besides significantly increased funding for First Nations-specific services, there is a need to increase and improve cultural competence in mainstream services.

The Productivity Commission's Review of the National Agreement on Closing the Gap says,

"NACCHO has previously noted that good practice cultural safety training 'is not simply about imparting knowledge, but engaging participants in critical self-reflection regarding personal and organisational values and practices'...Training that imparts knowledge can be an important part of truth telling. And when it engages participants in critical reflection it can lead to 'cultural humility', which is an important step towards becoming a culturally safe employee".¹⁰

⁹ Australian Institute of Health and Welfare (AIHW), <https://www.aihw.gov.au/reports/family-domestic-and-sexual-violence/family-domestic-sexual-violence-data/contents/responses-measures/hospitalisation-rates-for-family-and-domestic-violence> Family, domestic and sexual violence data in Australia, Hospitalisations for family and domestic violence, AIHW, Australian Government, 9 November 2022; Al-Yaman F, Van Doeland M and Wallis M, <https://www.aihw.gov.au/reports/indigenous-australians/family-violence-indigenous-peoples/summary> Family violence among Aboriginal and Torres Strait Islander peoples, AIHW, Australian Government, Canberra, 2006

¹⁰ <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>

Response to Term of Reference 3

3. How FVOs could be more accessible for victims of violence going through the family law system, including but not limited to:

- a) making it easier to apply for and enforce an FVO

Family violence safety notices

Victoria Police Family Violence Safety Notices (FVSNs) provide immediate protection to victims, and a similar model could be considered for all states and territories.

FVSNs currently hold for 14 days only, but the Victorian Government is considering extending police powers to ban family violence perpetrators permanently from interacting with their victims¹¹. This would:

- reduce the need for FVO applications
- solve the problem of victims being unprotected in the time between the FVSN expiring and the FVO court appearance
- save victims from having to attend court at all
- encourage victims who are not prepared to go to court to report domestic violence.

There is a risk, however: extending police powers in this way would bring a crucial responsibility for police to identify perpetrators correctly when investigating a family violence situation. Misidentification is more common among First Nations women than other people.

Independent FVO support system

NATSIWA members are calling for the Government to establish an independent specialist FVO support system that would process FVO applications and work with police to ensure they are enforced.

Difficulty accessing culturally safe legal assistance to obtain an FVO or respond to a breach

The Australian Institute of Health and Welfare cites “a lack of cultural competency and discriminatory practices across the support sector”¹² as a barrier to First Nations women seeking assistance for family violence.

Aboriginal and Torres Strait Islander Legal Services rely on federal funding and they are chronically underfunded despite repeated recommendations from the Productivity Commission for increases. At some services, legal assistance is means tested but most clients can't pay.

The Productivity Commission's Closing the Gap review also says, “...the demand for culturally safe services is still not being met. For instance, the Aboriginal Family Legal Service WA highlighted where a shift in funding [to the service rather than mainstream organisations] had occurred, newly funded services quickly reached capacity, demonstrating significant unmet demand for culturally safe services.” The Service's submission reported that:

“In Western Australia, the criminal justice and child protection systems continue to perpetrate institutionalised racism and discrimination against Aboriginal people every day”¹³

The 16 Family Violence Prevention Legal Service (FVPLS) units across Australia are the only First nations-controlled services across the country that deliver specialist legal and non-legal family violence prevention programs to Aboriginal people specifically. Despite demand, FVPLS's are also underfunded, and staff are

¹¹ <https://www.abc.net.au/news/2024-05-04/victorian-government-reforms-ban-family-violence-perpetrators/103804736>

¹² <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>

¹³ <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>

paid less than those in the better-funded Legal Aid commissions, which are less culturally safe than FVPLS units. Family Violence Prevention Legal Service units need to be funded so that staff have pay parity with Legal Aid staff. Funding should be legislated, not allocated at the whim of changing governments.

Language barriers

Anecdotally, a critical lack of interpreters, particularly in the Northern Territory where they are needed most, is disadvantaging women in their communication with police and courts. The Northern Territory Aboriginal Interpreter Service receives federal and territory funding and there are private and community interpreting organisations around Australia but more are needed.

b co-location arrangements that would allow an application or enforcement of an FVO to be heard in the same physical location as the Federal Circuit and Family Court of Australia

Again, video-link hearings would avoid co-location issues.

c the legal and non-legal support services required to promote early identification of and response to family violence.

Awareness and access to the Court domestic violence team

Continuous education/communication campaigns are essential for educating victims, perpetrators and observers about what constitutes family violence. Court-based campaign material would contain contact details for the domestic violence team. It would be distributed widely and publicly in hard copy, not just online, to reach women and children before they are actively looking for it.

Police could also connect or refer victims directly to the team.

Preventing violence by supporting First Nations men

A continuing theme among First Nations women is a desire to invest in First Nations men and boys, not demonise them. NATSIWA's directors hear this message from our members constantly.

Women want trauma-informed and culturally safe programs to heal men and empower them to develop better behaviours. Successful programs must be delivered through First Nations-led organisations and based on self-determination. They are at the heart of preventing violence.

A 2020 First-Nations led study of the Albury-Wodonga region says, "Mainstream men's behavioural change programs may not be appropriate for – or even available to – Aboriginal perpetrators of violence, and there is a lack of culturally specific programs."¹⁴ Providers and participants cited lack of centres, waiting lists, and lack of trained staff because of prohibitive costs and impracticalities.

¹⁴ <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2019/02/14221015/ANROWS-Langton-RtPP-Improving-services.pdf>

Response to Term of Reference 4

4. Any other reform that would make it safer and fairer for victims of violence in the family law system who need the protection of FVOs.

Any instance of family violence is an emergency situation.

The waiting involved in obtaining FVOs and attending court hearings is totally at odds with victims' acutely dangerous situations.

Emergency situations require specialist teams, properly funded and resourced 24/7. For First Nations women suffering family violence this means:

- culturally safe refuges that are safe, pleasant, private, trauma informed and suitable for children. There are nowhere near enough places for victims to flee to anywhere in Australia.
- expedited FVOs
- keeping suspected perpetrators in custody for longer so that victims have time to leave
- staff responding to victims in trauma-informed ways.

A NATSIWA member says,

"We need specialist teams to be able to help quickly and over a long period to stop children ending up in the same system, repeating the same violence they saw as a child. Invest in change for the future."

Tolerating violence fuels crime

The level of seriousness that the courts communicate about DFV is not always aligned with practice. Victim survivors find themselves perpetually gaslit as they raise issues of coercion, emotional violence and psychological violence, only to have those issues dismissed.

Courts must consider that young people witnessing DFV often escape DFV at home and put themselves in risky situations. In those situations, tolerating DFV fuels crime.

With current heightened attention on youth offending and children in detention (on the principle of adult time for adult crimes) the current court systems must be held to account for their contributions to offending. Courts must take an approach of early intervention and prevention to uphold children's rights.

NATSIWA members call for reforms including:

- elevating knowledge of coercive control and measures to address it in all court systems
- elevating knowledge of, and orders that align with, parallel parenting rather than shared parenting as an ideal outcome in best interests of the child
- a one-court system that supports a family across all their orders and provides supports accordingly to victims, to perpetrators, and to children based on their rights and needs
- elevating the child's voice and the child's rights in the court systems.