



North Australian Aboriginal Justice Agency

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Discussion Paper: Northern Territory Sexual
Violence Prevention and Response Framework

**Submission of the North Australian Aboriginal
Justice Agency**

July 2019

Contents

1. Introduction	3
2. About NAAJA	3
3. Discussion Questions	4
3.1. Question 1 – what are the problems related to sexual violence in your community and in the NT that the Framework should consider?.....	4
3.2. Question 2 – what can be done to prevent sexual violence in your community and across the NT?.....	4
3.3. Question 3 – what are the key elements of a successful sexual violence prevention program?.....	5
3.4. Question 4 – where should sexual violence prevention program be delivered e.g. youth detention centres, schools,	6
3.5. Question 5 – who should deliver sexual violence prevention program?.....	6
3.6. Question 6 – what words should be used when we talk about people who have experienced sexual violence and people who commit sexual violence?	7
3.7. Question 7 – what can be done to support and respond to children who have experienced sexual violence in your community and across the NT?	7
3.8. Question 8 – what can be done to support and respond to young people who have experienced sexual violence in your community and across the NT?	9
3.9. Question 9 – what can be done to support and respond to children with problem and harmful sexual behaviours in your community and across the NT?.....	9
3.10. Question 10 – what can be done to support and respond to young people with problem and harmful sexual behaviours in your community and across the NT?.....	11
3.11. Question 11 – what can be done to support and respond to adults who have experienced sexual violence in your community and across the NT?	11
3.12. Question 12 – what can be done to respond to adults who commit sexual violence in your community and across the NT?.....	14
3.13. Question 13 – how can we strengthen the systems that respond to sexual violence in your community and across the NT?.....	15
3.14. Question 14 – what kind of changes does the justice system need to make to respond better to sexual violence justice?	16

1. Introduction

This North Australian Aboriginal Justice Agency (**NAAJA**) makes this submission in response to the Northern Territory (**NT**) Government 'Northern Territory Sexual Violence Prevention and Response Framework Discussion Paper'. NAAJA welcomes the opportunity to contribute to the development of the NT Government's Sexual Violence Prevention and Response Framework (**Framework**).

In providing this submission, our aim is to highlight issues and make recommendations based on our authority led by an Aboriginal board and consistent with our meaningful commitment to cultural competency (as set out in the Cultural Competency Framework 2017 – 2020).

2. About NAAJA

NAAJA delivers culturally competent legal services to Aboriginal people in the Northern Territory. In addition to core legal practice in criminal and civil law, NAAJA provides law and justice related services that aim to ensure that Aboriginal people have real access to justice. NAAJA was formed in February 2006, bringing together the Aboriginal Legal Services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). In January 2018 NAAJA commenced services in the southern region of the Territory bringing together Alice Springs and Tennant Creek (Central Australian Aboriginal Legal Aid Services). NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974.

NAAJA serves a positive role contributing to policy and law reform in areas impacting on Aboriginal peoples' legal rights and access to justice. NAAJA travels to remote communities across the Territory to provide legal advice, deliver community legal education and consult with relevant groups to inform submissions.

3. Discussion Questions

3.1. Question 1 – what are the problems related to sexual violence in your community and in the NT that the Framework should consider?

From the most recent statistics recorded by the Australian Bureau of Statistics (**ABS**), it is apparent that sexual violence is an immensely significant issue in the NT.¹ Between 2017 and 2018, the recorded rate of people who had experienced sexual violence in the NT was 147 people per 100,000 (a total of 360 victims), the highest rate of any State or Territory in Australia. Of this, Aboriginal or Torres Strait Islander people represented a total of 174 people who have experienced sexual violence (226 people per 100,000) in this period, and 67% of Aboriginal people who experienced sexual violence knew their offender. Whilst these are the reported statistics, multiple reports including the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (*Ampe Akelyernemane Meke Mekarle* “Little Children are Sacred”) indicate the actual incidences of abuse are significantly higher than those presented in the above statistics.²

Given the disproportionate representation of Indigenous Australians among people who experience sexual violence, a prevention and response framework must centralise better addressing Indigenous peoples and communities. In doing so, the framework should be informed by an understanding of the unique context of sexual violence for Aboriginal communities, and draw on previous reports exploring these issues.

3.2. Question 2 – what can be done to prevent sexual violence in your community and across the NT?

We agree with the Discussion Paper that the most effective way to prevent sexual violence is to stop it happening in the first place.

NAAJA agrees that there is no single cause of social problems, and that there are a range of issues interacting together and creating risk factors at a personal, community and social level. For Aboriginal people, the range of issues is particularly complex, including intergenerational trauma, structural violence, cultural breakdown, and institutional disempowerment. Therefore, significant effort and a genuine commitment to cultural competency is required to address the prevention of and response to sexual violence. In this area, this begins with hearing and responding to the voices of Aboriginal women particularly people involved in frontline services and with strong community connections. In a justice system context, it also requires reform broadly consistent with reports such as the Australian Law Reform Commission’s ‘Pathways to Justice’ Report³ and leading advocacy from Aboriginal Community Controlled family related legal services.

¹ Australian Bureau of Statistics, ‘Recorded crime—victims, Australia, 2018’, ABS 4510.0, 2019.

² Patricia Anderson and Rex Wild, *Ampe Akelyernemane Meke Mekarle - Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007.

³ Australian Law Reform Commission, *Pathways to Justice: Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, December 2017, ALRC Report 133.

3.3. Question 3 – what are the key elements of a successful sexual violence prevention program?

There is a need for sexual violence community education and prevention efforts to be culturally appropriate and competent and to acknowledge the impacts of colonisation and intergenerational trauma on Indigenous people. Developing culturally competent ways of prevention requires being adaptive to the circumstances of the region and empowering and resourcing the people required for change.

All work in developing a sexual violence framework should be undertaken in partnership with Indigenous communities, and in conjunction with greater resources directed more broadly to achieving behavioural change through individual, family and community healing approaches. We support the Framework's consideration of Territory Families' Aboriginal Cultural Security Framework, and consider that the Sexual Violence and Prevention Framework should not only complement but should be informed by the Territory Families' Framework. Any government framework that refers to Cultural Safety and Security should have robust and independent means of assessing its design and effectiveness. Over time, implementation of these frameworks can be assessed by robust evaluation mechanisms to see a shift in government practices.

Many past strategies to reduce violence in Aboriginal communities have primarily relied on the culturalisation of western violence prevention programs, where an Aboriginal spin is put on a successful mainstream program.⁴ This is inadequate in recognising the unique historical context in which sexual violence occurs and is experienced for Indigenous people. Research has shown links between experiences of colonisation and people who commit sexual violence,⁵ as well as people who experience sexual violence.

A specific cultural framework is required for successful Aboriginal sexual violence prevention programs. Several core principles should underpin this framework, including:

- A focus on collective community healing;
- Strong cultural governance and self-determination;
- A genuine commitment to co-design, including consultation of Elders;
- A commitment to delivery of programs in regional and remote Aboriginal communities and in Aboriginal languages;
- An underpinning of Indigenous values and principles; and
- An approach cognisant of trauma-informed healing practices.

These principles are applicable to prevention programs at all stages (discussed at Discussion Question 4 below), including response programs, as well as support programs for victims of sexual violence.

⁴ Healing Foundation with Mick Adams, Gabriel Bani, Professor Harry Blagg, Jack Bulman, Professor Daryl Higgins, Benny Hodges, Dr Victoria Hovane, Maria Martin-Pederson, Dr Amanda Porter, Grant Sara, Alan Thorpe and Dr Mark Wenitong, *Towards an Aboriginal and Torres Strait Islander violence prevention framework for men and boys*, 2017.

⁵ See, eg, Sue Gordon, Kay Hallahan and Darrell Henry, *Putting the picture together: inquiry into response by government agencies to complaints of family violence and child abuse in Aboriginal communities*, Western Australia Department of Premier and Cabinet, 2002; Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys, *Violence in Indigenous communities*, Commonwealth Attorney-General's Department, 2001.

3.4. Question 4 – where should sexual violence prevention program be delivered e.g. youth detention centres, schools?

Three temporal stages of sexual violence prevention have been identified.⁶

1. Primary prevention: strategies aimed at preventing violence before it occurs, including whole-of-population strategies;
2. Secondary prevention (early intervention): early detection of risk or manifestations of the problem. This stage focusses on interventions that target individuals or population sub-groups showing early signs of engaging in violent behaviour, or becoming a victim of violence, or who may be particularly at risk of developing violent behaviours; and
3. Tertiary prevention (response or intervention): responses set in motion after the violence has occurred, which aim to reduce the consequences and impacts of violence and prevent recurrence.

In NAAJA's view, sexual violence prevention programs are important at all stages and operate most effectively when delivered in conjunction. Programs addressed to each stage should be delivered at appropriate locations for the demographic. Regardless of stage, prevention programs must be designed and properly resourced so as to be able to be delivered in remote and regional Aboriginal communities. For example, a PricewaterhouseCoopers report found that two of the most effective forms of primary prevention in relation to sexual violence are community mobilisation and individual and group participation programs.⁷ Such primary prevention programs should be delivered to Aboriginal people in community and in language.

NAAJA is of the view that tertiary prevention programs are pivotal and current initiatives should be extended. Programs should be available at early stages when a criminal defender presents before the courts, and on remand and during reintegration into community. This is discussed further at Discussion Question 12 below.

3.5. Question 5 – who should deliver sexual violence prevention program?

Sexual violence prevention programs must be culturally competent not only in design, but also in implementation.

Recruitment, training and retention of local and culturally appropriate staff is required. We note that this is in alignment with the *National Plan* 'Outcome 3 – Indigenous communities are strengthened' which includes strategies for leadership of Indigenous women, building capacity at the local level, and improving access to appropriate services.⁸ Wherever possible, Indigenous Elders and respected persons should be at the centre of intervention.

⁶ Australian Centre for the Study of Sexual Assault, *Reflecting on primary prevention of violence against women – The public health approach* (No. 19 2014); Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Assault*, Volume 10, 2017, 18, Recommendation 10.1.

⁷ PricewaterhouseCoopers Australia, *A High Price to Pay: The Economic Case for Preventing Violence Against Women*, November 2015, 21.

⁸ COAG (Council of Australian Governments), *The National Plan to Reduce Violence Against Women and Their Children: The Fourth Action Plan 2019-2022*.

This includes sitting in courts, devising diversionary programs, and leading on-Country healing camps.

NAAJA recommends that all professionals working in sexual violence prevention and response have training on intersectional issues affecting Aboriginal people, including: trauma informed practice, family violence, drug and alcohol use, children's development, gratuitous concurrence, and cultural safety. Cultural competency should be prioritised for all practitioners, as well as judges, magistrates and other staff who interact with sexual violence issues.

3.6. Question 6 – what words should be used when we talk about people who have experienced sexual violence and people who commit sexual violence?

NAAJA is of the view that appropriate language for programs delivered to Aboriginal people should be developed in consultation with Aboriginal communities.

Experienced Aboriginal interpreters, such as the Aboriginal Interpreter Services, and other experts should be consulted to facilitate accurate translation of concepts and the use of culturally appropriate language. Language and cultural awareness should be specific to the Aboriginal groups in each area. Local Aboriginal corporations may be of assistance in facilitating place specific design, for example, in Darwin, through Larrakia Nation Aboriginal Corporation Cultural Knowledge Unit.

3.7. Question 7 – what can be done to support and respond to children who have experienced sexual violence in your community and across the NT?

Questions 7 and 8 have been answered together, as the issues and recommendations we raise are applicable to both children and young people.

As noted in the Discussion Paper, child sexual abuse remains largely a hidden crime due, in part, to under-reporting linked to shame, stigma, fear of being punished, or victims being told they have to keep the violence a secret.⁹ For Aboriginal children and young people, these factors are heightened due to systemic structural barriers and a lack of trust in the justice system.

These issues are further exacerbated by mandatory reporting provisions. The unintended negative consequences of the universal mandatory reporting requirements have been thoroughly identified,¹⁰ namely that these requirements are causing children and young people who are victims of abuse or assault to feel that they have nobody that they can confidentially approach for support.

⁹ See also Natalie Taylor and Judy Putt, 'Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia', *Australian Government: Australian Institute of Criminology* (2007).

¹⁰ AMSANT, *Listening and hearing are two different things report*, June 2018; Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 7, 2017.

Sexual violence experienced by children often overlaps with sexual violence experienced by adults, particularly in domestic and family contexts. For this reason, the needs and wellbeing of children and young people should be considered across all areas of action in responses to sexual violence. The Final Report of the Advisory Panel on Reducing Violence against Women and their Children states that children and young people should be recognised as victims of violence against women in their own right, and recommended that the views and experiences of children and young people be taken into account during the scoping, design, and evaluation of services.¹¹ We agree that the co-existence of adult victims and child victims should be appreciated, and believe that a cohesive family-centred approach should be prioritised.

We echo the Discussion Paper's findings from preliminary consultations that we need Aboriginal Liaison Officers in schools to develop relationships with kids and be there for support if things are happening at home. We are concerned the levels of resources particularly in regional and remote schools and access to specialized services is not nearly where it should be. High levels of trauma amongst a population can compound and this can lead to high rates of contact with the justice system.

It is integral that support services for Aboriginal children and young people centre an Aboriginal cultural framework and voice, and are underpinned by the same principles as prevention programs, as outlined at Discussion Question 2. It has been found that a positive connection to culture acts as a shielding factor, by helping children develop their identities and self-esteem, emotional strength and resilience.¹²

In addressing children and young people, we support the recommendations made by the Royal Commission into the Protection and Detention of Children in the Northern Territory and the Royal Commission into Institutional Responses to Child Sexual Assault. We support research from the Royal Commission into Institutional Responses to Child Sexual Assault which found that:

- Evidence gathered by the Commission does not support the myth that Aboriginal culture condones child sexual abuse in any way;
- Quantitative studies such as the West Australian Aboriginal Child Health Survey have established that strong connection to culture is protective;
- Literature on Aboriginal and Torres Strait Islander child safety shows that 'provided the necessary social conditions', Aboriginal and Torres Strait Islander cultures 'act as a protective force for children and families';
- Empirical data now supports the idea that connection to culture is associated with better emotional, social and physical health and wellbeing of Aboriginal and Torres Strait Islander people; and
- Positive cultural connection may also increase the protective factors available to Aboriginal and Torres Strait Islander children by helping them to develop their identities, fostering high self-esteem, emotional strength and resilience.

¹¹ COAG Advisory Panel on Reducing Violence against Women and their Children, *Final Report*, 2016, Action Area 3.

¹² Patricia Anderson and Rex Wild, *Ampe Akelyernemane Meke Mekarle - Little Children are Sacred, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse*, 2007.

We support Recommendation 36.1 of the Royal Commission into the Protection and Detention of Children in the Northern Territory, that the NT Government consult with Aboriginal communities and the non-government sector with a view to establishing a body to work with the Northern Territory Government to, among other things, engage with communities, government bodies and relevant organisations about how to address sexual issues relating to children and young people, including:¹³

- a. the incidence and reporting of child sexual abuse;
- b. child sexual abuse in care and in detention;
- c. counselling and support services available to abuse victims in care or detention;
- d. child and adolescent sexual health, including the rate of STIs, contraception use, pregnancy and fatherhood;
- e. sexual behaviour or abuse by children and young people, and education programs for offenders, and
- f. the need for and implementation of a comprehensive community education strategy.

However, we consider that the groups engaged in considering these issues needs to be expanded to include Aboriginal communities, Elders and Law and Justice Groups, Aboriginal health and Aboriginal justice organisations.

We also support recommendation 36.2, that Territory Families implement, among other things, counselling programs and other forms of therapeutic services for victims following an incident of sexual abuse or assault.¹⁴

3.8. Question 8 – what can be done to support and respond to young people who have experienced sexual violence in your community and across the NT?

See above.

3.9. Question 9 – what can be done to support and respond to children with problem and harmful sexual behaviours in your community and across the NT?

Questions 9 and 10 have been answered together, as the issues and recommendations we raise below are applicable to both children and young people.

Prevention programs must be delivered at all temporal stages identified at Discussion Question 4, and should be informed by the principles outlined at Discussion Question 3. This aligns with Recommendation 10.1 of the Royal Commission into Institutional Responses to Child Sexual Assault which states that harmful sexual behaviours by children should be addressed at each of these three stages.¹⁵

¹³ Commonwealth, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Volume 3B, 2017, 64.

¹⁴ Commonwealth, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Volume 3B, 2017, 92.

¹⁵ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Assault*, Volume 10, 2017, 18.

We support the Framework's incorporation of responses to relevant recommendations from the Royal Commission into Institutional Responses to Child Sexual Assault and the Royal Commission into the Protection and Detention of Children in the Northern Territory.

We support, in particular, the following recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory:

1. Recommendation 36.1, subject to the inclusion of Aboriginal stakeholders, as outlined at Discussion Question 7 above;
2. Recommendation 36.2 – that Territory Families implement:¹⁶
 - a. sexual health education programs for children and young people, directed at responding to sexualised behaviours;
 - b. counselling programs and other forms of therapeutic services for victims following an incident of sexual abuse or assault; and
 - c. specialised expert programs for children and young people who perpetrate sexual abuse or assault on other children or young people.
3. Recommendation 36.3 – that Child protection caseworkers:¹⁷
 - a. have regular face-to-face contact with any child in detention who is also under care and protection orders
 - b. monitor the wellbeing of children in detention and ensure that their needs are being met, and
 - c. be involved in transition planning for a child in detention from the time of their entry into detention, in consultation with detention staff, key stakeholders and the child.

We support, in particular, the following recommendations of the Royal Commission into Institutional Responses to Child Sexual Assault:

1. Recommendation 10.2 – that the Australian Government and state and territory governments ensure timely expert assessment is available for individual children with problematic and harmful sexual behaviours;¹⁸
2. Recommendation 10.3 – that the Australian Government and state and territory governments adequately fund therapeutic interventions to meet the needs of all children with harmful sexual behaviours (including adequately funded specialist services);¹⁹
3. Recommendation 10.4 – that State and territory governments ensure there are clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice systems;²⁰
4. Recommendation 10.5 – that therapeutic intervention for children with harmful sexual behaviours be based on the following principles:²¹
 - a. a contextual and systemic approach should be used;

¹⁶ Commonwealth, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Volume 3B, 2017, 92.

¹⁷ Commonwealth, *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Volume 3B, 2017, 92.

¹⁸ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 18.

¹⁹ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 18.

²⁰ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 19.

²¹ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 19.

- b. family and carers should be involved;
 - c. safety should be established;
 - d. there should be accountability and responsibility for the harmful sexual behaviours;
 - e. there should be a focus on behaviour change;
 - f. developmentally and cognitively appropriate interventions should be used;
 - g. the care provided should be trauma-informed;
 - h. therapeutic services and interventions should be culturally safe;
 - i. therapeutic interventions should be accessible to all children with harmful sexual behaviours.
5. Recommendation 10.6 – that the Australian Government and state and territory governments should strengthen the workforce by ensuring that all services funded to provide therapeutic intervention for children with harmful sexual behaviours provide professional training and clinical supervision for their staff;²²
 6. Recommendation 10.7 – that the Australian Government and state and territory governments should fund and support evaluation of services providing therapeutic interventions for problematic and harmful sexual behaviours by children.²³

3.10. Question 10 – what can be done to support and respond to young people with problem and harmful sexual behaviours in your community and across the NT?

See above.

3.11. Question 11 – what can be done to support and respond to adults who have experienced sexual violence in your community and across the NT?

There are many barriers to access to justice for Aboriginal people. We have identified four significant areas of concern relating to Aboriginal people who have experienced sexual violence.

1: Lack of trust and awareness of rights

Aboriginal communities have negative experiences of and associations with the justice system. It has been observed that the availability of culturally appropriate legal assistance services for Aboriginal people is limited and this compromises the ability of Indigenous Australians to realise their full legal entitlements.²⁴ Greater culturally appropriate community legal education is needed to grow awareness of how sexual violence laws can be used to protect and empower Aboriginal people. Aboriginal victims of sexual violence are likely to experience fear and a lack of confidence in the justice system to a greater extent due to histories of institutional violence and discrimination.

²² Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 19.

²³ Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse*, Volume 10, 2017, 19.

²⁴ Access to Justice Taskforce Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, 2009, 143.

An additional issue for Aboriginal people is a reluctance to be responsible for incarcerating Indigenous offenders when the overall incarceration rate for Aboriginal people is so high. While people who have experienced sexual violence should be encouraged to report, there is a risk of over-prosecution of Indigenous people. When vulnerable Aboriginal victims of sexual violence encounter the police, they are likely to feel intimidated, and feel greater pressure to say what they perceive the police want them to hear, due to the historical context of Aboriginal people and the justice system.

2: Insufficient culturally appropriate support services

Language barriers, remote and regional access barriers, and a lack of access to culturally appropriate services inhibit the capacity for Aboriginal victims to seek justice.

The importance of language and cultural issues in providing access to justice for Aboriginal people in the Top End cannot be overstated. The vast majority of clients from remote communities in the Top End require an interpreter. Services such as 1800RESPECT should provide support in Aboriginal languages, as well as greater numbers of, and ease of access to, interpreters for support services and in court processes. The Fourth National Action Plan identifies this need to improve the 1800RESPECT service to better engage Indigenous and culturally and linguistically diverse people, for example, by increasing access to interpreters.²⁵

NAAJA supports the findings of the Discussion Paper from preliminary consultations, that available options should be expanded beyond counselling to include healing centres in each community, that Aboriginal people should be employed so that they are friendly and accessible, and that a range of support groups should be established including for gay Aboriginal people and Sistergirls. NAAJA recommends an increase in the resources available to Indigenous support services, so these bodies can have an increased presence in regional and remote areas. Improved cultural safety is also necessary in the court system to increase accessibility for Aboriginal people. Aboriginal liaison officers offer a vital support role in this respect, providing culturally appropriate support, referral pathways and acting as a conduit for communication in a cultural sensitive manner.

A 2017 report by Australia's National Research Organisation for Women's Safety (ANROWS) identifies the following important elements of systems advocacy from consultations with services working with and for Aboriginal women experiencing domestic and family violence:²⁶

- The pervasiveness of victim-blaming undermines women's sense of self and hope for better futures for themselves, their children and their families.

²⁵ COAG (Council of Australian Governments), *The National Plan to Reduce Violence Against Women and Their Children: The Fourth Action Plan 2019-2022*.

²⁶ Australia's National Research Organisation for Women's Safety (ANROWS), *Advocacy with and for Aboriginal women experiencing domestic and family violence: a practice guide*, 2017.

- It is important for women’s specialist services to cultivate and maintain respectful liaison and collaboration where possible with other services working with and for Aboriginal social justice aims.
- Women’s specialist services take the lead in advocating for large systems to become more responsive to Aboriginal and non-Aboriginal women seeking help for domestic and family violence.
- Women’s specialist services need to take the lead in asking questions about why, how, and when the sharing of women’s personal information takes place.

3: Concerns around breaking up family and community

Between 2017 and 2018, 67% of Aboriginal people who experienced sexual violence knew their offender.²⁷ The greater proportion of Aboriginal victims experiencing family violence gives rise to concerns about the breaking up of families, if victims speak out. The historic association between legal institutions and ‘welfare’, including intergenerational trauma from the Stolen Generations, raises greater fears that children will be removed as a result of engaging with court processes.

For this reason, advocates should take extra care when talking with Aboriginal woman about the safety and wellbeing of her children.²⁸ Greater access should also be provided to support, such as:

- Crisis housing, and access to safe, stable and culturally appropriate long term housing options for women and their children experiencing family violence;
- Placements with kin for children removed because of violence; and
- Culturally safe programs and services to better support non-violent parents (victims/survivors) to safely maintain the care of their children (thereby avoiding child removal and out of home care placements).

4: Support for incarcerated women

Sexual abuse trauma must be addressed therapeutically within a correctional context. The intersection of victimisation, mental illness and substance abuse should be understood in a historical context of colonialism and a social context of diminished social capacity.

Incarcerated Aboriginal women have experienced higher rates of violence than the general female prison population. A report by Stathopoulos and Quadara identified a history of sexual victimisation as a common element in women offenders’ profiles, their experiences of custody, and their capacity to engage in rehabilitation programs.²⁹ For example, a 2010 NSW Inmate Health Survey found that 81% of Aboriginal women reported having ever been in a violent relationship, compared to 61% of non-Aboriginal women.³⁰ A Western Australian study suggested that up to 90% of Aboriginal female prisoners were survivors of family and

²⁷ Australian Bureau of Statistics, ‘Recorded crime—victims, Australia, 2018’, ABS 4510.0, 2019.

²⁸ Australia’s National Research Organisation for Women’s Safety (ANROWS), *Advocacy with and for Aboriginal women experiencing domestic and family violence: a practice guide*, 2017.

²⁹ Mary Stathopoulos and Antonia Quadara, *Women as Offenders, Women as Victims: A Report for the Women’s Advisory Council of Corrective Services NSW* (2014).

³⁰ (Indig, McEntyre, Page J., & Ross, 2010a)

other violence.³¹ A New South Wales study in 2014 revealed that 70% of the Aboriginal female prisoners disclosed they were survivors of child sexual abuse, with 44% subject to ongoing sexual abuse as adults and 78% experiencing violence as adults.³²

There is also a greater number of people with mental health problems in the criminal justice system compared to the general community, with women reporting higher levels of psychological distress both when entering and being discharged from prison.³³

Culturally appropriate sexual violence therapeutic responses must be developed and delivered to women in custody for other offences as well as the community generally. Considering the cyclical nature of offending and abuse, responding effectively to violence against Aboriginal women will also address one of the key underlying drivers of women's offending, which should in turn lead to less women in the justice system, both as victims and offenders.

3.12. Question 12 – what can be done to respond to adults who commit sexual violence in your community and across the NT?

NAAJA strongly supports culturally relevant restorative justice initiatives which consult with, include and empower Aboriginal people throughout the process and in the outcome. Restorative justice principles should be appropriately flexible so as to be culturally relevant to Aboriginal people and capable of meeting the needs and resource constraints of remote Aboriginal people.

The Discussion Paper observes that there are currently no relapse prevention programs or dedicated residential rehabilitation places in the community for convicted perpetrators. This is particularly of issue for Aboriginal offenders. Research has identified that trauma inflicted on Indigenous communities has played out in intergenerational behaviours such as violence and substance abuse, which has created a cycle of dysfunction and eroded community harmony.³⁴ A review by Blagg identified historical causal factors of family violence in Aboriginal communities, including collective dispossession, loss of land and traditional culture, fragmentation of kinship systems and Aboriginal law, poverty and unemployment, structural racism, drug and alcohol misuse, and institutionalisation.³⁵

A reliance on criminal justice sanctions normalises incarceration, rather than harnessing the opportunity to work constructively to prevent further violence. NAAJA is of the view that deterrence alone is not an effective way of reducing the risk of breaches and reoffending, and that punitive measures must be tempered with other therapeutic measures.

³¹ Mandy Wilson et al, 'Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia' (2017) 7(1) SAGE Open 6.

³² Mary Stathopoulos and Antonia Quadara, *Women as Offenders, Women as Victims: The Role of Corrections in Supporting Women with Histories of Sexual Abuse*, Women's Advisory Council of Corrective Services NSW, 2014, 18.

³³ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners*, 2015.

³⁴ Aboriginal and Torres Strait Islander Healing Foundation, *Submission to the House of Representatives Standing Committee on Indigenous Affairs Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities*, 2014.

³⁵ Harry Blagg, Nicole Bluett-Boyd and Emma Williams, *Innovative Models in Addressing Violence Against Indigenous Women: State of Knowledge Paper*, ANROWS State of Knowledge paper Issue 8, 3, 2015.

NAAJA strongly supports the expansion of behavioural change programs and the violent offender program offered to prisoners serving sentence. Such programs should be available to both prisoners on remand and those serving sentence. The availability of these programs at a local level would enhance participants' prospects of rehabilitation and reintegration into the community. NAAJA also supports access to post-release plans when prisoners have opportunities for supervised and supported parole. Programs such as Throughcare should be extended to support people who commit sexual violence, through sufficient and reliable funding. For Aboriginal people, effort and resourcing should be directed to delivering programs in community and in language. Community healing and connection is of utmost importance and should be centralised and supported by institutions, as it often is in Indigenous communities. For example, in Indigenous communities, women often recognise the trauma men have suffered. In research undertaken by Blagg et al, a senior Kimberley woman told researchers, "we need to find a way to honour our men", observing that the criminalisation approach has only succeeded in alienating men further and marginalising them from the change process.³⁶

Recognising the intersecting nature of trauma, violence and substance abuse, drug and alcohol facilities which accept convicted sex offenders should also be developed, and access for Aboriginal offenders encouraged.

In concurrence with behavioural change programs encouraged in custody, similar programs should be encouraged for defendants coming before the court. A 2015 report by the Centre for Innovative Justice at RMIT found that attendance at court is a crucial opportunity for a defendant's health or substance abuse issues to be identified and, potentially, for a background of family violence to be identified even where it is not immediately evident.³⁷ Defendants should be proactively encouraged from the earliest stage possible to engage with programs to address the underlying causes of their offending, whether they are bailed or remanded in custody.

The expansion of these programs to more comprehensively address perpetrators of sexual violence depends on adequate resourcing. It is also essential that behavioural change programs are culturally appropriate, in accordance with the principles identified at Discussion Question 3, available in remote locations, and delivered with the assistance of interpreters when necessary.

3.13. Question 13 – how can we strengthen the systems that respond to sexual violence in your community and across the NT?

Effective programs and support systems currently supporting sexual violence victims and offenders in the NT should be adequately and consistently funded. As noted above, behavioural change programs should be extended to prisoners on remand, and offered at earlier stages for defendants coming before the courts. Any redevelopment of the sexual violence systems must be underpinned by the principles of self-determination and co-design with affected communities, requiring a commitment to funding and supporting Aboriginal

³⁶ Harry Blagg, Emma Williams, Eileen Cummings, Vickie Hovane, Michael Torres and Karen Woodley, *Innovative models in addressing violence against Indigenous women: Final report*, ANROWS Horizons, 2018.

³⁷ Centre for Innovative Justice, RMIT University, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, March 2015.

community controlled services. A review of mandatory reporting laws and their impact on victims of sexual violence must also be undertaken.

Greater cultural competency can be achieved through well-resourced training, an increase in Aboriginal staff and Aboriginal liaison officers, and broader access to interpreter services. Mainstream systems should increasingly defer to Indigenous organisations and Indigenous practices, placing them at the centre of intervention, in a 'country-centred' approach.

NAAJA is wary of a push to prosecute without thorough support for Aboriginal complainants, and a review of the risks associated with mandatory reporting. Issues arise in relation to unreliable evidence due to internalised pressure and feelings of intimidation. For example, when a young woman wants to access birth control or a sexual health check (or tests positive), once mandatory reporting comes into play, there may be experiences of shame and worry about getting into trouble or about a child being removed. These fears can manifest in attempts to minimise consent to sexual activity.

3.14. Question 14 – what kind of changes does the justice system need to make to respond better to sexual violence justice?

In our view, the complex issue of sexual violence can only be dealt with by a holistic, culturally appropriate approach which is well-resourced, long term, and coordinated among agencies. NAAJA advocates for a broadly for a holistic approach to preventing criminal offending and increasing community safety. This calls for a paradigm shift that moves attention away from a simple criminal justice model towards collective processes of community healing grounded in Indigenous knowledge.³⁸ An Indigenous theoretical framework should be utilised, which frames sexual violence not just as a gendered violence but informed by trauma relating to race.

Indigenous knowledge needed to be taken seriously and the views of Indigenous men and women as the principle bearers of knowledge on family violence should be privileged.

In addition to the development and extension of culturally informed programs discussed in this submission, innovations in court practices also have relevance. These innovations include the involvement of Elders sitting in courts (as in the Koori court model) with judges and magistrates, or full "triage" assessments when Aboriginal people attend court (to see if there are cognitive impairments, or alcohol, mental health, homelessness, or child care issues) and fully inform the court.

³⁸ Harry Blagg, Emma Williams, Eileen Cummings, Vickie Hovane, Michael Torres and Karen Woodley, *Innovative models in addressing violence against Indigenous women: Final report*, ANROWS Horizons, 2018.