



# The Path to Justice:

## Aboriginal and Torres Strait Islander Women's Experience of the Courts

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A report prepared for the Judicial Council on Cultural Diversity

## Acknowledgements

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- [Justice David Berman](#), Family Court of Australia
- [Ms Maria Dimopoulos](#), MyriaD Consultants
- [Magistrate Anne Goldsbrough](#), Magistrates' Court of Victoria
- [Ms Leisha Lister](#), Executive Officer, Family Court of Australia
- [Judge Josephine Willis](#), Federal Circuit Court of Australia
- [Ms Carla Wilshire](#), CEO, Migration Council Australia

The Council also extends its sincere thanks to the large number of services and individuals that participated in the consultations. Their candour and insight will play an important role in informing the deliberations of the Council and, it is hoped, in improving the experience of Aboriginal and Torres Strait Islander women in the future.

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Aboriginal and Torres Strait Islander Women's Experience of the Courts  
Report prepared for Judicial Council on Cultural Diversity

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# Foreword

I am very pleased to present this report, *The Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts*.

In 2015, the Judicial Council on Cultural Diversity identified the need to develop a national framework aimed at strengthening the capacity of the Australian court system to provide access to justice for women from culturally and linguistically diverse backgrounds, including Aboriginal and Torres Strait Islander women.

The Council recognised that there is already a significant body of existing research and recommendations about ways in which the justice system can better cater to the needs of Aboriginal and Torres Strait Islander peoples. It considered it important to collate this previous work, as well as to hold national consultations with a range of stakeholders who work with Aboriginal and Torres Strait Islander women. This was an important opportunity for community and legal representatives, many of whom are Aboriginal and Torres Strait Islander women, to provide feedback directly to the judiciary.

In addition to collating previous work in this area, this report also documents the findings of the consultation process. As a result it is a useful addition to the existing literature and will help courts and tribunals to better understand the barriers to accessing justice faced by Aboriginal and Torres Strait Islander women.

As First Peoples, Aboriginal and Torres Strait Islanders have a singular place in Australia. However, the history of violence, dispossession and social exclusion experienced by Aboriginal and Torres Strait Islander people

has contributed to their over-representation in the criminal justice system and almost every other measure of social and economic disadvantage. It is important to recognise and address the impact of history upon relationships between the courts and Aboriginal and Torres Strait Islander people.

It is clear that, while courts have begun the process of building relationships of trust and confidence with Aboriginal and Torres Strait Islander people, more needs to be done to ensure that women feel confident seeking the assistance of the court system.

This report and the proposals made in it will be carefully considered by the Judicial Council on Cultural Diversity and will be distributed to judicial officers and court staff around Australia. It is hoped that these proposals will provide a basis for practical and positive change, assisting courts to provide better access to justice for Aboriginal and Torres Strait Islander women.

This report includes comments about “consultation fatigue”—the experience of making the same suggestions repeatedly, but which are not implemented. If courts are to develop relationships of trust and confidence with Aboriginal and Torres Strait Islander women, it is vital that their voices are not only heard, but also acted upon.



**The Hon Wayne Martin AC,**  
Chief Justice of Western Australia,  
Chair of the Judicial Council on  
Cultural Diversity

# About The Judicial Council on Cultural Diversity

Australia is one of the most culturally and linguistically diverse countries in the world. The Aboriginal and Torres Strait Islander population is nearing 700,000, or 3 per cent of the total population, while one in four Australians were born overseas. In total, over 300 languages are spoken in Australian households. Some 60 per cent of Australia's future population growth will come from migration.

While Australia benefits enormously from this diversity, it also presents systemic challenges, particularly in relation to issues of access to justice. The Australian legal system was designed at a time when the population it served was more homogenous than it is now.

In 2014, in recognition of this fact, the Council of Chief Justices endorsed the formation of a new advisory body—the Judicial Council on Cultural Diversity (JCCD). The Council aims to assist Australian courts, judicial officers and administrators to positively respond to the changing needs of Australian society and ensure that all Australians have equal access to justice.

The JCCD reports to the Council of Chief Justices and provides policy advice and recommendations to it. It is chaired by the Hon Wayne Martin AC, Chief Justice of Western Australia. Membership of the JCCD is predominantly composed of judicial officers from all Australian geographical jurisdictions and court levels. Legal and community bodies are also represented.

The members of the JCCD are:

- **Chief Justice Wayne Martin AC,**  
Supreme Court of Western Australia
- **Justice David Berman,**  
Family Court of Australia
- **Justice Jenny Blokland,**  
Supreme Court of the Northern Territory
- **Dr Bernadette Boss,**  
ACT Magistrates Court
- **Judge Helen Bowskill,**  
District Court of Queensland
- **Mr Nigel Browne, CEO,**  
Larrakia Development Corporation
- **Ms Samantha Burchell, CEO,**  
Judicial College of Victoria
- **Ms Maria Dimopoulos,**  
MyriaD Consultants
- **Magistrate Anne Goldsbrough,**  
Magistrates' Court of Victoria
- **Justice Emilios Kyrou,**  
Court of Appeal, Supreme Court of Victoria
- **Justice Lucy McCallum,**  
Supreme Court of NSW
- **Ms Leisha Lister, Executive Officer,**  
Family Court of Australia
- **Justice Melissa Perry,**  
Federal Court of Australia
- **Professor Greg Reinhardt, Director,**  
Australasian Institute of Judicial Administration
- **Mr Ernie Schmatt,**  
Judicial Commission of NSW
- **Judge Rauf Soulio,**  
District Court of South Australia
- **Judge Josephine Willis,**  
Federal Circuit Court of Australia
- **Ms Carla Wilshire,**  
Migration Council Australia
- **Justice Helen Wood,**  
Supreme Court of Tasmania

# Executive Summary

The following report is a summary of consultations undertaken by the Judicial Council on Cultural Diversity. As such, the views expressed in the document are those of stakeholders who work with Aboriginal and Torres Strait women. The purpose of the document is to inform the thinking of the Judicial Council on Cultural Diversity in its deliberations on matters relating to access to justice for Aboriginal and Torres Strait Islander women.

In March 2015, the Judicial Council on Cultural Diversity (JCCD) received funding from the Commonwealth Office for Women to undertake a project aimed at strengthening the capacity of Australian courts to provide access to justice for women facing cultural and linguistic challenges. Recognising that Aboriginal and Torres Strait Islander women and migrant and refugee women are far more likely to enter the legal system at a point of extreme vulnerability, often as a result of family violence or family breakdown, the JCCD chose to place a particular emphasis on access to justice in that context.

The project comprises three elements:

- National consultations;
- Development of a national framework for the courts consisting of best practice guidelines, resources and protocols to be used across Australian courts;
- Advice on training packages for judicial officers and court administrators on gender, culture and family violence.

The first stage of the project involved a national consultation process. The purpose of this was to provide a basis of evidence and knowledge to the JCCD that it could use to inform the development of the framework. Separate consultations were held for issues affecting Aboriginal and Torres Strait Islander women and migrant and refugee women. A separate report has been prepared on the experience of migrant and refugee women.

As part of the Aboriginal and Torres Strait Islander consultation process, the JCCD held consultation roundtables and one-on-one meetings with a wide range of Aboriginal and Torres Strait Islander community-controlled services and other groups who worked with Aboriginal and Torres Strait Islander women experiencing violence. Stakeholders included legal services, domestic violence services, health services and researchers. This report refers to the findings from the Aboriginal and Torres Strait Islander stakeholder consultation process, submissions made by community-controlled services and the significant body of existing research on these matters. It includes the recommendations for improvement that were made to the JCCD.

Two clear messages were echoed across the consultations. Firstly, the abiding need to recognise the special place of Aboriginal and Torres Strait Islanders as the First Australians and to ensure that the needs of Aboriginal and Torres Strait Islander women are met at the outset and that their importance is truly acknowledged. A second clear theme in consultations was the need to understand the potential complexity of



Aboriginal and Torres Strait Islander communities and cultures. The barriers in accessing justice varied greatly depending on location, age, language and community.

This report can be seen as an attempt to collate what is already known of Aboriginal and Torres Strait Islander women's experience of the court system and to identify the actions courts themselves can take to improve access to justice. The consultations identified a number of barriers that Aboriginal and Torres Strait Islander women face when they reach court. However, a clear finding was that there are also numerous barriers that Aboriginal and Torres Strait Islander women experience before reaching court—and these barriers may result in them failing to seek help through the court system. A key message was the need to recognise that family violence invariably involved an adult victim and child victims.

Some of the barriers identified affect Aboriginal and Torres Strait Islander women exclusively; others are issues that affect many women experiencing family violence. However, Aboriginal and Torres Strait Islander women may experience them more acutely because of trauma, racism, adversity and disadvantage, language barriers, cultural differences and social exclusion.

While some of the recommended actions are specifically directed at Aboriginal and Torres Strait Islander women, others may be targeted more broadly and benefit all women. Courts have a role to play in rectifying some of these barriers and require an understanding of all barriers so that they may respond appropriately to the needs of Aboriginal and Torres Strait Islander women. A system that caters to the needs of the most vulnerable and excluded will cater better to all using the system.

## Before Court: Barriers to Reporting Family Violence

This report discusses a number of barriers faced by Aboriginal and Torres Strait Islander women before they even reach court. Factors such as intergenerational trauma and experiences of discrimination, racism and poverty all form a key part of Aboriginal and Torres Strait Islander women's experiences. In addition, Aboriginal and Torres Strait Islander women's perspectives of the justice system were shaped by dealings with the justice system overall—police, child protection, registry staff, corrections authorities, lawyers and judicial officers.

The key pre-court issues consistently raised were:

- Fear that reporting violence will mean that authorities will remove children;
- Geographical barriers;
- The impact of poor police responses;
- Family and community pressure on women seeking to protect themselves and their children;
- The complexity of legal problems experienced by Indigenous women;
- Lack of access to legal assistance and advice; and
- Lack of legal knowledge and understanding of their rights under the law.

## Communication Barriers

Many Aboriginal and Torres Strait Islander women had trouble communicating in the language of the justice system, adversely impacting on their ability to deal with police, engage with support services including legal representatives, and communicate with court staff and judicial officers.

A range of strategies were recommended for overcoming communication barriers, including: rewriting or reframing forms, sentences and orders in plain English; training lawyers and judicial officers to speak in plain English; further plain English resources and visual aids; better education about the Anunga guidelines and communicating with speakers of Aboriginal English; greater use of interpreters and translators; and employing Indigenous Court Liaison Officers.

Stakeholders believed Indigenous Court Liaison Officers were essential to overcoming communication barriers with Aboriginal and Torres Strait Islander women in the court system.

### Attending Court: Barriers to Full Participation

A clear finding from the consultations was that court was often seen by Aboriginal and Torres Strait Islander women as potentially unsafe and not as a place to seek resolution for problems. The consultations recorded a range of factors about the court experience that posed barriers for Aboriginal and Torres Strait Islander women, including: the intimidating process of arriving at court and safety while waiting at court; unpredictable waiting times; difficulty understanding forms, charges, orders or judgments; and courtroom dynamics. Difficulty understanding court processes, including communication difficulties, was triggered and amplified by some women's existing fear and distrust of the court.

Many support workers interviewed naturally had a strong focus on customer support across the court system, and raised the long-term desire to see the recruitment of more Aboriginal and Torres Strait Islander staff. Stakeholders recommended numerous changes to court processes and court language. They also called for judicial leadership to ensure all court staff improved their respect, cultural competence and approach to communication with Aboriginal and Torres Strait Islander communities.

Aboriginal and Torres Strait Islander staff were seen as one of the most effective approaches to making the system more open and accessible. More Indigenous personnel were recommended for every aspect of the justice system— registry staff, court officers, security staff, witness assistance programmes, child protection staff, policy staff, Indigenous family consultants and judicial officers. In particular, stakeholders called for a large increase in the number of Indigenous Court Liaison Officers to assist those approaching the court.

### Building a Successful Framework

A further finding from the consultations was the need for meaningful engagement between courts and Aboriginal and Torres Strait Islander peoples and their community-controlled organisations to develop and implement a plan for change. Priorities included:

- The need for a systematic approach to include Aboriginal and Torres Strait Islander opinions and values in assessing the performance of the justice system;
- Working with Aboriginal and Torres Strait Islander organisations and researchers to develop indicators and evaluation approaches that included Aboriginal and Torres Strait Islander values and priorities;
- The need for the courts to show they were responsive to feedback about the justice system and its impact on Aboriginal and Torres Strait Islander people;
- The need for improved identification of Indigenous status, language spoken at home and literacy;
- The need for improved case coordination; and
- Having a more holistic set of criteria to assess court performance and justice outcomes.

Stakeholders who participated in these consultations commended the judiciary for their leadership in creating the JCCD and acknowledged the commitment already shown by many judicial officers to improve outcomes for Aboriginal and Torres Strait Islander peoples. Stakeholders identified judicial leadership as fundamental to implementing any reforms.

## Recommendations and suggestions made for consideration by the JCCD

1. Courts should work with Aboriginal and Torres Strait Islander communities, their community-controlled services and Reconciliation Australia to develop accredited Reconciliation Action Plans.
2. Judicial officers should work with Aboriginal and Torres Strait Islander communities and their community-controlled services to strengthen relationships and understanding of court processes at the local level.
  - 3.1 Magistrates Courts should introduce education sessions for women applying for intervention orders to provide them with information about the process and access to court support services.
  - 3.2 The Family Courts should re-establish court information sessions for court users about their processes.
4. Courts should invest in comprehensive cultural competency and family violence training for all court staff, including trauma support.
5. All judicial officers should receive cultural competency training. Judicial officers who work in family violence matters should receive additional training in cultural competency within the context of family violence.
6. All courts should employ more Aboriginal and Torres Strait Islander peoples and should ensure that Indigenous Court Liaison Officers are available at each court.
7. All courts should give priority to establishing separate waiting areas for women attending court for family violence and sexual assault matters.
8. Courts should permit women to participate in the hearing via video-link and, if this is not available, take other measures to help women feel safe in the court environment and when giving evidence.
9. All courts should have court interpreter policies that are publicly available and easily accessible.
10. Judicial officers and lawyers should receive training and guidance about how to work with interpreters.
11. Courts should improve data collection about the cultural, linguistic and gender diversity of their court users.
12. Courts should establish key performance indicators against which to measure progress.

# Introduction

**Australia is one of the most ethnically, culturally and linguistically diverse countries in the world.**

The Aboriginal and Torres Strait Islander population is nearing 700,000, or 3 per cent of the total population<sup>1</sup>, and 11 per cent of Aboriginal and Torres Strait Islander people speak an Australian Indigenous language at home.<sup>2</sup> The 2011 Census recorded that over a quarter of Australia's population was born overseas and one fifth had at least one overseas-born parent.<sup>3</sup> More than 300 languages, including Indigenous languages, are spoken in Australian households.<sup>4</sup>

This diversity is expected to increase, with Australia's Aboriginal and Torres Strait Islander population growing by 2.2 per cent per year<sup>5</sup> and migration anticipated to account for 60 per cent of Australia's future population growth.<sup>6</sup>

The Judicial Council on Cultural Diversity (JCCD) was established in recognition of the need for Australia's legal system to be responsive to Australia's growing cultural and linguistic diversity. In a multicultural, multi-lingual and multi faith society, it is fundamental that strategies are put in place to ensure that all Australians receive equal access to justice.

In 2015, the JCCD received a grant from the Commonwealth Office for Women to undertake a project aimed at improving the capacity of courts to provide access to justice for women facing cultural and linguistic challenges. Previous research has identified that Aboriginal and Torres Strait Islander women are disproportionately overrepresented as victims of family violence,<sup>7</sup> and that there remain significant barriers for Aboriginal and Torres Strait Islander women seeking to navigate the family and civil law systems<sup>8</sup>—accordingly the JCCD chose to focus on access to justice in that context.

1 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population nearing 700,000*, Media Release, 30 August 2013 <http://www.abs.gov.au/ausstats/abs@nsf/latestProducts/3238.0.55.001Media%20Release1June%202011>

2 Australian Bureau of Statistics, *Census of a Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australia, 2011*, cat no. 2076.0, <http://www.abs.gov.au/ausstats/abs@nsf/mf/2076.0>

3 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census – Cultural Diversity in Australia, 2012-2013*, cat 2071.0, <http://www.abs.gov.au/ausstats/abs@nsf/Lookup/2071.0main+features902012-2013>

4 Australian Bureau of Statistics, *2011 Census Shows Asian Languages on the Rise in Australian Householders*, Media Release – National, 21 June 2012, <http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>

5 Compared with a projected annual growth rate of 1.6 per cent for the total Australian population over the same period: Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population may exceed 900,000 by 2026*, Media Release, 20 April 2014, <http://www.abs.gov.au/ausstats/abs@nsf/products/3E27B260A585DE5DCA257C-C900143EF6?OpenDocument>

6 Migration Council Australia, *The Economic Impact of Migration* (2015) <http://www.migrationcouncil.org.au/policy/reports/the-economic-impact-of-migration-2015-1/>

7 See, for example, the literature referred to in the National Aboriginal Family Violence Prevention and Legal Services' submission to the Productivity Commission Access to Justice Arrangements, <http://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub097-access-justice.pdf>

8 The Legal Australia-Wide Survey (LAW survey) found extremely high rates of unmet legal need among Indigenous people: Coumarelos C., Macourt D., People J., McDonald H.M., Wei Z., Iriana R., Ramsey, S., *Legal Australia-Wide Survey: Legal need in Australia* (LAW Survey), Law and Justice Foundation of NSW, 2012, <http://www.lawfoundation.net.au/ljf/app/6DDF12F188975AC9CA257A910006089D.html>

The project comprises three stages:

- National consultations;
- Development of a national framework for the courts consisting of best practice guidelines and resources to be used across Australian courts;
- Advice on training packages for judicial officers and court administrators on gender, culture and family violence.

The JCCD believes that both Aboriginal and Torres Strait Islander women and migrant and refugee women require the development of a framework to develop the existing system so as to enable better access. However, it recognises that Aboriginal and Torres Strait Islander women and migrant and refugee women have different starting points and different access barriers, and that Aboriginal and Torres Strait Islander women in particular face unique challenges. Further, the JCCD recognises the special place of Indigenous Australians as our First Peoples.

To appropriately accommodate this, the JCCD conducted separate consultation processes; one focusing on the experience of Aboriginal and Torres Strait Islander women, and one focusing on the experience of migrant and refugee women.

This report outlines the findings from the Aboriginal and Torres Strait Islander women's consultation process. It aims to provide a basis of evidence and knowledge for the JCCD to consider when developing the framework and training packages. A separate report has been prepared on the experience of migrant and refugee women.

## The consultation process

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The JCCD consulted with a wide range of stakeholders, including legal services, domestic violence services, health services, interpreting services and researchers. A national roundtable was held in Canberra and was opened by the Hon Robert French AC, Chief Justice of Australia, and Senator the Hon Michaelia Cash. Additional roundtables were held in Cairns, Darwin, Melbourne and Perth and were opened by judicial officers.

In addition, phone interviews were held with over 60 individuals and organisations elsewhere in Australia. This enabled stakeholders in remote and regional Australia to participate, including participants from Albany, East Kimberley, Pilbara, Alice Springs, Adelaide, regional New South Wales and regional Queensland.

The JCCD gave careful consideration to the method for conducting consultations and determined that it would engage with community-controlled organisations, rather than directly with women who have experienced trauma. Community-controlled organisations have an important and recognised role to play in representing the voices and advocating for the needs of the Aboriginal and Torres Strait Islander communities that they serve. While the limitations of such an approach are recognised, it was noted that the rapidly fluctuating policy environment for Aboriginal and Torres Strait Islander affairs places significant burdens on community organisations that are constantly requested to devote resources to facilitating community consultations.

Further, the JCCD recognises that there already exists a significant body of information about the issues and difficulties faced by Aboriginal and Torres Strait Islander peoples accessing the courts, as well as recommendations and submissions from Aboriginal and Torres Strait Islander community-controlled services about ways in which the justice system can be improved. The report makes reference to this research, but recognises that not all of the existing knowledge is referred to.

## Overview of the report

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This report consolidates the key themes arising from the consultations and the recommendations that were made to the JCCD. It commences with a brief overview of existing research into barriers that Aboriginal and Torres Strait Islander women face in accessing justice. Further research, in particular the valuable research conducted by community-controlled organisations and women's organisations, form the basis of much of the following report.

The report is then divided into the following sections:

- Before Court: Barriers to Reporting Family Violence;
- Communication Barriers;
- Attending Court: Barriers to Full Participation;
- Building a Successful Framework; and
- Recommendations and suggestions for consideration by the JCCD.

As the consultations focused on family violence and family law matters, the emphasis of the report is on Magistrates' Courts, the Family Court and the Federal Circuit Court. However, recognising that higher courts engage with serious and severe crimes, the report is broadly applicable.

The JCCD thanks all those who participated in the consultation process and acknowledges the candour and insight they provided.

# Existing Knowledge

An extensive body of evidence already exists on Aboriginal and Torres Strait Islander women's interaction with the justice system, and the nature of violence experienced by Aboriginal and Torres Strait Islander communities.

A major review in 2001 by Memmott and others concluded that violence in Indigenous communities was widespread, disproportionately high compared to other Australian communities and had dramatically worsened from the 1970s and 1980s onwards. Memmott et al found:

- Family violence may involve all types of relatives—the victim and perpetrator often had a kinship relationship;
- The term 'family' meant 'extended family' which also covers a kinship network of discrete, intermarried, descent groups;
- The acts of violence could constitute physical, psychological, emotional, social, economic and/or sexual abuse; and
- Some of the acts of violence were ongoing over a long period of time, one of the most prevalent examples being domestic violence.

Memmott et al noted that family violence included: spouse assault, homicide, rape and sexual assault, child violence, suicide, self injury, one-on-one adult altercations, inter-group violence, psychological abuse, economic abuse, intergenerational violence and normalised high levels of multiple forms of violence across whole communities. In spouse assault they found offenders and victims were involved in relationships where repeated violence and reconciliation continued over many years.

Memmott et al noted that the incidence of violence in Indigenous communities and among Indigenous people could not be separated from the history of European and Indigenous relations. Situational factors exacerbated violence and included family problems, financial problems, loss of close family members and other relations, unemployment, psychological problems, anger, alcohol intoxication, substance misuse and particular patterns of violence becoming normalised.<sup>9</sup>

In 2013, the Nous Group was commissioned by the Commonwealth Attorney-General's Department to build the evidence base to determine, firstly, what areas of Australia have the greatest need for targeted legal services to assist victims of family violence; and secondly, what role legal services played in assisting victims and what service delivery features had been effective.

The Nous Group found that family violence was widespread across Indigenous communities in rural and regional Australia, concentrated in areas that broadly follow patterns of Indigenous population, particularly where there are high levels of long term unemployment. Further, they found that:

- Around 90 per cent of violence against Indigenous women was not disclosed;
- Indigenous women living in rural and remote areas were 45 times more likely to be a victim of family violence than the non-Indigenous population;

<sup>9</sup> Memmott P et al, *Violence in Indigenous Communities*, 2001, <http://www.aerc.uq.edu.au/filething/get/2022/violenceindigenous.pdf>

- Indigenous women were 38 times more likely to be hospitalised from an assault and 10 times more likely to die from assault than non-Indigenous women; and

The aggregate level of violence involved in Indigenous domestic violence orders was more serious than the level of violence found in non-Indigenous domestic violence orders.<sup>10</sup>

The Productivity Commission, in its 2014 *Overcoming Indigenous Disadvantage* report, made similar findings about the wide-ranging impact of domestic and family violence among Aboriginal and Torres Strait Islander communities. The Commission found:

- Nationally, in 2012-13, the rate for Indigenous hospitalisations for nonfatal family violence related assaults was 34 times the rate for non-Indigenous females. Further, the rates of hospitalisation for violence related assaults increased markedly with remoteness (from 197 per 100 000 population in major cities to 1510 per 100 000 population in remote areas);
- A domestic altercation was the motive for 83% per cent of Indigenous female homicides and the victim and offender were intimate partners in 47% of Indigenous homicides; and
- Indigenous people comprised 22% of all people seeking help from specialist homelessness agencies, despite comprising only 3% of the Australian population. About a quarter of all Indigenous people seeking homelessness assistance advised it was due to family violence.<sup>11</sup>

The Australian Crime Commission's National Indigenous Intelligence Taskforce (NIITF) was established in 2006 following the Australian Government's Intergovernmental Summit on Violence and Child Abuse in Indigenous Communities. Its aim was to build a national picture of the nature and extent of violence and child abuse in Australia's remote, regional and urban communities. The NIITF conducted interviews in every jurisdiction, visiting 145 Indigenous communities, 58 regional towns and held more than 2000 stakeholder meetings. The taskforce found in 2014 that:

- Indigenous people continue to be over-represented as both victims and perpetrators of violent crimes;
- Violence was extreme, normalised and escalated rapidly. Further, violence was probably more common and extreme in remote communities;
- While the majority of violent offenders were male, females were increasingly committing violent offences;
- Many Indigenous children routinely witness incidents of domestic and family violence;
- Domestic violence was the most significant violence type affecting Indigenous communities;
- Domestic violence often commenced in the early years of a relationship and continued for 20 to 30 years;
- Community violence could involve inter and intra familial fighting and occurred for a range of reasons, sometimes escalating to community level;

<sup>10</sup> Nous Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, Commonwealth Attorney-General's Department, 2013. The Nous Group used publicly available data, desktop research, a literature review and consultations with 14 Family Violence Prevention Legal Service providers. The Nous Group estimates of violence are based on data and research published by the Australian Bureau of Statistics, the Australian Institute of Criminology and the Australian Institute of Health and Welfare.

<sup>11</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators*, 2014. The reports provide information about a wide range of outcomes, including family safety and are a recurring series. Previous editions were published in 2003, 2005, 2007, 2009 and 2011: see <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>



- Alcohol abuse was often normalised and often extreme and influenced the level and severity of violence and child abuse. Cannabis was widely used and easily obtainable, and use of amphetamine-type stimulants and prescription medication abuse were increasing in some regional and remote communities; and
- Suicide and self-harm continued to affect Indigenous communities at grossly disproportionate rates. There were clear links between suicide and self-harm and domestic violence, relationship breakdowns, early life trauma from child abuse, and associated alcohol and substance abuse.<sup>12</sup>

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<sup>12</sup> Australian Crime Commission, *The Final Report of the National Indigenous Intelligence Taskforce 2006-2014*, 2014 (redacted version released by the ACC under Freedom of Information obligations in 2015). See <https://crimemission.gov.au/organised-crime/joint-task-forces-and-initiatives/national-indigenous-intelligence-task-force>

# Key Issues

## Before Court: Barriers to Reporting Family Violence

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While the overall focus of this project is on steps courts can take to improve the experience of Aboriginal and Torres Strait Islander women using the court system, this section examines barriers women face to reporting violence.

It is important to document these barriers, as they form a significant part of the reason why many Aboriginal and Torres Strait Islander women never reach court. The usage of the justice system is a concern of the courts and they have a role to play in rectifying some of these barriers. Further, it is crucial that judicial officers and court staff are aware of the difficulties faced by many Aboriginal and Torres Strait Islander women before they reach court; the barriers they have overcome give context to their experience and may inform actions the court can take to ensure procedural fairness.

In exploring these issues it is essential to consider the broader context of Aboriginal and Torres Strait Islander women's lives. Factors such as intergenerational trauma, experiences of discrimination and racism, poverty, a past history of abuse, difficulties with literacy, health and mental health issues, and welfare dependency can all impact on whether an Aboriginal or Torres Strait Islander woman tries to seek remedy through the justice system.

This decision is also affected by Aboriginal and Torres Strait Islander women's experience of the justice system. During consultations for this project Aboriginal and Torres Strait Islander women were described as lacking faith in the justice system due to their past experiences—or the experiences of their family and friends—of the criminal and child protection systems.

Other factors identified as affecting Aboriginal and Torres Strait Islander women's willingness to engage with the justice system included:

- Fear that reporting violence will mean that authorities will remove children;
- Geographical barriers;
- The impact of police responses;
- Family and community pressure on women seeking to protect themselves and their children;
- The potential complexity of legal problems;
- Lack of access to legal assistance; and
- Lack of legal knowledge and understanding of their rights under law.

For many women, these factors mean that they may never go to court. As one stakeholder noted:

*“If you take all we know, the key message is that Aboriginal women experience far higher levels of violence over far longer periods of time before they approach the justice system.”*

*The justice system needs to appreciate the enormity of the decision that the women have taken and the courage they've shown. People need to understand how scared women are, how much danger they're in before they seek help and how much help they need straight away."*

## The impact of experiences of trauma and racism

Across Australia, stakeholders emphasised that any efforts to improve access to justice for Aboriginal and Torres Strait Islander women affected by violence must be underpinned by a far greater understanding of the impact of trauma and racism on the lives of Aboriginal and Torres Strait Islander women and children, and how it affected their contact with the justice system.

### Research on trauma

There is a growing body of research into the legacy of trauma<sup>13</sup> across generations, showing that exposure to stress and adversity in one generation can affect the mental and physical health and behaviours of later generations.<sup>14</sup>

<sup>13</sup> Trauma arises from an overwhelming event that involves intense fear, helplessness or horror. A person who has experienced trauma has an invisible wound, which affects the way he or she responds to future situations. Any number of "triggers" may transport a person back to re-live the fear, helplessness and horror of his or her original trauma.

<sup>14</sup> Pembry M et al, "Human transgenerational responses to early-life experience: potential impact on development, health and biomedical research" (2014) 51(9) *Journal of Medical Genetics* 563-572; Atkinson J, "Trauma-informed services and trauma-specific care for Indigenous Australian children: Resource sheet no. 21" (2013) Closing the Gap Clearinghouse Australian – Institute of Health and Welfare, <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/ctg-rs21.pdf>; Green BL, "Identifying Survivors at Risk: Trauma and Stressors across Events", in Wilson J and Raphael B (eds) *International Handbook of Traumatic Stress Syndromes* (2013); Aboriginal and Torres Strait Islander Healing Foundation, *Aboriginal and Torres Strait Islander Healing Programs: A literature review*, [http://healingfoundation.org.au/wordpress/wp-content/files\\_mf/1392087179ATSIHFLitreview.pdf](http://healingfoundation.org.au/wordpress/wp-content/files_mf/1392087179ATSIHFLitreview.pdf); Atkinson J et al, "Trauma, Transgenerational Transfer and Effects on Community Wellbeing", in Purdie N. et al, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, Department of Health and Ageing, 2010, <http://aboriginal.telethonkids.org.au/media/54889/chapter10.pdf>.

Trauma experienced by Aboriginal and Torres Strait Islander peoples arises from the forced removal of children and the loss of land, language and culture. It also arises from the burden of adversity experienced by many Aboriginal and Torres Strait Islander peoples, including trauma arising from racism, ill-health, poverty, injury, suicide, substance use, grief, loss and violence.

One stakeholder said:

*"It is important to realise that for many Aboriginal people their entire world feels unsafe. While a woman's world may be violent and unsafe, it is the only world she knows. For her there is 'no safe place' anywhere on earth."*

### Research on discrimination and racism

Experiences of racism have a profound impact on Aboriginal and Torres Strait Islander peoples, not only adversely affecting their physical and mental health, but also undermining their confidence in institutions such as the police and justice system.

Discrimination and racism experienced by Aboriginal and Torres Strait Islander peoples is well documented. The 2008 National Aboriginal and Torres Strait Islander Social Survey (the NATSISS) found that 27% of Indigenous people aged 15 years and over reported having experienced discrimination in the previous 12 months. The most common situations or places where discrimination was experienced included the general public (11%); police, security personnel, courts of law (11%); and at work or when applying for work (8%).<sup>15</sup>

<sup>15</sup> Cited in Australian Bureau of Statistics, "Social and Emotional Wellbeing: Discrimination", *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, Oct 2010, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter450Oct+2010>

The Indigenous Legal Needs Project<sup>16</sup> also found that discrimination and racism were pervasive experiences. The study surveyed over 800 people across five jurisdictions and found that a significant proportion of participants in every jurisdiction reported discrimination in the preceding two years: 28% in New South Wales, 29% in Victoria, 32% in Queensland, 41% in Western Australia and 41% in the Northern Territory.<sup>17</sup>

The 2014 Australian Reconciliation Barometer<sup>18</sup> found that Aboriginal and Torres Strait Islander Australians were more likely to have experienced and witnessed racial prejudice in the past six months. It found that:

- 31% of Indigenous people had experienced verbal abuse in the previous six months, compared to 13% of the general population;
- 42% of Indigenous people had witnessed verbal abuse in the past six months, compared to 22% of the general population; and
- 25% of Indigenous Australians had experienced discrimination at school and work. This compared to 7% of the general community who had experienced discrimination at school, and 12% of the general community who had experienced racism at work.<sup>19</sup>

The Australian Institute of Health and Welfare reported in 2011 that Aboriginal and Torres Strait Islander people who had experienced discrimination were less likely to trust the police, their local school, their doctor and/or hospital and other people in general.<sup>20</sup>

## Fear that reporting violence will mean that authorities will remove children

Aboriginal and Torres Strait Islander women's inclination to involve the justice system, particularly in response to family and domestic violence, is intimately connected with child protection. Across Australia, stakeholders advised that Aboriginal and Torres Strait Islander women sometimes did not report violence because they were scared they would lose their children. Rather, some women kept their problems to themselves until the situation escalated to extreme violence, whereupon acute options—such as removal of children by child protection authorities and prosecution of violent partners—were pursued.

This fear reflects both historical and contemporary circumstances. The legacy of past removal policies was highlighted in the findings of the 1997 Australian Inquiry in the Separation of Aboriginal and Torres Strait Islander Children from their Families.<sup>21</sup>

## Geographical barriers

A significant barrier for some Aboriginal and Torres Strait Islander women approaching the legal system was the distance involved. Stakeholders noted that some courts had very limited geographical reach and women needed to travel many hours, including for

<sup>16</sup> The study represented the first comprehensive analysis of Indigenous civil and family law needs undertaken in Australia. Funded by an ARC linkage grant and implemented in partnership with community legal services, the study involved fieldwork in 40 Indigenous communities, interviews with 800 Indigenous men and women and over 300 stakeholder organisations: <https://www.jcu.edu.au/indigenous-legal-needs-project>

<sup>17</sup> Cunneen C, Allison F, Schwartz M, Project reports of the Australian Indigenous Legal Needs Project on the civil and family law needs of Indigenous people in NSW, Vic, Qld, WA and NT, available at <https://www.jcu.edu.au/indigenous-legal-needs-project/resources/ilnp-reports-and-papers>

<sup>18</sup> The Australian Reconciliation Barometer is a survey run every two years by Reconciliation Australia to measure the progress of reconciliation between Aboriginal and Torres Strait Islander and non-Indigenous Australians.

<sup>19</sup> Reconciliation Australia, Australian Reconciliation Barometer 2014, [https://www.reconciliation.org.au/wp-content/uploads/2015/10/RR7200-Barometer-Brochure\\_WEB.pdf](https://www.reconciliation.org.au/wp-content/uploads/2015/10/RR7200-Barometer-Brochure_WEB.pdf)

<sup>20</sup> Australian Institute of Health and Welfare, *The health and welfare of Australia's Aboriginal and Torres Strait Islander people an overview*, 2011, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418955>

<sup>21</sup> Australian Human Rights Commission, *Bringing them Home*, 1997, <https://www.humanrights.gov.au/publications/bringing-them-home-report-1997>

more than a day, to attend court. These challenges were compounded by the practical difficulties of childcare and accommodation costs. As one stakeholder said:

*"Many women live a long way from court. They don't have cars or licences. They don't have money for travel or accommodation. And [who] will look after the kids if they travel to court? It would make enormous difference to access to justice if there was audio-visual access to court."*

The limited reach of legal services to these areas added to these barriers.

Aboriginal and Torres Strait Islander women living in communities near state borders, or where there was family movement across jurisdictions—for example, family movements between Doomadgee in Queensland and Borroloola in the Northern Territory; Mildura in Victoria and Renmark in South Australia; Albury in New South Wales and Wodonga in Victoria; Kununurra in Western Australia and Wadeye in the Northern Territory, or the Tri-state border area between the Northern Territory, South Australia and Western Australia—had particular difficulties engaging with the justice systems.

Women in these locations were at times engaging with domestic and family violence, child protection and youth justice authorities in several states. Stakeholders advised that at times there were child protection orders and youth justice orders in place on each side of the border, or siblings separated (with some children removed by one jurisdiction and the other siblings removed by another state).

Stakeholders also advised that information was sometimes not shared effectively between states and jurisdictions. For example, consultations reported that the Family Court and the Federal Circuit Court had to issue subpoenas to access relevant information from other jurisdictions in order to inform decisions about family violence and child protection matters because it was not being shared. It is acknowledged that there is legislative capacity to do this.

## Greater use of audio-visual technology

The majority of stakeholders consulted for this project called for greater use of audio-visual technology to facilitate access to courts, believing that technology was a practical way to overcome the access barriers experienced by women living in rural and remote settings, and as such had enormous potential to increase access to justice for Aboriginal and Torres Strait Islander women.

Greater use of audio-visual technology was also considered more cost-efficient for women, legal services and police. However, other stakeholders suggested that difficulties experienced in understanding court processes were sometimes compounded by the use of technology: some women experienced difficulty understanding what was going on and the different roles of parties appearing on the screen. It was noted that proper explanation of the process and what will occur is essential to the effective use of audio-visual technology.

A few stakeholders had strong views that it was preferable that face-to-face proceedings occur. They raised examples of judicial officers using telephones in family law matters to assess demeanour and relationships to children. They expressed a strong preference for video-link over telephone when dealing with child custody matters, concerned that otherwise judicial officers were completely reliant on psychologist reports about Aboriginal and Torres Strait Islander women's relationships with their children. Other stakeholders noted that using telephone or video-link to assess such matters was very rare.

While greater use of audio-visual technology was broadly supported, some stakeholders highlighted difficulties accessing and utilising telephone and audio-visual links. They advised that there were considerable disparities with respect to the use of technology in court. Some judicial officers were willing to use it, while others were not. Further, it was reported that some courts had poor telephone and audio-visual technology, leading to delays and

adjournments, while others had only one video-link room and many regional or remote communities had no audio-visual facilities at all.

Stakeholders believed that improved standards were needed, not only regarding the quality of technology but also in terms of court protocols on when, and how, to use technology. Some suggestions made were:

- More time should be set aside for telephone hearings, particularly those using interpreters;
- More time and special care needs to be exercised when video-link is used—in particular, it is important for judicial officers to explain who is present, their roles, and express the gravity of what is occurring;
- Protocols that have been developed to assist children and victims of sexual violence to give evidence via audio-visual technology should be adopted for all women, particularly Aboriginal and Torres Strait Islander women, making applications for orders to protect against domestic and family violence.

## The impact of police responses

Although outside the scope of this report, stakeholders expressed serious concerns about the way police responded to Aboriginal and Torres Strait Islander women experiencing violence, advising that some police behaviour was perceived as discriminatory, that some officers lacked cultural competence and that, at times, police had displayed a poor understanding of the cycle of domestic violence.

Stakeholders described instances where a police culture of blaming the victim and a reluctance to intervene early had arisen. They also reported instances of police treating women dismissively, sending women home saying, “it wasn’t a good enough breach” or responding to complaints with an attitude of “you’ve asked for it”. Stakeholders expressed concern that

matters were not fully investigated by police, that other witnesses were not interviewed and that statements were taken when people were intoxicated.

One stakeholder said:

*“The fact that violence is allowed to go on for so long is enabled by police racism and the racism of the whole system. The system creates so many barriers that prevent people from seeking help at the early stages of violence.”*

## Family and community pressure on women seeking to change relationships

Stakeholders consulted for this project reported that family and community pressures often inhibited a woman’s capacity to seek legal assistance. This is supported by recent research into these issues.

The Nous Group in 2013 found that Aboriginal and Torres Strait Islander victims of domestic violence are reluctant to report violence because of a fear or distrust of the justice system exacerbated by:

- Fear of the consequences of reporting family violence because of lack of anonymity in Aboriginal and Torres Strait Islander communities and repercussions from family;
- Fear that reporting violence will mean having to move away from kin and community. The importance of kin and community makes it very difficult for many Aboriginal and Torres Strait Islander women to end a relationship with the perpetrator, as this would usually mean leaving her community and separating her and any children from their social, cultural and economic world;
- Lack of access to alternative accommodation.<sup>22</sup>

<sup>22</sup> Nous Group 2013 *Family Violence Prevention Legal Services – Research and Needs Analysis Report*, op cit.

The Australian Crime Commission's National Indigenous Intelligence Taskforce in 2014 similarly found that Aboriginal and Torres Strait Islander people could be reluctant to report violence due to a range of factors including fear of retribution, feelings of shame or guilt and kinship/cultural issues. The Taskforce found that sometimes the marginalised and closed nature of some communities could allow domestic violence to go unchallenged, as family loyalties were given priority over the safety and protection of victims, and some perpetrators exploited cultural obligations to protect themselves from prosecution, accountability or behaviour changes.

## Potential complexity of legal problems

Some Aboriginal and Torres Strait Islander women may experience a wide range of criminal, administrative and civil law issues. Between 2008 and 2014, the Indigenous Legal Needs Project (ILNP study)<sup>23</sup> and the Legal Australia-Wide Survey (LAW survey)<sup>24</sup> both found extremely high rates of unmet legal need among Indigenous people. ILNP interviews with Aboriginal and Torres Strait Islander women found that family law, domestic violence, child protection matters and housing tenancy matters were frequently inter-related and the interaction between these different spheres of law were sometimes not well managed or understood by the women or by support services and relevant authorities.

Stakeholders noted that many Aboriginal and Torres Strait Islander women do not recognise that they need legal advice or see their issues as legal issues. Further, they observed that in many instances Aboriginal and Torres Strait Islander women experiencing violence approached the justice system in multiple roles over time—sometimes as victims, but also as respondents, defendants or witnesses. Lawyers explained that women may seek help for a violence matter (for example, to report a breach of an order) and then be served with unpaid fines or subpoenaed for another offence. These scenarios were frequently reported by stakeholders in Western Australian and Northern Territory consultations, for example:

- A teenager travelled from interstate at the request of the Crown to be a witness giving evidence of multiple sexual assaults against her, only to be served with subpoenas for outstanding juvenile matters after she had given evidence;
- Female Indigenous victims of violence served with warrants for their arrest for failing to attend court, including a woman imprisoned overnight after failing to attend court because a child was in hospital;
- A father was arrested when a woman reported violence, but then the woman was arrested at the same time for outstanding warrants for property damage offences. In this instance, both were imprisoned overnight with no one left at home to care for the children who were at school when the parents were arrested.

The ILNP study and LAW survey both found that when women and their children experience family violence and relationship breakdown they frequently find themselves addressing extremely complex legal issues in different courts, different jurisdictions and under different pieces of legislation. For these women, the justice system is complex, fragmented and uncoordinated, with information in one court not being transferred to another.

23 Separate state and territory project reports by Cunneen, Allison and Schwartz for Victoria, New South Wales, Queensland, Northern Territory and Western Australia. <https://www.jcu.edu.au/indigenous-legal-needs-project/resources/ilnp-reports-and-papers>. A summary of the ILNP core findings is provided by submission to the Senate Inquiry on Access to Legal Assistance: [https://www.jcu.edu.au/\\_data/assets/pdf\\_file/0008/119843/jcu\\_147272.pdf](https://www.jcu.edu.au/_data/assets/pdf_file/0008/119843/jcu_147272.pdf)

24 Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: Legal need in Australia (LAW Survey)*, *op cit*. The survey involved 20,716 telephone interviews with household residents aged 15 years or over across Australia & was administered during 2008. Within each state and territory, quotas were set for age, gender, geographical area, Indigenous status and cultural and linguistic diversity.

## Access to legal assistance

Several major inquiries have found that Aboriginal and Torres Strait Islander peoples, as well as other Australians, have a high unmet need for community legal assistance. Stakeholders noted that in 2014, the Productivity Commission's Access to Justice Inquiry recommended an immediate \$200 million per annum increase in funding for community legal services.<sup>25</sup>

Stakeholders advised that funding cuts seriously affected Aboriginal and Torres Strait Islander women's access to justice in rural and remote communities because of the limited time that services were able to spend in the community. This causes many women to find that their only option is to represent themselves.

In addition, stakeholders expressed concern that legal services were frequently unable to provide legal advice or representation to women due to a conflict of interest arising from past or current interactions with the perpetrator. Again, this was a particular concern in regional and remote areas serviced by only one or two community legal services.

## Legal knowledge and understanding

In its 2010 report, the Australian Law Reform Commission noted that '[t]here is no single nationally or internationally agreed definition of family violence'.<sup>26</sup> It is acknowledged that States and Territories have undertaken reviews of their family violence laws and that the definition of family violence is now more similar across jurisdictions (although not identical).

To take one example, the *Family Law Act* defines family violence as "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family ... or causes the family member to be fearful".<sup>27</sup> It identifies several behaviours which may be family violence, including assault, sexual assault, repeated derogatory taunts, damage to property, unreasonable denial of financial autonomy, unreasonable withholding of financial support, and prevention of the victim from making social and cultural connections.<sup>28</sup>

The ILNP found Aboriginal and Torres Strait Islander women often had poor familiarity with family law and its processes, and their legal rights in relation to child protection. Furthermore, the study found that many Aboriginal and Torres Strait Islander women did not appreciate the value of early advice or representation.

Numerous stakeholders advised that Aboriginal and Torres Strait Islander women experienced many difficulties in their dealings with child protection authorities and courts about children. The ILNP found that many women in contact with the child protection system do not realise that child protection actions occur within a legislative framework nor do they seek legal assistance for child protection matters.

Similarly, stakeholders reported that many Aboriginal and Torres Strait Islander women sought legal advice only after substantial intervention by child safety agencies, including after children had already been removed. There were reports that child protection agencies put significant pressure on victims of family violence to remove themselves and their children from the presence of their partner or to take action in court against the perpetrator; if they do not, the agencies take action to remove the

<sup>25</sup> Productivity Commission, *Access to Justice Arrangements Inquiry*, 2014, <http://www.pc.gov.au/inquiries/completed/access-justice/report>

<sup>26</sup> Australian Law Reform Commission, *Family Violence - A National Legal Response* (ALRC Report 114), 11 November 2010, para [5.6], <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>

<sup>27</sup> *Family Law Act 1975* (Cth) s 4AB(1).

<sup>28</sup> *Family Law Act 1975* (Cth) s 4AB(2).



children from the mother's care. It was often stated that difficulty understanding court processes, including communication difficulties, triggered and amplified women's existing fear and distrust of the court system.

## Communication Barriers: Working with Interpreters

Stakeholders reported that some Aboriginal and Torres Strait Islander women had trouble communicating in the language of the justice system. Communication barriers were not only experienced by speakers of Indigenous languages, but also by women who spoke Aboriginal English<sup>29</sup> at home.

Language barriers adversely impacted on Aboriginal and Torres Strait Islander women's ability to deal with police, engage with support services including legal representation, and communicate with court staff and judicial officers. Women with limited English language skills were at a distinct disadvantage when participating in court proceedings and in understanding court orders. Further, different ways of communicating could affect the way Aboriginal and Torres Strait Islander women were heard and understood in the legal process, including how juries and judicial officers assessed their credibility and reliability.

Difficulties in communicating also adversely impacted women's experience of the court system, heightening their anxiety and mistrust. Stakeholders reported that communication differences left many women feeling excluded in court. In addition to being stressed about appearing in court, and frightened by being near violent partners, women were further stressed by not understanding what was occurring and by the fear of not being understood.

Some stakeholders consulted for this project expressed particular concern about the extreme vulnerability of very young and older women who spoke Aboriginal languages as their first language. Stakeholders nominated older female language speakers, subjected to extreme elder abuse by family members, and young girls and women subjected to sexual abuse, as some of the most vulnerable Aboriginal and Torres Strait Islander women.

Lawyers who had worked in Indigenous community legal services for many years advised that they were still frequently confronted by the degree of communication barriers experienced by women. As one lawyer observed:

*"You can lose a woman with just one word. A classic is 'interim' and 'final' orders. Women can understand every other word in the sentence, but if you don't explain 'interim' you've failed to explain the most important thing."*

Another experienced lawyer said:

*"Just the other day I came out of court and found my female client sobbing because she was convinced we'd lost. I was so happy because we'd had such a great win and the Magistrate had been so clear. She really didn't understand what had just happened. I was surprised because it was just so clear to me what had happened."*

<sup>29</sup> Aboriginal English involves different words and phrases, different accents, grammar, meaning and culturally different ways of communicating. These differences can affect the ways Aboriginal and Torres Strait Islander women and men respond to questioning and interviews (for example, gratuitous concurrence, silence, the pace of communication, and differences in the way people give specific information). See, eg, Eades, D, *Aboriginalised English: Implications in Legal Contexts in the Northern Territory* (Conference Paper, Northern Territory Supreme Court Language and the Law Conference, 2015); Mildren, D., "Redressing the imbalance against Aboriginals in the criminal justice system" (1997) 21(1) *Criminal Law Journal*, 7-22.

Stakeholders advised that there were no common assessment tools to assess communication impairment or how to respond to the needs of Aboriginal and Torres Strait Islander women with multiple communication barriers.

Stakeholders advised of the importance of speaking and writing in plain English in court. They felt judicial officers could play a role in ensuring all parties used plain English and explained legal terms and argument. They also suggested that more plain English legal resources could be developed. The following were provided as examples of useful resources:

- Aboriginal Interpreter Service and Aboriginal Resource Development Service's plain English legal dictionary;<sup>30</sup> and
- Central Australian Aboriginal Family Legal Unit's Super Law DVD and workbook, particularly with respect to its plain and colloquial English explanations and visual aids about domestic and family violence.<sup>31</sup>

The main strategies recommended for overcoming communication barriers were:

- Reframing forms, sentences and orders in plain English and ensuring they can be easily interpreted and translated;
- Guidance for lawyers and judicial officers about how to communicate in plain English; and
- Further plain English resources (such as a visual guide to a journey through court and court language).

Further, stakeholders believed Indigenous Court Liaison Officers were essential to overcoming communication barriers with Aboriginal and Torres Strait Islander women.

## Engaging interpreters for speakers of Aboriginal and Torres Strait Islander languages

For Aboriginal and Torres Strait Islander women with limited English language skills, the provision of professional, appropriate and skilled interpreters is crucial if the legal system is to respond to their needs and ensure that they can participate fully in court processes.

Approximately 60,000 Aboriginal and Torres Strait Islanders speak an Indigenous language as their first language. The Aboriginal Interpreter Service (AIS) covers the Northern Territory and some parts of the tri-state Central Australian areas crossing the South Australian and Western Australian borders, while the Kimberley Interpreting Service (KIS) covers the Kimberley and undertakes best efforts to assist language speakers in other parts of Western Australia.

However, many people expressed concerns about the availability of interpreters in South Australia, Queensland and, at times, Western Australia. Stakeholders noted that all three states had language policies requiring state authorities to make provisions for, and to engage, interpreters when required—but noted that these policies were generally not implemented or funded.

It was reported that lack of Indigenous interpreters particularly affected Magistrates Courts, tenancy and guardianship tribunals, police and child protection authorities.

Stakeholders consistently noted the lack of funding for interpreter services and the adverse impact this had on Aboriginal and Torres Strait Islander women's access to justice.

<sup>30</sup> Aboriginal Resource Development Service, Free interactive online dictionaries, Plain English Legal Dictionary, 2015, <http://www.ards.com.au/pages/Language.html>

<sup>31</sup> Central Australian Aboriginal Family Legal Unit, *Super Law DVD and Workbook*, 2012, [http://www.naclc.org.au/resource\\_details.php?resource\\_id=424](http://www.naclc.org.au/resource_details.php?resource_id=424)

The Aboriginal and Torres Strait Islander Legal Service has previously indicated that they believe current arrangements mean Australia often does not meet domestic and international obligations to ensure a fair trial with respect to the provision of interpreters.<sup>32</sup>

Stakeholders considered that the lack of access to interpreters rendered the justice system unjust. They contended that, without interpreters, clients were not able to understand the caution, participate in police interviews or provide witness statements, give instructions, understand charges, engage in processes associated with court reports (for example, pre-sentence or psychiatric reports), fully participate in courts and tribunals, to understand orders and decisions, or access support services.

Stakeholders also emphasised the lack of funding for legal services to engage Indigenous interpreters to assist counsel to take instructions from clients and to explain judicial determinations.

## Responsibility for engaging an interpreter

A related issue raised by stakeholders was the lack of clarity around who was ultimately responsible for determining when a client needed an interpreter and when to halt proceedings if an interpreter was not available. Other than in the Northern Territory, stakeholders reported that courts do not have an agreed approach to determining whether a person of some English proficiency needs an interpreter in order to be fully linguistically present in court. Stakeholders expressed concern that court cases were proceeding despite clients not understanding what was going on.

A common theme to emerge from consultations was the failure of police, counsel and courts to use interpreters, with the objective of "getting through the list" overriding the obligation to engage interpreters. It was suggested that there were occasions when judicial officers and lawyers recognised that interpreters were needed but continued legal processes despite knowing the litigant did not understand what was occurring.

Stakeholders noted that many courts do not have processes in place to assess the need for an interpreter in advance of a hearing. They stated that this is a particular issue in Magistrates Courts and Tribunal proceedings, where there is often very limited information available about court users prior to the hearing. It was noted that this is especially the case when women are unrepresented or only have their first discussions with counsel immediately prior to their case being heard.

Stakeholders discussed the demanding operating arrangements characterising remote circuit courts, with Magistrates and counsel flying in and out of communities. It was suggested that lists are often very long and lawyers have little time to take instructions, let alone to determine whether an interpreter is required.

It was also noted that while it is ultimately the responsibility of the Magistrate to determine whether an interpreter is required on these occasions, the practical realities of running remote courts means that many Magistrates are unable to exercise this responsibility because of the pressure to complete lists.

Services emphasised the importance of courts developing processes to identify the need for an interpreter in advance of a hearing, for example, by making appropriate inquiries when the matter is first listed. Stakeholders from the legal profession expressed the view that it is very important that judicial officers, including Chief Magistrates and Chief Justices, show strong leadership around engagement of interpreters as an essential element of access to justice.

<sup>32</sup> Aboriginal and Torres Strait Islander Legal Service, *The Right to A Fair Trial*, NATSILS Submission to the Commonwealth Attorney-General Regarding the Expansion of Aboriginal and Torres Strait Islander Interpreter Services, March 2011, <http://www.atsils.org.au/wp-content/uploads/2014/11/Joint-ATSILS-Aboriginal-and-Torres-Strait-Islander-Interpreter-Services-Submission-March-2011.pdf>

## Working with interpreters

Stakeholders highlighted a lack of consistent awareness or competence amongst judicial officers and lawyers of how to work with interpreters and advised that counsel and judicial officers needed training and professional development in this area. It was suggested that training should include:

- How to determine whether a person of limited English proficiency needs an interpreter;
- Skills on working with speakers of Aboriginal English;
- Practical skills of working with an interpreter; and
- Plain English communication.

Stakeholders advised that some court staff and judicial officers might benefit from training in how to manage the court to accommodate the needs of interpreters. For example, stakeholders said some courts were not familiar with setting aside longer periods of time to accommodate the additional time needed for interpreting. One stakeholder reported difficulties where judicial officers were impatient with the relay-delay on video-link and kept trying to hurry the interpreters along so they could complete the matter.

## Attending Court: Barriers to Full Participation

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### Arriving at Court

Stakeholders and women consistently noted how intimidating it was for Aboriginal and Torres Strait Islander women to arrive at court. In particular, it was noted that regional and remote courts are often very small, and victims and perpetrators are often in close physical

proximity for many hours. Stakeholders described overcrowded waiting rooms, people lined up standing in corridors and corners, sitting on the steps and outside areas. Women were frightened being so close to their partners, who sometimes arrived with family members who could behave in an intimidating fashion.

It was reported that victims felt intimidated that everyone knew their business. In some regional and remote areas, court was viewed by some in the community as akin to a social curiosity. One stakeholder noted: "People turn up to see what is going on and gossip. This fuels the cycle of lateral violence."

Lawyers talked about the difficulty of taking instructions from women in private as many courts did not have meeting rooms. Remote courts were particularly difficult. Lawyers working remote circuits described taking instructions sitting with women in the dirt, sun, and wind with all their paper work on their knees and walking around buildings searching for a corner in which to have a private conversation.

Lawyers across the country described the lack of privacy for women as contributing to their reluctance to engage with the courts. One lawyer described escorting a client from a safe room where the defendant's family had sat outside the safe room door and along the corridor all day:

"She was terrified, trapped in the safe room. There was a big guy lounging against the door, preventing us from entering. I had to ask him to move."

Stakeholders stated that the courtroom was terrifying for women and considered how more could be done to "humanise" the court. People favourably noted the impact of places like the Victorian Koori Court or the Neighbourhood Justice Centre, where the bench is lower and the court is more informal, light and open.

## Waiting times

The majority of stakeholders expressed concern about unpredictable waiting times when attending court. They noted the difficulties experienced by women who were told to attend court at 9am and then found they had to wait all day to be heard, often in the presence of the perpetrator. Women had issues estimating the time needed for parking or had difficulty managing bus timetables, as well as coordinating childcare and school pick ups. These considerations were more complicated and costly for women who had travelled significant distances to attend court.

Stakeholders noted how hard it was for unrepresented women to wait in court for matters that were frequently heard later in the day.

One stakeholder noted:

*"It is gruelling sitting there all day with him and his family. It preys on her mind, she gets more and more scared. As every moment goes by she is fighting a battle with herself about whether she can give evidence."*

Stakeholders emphasised that these circumstances were not one-off events. As many of the matters experienced by Aboriginal and Torres Strait Islander women were complex, women were attending multiple hearings, both as witnesses and applicants.

These difficulties led to a range of suggestions:

- That courts introduce "greeters" and a stronger focus on customer service and victims across the court system;
- That courts reconfigure the role of security staff to provide a "concierge" service, an approach used by the Victorian Neighbourhood Justice Centre;<sup>33</sup>

- That courts look at how other busy organisations, such as Medicare or motor registries, managed queues and waiting times. Such a system could assist women to see where their matter sat in a list, with estimates about when they might be called;
- That forms and letters be much clearer about the amount of time that women should set aside for court appearances;
- That court days be split into morning and afternoon sessions, so that women knew that at most they had to wait half a day; and
- That court spaces and waiting times be used far more effectively, for example by playing videos on community legal education matters.

## The need for improved for case coordination

Stakeholders noted that Aboriginal and Torres Strait Islander women frequently had complex legal needs that had family violence at their core, but were heard across a variety of criminal, family, children's and drug courts with little case coordination. They noted their clients found the system fragmented, complex and difficult to navigate.

Stakeholders highlighted their concern about poor case coordination. They cited examples where the same regional magistrate dealt with violence, child protection and criminal issues as separate matters over six weeks, even though they were related. The criminal matter might be presented by defence lawyers as a "one-off snap" with no other evidence presented. However, three weeks later the child protection hearing might show strong evidence that violence had been ongoing for years. A week later the hearing about the violence matter might show there were 10 previous call outs but the matter had never proceeded to court before. While different parts of the system have all this information, it is not presented to the magistrate at the same time.

<sup>33</sup> The Centre's security staff direct clients to the right place within the Centre. In addition, within the Centre's registry, there is a strong customer service focus, such as using clients' first names, training in how to remain calm in the face of agitated people, and asking clients additional questions to see if the registry could help with other matters. Plain English surveys seeking feedback on Centre performance are prominently displayed on service counters. Information is available in multiple languages.

Likewise, information given in one case (for example, a child protection matter) was not necessarily included in the family violence matter.

Participants believed this fragmentation and lack of case coordination and information sharing led to inconsistent decisions by judicial officers which ultimately led to a lack of accountability for perpetrators and insufficient focus on the needs of the adult and child victims of violence.

Some participants called for a specialist family violence “one court-one family model” where a magistrate could undertake an integrated investigation of all the matters—criminal, violence, family, child protection and other matters.<sup>34</sup>

## Physical safety at Court

As described earlier, applicants and respondents sometimes attended court with family members and sometimes community members. Stakeholders noted that decisions about who should be present needed to be made on a case by case basis. They particularly noted the importance of listening to the wishes of the victim of violence in making a decision about who should be present in the courtroom and utilising legislation to ensure this occurs.

There were mixed views about how judicial officers should handle this, given many women felt intimidated by the presence of others. Some noted it was important that support people attended court, particularly in matters concerning children, as in cultural terms other family members also have responsibilities for children and therefore need to be present. Stakeholders also observed there were insufficient Indigenous Court Liaison Officers and that family members played an important role in helping the parties understand a decision.

Children often attended court with their mothers because they had no other options for childcare. Stakeholders were very concerned that courts are a traumatising environment for children. They suggested some provision for childcare, or at least a play corner, for women attending court with children.

Greater use of technology was seen as a way to overcome the lack of safety that women felt on attending court. The majority of stakeholders advised many women would prefer to give evidence via video-link, as they found it too intimidating to sit near the perpetrator. For example, one community legal service said:

*“We had a lady who had endured 12 years of violence and had always been too frightened to provide evidence. She agreed to give evidence when she found she could do it through video-link.”*

Stakeholders noted that many regional and remote courtrooms were very small, and many had no safe rooms. As a result woman frequently had to sit extremely close to the perpetrator, which could be terrifying. Stakeholders considered that better use of technology could help create a greater sense of safety for those women. It would also alleviate the need to make special arrangements to escort women to and from court, or to find safe spaces for them to sit while they waited for their hearings.

It was also suggested that greater use could be made of physical barriers, including screens, when video-link technology is not available, so that women can be separated from the perpetrator.

## Understanding court processes

Many stakeholders talked about the disjointed nature of justice system processes and the lack of client information for women. Women found it hard to get information on their pathway through court and sometimes failed to attend parts of the process due to a lack of knowledge.

<sup>34</sup> See, eg, the Family Violence Court Division in the Magistrates’ Court of Victoria <https://www.magistratescourt.vic.gov.au/jurisdictions/intervention-orders/family-violence-court-programs>

Some stakeholders noted that they and their clients found court websites confusing to navigate. However, it was also acknowledged that some courts had developed user-friendly websites.

## Difficulty understanding forms, orders or judgments

Stakeholders reported concern for Aboriginal and Torres Strait Islander women who could not read and write, or had very limited literacy. However, stakeholders reported that even women who could read and write English well had difficulty understanding legal terms and terminology to the extent necessary to enable them to complete forms used in the court system.

Stakeholders expressed concern that women didn't understand the forms, orders or judgements used in court, noting that self-represented women were particularly vulnerable. Community legal services reported that clients attended the service asking for help completing forms, understanding court processes and comprehending orders. Services advised that women were unlikely to proceed with intervention orders unless legal services or Indigenous Liaison Officers assisted them to fill in their forms. Some stakeholders in regional areas reported that court registries were often unwilling to assist women to complete forms; this presented particular challenges for women who did not have access to lawyers or support services to assist.

Across Australia, stakeholders expressed frustration with the way forms, charges and orders were written. One stakeholder commented that "the forms used to take out restraining orders are incredibly unclear and the Family Court forms worse". Difficulty completing the forms was identified as a real barrier, with some stakeholders reporting that the level of stress created by a difficult form was enough to stop some women pursuing an application for an intervention order.

People advised that Indigenous Liaison Officers, where they existed, played an invaluable role in helping with communication around

court processes and forms. However, they were frequently not present to explain orders at the end of the process because they needed to be in court with their next client. Stakeholders reported that security staff were frequently asked by women to explain orders, leading to confusion and misinformation. Aboriginal and Torres Strait Islander staff in refuges advised that women often returned from court and asked them to explain orders.

Stakeholders expressed concern that orders were written in complex language such as "The person bound must not behave in an intimidatory, offensive or emotionally abusive manner towards the person protected" and "act of abuse, breaching the peace, causing fear, damaging property or intimidating another person". One stakeholder commended an experienced Magistrate who always used plain English to explain orders, for example, explaining that the terminology meant "Don't come to the house when you are drunk or angry. Don't swear or yell. Don't lay hands on her." This stakeholder noted that "orders need to get straight to the point and use simple language".

There was universal agreement that forms and paperwork could be greatly simplified. Several stakeholders noted that the Neighbourhood Justice Centre (NJC) in the Melbourne City of Yarra has recently launched an online Family Violence Intervention order that is an easy to use, secure online version. The form uses plain English and has tips to help users complete the application.<sup>35</sup>

Stakeholders also noted that a session at the 2015 Northern Territory Supreme Court *Language and Law Conference* set out a case study of charges, showing how they included unnecessary information and confusing grammar. The case study showed that a charge could be reduced to approximately a quarter of its current length, still retain all essential information but be easier to understand and interpret.

<sup>35</sup> Community Justice Centre, *Apply online for a Family Violence Intervention Order*, 2015, <https://www.njcforms.courts.vic.gov.au>

## Courtroom dynamics

Stakeholders reported that a major factor that affected Aboriginal and Torres Strait Islander women's perceptions of the court system was how the judicial officer treated them at their hearing. Stakeholders called for judicial officers to do all they could to manage their courtroom in a way that considered the needs of women.

Stakeholders repeatedly noted that given the complexity of matters faced by many Aboriginal and Torres Strait Islander women, it would be helpful if more time was set aside for matters. Many commented that matters concerning Aboriginal and Torres Strait Islander women may require more time and a more flexible approach than was usually allocated. In some places people thought this could be achieved by an Aboriginal and Torres Strait Islander specific list, while others called for substantial reforms and specialised family violence courts.

Numerous people explained how taking things slowly and making efforts to build a relationship transformed women's access to justice. They saw this as the responsibility of everyone in the court system, but they commended judicial officers who took extra time to explain matters. Stakeholders advised that women were grateful when a judicial officer used plain language and took a few minutes to explain their role and the roles of other people in the court. Such approaches lowered anxiety and built trust.

### Hearing the victim

Services noted that at times insufficient care was taken in case coordination to ensure victim's names were on the victim's register or to provide information about the terms of orders, bail conditions or dates of release.

A frequently expressed concern was that judicial officers were not receiving sufficient advice about the views of the victim when making intervention orders.

Many stakeholders expressed concern that intervention orders were often made by police based on what they had seen at the time of the call out, with no further conversations between police and the victim about the terms of the order before the matter went to court.

Legal services advised that even if women wished to negotiate changes to orders, police prosecutors were frequently reluctant to do so. Services felt that this silenced the victim and at times created a wall of hostility between the woman and the police, sometimes turning women into disengaged witnesses. Services suggested that orders made by police should always include a section outlining the woman's perspective, as it was preferable that the judicial officer had the opportunity to consider everyone's view. One stakeholder said:

*"The woman has just escaped a situation where they have no control. Yet they find themselves part of a legal process where once again they had no control and no voice."*

Stakeholders also expressed a concern that women had to tell and re-tell their story frequently: this was re-traumatising and also made the women feel that they were disbelieved and unheard. Stakeholders sought a common assessment and reporting process where the victim was supported to tell a comprehensive story once.

### Perpetrators and sentencing options

Numerous stakeholders asserted that the current court system was not holding perpetrators accountable for their violence and that this had a detrimental effect on women victims and their children.

They commented on the imbalance of resourcing towards respondents rather than applicants. Others pointed out that Aboriginal and Torres Strait Islander victims needed more time with lawyers and more time in court given the complexity of legal matters, the burden of trauma, the levels of fear and mistrust,



communication difficulties and the level of violence women had experienced. However, given the tight fiscal environment women struggled to find services who could help with all their needs, particularly as legal services gave priority to men charged with family violence criminal matters.

### The importance of court administration

Stakeholders emphasised the importance of frontline registry staff in the overall experience of court. It was noted that registry staff varied greatly in their demeanour and capacity for cross-cultural communication. While some staff might assist with the completion of paper work, others resisted when asked to help organise interpreting, video-links, telephone links or use of safe rooms. Others were unhelpful to community-controlled services. For example, some legal services in regional areas with large Aboriginal and Torres Strait Islander populations said it was exceptionally difficult to get access to court lists in advance, making it difficult for legal services to check for any potential conflicts or attempt to case manage interconnected matters.

One stakeholder said:

*"Women approach the justice system with a lifetime of experiences of racism. They are very quick to read the cues that a whitefella doesn't want them around. It affects their perception of the entire legal system – it primes them to see the system as racist."*

Stakeholders advised that courts needed to show leadership that there would be no adverse consequences if a person or organisation wished to make complaints. Further, complaints processes need to be easily accessible, transparent and easy to use.

### Judicial attitudes and actions

Those consulted for this project reported varying levels of cultural competency amongst the judiciary. While stakeholders spoke respectfully of many judicial officers, concerns were expressed about the need for greater access to training and material that provided cultural context. Areas for suggested attention included: the dynamics of domestic and family violence; trauma, unconscious bias; cultural awareness training; greater understanding of local communities and their specific cultural practices; plain English communication; working with interpreters; and training or managing Aboriginal and Torres Strait Islander staff, where relevant.

Stakeholders called for training to be delivered by Aboriginal and Torres Strait Islander people and for it to be tailored to local circumstances. Some stakeholders expressed a desire to see greater use of elders and community justice groups to provide a depth of local understanding; to provide advice to judicial officers, lawyers and services on language and customs; and to provide more advice on sentencing matters. Others cautioned that there were significant difficulties in identifying which elders were appropriate for this task, particularly around issues affecting women and around domestic violence issues. It was noted that elders need support and training about court processes and their responsibilities within that process. Many of those consulted called for a culture of continuous learning, based on regional approaches and meaningful engagement.

A number of stakeholders believed that building strong relationships between judicial officers and Aboriginal and Torres Strait Islander communities is a practical and effective form of training and development for judicial officers. Stakeholders noted that relationship building sometimes needed to occur over years, and required the establishment of effective processes in partnership with Aboriginal and Torres Strait Islander communities.

This was described as “two way learning” and stakeholders identified profound benefits for both judicial officers and communities. Such engagement was seen as an efficient way for judicial officers to build relationships on the ground and acquire an understanding of local issues, as well as facilitating learning for the Indigenous people involved.

Many stakeholders believed two way learning and the slower more deliberate approach were important outcomes of specialist Indigenous court models (such as the Koori or Nunga courts or Queensland’s Community Justice Courts). These models were commended for fostering respectful, deep relationships between judicial officers and respected elders. These approaches were seen as “competent” because they gave time for all relevant information to be deliberated.

Stakeholders commended judicial officers who had a good understanding of local communities. They spoke positively of judicial officers who had taken the time to build relationships and made efforts to understand community history, culture and language.

Some stakeholders suggested that days of significance / commemoration presented an important opportunity for the judiciary to reach out to Aboriginal and Torres Strait Islander communities, meet local leaders and to demonstrate respect for communities and their priorities. Aboriginal community-controlled organisations suggested that the judiciary could commemorate the Anniversary of the Apology, National Sorry Day, Reconciliation Week, NAIDOC week and Ochre Ribbon Day (a recent initiative of the Indigenous Family Violence Prevention Services). Stakeholders also believed that court visiting programmes and court open days were an important part of making the courts more accessible to Aboriginal and Torres Strait Islander women.

While they commended the judiciary for their leadership in beginning the JCCD consultation process, and the commitment shown by many judicial officers to improve outcomes for Aboriginal and Torres Strait Islander peoples, stakeholders identified judicial leadership as fundamental to implementing any reforms. They believed Chief Justices, Chief Judges and Chief Magistrates play an important role in setting standards and ensuring they are met.

Stakeholders also suggested that leadership needs to be shown in order to improve the operation of courts administration and to ensure all court staff—registries, security, court officials—improved their respect, cultural competence and approach to communication.

## Abuse of court processes

Many stakeholders reported instances of men abusing court processes in order to maintain power and control over women. Lawyers commented on the complexity that judicial officers face and the degree of expertise required to manage some domestic violence cases. Many stakeholders noted that tone and subtle interjections by a judicial officer had a powerful impact on changing the dynamics of the room.

Numerous people asked for reforms to be implemented to prevent perpetrators cross-examining victims. Such legislation already exists in some states.

Stakeholders noted that women felt safer when judicial officers made effective use of Indigenous Liaison Officers. People commended the following practices: referring to the presence of the Officer and seeking their advice; allowing time for the Officer to familiarise the woman with the court room; and ensuring the Officer was present whenever Aboriginal and Torres Strait Islander applicants or respondents were present.

## Proposals for reforming court processes

Across Australia, there were consistent messages about the need for court reform.

Stakeholders proposed several models for reforming the justice system to better focus on the needs of Aboriginal and Torres Strait Islander victims of violence:

- Dedicated family violence lists allied with an integrated service response for victims and perpetrators;
- Integrated one-court, one-family models with a focus on therapeutic jurisprudence and long term intervention; and
- Aboriginal and Torres Strait Islander courts, tribunals and lists.

While some jurisdictions have family violence lists, many stakeholders worked in regions where there were no specialised lists. Regional stakeholders talked about the value of dedicated lists for domestic and family violence held on a specific day so that relevant services, such as Family Relationships Centres, could attend. However, they noted it would be difficult to fully implement such proposals in many regional and remote communities as there were no support services for either the victim or perpetrator in these locations.

### The importance of integrated support services

Services called for greater case management of cases with police to identify families who had high degrees of contact with the police and child protection system, and where there was a background of recidivism and violence. This could allow courts to divert these families to an integrated court, working in partnership with families and community services to implement a long term plan to improve family functioning.

Participants believed community-controlled services needed to be central to this response, and it was essential that there be strong cultural governance frameworks. In particular, stakeholders suggested that courts and police needed to work hand in hand with Aboriginal and Torres Strait Islander people trying to hold their families together, whilst still holding perpetrators accountable.

### Aboriginal and Torres Strait Islander courts, tribunals and lists

A number of stakeholders commended the value of Indigenous-specific court and tribunal initiatives to support Indigenous defendants, victims and witnesses. Some form of Indigenous sentencing option operates in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory.<sup>36</sup>

Some stakeholders called for the implementation of Indigenous specific lists, courts or tribunals or specialist arrangements, including:

- Dedicated Indigenous lists in Children's Courts and Family Court;
- Increased involvement of Aboriginal and Torres Strait Islander people in pre-sentencing and sentencing, such as through the Koori Courts, Queensland's community justice group and Remote Justice of the Peace arrangements;
- Neighbourhood Justice Centre's Aboriginal Hearing day model; and
- Establishing Indigenous victim's compensation lists in all jurisdictions, based on the positive outcomes arising from the Koori specialist list in Victoria's Victims of Crime Assistance Tribunal.

<sup>36</sup> Bartels, L., "Indigenous-specific court initiatives to support Indigenous defendants, victims and witnesses", Brief 17, April 2015, Indigenous Justice Clearinghouse Australian Institute of Criminology <http://www.indigenousjustice.gov.au/briefs/brief017.pdf>

Stakeholders identified a number of benefits from Indigenous-specific courts and tribunals:

- The opportunity to set more time aside to consider matters;
- Opportunities for integrated service provision;
- More culturally competent and trauma informed skilled judicial officers and tribunal members; and
- A greater sense of healing and justice experienced by people participating in such processes due to the focus on direct engagement, empathy and communication.

Where processes involved elders in sentencing discussions the identified benefits included:

- Two way learning for both judicial officers and Aboriginal and Torres Strait Islander people;
- Better information to inform sentencing decisions;
- Greater impact of decisions on people coming before these processes; and
- Greater appreciation of court processes and the law by the community.

A number of issues were raised regarding the operation of Indigenous specific arrangements, including:

- Under-resourcing; and
- Elders involved in such processes frequently being unpaid and under-supported

Not all stakeholders prioritised the establishment of Indigenous specific lists or courts over specialist family violence courts. Some stakeholders—typically those working in regional or remote settings where Aboriginal and Torres Strait Islander people comprised a significant majority of people appearing before the courts—had a preference for an integrated court model focused around violence or the family unit.

## Employing Aboriginal and Torres Strait Islander Peoples

Almost every person who participated in the consultations identified the recruitment of more Aboriginal and Torres Strait Islander staff, particularly women, as one of the most pressing reforms needed to address barriers to women engaging with the court system, including overcoming feelings of fear and mistrust.

Many stakeholders commented that very significant proportions of people facing the courts were Indigenous people, yet the judicial officers and staff administering the justice system were overwhelming non-Indigenous. As one stakeholder said:

*“It’s very confronting that, given the amount of Aboriginal people in this community, there are almost no Aboriginal people in the court—in any capacity. The court feels very foreign. If there were Aboriginal staff in any capacity—in registry, on security—that would make a huge difference. For Aboriginal people, connection to people is everything. If we see our mob working in the courts, all of a sudden we’ll have a connection to the courts and courts will be more open to our people.”*

More Aboriginal and Torres Strait Islander personnel were recommended for every aspect of the justice system—registry staff, court officers, security staff, witness assistance programmes, child protection staff, policy staff, Indigenous family consultants, lawyers and judicial officers. The presence of Aboriginal and Torres Strait Islander staff was seen as essential to helping women overcome their feelings of fear, embarrassment and stigma. As one stakeholder said:

*“By employing other Aboriginal people in the system, the justice system ‘borrows trust’. Culturally, when Aboriginal people are moving through unfamiliar places, travelling with a person from that place helps us believe we can travel safely. An Indigenous*

*Liaison Officer helps the woman believe they can make it through court safely. Having Aboriginal people in the system does not ameliorate trauma, but it's a buffer."*

In particular, stakeholders called for a large increase in the number of Indigenous Court Liaison Officers, who were seen as working as cultural brokers who could assist judicial officers by having a deep understanding of communities, cultural practices and ways of communicating. Stakeholders mentioned particular cultural practices that were unique to particular regions, such as a Torres Strait Islander adoption practices, known as Kupai Omasker.

Stakeholders noted the importance of having both male and female Indigenous Court Liaison Officers and the need for separate officers for victims and respondents.

Stakeholders suggested that Indigenous Court Liaison Officers could help women by:

- Supporting women to complete paperwork (including overcoming literacy barriers);
- Letting women know when they needed to be in court, and providing access to phone and email if a woman did not have them;
- Providing information about court processes and what to expect next;
- Providing more one-on-one time and individualised support for women;
- Facilitating audio-visual conferencing or other safety related procedures;
- Coordinating access to support services and legal advice;
- Explaining orders and bail conditions; and
- Liaising with the police or the Sheriff on fines.

A variety of models were envisaged for Indigenous Court Liaison Officers.

One was for the officer to be attached to a particular court. The officer would assist people in navigating the court and providing contextual

information to other officers in the justice system. This appears to be the model currently implemented in some jurisdictions.

A related model was a "greeter". The presence of such staff was seen as courts having a much greater customer service orientation for victims of violence, in particular unrepresented litigants. It was envisaged that a greeter would help the woman:

*"walk through the process from beginning to end. A greeter could tell women where they need to go, orient them to the court environment and court room, point them to sources of support (including victims of crime compensation) and explain orders."*

One group of stakeholders stated that:

*"this could help the client feel more in control, make sure they have all the right pieces of paper, and make court more friendly and safe."*

Another model was for an Indigenous Court Liaison Officer to be the person holding the entire system together, working across courts and services. It was envisaged such a person would be a "one stop shop" or "comprehensive case manager". Such a person could assist women (particularly unrepresented women) to navigate the entire justice and child protection systems, including accessing services and supports.

Stakeholders noted that Indigenous Liaison Officers were called upon to perform extremely complex roles; they believed Officers needed to be better qualified to do so, and more supported in performing these roles.

Stakeholders called for judicial officers and administrative staff to develop greater awareness of the dual responsibilities experienced by Aboriginal and Torres Strait Islander staff and to support their professional development. Stakeholders also noted the importance of judicial leadership in supporting the work of Indigenous Court Liaison Officers.

# Building a Successful Framework

A key finding from the consultations was the need for meaningful engagement with Aboriginal and Torres Strait Islander women and their community-controlled organisations to develop and implement a plan for change. Priorities identified included:

- The need for a systematic approach to include Aboriginal and Torres Strait Islander opinions and values in assessing the performance of the justice system;
- Working with Indigenous organisations and researchers to develop indicators and evaluation approaches that included Aboriginal and Torres Strait Islander values and priorities;
- The need for the courts to show they were responsive to honest feedback about the justice system and its impact on Aboriginal and Torres Strait Islander peoples;
- The need for improved identification of Indigenous status, language spoken at home, literacy and disabilities;
- The need for improved case coordination; and
- Having a more holistic set of criteria to assess court performance and justice outcomes.

## Ensuring accountability

While stakeholders valued the opportunity provided by the consultations to give feedback about the workings of the courts,

they hoped this was the beginning of more extended meaningful engagement. As one stakeholder said:

*“It is important there is an ongoing way for Indigenous people, and Indigenous women’s voices to be heard. There needs to be a structured approach to giving feedback about the justice system at the regional or state level, agreeing reform and tracking change – for example a women’s congress – with appropriate representation so the justice system gets useful and timely feedback rather than waiting for things to explode.”*

Stakeholders identified the importance of courts and court administration bodies in valuing Aboriginal and Torres Strait Islander perspectives and priorities and reforming their key performance indicators to include these.

Many people expressed consultation fatigue—that the same suggestions had been made repeatedly, but not acted on.<sup>37</sup> It was suggested that keeping a public scorecard of progress in implementing reforms recommended by Aboriginal and Torres Strait Islander peoples could itself be a key performance indicator of meaningful change.

<sup>37</sup> Stakeholders referred the JCCD to other work undertaken and expressed frustration that good ideas had not been implemented. People referred to past reports including: Northern Territory Legal Aid Commission Integrated Family Violence Justice Project (2007); the Family Law Council’s reports into Family Violence (2009) and Indigenous and culturally and linguistically diverse clients in the family law system (2012); Australian Law Reform Commission and NSW Law Reform Commission report into Family violence (2010); and a variety of Western Australian work on the intersection of the family law and child protection jurisdictions including the work of Professor Chisholm AM and West Australian Law Reform Commission’s 2014 discussion paper report on Enhancing Laws concerning Family and Domestic Violence.

The extent of Aboriginal and Torres Strait Islander employment within the justice system, for example in registry officers and other court administration staff, witness assessment services and child protection staff, was repeatedly identified as a tangible indicator of inclusiveness.

Customer service measures identified by stakeholders as important included courtesy, friendliness, helpfulness, timeliness, convenience, feelings of safety and extent of understanding. Measures of accessibility were also important—for example, availability of plain English forms and documents, distance travelled, time spent in court, clarity of expectations, availability and use of audio-visual technology and engagement of qualified interpreters.

People consulted for this project supported the idea of feedback mechanisms, such as complaints systems and feedback forms. Aboriginal community-controlled legal services advised they received valuable feedback from their clients from feedback forms and suggested courts could also be more active in seeking feedback. An alternative suggested approach would be celebrating good performance.

## Improving data and IT systems

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Stakeholders expressed concern about the poor administrative and record keeping systems used by courts and the limited information available to identify clients with particular barriers. Stakeholders were concerned about the limited information available about language spoken at home, literacy and English language proficiency and whether an interpreter or other communication assistance would be required. Concern was also expressed about the approaches used to determine whether a woman, or her children, identified as Aboriginal or Torres Strait Islander.

Stakeholders called for courts to improve data collection about their users, which would assist courts to ensure their responsiveness.

## Measuring progress

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Stakeholders called for courts to work with Indigenous researchers and organisations to develop methodologies, criteria for valuing success and key performance indicators that took into account Aboriginal and Torres Strait Islander peoples' views.

Stakeholders in several jurisdictions expressed concern with the poor quality and limited range of criteria used in past evaluations that subsequently led to the ceasing of some Indigenous-specific initiatives. Such evaluations used criteria such as recidivism against a population base line and cost per case—criteria that were blind to other criteria of value to Aboriginal and Torres Strait Islander people, such as feelings of being heard, accessibility, enhanced levels of understanding by respondents and victims, and greater levels of trust and respect between courts and Indigenous communities.

Stakeholders argued courts needed a stronger focus on long term outcomes, better case coordination and more efficient investment of resources in the justice system, in particular through justice reinvestment. They called for courts to adopt a more integrated and holistic approach to the implementation of the justice including more coordinated implementation with Aboriginal and Torres Strait Islander peoples and their organisations.

# Recommendations and suggestions for consideration by the JCCD

Stakeholders made the following recommendations and suggestions for consideration by the Judicial Council on Cultural Diversity and the Australian court system more broadly.

1. **Courts should work with Aboriginal and Torres Strait Islander communities, their community-controlled services and Reconciliation Australia to develop accredited Reconciliation Action Plans.**

The consultations suggested that a major barrier to Aboriginal and Torres Strait Islander women reporting family violence was fear and mistrust. Stakeholders called for the judiciary to show leadership in improving the relationship between Aboriginal and Torres Strait Islander people and the courts, including an openness to honest feedback. They called for a systematic approach to including Aboriginal and Torres Strait Islander voices in the performance of the justice system. The Reconciliation Action Plan programme is a framework for organisations to develop a practical and measurable plan to achieve reconciliation.

2. **Judicial officers should work with Aboriginal and Torres Strait Islander communities and their community-controlled services to strengthen relationships at the local level.**

The consultations indicated that a major barrier to Aboriginal and Torres Strait Islander women reporting family violence was poor familiarity with the law and distrust of the court system. Stakeholders suggested that judicial officers should become involved

in community education forums and other forms of meaningful engagement at the local level, both as a means of providing legal information and to demonstrate that courts are accessible.

Consultations indicated a strong desire for “two way learning”—not only would judicial officers inform the community, judicial officers would also learn from community. Community-controlled organisations expressed a strong desire to work with judicial officers and to help them meet community members.

Courts could also commemorate days of significance as opportunities to engage with Indigenous communities. Courts could commemorate the Anniversary of the Apology, National Sorry Day, Reconciliation Week, NAIDOC and Ochre Ribbon Day.

- 3.1. **Magistrates Courts should introduce education sessions for women applying for intervention orders to provide them with information about the process.**

The consultations demonstrated that Aboriginal and Torres Strait Islander women have little knowledge of the process of applying for an intervention order and what it meant. Court information sessions would assist women to understand the process, steps that are required and available services and referrals for support safety plans.



### 3.2 The Family Courts should re-establish court information sessions for court users about their processes.

Stakeholders suggested that similar court information sessions would be beneficial in the Family Court the Federal Circuit Court. The family courts previously held compulsory information sessions for all people attending court, which explained the process to them. The provision of such sessions would assist in making women feel more comfortable with the court process, the roles of each of the participants, and provide an understanding of what will happen in the courtroom.

### 4. Courts should invest in comprehensive cultural competency and family violence training for all court staff, including trauma support.

It was noted that court staff are one of the main points of engagement for Aboriginal and Torres Strait Islander women with the court system. It is therefore fundamental that all staff are trained to understand the needs of Aboriginal and Torres Strait Islander court users so they can ensure they respond and inform appropriately and competently. Stakeholders suggested that training should be developed and implemented in partnership with Aboriginal and Torres Strait Islander peoples and should be evaluated.

### 5. All judicial officers should receive cultural competency training. Judicial officers who work in family violence matters should receive additional training in cultural competency within the context of family violence.

One of the major factors that impacted upon women's perceptions of the justice system was the treatment they received from judicial officers. Of concern is that there were a number of judicial officers who

demonstrated poor understandings of the particular needs of Aboriginal and Torres Strait Islander women, including the dynamics of family violence. Consultations suggested greater judicial education would assist in rectifying this.

### 6. All courts should employ more Aboriginal and Torres Strait Islander peoples, in particular Indigenous Court Liaison Officers.

Consultations identified the employment of more Aboriginal and Torres Strait Islander staff as one of the most needed reforms to address barriers to women engaging in the court system. More Aboriginal and Torres Strait Islander personnel were recommended for every aspect of the justice system—registry staff, court officers, security staff, Indigenous family consultants and judicial officers. In particular, stakeholders called for a significant increase in the number of Indigenous Court Liaison Officers, particularly in areas where Aboriginal and Torres Strait Islander people comprised a high proportion of people facing the justice system.

### 7. All courts should give priority to establishing separate waiting areas for women attending court for family violence and sexual assault matters.

Stakeholders reported that Aboriginal and Torres Strait Islander women have significant concerns about waiting in the same area as the perpetrator. Countless stories were told of men using this time to intimidate and harass women. Separate waiting areas would greatly assist in alleviating women's stress and safety at court.

8. Courts should permit women to participate in the hearing via video-link and, if this is not available, take other measures to help women feel less stressed in court.

Consultations noted that many women found it highly stressful to attend court and be in the same room as the perpetrator. There is a risk of further traumatising survivors of family violence, particularly women who have traumatic backgrounds. Allowing women to participate in the hearing via video-link would reduce women's stress, enable them to participate more fully and assist their best evidence to be heard.

If audio-visual technology is not available, courts should take measures such as:

- Giving women the opportunity to visit the courtroom prior to their case being heard so that they can familiarise themselves with the environment;
- Seat women in the courtroom in a place where they cannot see the perpetrator;
- When giving testimony, separate the woman from the perpetrator by a screen to reduce the possibility of his presence intimidating the woman into not being able to fully give evidence;
- Allowing women to be accompanied by support workers;
- Closing the court to the public to minimise the pressure exerted by the presence of community members and ensure the woman feels safe that the full details of her experience will not become widely known in her community.

9. All courts should have court interpreter policies that are publicly available and easily accessible.

There was a lack of clarity among stakeholders as to who was responsible and accountable for engaging an interpreter. This left many women without access to an interpreter, undermining their ability to participate in court proceedings and compromising procedural fairness.

Policies should:

- Identify who is responsible for engaging and paying for an interpreter in all cases;
- Establish procedures to identify when court users need an interpreter;
- Establish procedures for ensuring that appropriate interpreters are engaged for all hearings, including arrangements to have rostered on interpreters in areas of need.

10. Judicial officers and lawyers should receive training and guidance about how to work with interpreters.

Effective courtroom communication is a shared responsibility between judicial officers, lawyers and interpreters. Judicial officers and lawyers have an obligation to take steps to ensure that interpreters understand the language being used in court. Greater education would assist all participants in the court system to work more effectively with interpreters and thereby improve the experience of Aboriginal and Torres Strait Islander women in family violence related matters.

11. Courts should improve data collection about the cultural, linguistic and gender diversity of their court users.

There is a lack of useful and consistent information about court users. Courts should begin collecting information about their users, including whether the person is from an Aboriginal or Torres Strait Islander background and what their language needs are. This would assist courts to ensure they are responsive to the needs of their users.

12. Courts should establish key performance indicators against which to measure progress.

Consultations found that courts could benefit from redesigning their operations to have a stronger focus on customer service, in order to increase feelings of safety and trust amongst Aboriginal and Torres Strait Islander peoples. Consultations also identified the importance of courts and court administration bodies valuing Aboriginal and Torres Strait Islander perspectives and priorities and reforming their key performance indicators to include these in their core measures of performance.

It was suggested that courts should work with Indigenous organisations and researchers to develop indicators and evaluation approaches that included Aboriginal and Torres Strait Islander values and priorities.

Focus areas could include:

- Fulfilment of commitments in Reconciliation Action Plans;
- The number of requests for interpreter assistance which were met, and what standard of qualifications the interpreter had;

- The number of requests for audio-visual equipment that were met;
- The development of plain English letters, orders and sentences;
- The number of judicial officers undertaking judicial education programs;
- The number of staff participating in education and training;
- Court user satisfaction levels.

Stakeholders emphasised the importance of public reporting on the progress made, as transparency fosters public trust and confidence in courts.

