



*North Australian
Aboriginal Justice Agency*

NAAJA

Submission: Review of the legislation
and justice response to domestic
and family violence

naaja.org.au

November 2022

Contents

Glossary.....	3
Acknowledgement of Country	5
Victim-Survivor Acknowledgement	5
Attribution.....	5
About NAAJA.....	6
The Kunga Stopping Violence Program.....	6
Executive Summary.....	7
Summary of recommendations	8
Coercive control reforms	14
The ramifications of criminalising coercive control	14
Coercive control recommendations	15
Legislative reform	15
Misidentification	19
DVOs	20
Mandatory reporting	26
Sentencing Act	30
Criminal Code	31
Local Court Act	33
Systemic reforms	34
Aboriginal Justice Agreement	34
Mandatory Sentencing and Reform of Community Based Sentencing Options	34
Kunga Stopping Violence Program	34
Shared decision-making, co-design and partnership	36
Addressing Coercive Control	37
Specialist DFV court approaches	38
Improved policing of DFV	39

Police referral to 24-hour specialist referral service	42
Improved prosecution of DFV offences	43
Legal assistance for parties in DFV proceedings	43
Trauma informed services	43
Identifying and managing risks of DFV	44
Multi-Agency Children and Community Safety Teams / Framework	44
Death review process	46
Concluding statement.....	46

Glossary

AGD	Department of the Attorney-General and Justice
AJA	Aboriginal Justice Agreement
ASCC	Alice Springs Correctional Centre
CAALAS	Central Australian Aboriginal Legal Service
CAWLS	Central Australian Women’s Legal Service
CRAT	Common Risk Assessment Tool
CtG	Closing the Gap Agreement
DAIWS	Darwin Aboriginal & Islander Women’s Shelter
DFSV	Domestic, Family and Sexual Violence
DFV	Domestic and Family Violence
DVO	Domestic Violence Orders
FSF	Family Safety Framework
ICRO	Inter-agency Co-ordination and Reform Office
KRALAS	Katherine Regional Aboriginal Legal Aid Service
KSVP	Kunga Stopping Violence Program
MALS	Miwatj Aboriginal Legal Service
NAAJA	Northern Australian Aboriginal Justice Agency
NT	Northern Territory
NTG	Northern Territory Government
NAALAS	North Australian Aboriginal Legal Service

RAMF	Risk Assessment and Management Framework
SADFV	Specialist Approach to Domestic and Family Violence
TFHC	Territory Families Housing and Communities
WOSSCA	Women's Safety Services of Central Australia

Acknowledgement of Country

The Northern Australian Aboriginal Justice Agency and the Kunga Stopping Violence Project acknowledges and pay our respects to the traditional owners of the lands on which we live and work across the Northern Territory. We pay our respects to the Aboriginal and Torres Strait Islander Elders, leaders and respected persons, past, present and future and value the immense cultural knowledge of Aboriginal contributors to both the review and our submission.

Victim-Survivor Acknowledgement

NAAJA would like to particularly acknowledge the voices of victim-survivors of domestic, family and sexual violence and the immensely important role they play in working towards a safer community for everyone. We respectfully acknowledge the service providers and advocates who continue to work tirelessly in protecting victim-survivors and their families on a daily basis and we honour all victims-survivors, those who speak out and those whose voices have been silenced.

Attribution

NAAJA acknowledges the following individuals who had provided their knowledge and expertise into this submission:

- Rachel Neary, Coordinator – Kunga Stopping Violence Program
- Ren Flannery, Justice Policy Partnership Policy Officer
- Anna Gill, Regional Managing Solicitor – Southern Region
- Clara Mills, Managing Solicitor – Civil Law
- Nayomi Naranpanawa, Deputy Managing Lawyer (Darwin) – Civil Law
- Patrick McNally, Solicitor – Criminal Law
- Katie Davern, Solicitor – Civil Law
- Julienne Daly, Solicitor – Criminal Law
- Emma Henke, Solicitor – Youth Team

About NAAJA



North Australian Aboriginal Justice Agency

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal aid services to Aboriginal people across the Northern Territory (NT). NAAJA was established in February 2006, which initially amalgamated the three top end legal services which are the North Australian Aboriginal Legal Aid Service (NAALAS), the Katherine Regional Aboriginal Legal Aid Service (KRALAS) and the Miwatj Aboriginal Legal Service (MALS). Until 2018, NAAJA only operated in the top end region until the Central Australian Aboriginal Legal Services (CAALAS) which covers the Barkly and Central Australian region of the NT then formed NAAJA. NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since their establishment. NAAJA serves a positive role contributing to policy and law reform in areas impacting on Aboriginal peoples' legal rights and access to justice. NAAJA travels to remote communities across the Top End to provide legal advice and consult with relevant groups to inform submissions.



KUNGA
stopping violence project

CHOICES. CHANGES. CHANCES.

The Kunga Stopping Violence Program

The Kunga Stopping violence program (KSVP) operates as a subset of a wider throughcare program operated by the NAAJA across the NT. 'Throughcare is defined by NAAJA as the coordinated provision of support, beginning when a person first enters prison and continuing until they are living a 'safe, fulfilling and trouble-free life back out in the community'.

KSVP is a voluntary prisoner through care program that works specifically with Indigenous female offenders in Alice Springs Correctional Centre. The program provides an intensive twenty-day therapeutic course with a focus on trauma, grief, loss, and anger, held over one month, followed by pre-release and post release support for course graduates for up to two years. The Kunga program is managed by a qualified and experienced social worker who is actively engaged with the clients and oversees the case management that is conducted in a culturally safe manner by three Aboriginal female case managers.

Submission: Review of the legislation and justice response to domestic and family violence submission

Executive Summary

In the Northern Territory, Aboriginal and Torres Strait Islander (Aboriginal) people are disproportionately impacted by incidences of domestic and family violence (DFV) and the justice response to both victims-survivors and offenders. NAAJA's work, through our legal services and community justice programs, such as the Kunga Stopping Violence Project (KSVP), Throughcare and Community Justice Groups (CJGs) exposes the daily failings of the systems from first contact to prosecution to post engagement.

Australian Aboriginal and Torres Strait Islander (Aboriginal) people are the most incarcerated people in the world, this is particularly the case in the NT, where 84% of our adult prisoners are Aboriginal and anywhere between 96-100% of children and young people in detention are Aboriginal. In the NT 63% of people in detention are being held for DFV-related offences, of which 90% of DFV related criminal matters are Aboriginal defendants. NT Aboriginal women and girls are the most victimised people of intimate violence in the world and are 40 times more likely to be hospitalised for family-violence related assaults than non-Aboriginal women.¹

The KSVP participants have been found to have exceptionally high rates of domestic, family and sexual violence victimisation. A 2020 study on "Kungas' trauma experiences and effects on behaviour in Central Australia" found that: 'Of the 53 women almost all (n=51, 96%) reported having experienced violence by an intimate partner prior to entering the prison.'² This high prevalence combined with fact that 'First Nations women are the fastest-growing prison population, constituting 37% of the female prison population, despite making up only 2% of Australia's total population'³ means that any changes to the domestic and family violence legislation and justice responses will have significant ramifications for the KSVP participants.

The correlation between the growing rates of Aboriginal women incarcerated who are victim-survivors and that of the increase of DFV related offences in the NT is representative of the complex way in which legislation unintentionally leads to the criminalisation of victims-survivors. When reforming legislative and systemic responses to DFV consideration must be given to the intersecting nature of victim-survivors and perpetrators and how application of legislation and policy could further entrench cycles of victimisation and criminalisation of affected parties.

¹ Northern Territory Government. (2018). *The Northern Territory's Domestic, Family & Sexual Violence Reduction Framework 2018–2028: Safe, respected and free from violence*. P.19. [Domestic,-Family-and-Sexual-Violence-Reduction-Framework.pdf \(nt.gov.au\)](https://www.nt.gov.au/domestic-family-and-sexual-violence-reduction-framework.pdf)

² Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS. P.27

³ <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release#data-download>

NAAJA welcomes the opportunity to provide feedback on the Department of the Attorney-General and Justice (AGD) extensive Review of Legislation and the Justice Response to Domestic and Family violence (the Review). NAAJA appreciates this opportunity to draw on our expertise to address key legislative and system concerns outlined in this extensive review, and we offer this expert advice for your consideration.

Summary of recommendations

Coercive Control: NAAJA supports Option 1 in principle, however, recommends coercive control be addressed through systemic reform and the resourcing of service provision and not by criminalising coercive control at any time in the future.

LR4: NAAJA requires further details regarding the amended definitions of court DVO, police DVO and external order in the *Domestic and Family Violence Act 2007* (DFVA) before we can support this recommendation.

LR5: NAAJA does not support changes in the legal definition proposed in LR5. NAAJA recommends addressing coercive control and coercive behaviours through systems reform and increased funding of DFV services and programs before legislative change can be considered.

LR6: NAAJA does not support the change in definition proposed in LR6 but rather recommends addressing coercive control through systems reform and increased funding of DFV services and programs.

Note: Once the systems and supports are in place, as outlined in **Option 1** of the review, future legislative amendments to definitions to include coercive behaviours must be performed in close consultation with Aboriginal DFV and legal services, programs and advisory groups.

LR7: NAAJA recommends that the NTG utilises the proposed four years outlined in **Option 1** of the Review to develop training and education for frontline workers that is Aboriginal sector led.

LR8: NAAJA does not support the proposed amendments to the definition of Domestic Relationship Section (9) of the DFVA.

LR10: NAAJA is in support of widening the scope of section 19(1), however does not support the proposed amendment to section 19(2), or insertion of a new mandatory requirement under section 19.

LR11: NAAJA would not oppose a broadening of section 19 to encompass DVOs currently in force to make it clear that past DVO's should be considered if consideration does not include matters that were withdrawn or that a defendant was found not guilty.

LR12: NAAJA does not support LR12 (2)(b) before the appropriate steps are taken to increase understanding of coercive control as outlined in NAAJA's Systemic Reform submission. Additionally, any further amendments outlined in LR12 would need to be appropriately resourced with additional funding allocation for the courts, legal services and support services.

LR14: In principle NAAJA supports recommendations as laid out in LR14, however require further details around how the legislation will be applied before endorsing the proposed changes in their entirety. NAAJA recommends investment in safe housing for defendants and consideration to retain a child with the non-primary perpetrator to occur bilaterally across both the DFV and Child Protection (CP) courts.

LR15: NAAJA requires further details of the proposed definition changes outlined in LR4 before endorsing amendments outlined in LR15. NAAJA refers ICRO to recommendations SR7-SR9, outlined in this submission to address incidences of coercive control in different types of relationships through education and public health promotion co-designed with Aboriginal run DFV programs and services, and the Aboriginal partnerships under the Aboriginal Justice Agreement (AJA) and the Closing the Gap (CtG) agreement.

LR16: NAAJA recommends the proposed legislative changes outlined in LR16 be carefully drafted in consultation with Aboriginal run DFV services and programs.

LR17: NAAJA supports changes to the legislation that prevent further harm to victims of technology facilitated abuse.

L18: NAAJA does not support mandating attendance at DFV behaviour change programs through conditions in DVOs supports but supports the investment in the expansion and creation of locally designed, culturally and linguistically supportive programs addressing behavioural change for men and women committing DFV.

LR20: NAAJA does not take issue with the proposed discretionary consideration of the length of a person's prison term and its relevance to the length of an order, however we are concerned with the distinction between obligations and discretionary conditions and therefore cannot support recommendation LR20 in its entirety.

LR22: Sections 52A, 53 and 18 of the DFVA already provides adequate avenues to the type of DVO and proposed test outlined in LR22 and therefore NAAJA does not support a duplication of what is already required.

LR24: NAAJA supports the proposed amendments to section 30 of the DFVA outlined in LR24, in particular to gaining the consent of the protected person/s before disclosing their address to the defendant.

LR25: NAAJA supports the nature of the DFV to be included in the form itself without the need to serve the affidavit at first instance. NAAJA also supports the proposed amendments to section 30 of the DFVA, in particular to gaining the consent of the protected person/s before disclosing their address to the defendant.

LR26: NAAJA does not support the proposed amendment to section 13(3), which is an unnecessary provision that conflicts the youth-informed practice defined by the principles in section 4 of the *Youth Justice Act (2005) (YJA)*.

LR28 and LR29: NAAJA supports the proposed amendments to section 35 and 38 of the DFVA as outlined in recommendations LR28 and LR29, in particular we welcome the amendment to section 38 so that reciprocal orders cannot be made by consent unless the court is satisfied that there are grounds for making the order against each party.

LR31: NAAJA does not support the proposed amendments to Part 2.7 in relation to the courts or prosecutors initiating interim or variations to DVOs without hearing a submission from parties as to the conditions and the issues they wish to raise.

LR35: NAAJA agrees with the provision changes outlined in LR35, however we can foresee an ineffectiveness if not accompanied by systemic change to the court proceedings.

LR36: NAAJA recommends the exclusion of health professionals under s.124A(3) of the DFV Act, with the addition of excluding legal services including Client Support Officers and Case Workers. NAAJA also calls for a review of the of DFV mandatory reporting legislation in relation to women's safety.

LR38: NAAJA strongly recommends repealing Mandatory Sentencing provisions s121 and s122 instead of amendments outlined in LR38.

LR39: NAAJA does not support legislative reform but rather strongly supports system reform that seeks to create autonomy for victim-survivors to contribute to decision making through consultation and/or informed consent.

LR40: NAAJA supports an appropriately funded and resourced 24 Hour Specialist DFSV Referral Service with the provision it is implemented in close partnership with Aboriginal run DFV services and programs, including KSVP.

LR42: NAAJA supports DFV matters to be heard by the courts when the defendant is under the age of 18.

LR47: NAAJA does not support the proposed provisions outlined in LR47, as they run the risk of imposing harsher sentences that would increase rates of incarceration without reducing the risk of harm to women and children. Additionally, a new aggravating provision would create the same duplication and double jeopardy issues as set out in NAAJA's response to LR38 above.

LR48: NAAJA recommends that ICRO engage in extensive, local research as part of the four-year plan to tackle coercive control, as laid out in **Option 1** of the Review, as a continuum from consultation and an education process driven by community-based partnerships.

LR50: NAAJA does not feel the recommendations proposed in LR50 would be effective in improving the experience of the victim-survivor, which is better addressed through court procedure and operational improvements as mentioned in LR35.

LR51: As previously highlighted, enshrining a complex concept, such as coercive control or psychological harm, in legislation, is fraught with risk and NAAJA urges ICRO to first take the steps outlined in the Systems Reform section of this submission pertaining to **Option 1** of the Review.

LR52: NAAJA does not support an unnecessary duplication of an offence that exists in section 186 (a) of the Criminal Code.

LR54: The proposed amendment along the lines of s39 of the Evidence Act is at risk of objectifying Aboriginal people's lives and NAAJA does not support this recommendation.

LR55: NAAJA does not support the adoption of mandatory jury directions in relation to coercive control, however we would support the establishment of a working group that includes Aboriginal run legal and DFV services and partnerships established under the CtG and AJA.

LR56: NAAJA does not see the recommendation outlined in LR56 as serving as a protective factor for victim-survivors and therefore does not support the proposed changes.

LR57: Whilst NAAJA does not oppose the proposed amendment to the Local Court (Criminal Procedure) Act 1928 to create a presumption that if an accused is charged with more than one sexual offence, we do not support the presumption that DFV-related offences are heard together.

SR2: NAAJA recommends the inclusion of an Aboriginal led government agency representative in the ICRO and encourages stronger Aboriginal representation and voices in ICRO and across the work of ICRO.

SR3: NAAJA supports alternatives to sentencing options that are:

- informed by specialist expertise on DFV,
- led by Aboriginal service providers, and
- are co-designed by Aboriginal Advisory Groups/partnerships, such as the NT Justice Policy Partnership (JPP) and Community/Law Justice Groups.

NAAJA recommends investing in Aboriginal run diversionary and rehabilitative community-based sentencing options, including accommodation services for offenders.

KSVP recommends trauma informed AOD programs and funding of family residential AOD rehabilitation.

KSVP recommend safeguards to monitor and prioritise the safety of victim-survivors that relate to the proposed SR3 as detailed in this submission.

SR5: NAAJA supports collaborations across stakeholders that aims to strengthen the cultural authority and self-determination of Aboriginal communities experiencing DFV as highlighted in the AJA, including consultation with the Community Justice Groups and Aboriginal DFV sector such as the KSVP.

SR7: NAAJA recommends the funding to be re-allocated to the Law/Community Justice Groups to co-design and implement community awareness raising initiatives around coercive control and DFV. Refer to **Appendix 1** for detail.

SR8: NAAJA supports the proposal to fund the expansion of DFV training and education tailored to police, prosecutors, judges, lawyers and front-line workers to assist in identifying and responding to coercive control and DFV, with the caveat that the training and resources be co-designed and delivered by Aboriginal experts and partnerships and be inclusive of key child protection stakeholders.

SR9: NAAJA supports a NT-wide public health campaign about healthy and safe relationships that is co-designed by Aboriginal organisations and partnerships and is delivered in multiple Aboriginal languages.

SR10: NAAJA supports a trauma-informed specialist approach to handling DFV matters in court and strongly recommends that legal service providers receive increased funding to meet the needs of both defendants and protected person utilising such courts. Further funding should include the education and training of lawyers, judges, community corrections staff and Aboriginal language interpreters.

Submission: Review of the legislation and justice response to domestic and family violence submission

Furthermore, NAAJA recommends a thorough external evaluation of the current Specialist Approach to DFV (SADFV) model.

SR11: NAAJA is strongly against increased police powers and urges ICRO to propose that the Commissioner of Police and the ICRO work in partnership with the Aboriginal DFV sector, Community Justice Groups (CJGs) and NT Justice Policy Partnership (JPP) to revise the police General Order on DFV and other relevant policy and procedures and ensure all further training and education is co-designed.

SR12: NAAJA strongly supports an emphasis on capacity building of first responders to DFV. In addition, to recommendations a-c outlined in the review NAAJA urges the Commissioner for Police to mandate cultural safety training and ensure DFV training is co-designed by Aboriginal DFV services and CJGs.

NAAJA further recommends a complete review and overhaul of the NT Police end-to-end recruitment, including attraction, cultural competency assessments and cultural safety training.

SR13: NAAJA endorses the modification of CRAT for police to incorporate a trauma-informed, culturally safe practise as outlined in SR13, and further encourages consideration of the attendance of a DFSV trained Aboriginal Health Worker or culturally competent social worker alongside the police in DFSV incidences.

SR14: NAAJA does not oppose provision of a certificate to the Court at the first mention in all applications for DVOs, as outlined in the proposed SR14, if consideration does not include matters that were withdrawn or that a defendant was found not guilty.

SR15: NAAJA supports a 24hour Specialist DFV Referral service with the caveat that the service be guided by the Aboriginal DFV sector, including our KSVP.

SR16-17: NAAJA supports further review and capacity building of prosecutors as outlined in SR16-17 and further calls on the NTG to adequately fund legal service providers to appropriately meet the demands of DFV cases.

SR18: NAAJA supports the proposal outlined in SR18 with the recommendation to strengthen legal service provision to be expanded to the Central Australia and Barkley regions.

SR20: NAAJA strongly supports a specialist trauma-informed counselling service for female prisoners if this service is delivered in collaboration with Aboriginal run providers (including co-location) and is accessible post-release.

SR21: NAAJA supports the proposed funding for DFV perpetrator programs outlined in SR21 if those programs are co-designed and implemented with Aboriginal organisations and partners, such as the CJGs and NT JPP.

SR23-24: NAAJA supports expansion of the RAMF and strengthening of the FSF, particularly for remote clinics. NAAJA advises this is to be co-led by women's specialist services as outlined in our submission.

SR25: NAAJA supports further development of the MACCST guidelines to consider children exposed to and affected by DFV and request this development includes the consideration of children of incarcerated parents as an early intervention mechanism.

SR26: NAAJA supports a systems-driven DFV Death Review that feeds into existing coronial and criminal proceedings, including adequately funding of service providers and linkage to Aboriginal led inter-agency leadership and governance

Coercive control reforms

In the Review the AGD acknowledges the complexities of factors leading to DFV including the ongoing impact of colonisation, racism and discriminatory policies and practices [and intergenerational trauma]¹. NAAJA recognises that coercive control unequivocally is a leading indicator of DFV that can result in homicide and the tragic, irreversible loss of predominantly women and children. Whilst the review acknowledges the impacts criminalising coercive control may have on Aboriginal women it does not deeply consider the vastly different experience of coercive control by Aboriginal women and the impacts this will have when it comes to application of the law should coercive control be criminalised.

The ramifications of criminalising coercive control

When it comes to responding to coercive control criminalising the behaviour may see some convictions at the court end, but it will not improve a victim-survivors ability to be protected in an immediate instance. This is due to the unlikelihood of a victim calling the police for coercive control incidences, and the police's inability to arrest immediately without further investigation to gather sufficient evidence, such is the complex nature of coercive control behaviour.

In addition, application of coercive control as an offence is heavily dependent on the expertise and capability of the first responder, which requires a high-level of expertise to be able to assess, identify and respond safely and appropriately to an incredible nuanced situation. For instance, the insidious and accumulative nature of coercive control can often lead to the perpetrator utilising the law to have

the victim-survivor misidentified as the perpetrator. Therefore, creating a new offence runs the risk of becoming purely symbolic without improving the safety of victim-survivors.

NAAJA recognises that a stronger focus on improved justice responses to coercive control is important in protecting the safety of victim-survivors, though criminalising coercive control, as laid out in Option 2 of the review, potentially poses risks to women with criminal histories and or those who are legally compromised, such as KSVP participants.

NAAJA holds serious concerns that within the current context, laws made to protect women, in the case of Aboriginal women, are too often used against them and/or used in cases of misidentification leading to increased rates of Aboriginal women's imprisonment.⁴ It is also noted that in cases where a woman may be identified as the user of violence, and in particular where coercive control is a tactic or factor, there are no current community-based women's programs to address this, such as the men's behaviour change program. This may result in further rising incarceration rates for Aboriginal women who don't have viable remand or community sentencing options. Whilst the KSVP course, run out of Alice Springs Correctional Centre (ASCC), covers healthy and respectful relationships content, it is only currently available for women already serving a sentence or in custody on remand in ASCC.

Coercive control recommendations

NAAJA supports **Option 1**, to immediately invest in a raft of legislative and systemic reforms before even considering legislating the criminalisation of coercive control. Whilst NAAJA does not feel the proposed four years is sufficient to see lasting improvements it gives scope to evaluate the impacts of criminalisation on Aboriginal families in other jurisdictions. It is NAAJA's view that coercive control must be addressed through systemic reform and the resourcing of service provision and not from a legislative response, which runs the risk of further criminalising victim-survivors and inevitably resulting in poorer outcomes for families and communities.

Legislative reform

LR4: Based on the information provided in the Review it is not clear what the proposed definitions of DVO, police DVO and external order would be amended to. Whilst NAAJA agrees the structure of the *Domestic and Family Violence Act 2007* (DFVA) could be clarified we are not able to support recommendation LR4 without further details of the proposed changes, in particular around the inclusion of coercive control in a way that could unintentionally criminalise the behaviour.

⁴ Caldwell, J. E., Swan, S. C., & Woodbrown, V. D. (2012). Gender differences in intimate partner violence outcomes. *Psychology of Violence, 2*(1), 42.

LR5: NAAJA does not support any changes to the definitions of section 5 of the DFVA which includes coercive control in a way that could criminalise alleged behaviour, e.g., through an allegation of Breaching a Domestic Violence Order (DVO) alleging the use of coercion. NAAJA recommends addressing coercive control and coercive behaviours through systems reform and increased funding of DFV services and programs. NAAJA supports further education in the community about what coercive behaviours are and their possible impacts on the person to whom the behaviour is targeted. See NAAJA's response below regarding Proposal LR6 for a comprehensive discussion related to this point.

LR6: NAAJA recognises the importance for first responders to have a fulsome understanding of coercive control in order to reduce the misidentification of victim-survivors, however the definition proposed in the Review is modelled on legislation introduced in a criminal context in Scotland and is thus removed from the unique experience of victim-survivors of coercive control in the NT. Furthermore, due to the inconsistency of experience and understanding within the first responder workforce, as outlined in SR12, NAAJA is extremely concerned that any form of legislating coercive control will lead to a further criminalisation of Aboriginal people, in particular Aboriginal women.

The proposed recommendations laid out in LR6 of the Review fail to address the nuances of how coercive control is experienced across diverse cultural groups and regions in the NT and would only lead to further criminalisation of some of the most disenfranchised members of our community. The broader NT community requires culturally responsive public education to understand both the meaning/s of 'coercive control' and diverse way in which it is experienced across different communities in the NT. For instance, the experiences of coercive control as an endemic feature in relationships of young Aboriginal couples in intimate relationships would require tailoring public education to the specific needs of different age groups⁵.

Therefore, NAAJA does not support the change in definition proposed in LR6 but rather recommends addressing coercive control through systems reform and increased funding of DFV services.

LR7: There is an urgent need to reduce the rate of misidentification of victim-survivors as perpetrators, which, in NAAJA's experience, is more common than not due to the inconsistency of first contact response by the NT Police. Given the DFVA primarily relates to criminal and civil matters in a court

⁵ K, Senior. J, Helmer. R, Chenhall. (2017). 'As long as he's coming home to me': vulnerability, jealousy and violence in young people's relationships in remote, rural and regional Australia. *Health Sociology Review*, 26:2, 204-218, DOI: 10.1080/14461242.2016.1157697

context, legislating a guidance framework, such as the one proposed in LR7, leaves it vulnerable to misinterpretation when being applied in a first response context and would only lead to further criminalisation of overrepresented groups, including women and children.

NAAJA recommends that the NTG utilises the proposed four years outlined in **Option 1** of the Review to review and strengthen the *Risk Assessment and Management Framework* (RAMF) training for all frontline workers in order to build their capacity to identify and address coercive control without the risk of misidentification. Improvements to the current RAMF training must be led by the DFV sector with input from the lived experiences of victim-survivors who are legally compromised and experience additional risks of coercive control by a domestic partner. Once reviewed in consultation with the sector and community NAAJA would support the RAMF training to be expanded as part of the compulsory training suite for front line workers.

LR8: NAAJA has serious concerns pertaining to the proposed changes to the definitions of ‘domestic relationship’ as elucidated in LR8. Through the KSVP, NAAJA has experienced many examples of where expanding the definition of ‘domestic relationships’ would lead to the criminalisation of vulnerable women. Expansion of the definition of ‘domestic relationships’ would unintentionally create further pathways to incarceration of vulnerable victim-survivors as they try and navigate past relationships and/or shared parenting with ex-partners who may be in a new relationship. The complexity of coercive control and the ways in which perpetrators can manipulate circumstances and the victims’ relationships with others would leave victims vulnerable to criminalisation and ultimately incarceration under these proposed amendments.

Expanding the DFVA to incorporate these proximal relationships or fleeting relationships to the primary relationship only serves to render a larger group of people subject to potential criminal charges and becoming embroiled in the criminal justice system. The *Criminal Code Act 1983*, *Summary of Offences Act 1923*, *Trespass Act 1987* and the *Commonwealth Criminal Code 1995* already offer a raft of criminal charges that can be employed to convict the types of behaviour the proposed legislative amendment seeks to address, including threats, assaults, harassment online or via SMS, trespassing, stalking etc. Additionally, a victim may employ a Personal Violence Restraining Order for protection from someone they are not in a domestic relationship with.

LR10: NAAJA is in support of widening the scope of section 19(1), however does not support the proposed amendment to section 19(2) or insertion of a new mandatory requirement under section 19.

The broad scope of section 19(2)(e), as it currently stands, is sufficient to encapsulate the additional matters which are proposed under section 19(2) in LR10 of the Review. The option to provide for consideration of ‘current legal proceedings’ creates potential for the court to be unduly persuaded by ongoing criminal proceedings where the outcomes have not yet been determined, which could undermine the presumption of innocence. In practice, the court already considers current legal proceedings when determining a DVO under section 19(2)(e), therefore making any further improvements intended by the recommended changes to section 19 (2) unnecessary.

The DFVA already provides ample opportunity for DVOs to be created and confirmed for the protection of children without mandating the court to include children as protected persons, section 29 is an example of this. Whilst the protection of children, experiencing or exposed to DFV is critical, mandating the requirement goes beyond the Objects of the DFVA and practically speaking could result in illogical and unnecessarily expansive DVOs. Under the current resources available to courts and legal services the type of assessment outlined in the proposed mandatory requirement would not be possible, and could consequently put children at greater risk, if, for example, the DVO leads to preventing children from having contact with their primary carer. The proposed amendment to section 19(1), which NAAJA supports, eliminates the need for such a mandatory requirement.

Where the other legal proceedings are family court matters or child protection a mandatory section could further serve to complicate those matters. In those matters there is often a heavier reliance on evidence and the DVO may serve to undermine those proceedings.

LR11: As outlined in SR14 “NAAJA does not oppose provision of a certificate to the Court at the first mention in all applications for DVOs... if consideration does not include matters that were withdrawn or that a defendant was found not guilty of.” Section 19 of the DFVA already takes into consideration the defendant’s criminal record and does not need to be repeated by a new requirement. As a defendant’s criminal history does not disclose past DVOs NAAJA would not oppose a broadening of section 19 to encompass DVOs currently in force to make it clear that past DVO’s should be considered but we note the broad discretion that already exists as to what can be considered already under s19 of the DFV Act, we do not see the need to re-legislate through a new requirement.

Misidentification

LR12: In NAAJAs experience, the complexity the proposed additional test would introduce to the court process runs the risk of protracted DVO hearings, which is not in the best interest of either party. Cross allegations in the court already go through a stepped-out process that need to be weighed up by the courts. Introduction of additional tests for cross allegations would need to support the time and consideration it would take for courts to appropriately balance effective application of DVOs with the safety of protected parties in line with the Objects of the Act. The resourcing of the courts, legal services and support services would need be increased to deal with these complex applications and even then, a DFV registrar or LC Judge may not be able to determine the issues outlined in 21 of the recommendation. If not properly resourced additional test runs the risk of both or one party being unable, due to the lack of legal representation, experts or other resources, to demonstrate to the court that they are the person most in need of protection.

Of the recommended amendments to LR12 NAAJA could not support 2(b) before the appropriate steps are taken to increase understanding of coercive control as outlined in NAAJAs Systemic Reform submission.

LR14: In principle NAAJA supports recommendations as laid out in LR14, however require further details around how the legislation will be applied before endorsing the proposed changes in their entirety.

Changes to exclude a defendant from the premises along the lines of sections 63 and 64 of the *Domestic and Family Violence Protection Act 2012 (Qld)* raises concerns of the implications this may have on victim-survivors who have been misidentified as the primary instigator. These provisions could potentially put women at risk of losing stable housing and facing potential removal of their children, causing further trauma and disruption to the family.

The proposed amendments would require further investment in safe housing for an offender who is served such an order. Access to safe housing for offenders is the only means that would effectively relieve the pressure on the protected person to take the defendant back into the home if the defendant is rendered homeless as a result of being removed. Excluding a defendant from their home without a safe place to reside could further compound the conflict and place the victim at risk of retaliation and potential further violence, therefore any such provision would need to only be exercised in extreme circumstances and with careful consideration.

To endorse such legislative changes NAAJA requires further detail around the kind of living circumstances this reform would encompass and what potential risks this might pose for a defendant if alternative housing services are not available.

Additionally, considerations to retain a child with the non-primary perpetrator needs to happen bilaterally across the DFV, Family Court and Child Protection (CP) courts. There is potential for this legislative reform to have negative impacts in a child protection context if applied solely in a DFV court hearing without careful consideration to CP and Family court matters intersecting as a result. For instance, DVOs that are inconsistent across jurisdictions in relation to the care of a child or who a child resides with (if misidentification of the primary care giver occurs), the child may be removed to care or face homelessness, contributing to unintended consequences for the child.

DVOs

LR15: As with the proposed definition changes in LR4, NAAJA requires details of the proposed definition outlined in LR4 before endorsing any such changes. Coercive control is a complex concept that is impacted by the diversity of our community and would be challenging to define without unintentionally criminalising vulnerable members of our community. Legislating complex concepts, such as “psychological abuse” through a western lens threatens to further alienate the experiences of victim-survivors from diverse backgrounds.

NAAJA is concerned that if the legislative definition of DFV, as proposed in LR5 is enacted along with LR15 at the same time, the manner in which these two sections would interact would essentially result in the criminalisation of coercive control through the offence of Breach of DVO, prior to essential community consultation and education takes place around what constitutes coercive control. If these amendments went ahead as proposed the end result would be an increase in people being charged and imprisoned for Breaching a DVO for behaviour that they do not yet understand to be criminal. If these changes were made there is also a risk that uneducated and uninformed frontline workers would have little understanding of coercive control and misidentify the person most in need of protection when assessing DFV situations. NAAJA fears that if proposals LR5 and L15 are brought in before an extensive consultation process an unintended consequence would be that increased victim-survivors will be misidentified as offenders and will come into contact with the justice system as defendants and likely face incarceration.

To prevent increased rates of incarceration for coercive control and other forms of psychological abuse, the education of community, frontline workers and all judicial personnel must be addressed.

Training and education must encompass an understanding of the nuanced and diverse experiences of coercive control and the way in which this directly applies to DVO conditions and the consequences of an alleged breach.

NAAJA refers ICRO to recommendations SR7-SR9, outlined further in this submission to address incidences of coercive control through education and public health promotion co-designed with Aboriginal run DFV programs and services, and the Aboriginal partnerships under the AJA and CtG.

LR16: In principle, NAAJA supports recommendations as laid out in LR16, with consideration to the misidentification of victims-survivors as perpetrators. In NAAJA's experience reports of assault and/or abduction can be fabricated and used as a form of abuse against the victim-survivor, most commonly women. Due to the increasing trend of Aboriginal female victim-survivors being misidentified in the NT, NAAJA raises concerns that the proposed changes may prevent victims-survivors from calling police to have an abducted child located. For these reasons, NAAJA recommends the proposed legislative changes outlined in LR16 be carefully drafted in consultation with Aboriginal run DFV services and programs.

LR17: Technology Facilitated abuse (TFA) including image-based abuse has been found to occur at a disproportionate rate and prevalence amongst remote and regional Australia, with Aboriginal women experiencing very high rates of victimisation.⁶

In 2020 eSafety commissioned research on the experiences and impacts of TFA involving Aboriginal and Torres Strait Islander women living in remote and regional areas. The report found that the experiences of Aboriginal women living in remote and regional areas are widespread and diverse but share common risks when experiencing TFA. The research found that the impacts of TFA on women who participated in the study were serious and long lasting. Aboriginal female participants also reported image-based abuse. In many incidents, this was the sharing of sexualised images without the woman's consent. The use of image-based abuse was common in the context of intimate partner violence, where an abuser would share a sexualised image of his current or ex-partner to shame and humiliate them. These images were often shared on Facebook or via text messages.⁷

⁶ C,Brown, M,Yap, A,Thomassin, M,Murray, and E,Yu. (2021). *"Can I Just Share My Story?" Experiences of Technology-Facilitated Abuse among Aboriginal and Torres Strait Islander Women in Regional and Remote Australia.* Journal of Global Indigeneity 5 (2).

⁷ Ibid.

Changes to the legislation that prevent further harm to victims of TFA are welcome by NAAJA and KSVP, including the confiscating of images and/or devices that hold these images that have been used or threatened to be used to inflict psychological, emotional and social harm.

LR18: NAAJA recognises that evidence supports mandated attendance to DFV behaviour change programs can contribute to prevention of DFV, however in the current NT context the adequate infrastructure and services are not in place to meet such a mandate, creating a great risk of increased criminalisation at no fault of the defendant. For this reason, NAAJA does not support mandating attendance at DFV behaviour change programs through conditions in DVOs.

NAAJA supports the current arrangement remaining in place pursuant to section 24 of the DFVA, that where a defendant consents the court can order the defendant attend mandatory counselling/behavioural change. NAAJA's position supports a therapeutic approach to addressing the underlying causes of DFV building on when an offender is ready to address their behaviour rather than a punitive approach which could increase the risk of DFV behaviour escalating towards the protected person and children if a defendant is forced to attend against their will.

NAAJA also has concerns that without further information as to what the mandate would look like there would be unintended consequences for the protected person, the defendant and any children in the care of the parties. For example, if the primary earner is mandated to attend a course for a particular time period in a particular location, this would impact on their employment status and income, impacting on the protected person and children, and potentially increasing risk of family violence occurring.

NAAJA is also concerned that should a defendant act in breach of the mandated condition to attend a behavioural change or counselling program but is otherwise compliant with other restraining conditions on the matter and not committing DFV, that the defendant would be at risk of being charged with Breach of DVO and subsequently imprisoned despite not committing DFV in accordance with the order.

It is already regular practice that, defendants who are pleading guilty to DFV offending, such as assaults, may be mandated to attend behavioural change programs as part of a conditional order suspending sentence. It is evident that there is a dearth of men's behavioural change programs currently available in the NT. Importantly there is no infrastructure or resources currently in place to realistically respond to the increase in orders mandating attendance through DVOs if this proposal

Submission: Review of the legislation and justice response to domestic and family violence submission

was enacted. Furthermore, there are essentially no options for those defendants who reside remotely to access community-based, culturally safe, gender specific and linguistically appropriate behavioural change programs.

NAAJA supports investment in the expansion and creation of locally designed, culturally and linguistically appropriate culturally safe programs addressing behavioural change for men and women committing DFV. Where the person accessing the course has children in their care, courses would need to support access to childcare so the person can attend. Investment also needs to be made into accommodation options, interpreters and daily living support to support DFV offenders to be able to access programs to ensure that meaningful engagement, comprehension and continued attendance occur.

LR20: NAAJA is concerned with the distinction between obligations and discretionary conditions that the proposed amendments to section 27 of DFVA will introduce and therefore cannot support recommendation LR20 in its entirety. Whilst NAAJA does not take issue with the proposed discretionary consideration of the length of a person's prison term and its relevance to the length of an order, amending the DFVA to make matters raised by the defendant a discretionary consideration only, could have the unintended consequences of removing procedural fairness requirements which protect vulnerable defendants who can often include victim-survivors.

Through our work, NAAJA is committed to reducing the over-incarceration rates of Aboriginal people and the introduction of DVOs for indefinite periods will only serve to continue to criminalise Aboriginal victim-survivors as an unintentional target. Due to the increasing rates of misidentification, indefinite DVO periods threatens to exacerbate cycles of incarceration with the further repercussion of removing any meaningful non-prison-based opportunities for rehabilitation, and increased risks of homelessness.

Additionally, introducing indefinite DVO's will disproportionately affect vulnerable women and men who suffer from cognitive impairments, mental ill-health and acquired brain injuries. Often people with these types of impairments and illnesses have difficulty with memory and behavioural issues and would be at higher risk of having DVO's taken out against them and then at higher risk of breaching conditions of DVO's than defendants who do not suffer from such conditions. If an order is for an indefinite period, this will set up many vulnerable people in this category to increased likelihood of being imprisoned over and over again for the rest of their lives. NAAJA is concerned that many Aboriginal people who suffer from cognitive impairments, FASD, acquired brain injuries (often from

Submission: Review of the legislation and justice response to domestic and family violence submission

being victims of violence) and mental ill-health and would fall into this category of defendant thus increasing the rate of vulnerable Aboriginal people in custody in NT prisons.

The limited allocation, and often absence of legal service funding, which exists for defendants to appeal DVO decisions, instruct lawyers to actor defendants through the application process and negotiate condition and protected persons to initiate downgrade applications is a factor which should weigh against the introduction of these amendments. These rights are particularly important while misidentification continues to be an ongoing issue in this area and where DVOs can have significant impacts on one parties' ability to spend time with the children of the parties. The Objects of the Act section 3(1)(c) "to reduce and prevent domestic violence"⁸ will be compromised by the proposed introduction of indefinite DVOs and therefore is not supported by NAAJA.

LR22: The proposed amendment outlined in L22 is premised on the lack of ability to extend an expiring DVO, however this is not correct, DVOs can be varied to extend the expiry date by application or on the court's own initiative under sections 45(3)(b) and 51 and under the expansive meaning of the word 'vary' in section 4 (definitions).

Therefore, NAAJA opposes the creation of a further DVO category of an interim extension order. This would create unnecessary duplication and confusion, partly where a very similar type of DVO exists under section 52A. The proposed test is in effect a duplication of what is already required by section 53 and section 18 to which it refers.

LR24: The Review has highlighted important concerns around the safety of protected person/s through the disclosure of their address on the DVO application form under section 25 of the DFVA and the aggravating impacts of complaint details outlined in the appending affidavit. NAAJA agrees with the Reviews assessment of risks associated with the details of the form and with serving an affidavit at first instance.

NAAJA supports the nature of the DFV to be included in the form itself without the need to serve the affidavit at first instance, taking into consideration the defendant's right to understanding the basis of the complaint prior to facing court proceedings. NAAJA supports the proposed amendments to section

⁸ The Northern Territory Government. (2007). *Domestic and Family Violence Act 2007*. P.2

30 of the DFVA outlined in LR24, in particular to gaining the consent of the protected person/s before disclosing their address to the defendant.

LR26: Victim-survivors of DFV often report feeling further disempowered by the criminal justice system's approach to responding to DFV, NAAJA would like to see this Review of the legislation and justice response as an opportunity to reform some of the paternalistic structures that lead to disempowerment of victim-survivors. It is NAAJA's perspective that this should include children of an adult protected person and recommends alignment with the age of consent, enabling children above the age of 16 to not be included on a DVO of an adult protected person. Given there is already a legislative regime in the Family Courts that protect children of adults experiencing DFV, NAAJA feels that the proposed amendment to section 13(3) is an unnecessary provision.

LR28 and LR29: NAAJA supports the proposed amendments to section 35 and 38 of the DFVA as outlined in recommendations LR28 and LR29, in particular we welcome the amendment to section 38 so that reciprocal orders cannot be made by consent unless the court is satisfied that there are grounds for making the order against each party.

LR31: NAAJA does not support the proposed amendments to Part 2.7 in relation to the courts or prosecutors initiating interim or variations to DVOs without hearing a submission from parties as to the conditions and the issues they wish to raise. NAAJA strongly encourages that any changes to court proceedings honours procedural fairness and supports the informed consent of both the protected person and defendant to discourage further disempowerment of parties, in particular the protected person.

Currently, in the case of full non-contact DVOs between parties with children, parties can make a submission as to whether there should be a third-party exception, these submissions are vital for courts to understand the logistics around co-parenting. If a court is not required to hear these submissions, there is risk that relevant factors about family circumstances and arrangements would not be addressed or overlooked in any order made by the court, which creates a risk of further conflict and DFV being used to say gain access to children or belongings. Making decisions about the conditions in the DVO without both parties input can further exclude a defendant from healing events such as important family and cultural activities that can provide rehabilitative and healing power to a person who has used DFV.

Furthermore, section 45, Part 2.7 of the DFVA already refers to "an offence that involves domestic violence"⁹, which enables the court to make an order on a case-by-case basis. Without a clear understanding of what sort of offences, the proposed finding of/ plea of guilt relates to, or until a definition of domestic violence is settled on, NAAJA cannot support a generic finding of guilt and therefore finds it unnecessary to change the wording from 'may' to 'must' when considering a DVO in court.

LR35: NAAJA agrees with the provision changes outlined in LR35, however we can foresee an ineffectiveness if not accompanied by systemic change to the court proceedings. For instance, the current DFV and CP courts are both very unsafe for protected persons on an operational level, despite recent changes some NT courts don't provide safe rooms and only have one entry/exit point, additionally the way in which allegations are addressed is not trauma informed, which greatly contributes to the re-traumatisation of victim-survivors.

Due to the current lack of procedural fairness NAAJA can foresee the lack of formality and legal technicality, as outlined in the provision changes, could have negative implications on both defendant and protected person, as it may lead to increased risk of DVO breaches and unfounded DVO applications, often used as a mechanism of violence against victims who fight back.

Mandatory reporting

LR36: Whilst NAAJA acknowledges the protective factor mandatory reporting has served for victims-survivors, in particular children, the immense trauma and fear decades of child removal has caused for Aboriginal people, in particular women and mothers, cannot be ignored when discussing Mandatory Reporting in a DFV context.

It is NAAJA's experience that mandatory reporting creates a massive barrier for victims-survivors being able to provide evidence and talk in confidence with their legal representation, the very nature of mandatory reporting goes against the client/lawyer confidentiality that our clients have the right to expect.

NAAJA agrees with the Australian Law Reform Commission and NSW Law Reform Commission (the Commissions) (2010) findings that mandatory reporting can severely disempower victims-survivors of DFV and take away their autonomy to access legal and medical support. This is particularly the case

⁹ The Northern Territory Government. (2007). *Domestic and Family Violence Act 2007*. P.27

for Aboriginal women who have suffered a long history of systemic abuse and victimisation at the hands of government agencies. Whilst “[t]he rationale was to challenge the culture of silence and inaction in relation to DFV so that families are safer.”¹⁰ as a safety mechanism it has only further silenced the voices of Aboriginal victim-survivors of DFV and increased the fear and distrust of the services designed to protect them.

Therefore, NAAJA supports the Commission’s recommendation to exclude health professionals under s.124A(3) of the DFV Act, with the addition of excluding legal services including Client Service Officers and case workers who work alongside solicitors in DFV services to provide cultural brokerage.

NAAJA supports removing historical cases of physical and/or sexual harm where there is no current threat as a mandatory report. Many victims seek counselling and healing many years after they have experienced violence and the threat once posed is no longer imminent. Mandatory reporting for historical violence means that many women do not disclose at all.

Additionally, NAAJA calls for a review be conducted assessing the effectiveness of DFV mandatory reporting legislation in relation to women's safety. It is vital that such a review amplifies the voice of victim-survivors experiences of being subjects of a mandatory report and whether the subsequent police actions increased or decreased the victim's safety.

LR38: The supporting evidence pertaining to the proposed changes outlined in LR38 lacks specificity of the definition of a DFV related offence as a prior, this will need to be clearly defined as an offence under the DFVA instead of referenced as generalised terminology. The use of such generalist language risks encompassing too greater range of conduct, failing to consider the particular circumstances of the conduct which could include a wide range of circumstances particular to past offending or offender. NAAJA does not support the use of such generalist terminology to be enshrined in legislation, including the use of “DFV related offence” being left undefined or defined as including Criminal Code Schedule II offences or other ancillary offences, rather NAAJA suggests a definition of “an offence contrary to the DFVA”.

Whilst NAAJA supports the repealing of the mandatory sentencing regime contained in s121 and s122 of the DFVA, we do not support the proposed tiered approach to sentencing as proposed in LR38. Relying upon a tiered approach and increasing penalties as an increased deterrent to Breaching DFV

¹⁰ The Northern Territory Government. (2022) *The Review into the Legislative and Justice response to Domestic and Family Violence in the NT*. P.80

orders is ineffective in achieving the Objects of the DFVA and will not achieve the end goal of ensuring the safety of women and children. We can look to the failure of mandatory sentencing and increased tariffs for violent offending set out in the *Sentencing Act* as an example of where increased penalties and longer periods of imprisonment have not resulted in increased safety for women and children and has failed to result in less violence in our communities. Instead, we have higher rates of violence against women and children than ever before and more adults in custody, which is disproportionately made up of Aboriginal people and increasing numbers of female offenders in custody.

The evidence is already clear that higher penalties does not equate to lesser charges, therefore NAAJA is highly concerned that a tiered approach and higher maximum penalties will increase the incarceration rates of Aboriginal men and women and for longer and longer periods of time and at greater rates.

Such an approach fails to consider the intergenerational trauma, as understood through the *Bugmy* principles, and how trauma experienced as a child informs behaviour as an adult, resulting in many victim-survivors committing DFV offences either as children or adults. Incarcerating people for longer periods of time will not address these root causes and as such does not reduce family violence until the originating causes are addressed.

Rather NAAJA supports an evidence-based therapeutic approach, using trauma-informed, wrap-around and holistic practices that are culturally safe in the engagement of the whole family and community. NAAJA recommends investing in Aboriginal designed and locally run programs, education and services for both victim-survivors and perpetrators.

NAAJA does not support the inclusion of 'harm' in a DFV Breach of order to increase the maximum sentence applicable. NAAJA's position is that there are multiple offences and sentencing principles already available in NT law which take into account where 'harm is occasioned' in offending and there is no need to legislate a new offence incorporating this into the DFVA. Examples of some of the offences already provided for in the *Criminal Code Act 1983*, which include harm, are:

- a) s186 (Unlawfully Cause harm),
- b) s188(2)(a) (Aggravated Assault cause harm),
- c) s192 (7) (8) (sexual intercourse and gross indecency (cause harm and cause serious harm),
- d) s181 (unlawfully Cause Serious Harm),

e) s177 (a) (Acts intended to Cause Serious harm causes harm).

Further section 5 (2)(b) of the *Sentencing Act 1995*, already requires that a court when sentencing an offender, must have regard to the “nature of the offence and how serious the offence was, including any physical, psychological or emotional harm done to a victim”¹¹.

The recommendations made in LR38 would only duplicate existing provisions and could lead to situations where multiple charges are laid for the same allegation of harm. Such duplication risks situations where a defendant can be overcharged for the same incident. This may result in protracted negotiations between defence and prosecution, which, may only be resolved by way of a contested hearing and require a victim survivor to attend court to give evidence. This is not in the best interests of any of the parties particularly a victim-survivor of domestic and family violence.

LR39: As it stands the criminal justice approach to DFV is incredibly disempowering for victim-survivors and can more often than not lead to an underreporting of DFV incidence, in particular of the accumulative nature that can be a defining feature of coercive control. NAAJA is concerned that the recommended amendments to the DFVA and/or *Information Act (2002)* outlined in LR39 could further breach a victim-survivors rights to have input in the decisions made that impact their life.

The non-consensual nature of such a paternalistic approach threatens to further endanger a victim-survivor by contributing to further deterioration of the family unit (for Aboriginal people this is considered in a broader context) and create barriers to accessing services and important cultural supports, particularly in regional areas.

NAAJA does not support legislative reform that could unintentionally disempower victim-survivors but rather strongly supports system reform that seeks to create autonomy for victim-survivors to contribute to decision making through consultation and/or informed consent. This process needs to be conducted in a culturally safe way, with victims’ voices prioritised as leading the process. For these reasons, NAAJA would endorse the use of an expert Aboriginal Advisory Committee to lead the design, implementation, and review of such a strategy.

LR40: As outlined in NAAJAs Systemic Reforms section of this submission, we strongly oppose increased police powers as an appropriate and safe means of improving outcomes for victims-

¹¹ Northern Territory Government. (1995). *Sentencing Act*

survivors of DFV, in particular Aboriginal women. NAAJA would however support an appropriately funded and resourced 24 Hour Specialist DFSV Referral Service with the provision it is implemented in close partnership with Aboriginal run DFV services and programs, including KSVP.

LR42: Presently, the *Youth Justice Act 2005* (YJA) treats youth who are under 15 differently to youth who have turned 15 (see ss 65(2), 83(2)(b) & (3), 125(b) & 136(2)(b)). The proposed amendments to ss 14(3) and 28 of the DFVA would be taking the DFVA out of step with the YJA and therefore is not supported by NAAJA. NAAJA recommends the review takes into account the need for a youth-informed practice when dealing with young people as outlined in the principles (s.4) of the YJA, and supports DFV matters to be heard by the courts when the defendant is under the age of 18 as proposed in LR42 c).

Sentencing Act

LR47: As previously stated NAAJA does not support the criminalisation of coercive control in any form, whether this be as a separate offence or legislating coercive control behaviour/s that could lead to increased sentencing or extended DVOs. What is required is comprehensive community wide education that is adapted to the diverse NT audience, as to what constitutes coercive control and the consequences related to further criminalisation. In addition to not supporting provision b) of the LR47, NAAJA does not support provisions a) and d), as they offend the principles of sentencing on offences by inviting consideration of offences and conduct outside the scope of the facts found by the court [in the case of (a)] and against the principles in *De Simoni* (1981) 147 CLR 383 [in the case of (d)]¹².

Lastly, NAAJA does not support provision c), of this recommendation, as it forces the court to impose a harsher sentence, and, as set out previously in relation to LR38, increasing penalties does not decrease offending or keep women and children safer. Increasing penalties also results in a diminishing hope of rehabilitation being considered in the sentencing consideration, particularly when dealing with first offenders.

In a practical sense, specific offences of DVO breaches involving children would be brought on the basis that the conduct complained of exposed or was against children contrary to a DVO in force, contra s120 of the DFV Act. To then create a new aggravating provision as proposed in LR47(c) would create the same duplication and double jeopardy issues as set out in NAAJA's response to LR38 above.

¹² *Weininger v The Queen* (2003) 212 CLR 629

LR48: In the context of LR48 a pattern of past behaviours of coercive control can already be presented in submissions by defence in mitigation and if raised must be considered by a court when deciding sentence pursuant to section 5 and section 78 (d) (i) of the *Sentencing Act NT* (1995).

As proposed in **Option 1** of the Review NAAJA supports the investment in consulting with Aboriginal led DFV services and partnerships, such as the CJGs and NT JPP, to roll out culturally responsive coercive control education prior to any other steps are taken, including research.

In order to meet the unique needs of communities across the NT and their diverse experiences of coercive control any research must have a localised focused and be conducted in consultation with the groups previously mentioned, this can only occur once an understanding of coercive control exists within the communities. It is imperative that we move away from overlaying research based on International or even Interstate experience on the NT context.

NAAJA recommends that Inter-agency Co-ordination and Reform Office (ICRO) engage in extensive, local research as part of the four-year plan to tackle coercive control, as laid out in **Option 1** of the Review, as a continuum from consultation and an education process to be driven by community-based partnerships.

LR50: NAAJA wholly supports the protection of victim-survivors throughout court proceedings with respect to procedural fairness. In NAAJAs experience there are limited cases where the defence is attempting to make the case that the representations or the views of the victim at the time of making the Victim Impact Statement (VIS) have changed, in such a case where there is plausible context for this cross examination of a VIS the victim would be protected under the Credibility Rule¹³, which requires judicial leave. Therefore, NAAJA does not feel the recommendations proposed in LR50 would be effective in improving the experience of the victim-survivor, which is better addressed through court procedure and operational improvements as mentioned in LR35.

Criminal Code

LR51: This Review is a great opportunity to deeply consider both the intentional and non-intentional consequences legislative reform will have on effected parties, and in turn their families and communities. In the instance of LR51 it is not clear what the intended consequence of the amendment, nor the objective it would serve were it entrenched into law. As previously highlighted, enshrining a complex concept, such as ‘coercive control’ or ‘psychological harm’, in legislation is fraught with risk and NAAJA urges ICRO to first take the steps outlined in the Systems Reform section of this submission,

¹³ ENULA s 101A.

pertaining to **Option 1** of the Review. The value of **Option 1** only holds ground if the systems reform work is not undermined by legislating coercive control behaviours through other means.

LR52: Section 186 (a) (a) of the *Criminal Code* already addresses choking as a stand-alone offence, amending section 188 (2) to include choking, suffocation or strangulation as an aggravating feature is an unnecessary duplication of an offence that already exists. The rationale for the amendments proposed in LR52 is unlikely to be a persuasive deterrent for defendants, as a new charge would be treated individually, aggravating the offending substantially. Solicitors' advice to defendants will reflect the reality that although the charge has been substituted, a separate matter of strangulation will still attract a proportionate sentence.

LR54: Courts rely upon the rigour used under existing provisions in the *Evidence Act 1939* (UEA) to determine the relevance and standard of evidence given, case-by-case. As it stands the UEA provides the best and most appropriate mechanism for the process for admission of such evidence and does not require a new provision providing for a separate category of expert evidence. Under the UEA there is nothing to preclude a party from calling expert evidence on DFV and going through the relevant process of seeking to call expert evidence, therefore NAAJA doesn't see further changes to be either necessary or effective.

Furthermore, NAAJA would be concerned about the paucity of "experts" understanding of Aboriginal peoples lived experience and the dearth of non-western standards when proclaiming expertise on Aboriginal people and their diverse experiences. This is particularly concerning when applying a broad-brush, generalist expert approach on experiences of DFV as outlined in the provision of section 39 (3)(a) of the *Evidence Act 1906* (WA). Such approach creates a homogenous assumption that there is only one way any person experiences DFV and suggests that there is in existence a homogenous nature and effect of DFV that exists regardless of any person's background, life experiences, views, culture, language, personality and worldview. This disempowers the individual lived experience of DFV and discounts their diverse cultural and linguistic backgrounds and geographic influences that proclaimed "experts" will not have a nuanced understanding of.

In the historical context of colonisation and the past objectification of Aboriginal people's lives as objects of study and science we need to be wary of inadvertently legislating in a way that allows "experts" to speak for and about Aboriginal people's experiences of DFV in a homogenising and generalist manner. The proposed amendment along the lines of section 39 of the UEA is at risk of doing just this and NAAJA does not support this recommendation.

LR55: NAAJA does not support the adoption of mandatory jury directions in relation to coercive control, as the lack of clarity does not support NAAJA's overall position on the criminalisation of coercive control. Therefore, we are reluctant to inadvertently and prematurely endorse legislative change before the appropriate systems are in place to navigate the unintended impacts it will likely have on the Aboriginal community, mainly increased incarceration rates. In the development of the necessary systems and education to support a community wide understanding of coercive control NAAJA would support the establishment of a working group that includes Aboriginal run legal and DFV services and partnerships established under the CtG and AJA, such as the Community Justice Groups and the NT Justice Policy Partnership Group.

LR56: Recommendation LR56 suggests that the right to object is definitive of whether or not a victim will be required to give evidence, however this is not the case. This decision ultimately lies with the judge who has the benefit of hearing from the victim-survivor prior to making a decision. Whilst in practice a court will rarely excuse a victim from giving evidence, this does not need to be a traumatising process if best practice, as outlined in LR35, is utilised to empower victims input into the court process. This is particularly important for Aboriginal people who have been disempowered by paternalistic systems that define their experiences and have silenced their voice for centuries. NAAJA does not support proposal LR56.

Local Court Act

LR57: NAAJA does not oppose the proposal to amend the *Local Court (Criminal Procedure) Act 1928* to create a presumption that if an accused is charged with more than one sexual offence it is presumed that the charges are heard together.

NAAJA does not however support a presumption that DFV-related offences are heard together. There is already provision for the joinder of charges pursuant to section 51 and 101 of the *Local court (Criminal Procedure) Act 1928* and NAAJA does not support any amendment to these sections. These sections provide the avenue by which the prosecution can lay charges on information or complaint on one file number. There is no need to create a presumption as proposed in LR57.

It is also important to note that in addition to section 51 and section 101 of the *Local (Criminal Procedure) Act 1928* Part 3.6 of the *Evidence (National Uniform Legislation) Act 2011* creates another avenue by which joinder of charges is possible. As there are already existing processes and options in place under which the hearing of joined charges/matters can be achieved NAAJA sees it as unnecessary to create an additional provision as proposed in LR57.

Systemic reforms

Legislative reform is essential to establishing long-term parameters that guide systems towards improved outcomes, which outlast changes in government and barriers of funding. However, the strength of legislative reform can easily be compromised by inconsistent application of the law and low capacity of service provision to support the changes. Legislative reform quite simply must come hand in hand with investment in systemic reform and strengthening of the service sector.

Aboriginal Justice Agreement

SR2: NAAJA welcomes the committed focus of systems reformed proposed by the ICRO in alignment with the AJA to improve outcomes for Aboriginal people who come into contact with the justice system for DFV related matters. The establishment of an Aboriginal Advisory Group is an effective consultative approach that can only be strengthened by the inclusion of an Aboriginal led government agency representative in ICRO. In the spirit of the shared decision-making and Aboriginal leadership committed to in the AJA, and the Northern Territory Governments (NTG) *Everyone Together Strategy*, NAAJA encourages stronger Aboriginal representation and voices in ICRO and across the work of ICRO.

Mandatory Sentencing and Reform of Community Based Sentencing Options

SR3: Reforming mandatory sentencing in the NT is vital to reducing the overincarceration of Aboriginal people. To better support the prevalence of DFV related criminal and child protection matters impacting Aboriginal families, NAAJA supports alternatives to sentencing options that are:

- informed by specialist expertise on DFV,
- led by Aboriginal service providers, and
- are co-designed by Aboriginal Advisory Groups/partnerships, such as the NT Justice Policy Partnership (JPP) and Community/Law Justice Groups.

Furthermore, NAAJA recommends investing in the resourcing of Aboriginal run diversionary and rehabilitative programs to ensure community-based sentencing options for Aboriginal offenders are culturally safe. Including DFV accommodation services for offenders as a prevention mechanism to the traumatic displacement of victim-survivors and their children from their homes. Such holistic service provision can act as a protective factor to further offending for offenders engaged in behavioural change programs and in need of additional supports.

Kunga Stopping Violence Program

“The KSVP is an example of the kind of program the courts could use as a diversionary option while the women are on remand and after sentencing. Magistrates themselves have been asking for

Submission: Review of the legislation and justice response to domestic and family violence submission

information of such programs as remand/ sentencing options.”¹⁴ This report also lists extensive recommendations that pertain to community-based alternatives to mandatory sentencing outlined in proposal SR 3, such as:

- “Develop and fund the delivery of trauma-specific and culturally safe approaches to alcohol and drug rehabilitation in Central Australia.
- Develop and fund family residential alcohol rehabilitation, including women and children’s residential rehabilitation in Alice Springs”.¹⁵

This report further outlines recommended safeguards to monitor and prioritise the safety of victim-survivors that relate to the proposed SR3.

- Increase the screening and treatment for women entering the law enforcement system with mental health, complex trauma, FASD, and ABI and other brain injuries, with flow-through therapeutic care from prison to services on the outside.
- Increase the number of female Aboriginal police officers and equip them with trauma-specific intervention skills.
- Provide transitional accommodation for women leaving prison in Central Australia.
- Urgently increase the supply of public housing in Alice Springs and remote central Australian communities.
- Develop trauma-specific alternatives to sentencing for Aboriginal women in collaboration with local Aboriginal women.
- Develop alternative women’s crisis accommodation funding models in Central Australia in collaboration with local Aboriginal women.
- Place more emphasis on whole-of-family and whole-of community approaches to family violence interventions due to the intergenerational trauma that exists in Central Australia. Hold educational sessions for lawyers, judges and community corrections staff about the safety implications of placing women on conditions when in a domestic violence relationship.
- Initiate early intervention for teenagers, with culturally specific support for Central Australian Aboriginal families and communities, to help young people through loss and grief, exposure to traumatic incidents, intimate partner violence and assault, and intimate use of social media and bullying.

¹⁴ Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas’ trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS. P.54

¹⁵ Ibid. P.60

- Increase community of practice to help staff cope with vicarious trauma.
- Coordinate and hold regular cross-sectional communities of practice meetings. –
- Implement better screening and health coordination within the prison context, including screening for complex trauma, other mental health conditions, disabilities, FASD, and brain injuries.

Shared decision-making, co-design and partnership

SR5: The development of the Law and Justice Groups (LJGs) and Community Justice Groups (CJGs) under the AJA was to build respectful and collaborative relationships that seek to strengthen local decision-making and re-establish cultural authority and respect between generations, agencies and service providers.¹⁶ As outlined in NAAJA’s Community Justice Groups submission to ICRO, addressing structural and systemic issues should include “self-determinative localised decision-making processes that strengthen culturally secure practice following close consultation with community, community leaders and Aboriginal Community Controlled Organisations.”¹⁷ NAAJA supports collaborations across stakeholders that aims to strengthen the cultural authority and self-determination of Aboriginal communities experiencing DFV as highlighted in the AJA.

For an in-depth understanding of why community-driven, localised decision-making is critical for meeting successful outcomes when addressing DFV in Aboriginal communities refer to NAAJAs CJGs response in **Appendix 1**.

Such partnerships and consultation with the Aboriginal DFV sector, as a specialist advisory panel of experts, including NAAJA’s KSVP, is vital in understanding the needs and voices of Aboriginal women across the NT, who have experienced being both victims and perpetrators of DFV and the nuanced specificities of these experiences, in particular the intersectional barriers that this marginalized cohort face.

¹⁶ The Department of the Attorney-General and Justice. (2021). *Northern Territory Aboriginal Justice Agreement: 2021-2027*. The Northern Territory Government https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf

¹⁷ Northern Australian Aboriginal Justice Agency. (2022). *Community Justice Program Submission – Systemic Reforms-Domestic, Family and Sexual Violence (DFSV) Interagency Coordination and Reform Office (ICRO) Theory of Change Workshops + Review of Legislation and the Justice Response to Domestic and Family Violence in the Northern Territory Proposals for Consultation*. P.5

Addressing Coercive Control

SR7: Under *Aim Two: Engage and Support Aboriginal Leadership* of the AJA, the NTG have committed to strengthening authentic partnership and shared decision-making through the establishment of Law/Community Justice Groups.¹⁸ Respecting the cultural authority of these groups to raise community awareness and understanding of coercive control and DFV is critical in overcoming the barriers of previous culturally inappropriate attempts. Funding the Law/Community Justice Groups to co-design and implement such programs better aligns with the spirit of self-determination underpinning the AJA oppose to reliance on the Department of Territory Families Housing and Communities (TFHC) to empower cultural authority already readily available. Refer to **Appendix 1** for details.

SR8: The Central Australian Women’s Legal Service (CAWLS) report *Coercive control, social entrapment and criminalised women*, highlights the alarming disproportionate rates in which women, in particular Aboriginal women, receive and breach Domestic Violence Orders (DVOs), leading to criminalisation, and under mandatory sentencing laws, time spent in custody¹⁹. As identified by CAWLS, NAAJAs experience is that misidentification of victims-survivors as perpetrators by police is becoming increasingly common and has dire consequences to the victim-survivor, their children and family. “Misconceptions about the nature of DFV are tied to the perpetuation of the ‘ideal victim’ stereotype”²⁰, the ideal victim does not defend themselves or fight back.

The justice response to DFV is very much influenced by this mythology and needs to be addressed when providing police, prosecutors, judges, lawyers and front-line workers with further training to identify and respond to coercive control and DFV. In addition, key child protection stakeholders require further training to work with a mother experiencing DFV to create a safe environment by recognising her strengths and safety decision making so that child removal outcomes aren’t perpetuating violence against women.

NAAJA supports the proposal to fund the expansion of DFV training and education tailored to police, prosecutors, judges, lawyers and front-line workers to assist in identifying and responding to coercive

¹⁸ The Department of the Attorney-General and Justice. (2021). *Northern Territory Aboriginal Justice Agreement: 2021-2027*. The Northern Territory Government https://justice.nt.gov.au/_data/assets/pdf_file/0005/1034546/nt-aboriginal-justice-agreement-2021-2027.pdf

¹⁹ Taylor, J and Marshall, J. (2021). *Coercive control, social entrapment and criminalised women*. Central Australian Women’s Legal Service. [Coercive-Control-Social-Entrapment-and-Criminalised-Women-Law-Society-NT-Balance-Edition-1.21.pdf](https://cawls.org.au/Coercive-Control-Social-Entrapment-and-Criminalised-Women-Law-Society-NT-Balance-Edition-1.21.pdf) (cawls.org.au)

²⁰ Ibid. P.22

control and DFV, with the caveat that the training and resources be co-designed and delivered by Aboriginal experts and partnerships and be inclusive of key child protection stakeholders.

SR9: As with training, public health education should be led by community in order to benefit from the cultural authority and understanding that self-determination affords. Effective community education and engagement requires amplifying the voices of the people for the people. Consultation with Aboriginal led service providers and programs will highlight the cultural nuances that impact victim-survivors experiences of coercive control. What defines coercive control within one relationship can look quite different in another, ensuring cultural authority leads any form of public education will capture these different experiences that can be influenced by culture, language and geography, for this reason the cultural authority on this work must be place-based and led by localised knowledge.

Specialist DFV court approaches

SR10: NAAJA supports a trauma-informed specialist approach to handling DFV matters in court, with the caveat that DFV and legal service providers receive increased funding to meet the needs of both defendants and protected persons utilising specialist court proceedings. Implementation should be guided by the learnings of the pilot Specialist Approach to DFV (SADFV) court in Alice Springs and programs in other jurisdictions, such as the Koori Family Violence Court service in Victoria, which includes both a male and female Koori Community Engagement Officers appointed to each magistrate's court. Improved outcomes for victims-survivors could be further achieved by reviewing the safety of court houses for victims-survivors, including children courts and consideration to child protection matters. NAAJA also notes that women who are both victims and perpetrators of DFV are not mentioned in this scope of reforms. There is perceived ongoing injustice in the gendered difference in how men and women are sentenced for violent crime such as reported in Bevis et al (2020):

“In the workshop with service providers, a discussion took place between participants about perpetrators being granted bail when they are known offenders, and women being in jail on remand when they have fought back (with a weapon). They said that the women are given longer sentences for defending themselves than the male perpetrators received for assaulting the women in the first place.”²¹

A thorough external evaluation of the SADFV would enable DFV-ICRO to adequately assess areas of development that are lacking in the current model. For instance, NAAJA has found SADFV can be a

²¹ Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS. P.45

much lengthier process that can require the defendant to return to court an unreasonable number of times. Furthermore, additional requirements of SAFDV can place a massive strain on already under-resourced and time-poor services. Without the identified support roles of the Victorian model, lawyers are expected to deliver services and referrals they are unqualified and ill-equipped to provide, which defeats the trauma-informed, wrap around approach of the model.

NAAJA refers to recommendations for all judicial settings laid out in the report by Bevis et al (2020) to be considered in further implementation and expansion of SAFDV courts:

- Hold educational sessions for lawyers, judges and community corrections staff about the safety implications of placing women on conditions when in a domestic violence relationship.
- Allocate more time to communicating with and listening to Aboriginal women during court procedures.
- Increase police and judges' understanding of the impact of trauma and how this affects a woman's ability to provide evidence.
- Increase the training and employment of local Aboriginal staff who can speak the local Aboriginal languages within the social, health and legal service sector.²²

Improved policing of DFV

The KSVP see repeated examples of clients refusing to call police and/or resisting police involvement when they have experienced DFV due, in part, to their own criminal history compromising their sense of safety with the police. Women on orders, and conditional parole, women with warrants and women on good behaviour are all concerned that calling the police for any reason will result in charges and possible misidentification and/or (re)incarceration.

One woman explained: "Taking women from home to keep them safe is a failure in our culture/system." Another woman pointed out: "Once when my husband was drunk, he said that he was going to hang himself. I called the police to take my husband to sober-up shelter. Instead, they took me to the women's refuge. I went to the hospital as I bit my tongue, and it needed stitches. When I was there, I got told that my husband tried to hang himself—but he was okay. Police did not listen to me."²³

Anecdotally, KSVP clients have told the KSVP staff about police actions that indicate a lack of understanding about trauma and trauma-informed practise. Often male police officers are still the

²² Ibid. P61

²³ Ibid. P.40

main point of contact for incidents of sexual assaults with female police often not provided as an option. KSVP clients have a fear of being transported between Darwin and Alice Springs correctional centre via road with two male corrections officers, which can be a triggering event. Clients have also told us about their young daughters being questioned by male police not accompanied by female police in a way that can be very triggering of past traumas.

SR11: There is a very real and entrenched history of fear and distrust of police by Aboriginal women that cannot be ignored when reviewing the role of police in responding to DFV. Even today, the significant number of Aboriginal women experiencing misidentification and having their children removed impacts Aboriginal women's willingness to report DFV and seek help through the judicial system. Whilst we support community-led and co-designed training, policy and procedures to identify and address coercive control NAAJA does not support increased police powers. NAAJA has 50 years' experience representing and providing legal advice to Aboriginal people who have come into contact with the justice system and increased police powers has only ever led to increased criminalisation of Aboriginal people. Furthermore, the transient nature of the Northern Territory leaves NT Police workforce vulnerable to ill equipped, culturally unsafe officers, as has been revealed in the Kumanjayi Walker coronial inquest.

In the Victorian Aboriginal Legal Service *Addressing Coercive Control Without Criminalisation: Unlocking Victorian Justice webinar* Gunai/Kurnai, Gunditjmara, Wiradjuri and Yorta Yorta writer, Nayuka Gorrie, highlights the coercive control relationship that Aboriginal women are so often in with government structural mechanisms, such as police, child services, Centrelink and public housing,²⁴ that impede their ability to feel safe under systems designed to protect them.

Systemic racism is a reality that the KSVP clients and their families live with every day in many facets of their lives. Racism needs to be addressed at a systems level when looking at improving policing and justice reform. The Bevis et al study elucidated that when an experience of racism happens on a structural level it impedes resilience.

“While the women in this study demonstrate remarkable resilience when experiencing extreme levels of trauma, this resilience has biological effects with particular adaptive responses that need to be understood. It is these adaptive responses that the service and justice systems fail to respond appropriately to—punishing the women when they need support to heal. Further, in all situations, women encounter structural and institutional racism, which undermines their resilience”²⁵.

²⁴ The Victorian Aboriginal Legal Service. (2022, 15 March). *Addressing Coercive Control Without Criminalisation: Unlocking Victorian Justice webinar*. [Addressing Coercive Control Without Criminalisation: Unlocking Victorian Justice webinar - YouTube](#)

²⁵ Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS. P.31

In line with the AJA commitment to partnership and shared decision-making, NAAJA recommends that the Commissioner of Police and the DFSV-ICRO work in collaboration with the Aboriginal DFV sector, Community Justice Groups and NT JPP to revise the police General Order on DFV and other relevant policy and procedures and ensure further training and education is co-designed. The method of co-design is an important step towards self-determination beyond out-dated consultation processes and can lead to healing the cracks left by past racist legacies and power imbalance. There is a particular need to entrust the CJGs to lead definitions, understanding and responses to experiences of coercive control in remote and regional communities, where experiences of DFV doesn't always align with mainstream concepts.

SR12: Highlighted by recent publications of discriminatory behaviour and a culture of cover up prevalent in the NT Police force, NAAJA strongly supports an emphasis on capacity building of first responders to DFV. In addition, to recommendations a-c outlined in the review NAAJA urges the Commissioner for Police to mandate cultural safety training and ensure DFV training is co-designed by Aboriginal DFV services and CJGs to capture the unique experiences of DFV and coercive control that has previously led to misidentification and culturally unsafe handling of Aboriginal DFV victims-survivors by first responders.

The transient nature of the NT that leads to low retention rates and recruitment challenges, in particular to remote areas, needs to be addressed in a complete review and overhaul of the NT Police end-to-end recruitment. This includes incentivising recruitment of an Aboriginal workforce across all levels of the organisation. However, strengthening the Aboriginal workforce can only be achieved in a culturally safe workplace. There are many workforce development models that look at safe and inclusive workplace practices, which needs to begin with assessing the cultural safety of new recruits and providing ongoing training to all levels of staff, as workplace culture is influenced from the top down. New Zealand and Victoria have both actively worked on improving recruitment practises for prison officers that could provide insight into an operational review of the NT Police, this includes:

- Inclusive language and imagery in recruitment advertising,
- an Aboriginal interview panellist for certain roles, for instance for remote community roles,
- cultural competency interview questions for all roles across the organisation, including an understanding of remote living for roles posted to remote communities,
- cultural competency testing for first responders through professionally delivered role play,
- unconscious bias assessment,
- and cultural safety training for all new recruits.

To eradicate entrenched systemic racism and establish a culturally safe workplace is key to a culturally competent first response to DFV experienced by Aboriginal people in the NT. However, this cannot be achieved by training, recruitment or identified roles in isolation, it requires an organisational commitment to continue to work towards best practice and workplace safety for everyone. Whilst NAAJA supports the proposed recommendations we urge the NT Police to take the workforce development steps outlined above and commit to designing and implementing these changes in partnerships with the Aboriginal DFV services, CJGs and other relevant community partnerships.

SR13: NAAJA's experience of the Risk Assessment and Management Framework (RAMF) and Common Risk Assessment Tool (CRAT) has been a relatively positive one and we can see value in modifying the CRAT specifically to support frontline police in improving the assessment and management of risk of harm, or further harm, from DFV during operational duties. NAAJA endorses the modification of CRAT for police to incorporate a trauma-informed, culturally safe practise, which includes the attendance of a female officer and the use of an Aboriginal Liaison Officer and Aboriginal language translation services. Another consideration NAAJA strongly recommends is the attendance of a DFSV trained Aboriginal Health Worker or culturally competent social worker alongside the police in DFSV incidences. The evaluation of this model in Toowoomba found that real-time case consults supported both victims-survivors and police, improving experiences of engagement and even seeing an increase in DVO charges lodged by 43% in 2021/2022.²⁶

SR14: Currently s.19 of the Domestic and Family Violence Act 2007²⁷ considers the defendants criminal record as defined in the Criminal Records Act 1992, which NAAJA considers sufficient. NAAJA does not oppose provision of a certificate to the Court at the first mention in all applications for DVOs, as outlined in the proposed SR14, if consideration does not include matters that were withdrawn or that a defendant was found not guilty, which is not always covered in the Spent Convictions Act definition. In all due fairness to the defendant, historical matters that have been withdrawn or given a not guilty verdict have already been carefully considered by the court after hearing from both prosecution and defence and have not received a conviction, therefore should not impact the consideration of future matters.

Police referral to 24-hour specialist referral service

SR15: NAAJA would welcome a 24hour Specialist DFV Referral service and would further recommend that this service closely consult and be guided by the Aboriginal DFV sector, including our KSVP

²⁶ Rodgers, J. Carrington, Ryan, V, and Carr, R. (2022. May). Evaluation of a specialist domestic violence worker embedded in a police station. Issue No. 23. Centre for Justice Briefing Paper. QUT. P.3-4 [Briefing-Paper-23-Toowoomba-co-location-FINAL.pdf \(qut.edu.au\)](https://www.qut.edu.au/~/media/Files/2022/05/Briefing-Paper-23-Toowoomba-co-location-FINAL.pdf)

²⁷ Northern Territory Government. (2007). *Domestic and Family Violence Act 2007*. (No.34 of 2007). P.2.2,S.19

program, in order to meet the specialist needs of the clients and their direct families, so that they are not excluded from such a service in any way based on their criminal history.

Improved prosecution of DFV offences

SR 16-17: The service sector has for a long time called for improved resources and training and NAAJA will continue to support initiatives that engage the Aboriginal service sector and community in co-designing and partnership across all sector-strengthening developments. In addition, to capacity building of prosecutors NAAJA highlights that the current rate of DFV offending has put an immense strain on legal service delivery and that adequate funding and resources are vital in assuring services are appropriately meeting demands and delayed court processes aren't impacting protected parties, defendants and efficiency of the court.

Legal assistance for parties in DFV proceedings

SR18: NAAJA supports the proposed reforms outlined in SR18 as both male and female defendants are regularly left unrepresented in the court system due to conflict of interest regulations. Improved funding of services to represent defendants would result in better efficiencies in the DV court system.

Enabling services to provide a supportive and safe environment in which to assist defendants in understanding their obligations under a DVO, including the use of interpreters and Aboriginal support staff to ensure a defendant understands, which can only be in the interests of the protected person and any children. Defendants receiving legal advice regarding their DVO have their legal obligations explained, increasing the likelihood of compliance.

NAAJA further recommends the strengthening of legal service provision to be expanded to Central Australia and the Barkley region, and that the service is co-designed with Aboriginal service providers, such as KSVP, and community to be culturally safe and responsive.

Trauma informed services

SR20: As emphasised throughout this submission, it is critical to be guided by the profound knowledge of Aboriginal DFV service providers, community leaders and self-determined partnerships established under the CtG and AJA, such as the NT JPP and CJGs. As many of these services operate either under or unfunded further resource and funding investment must be committed to co-design and implement programs and services accessed by Aboriginal people.

NAAJA also strongly supports the proposal that the DFSV-ICRO reform agenda include consideration of funding for a specialist trauma-informed counselling service for women prisoners who have experienced DFV, sexual abuse, child abuse or other forms of trauma. NAAJA would recommend that

Submission: Review of the legislation and justice response to domestic and family violence submission

such a service work collaboratively with the KSVP and Aboriginal DFV services, including co-location where appropriate. NAAJA would also ask that this service be available for women after their release from prison, working collaboratively with both KSVP and Sexual Assault Referral Centre (SARC) who currently provide this service for prisoners who have been referred to them for counselling.

SR21: NAAJA supports the proposed funding of DFV perpetrator programs in the NT as outlined in SR21 with the caveat that the design and implementation is enacted in partnership with the expert Aboriginal groups outlined above under the NTGs commitments to shared decision-making and two-way partnership prioritised in the CtG and AJA.

NAAJA would like to further note that programs must consider the diverse experience of DFV by victims-survivors, in particular Aboriginal people's experiences and conceptualisation of coercive control, that can include a victim-survivors also being considered a perpetrator. It is time we moved away from just focusing on the behaviour and recognise that perpetrators are more often than not victims-survivors requiring culturally safe, trauma-informed healing support, which needs to be recognised in the shared principles of DFV perpetrator programs.

Identifying and managing risks of DFV

SR 23: The RAMF and associated CRAT has capacity to provide tools to service at-risk women experiencing DFSV. It is essential that police, corrections officers and health workers, particularly those in remote clinics, are required to complete the RAMF training as part of their induction and ongoing employment. KSVP in particular appreciates the focus in the RAMF on:

- the ways that women may resist violence,
- misidentification, and
- culturally and contextually specific nuances and terms in regard to DFSV.

NAAJA also supports the proposed SR 24 to strengthen the Family Safety Framework (FSF), and further still, NAAJA would recommend that the FSF would be further strengthened with women's specialists' services such as the Women's Safety Services of Central Australia (WOSSCA), Darwin Aboriginal & Islander Women's Shelter (DAIWS) or Dawn House co-leading the FSF.

Multi-Agency Children and Community Safety Teams / Framework

SR 25: NAAJA's KSVP takes a holistic approach to all clients and often works with whole families, including where appropriate and safe to do so, fathers and husbands. KSVP has had three generations from the one family complete the program 'a grandmother 65 years old, her daughter aged 38 and

her granddaughter aged 18'²⁸ which highlights how commonly intergenerational trauma can lead directly to incarceration.

Consequently, NAAJA would like MACCSTs to identify and meet the needs of children who have an incarcerated parent for early intervention support. Research shows that the adverse social determinants of children with incarcerated parents, particularly daughters of mothers in prison. Internationally, literature relating to the impacts of parental incarceration on children is inconsistent, though points generally correlate with future criminalisation, substance use, poorer health and wellbeing outcomes and anti-social behaviour.²⁹ Maternal incarceration has been found to have a more pronounced correlation with future incarceration for children than paternal incarceration. Dallaire (2007) determined that amongst incarcerated women with adult children, their children were 2.5 times more likely to be incarcerated than if they had an incarcerated father.³⁰

Research undertaken by KSVP and Professor Judy Atkinson highlighted that there are early warning signs for women and girls that can potentially lead to behaviours and that make them vulnerable to incarceration. In the seminal work by Judy Atkinson "Trauma Trails" (2002),³¹ Atkinson mentions major loss events in women's childhood and adolescence that leave gaping holes in girls' networks of protective adults can lead to increased risk factors to increased incarceration, including substance misuse. A more recent study found that for KSVP study participants':

"...fractured relationships surrounded the women as a result of intergenerational, collective and cumulative trauma, grief and despair. The women commonly experienced a lack of feeling safe when growing up. Common themes that contributed to a lack of a sense of safety were premature deaths across their family systems and/or caregivers; dislocation from moving to town camps; the influence of alcohol and other drug use by those around them (particularly for those who grew up in town camps); and fear passed down through generations. The women in the study felt abandoned and unsupported within their communities. Their lives were layered with loss and accompanying unresolved grief."³²

One of the Bevis et al. (2020) recommendations to mitigate this included:

²⁸ Atkinson, Judy, 2020, Symptom as history, culture as healing: Incarcerated Aboriginal women's journeys through historic trauma and recovery processes, Book Section, viewed 28 September 2022, <https://www.nintione.com.au/?p=18176>.

²⁹ Thomson, N. D., Moeller, G. F., Amstadter, A. B., Svikis, D., Perera, R. A., & Bjork, J. M. (2020). The impact of parental incarceration on psychopathy, crime and prison violence in women. *International Journal of Offender Therapy and Comparative Criminology*, 64(10-11), 1178-1194.

³⁰ Dallaire, D. H. (2007). Incarcerated mothers and fathers: A comparison of risks for children and families. *Family relations*, 56(5), 440-453.

³¹ Atkinson, J. (2002). *Trauma trails, recreating song lines: the transgenerational effects of trauma in Indigenous Australia*. Spinifex Press.

³² Bevis, M., Atkinson, J., McCarthy, L., & Sweet, M. (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia* (Research report, 03/2020). Sydney, NSW: ANROWS. P.6

“Initiate early intervention for teenagers, with culturally specific support for Central Australian Aboriginal families and communities, to help young people through loss and grief, exposure to traumatic incidents, intimate partner violence and assault, and intimate use of social media and bullying”³³.

NAAJA would further recommend that adolescent girls and young women who experience the loss of protective female figures, also be identified as being at risk, and provided with wraparound services and support at an early stage.

Death review process

SR26: In 2018 NAAJA appeared in the coronial inquest for Kwementyaye (Sacha) Green, a repeat victim of DFV, whereby Judge Greg Cavanagh found that massive failings and lethargy at all levels of policing led to an inadequate and protracted investigation that prevented the perpetrator being charged of any offence.³⁴ Judge Cavanagh drew comparison to a number of Aboriginal and non-Aboriginal murder victims to emphasise the discrepancies found in police investigations and highlighted the similarities in the Stephen Lawrence Inquiry that found institutional racism to have influenced police performance and failings.³⁵

If there is potential for a systems-driven DFV Death Review to bring parity for Aboriginal victims and ensure procedures are performed in a timely manner NAAJA supports the proposed SR26 in principle, noting that the implementation must feed into existing coronial and criminal proceedings to avoid unnecessary duplication that could result in a drain on resources. Appropriately funding and linking the DFV Death Review Process to inter-agency leadership and governance would strengthen the potential success of a systems-driven DFV Death Review process if the approach is inclusive of consulting existing partnerships with the Aboriginal service sector and community.

Concluding statement

NAAJA appreciates the extensive work the AGD has undertaken to produce this incredibly important review and we value the opportunity to work alongside the department to ensure the Aboriginal community is at the forefront of future legislative and system reform. The Review draws attention to some key issues impacting Aboriginal people experiencing DFV, however by and large the Aboriginal voice is significantly missing in this review, in particular the diversity of how DFV is experienced, the

³³ Ibid.P.9

³⁴ Cavanagh, G. (2018). *Inquest into the death of Sasha Loreen Napaljarri Green*. Coroners Court Alice Springs/Tenant Creek. NTLC 016 [A00592013-Sasha-Green.pdf \(nt.gov.au\)](https://www.nt.gov.au/ntlc/016/A00592013-Sasha-Green.pdf). PP. 15-21

³⁵ Ibid. citing *The Stephen Lawrence Inquiry: Report of an Inquiry* by Sir William Macpherson of Cluny. February 1999. P.23

complexities of misidentification and an indepth understanding of the victim-survivor/perpetrator intersection.

With NAAJA's 50 years experience of representing both victim-survivors and offenders from the Aboriginal community it is profoundly clear that legislative reform designed to protect a mainstream cohort will, without a doubt, only serve to further criminalise Aboriginal people, in particular the most vulnerable members of the community. We would like to take this opportunity to affirm that under no uncertain circumstances does NAAJA now or will ever support increased police powers. Current concerns highlighted in Kumanjayi Walker coronial inquest and media coverage of police misconduct only emphasise that discriminatory treatment of Aboriginal people by police is not just one of a historical context and will take much time and commitment to heal.

NAAJA found the recommended legislative reforms in the Review, overall, to be lacking in the detail and specificity that enables effective input from the community sector. We hope our submission will act as a springboard into a far more nuanced consultation with the service sector at large and that the Review can be a catalyst to work in partnership towards meaningful change for our community.

From our organisations perspective this Review is a platform for this work to start and is by no means a fully realised, strategic approach to addressing the concerns faced by people experiencing DFV in the NT. One barrier to this is the misguided focus on the International and interstate experience, which becomes problematic as a starting place to assume solutions in an NT context. However, the broad-brush approach of the Review is an ideal platform for beginning this important journey, and partnerships already established under the AJA and CtG, such as Community/Law and Justice Groups and the NT JPP, setting the perfect climate to begin this work.

NAAJA strongly supports the empowerment of victim-survivors in being part of this decision-making process and deeply value the expertise of service/program providers and community members with lived experience. This is particularly critical in amplifying the voices of Aboriginal women and children who have been silenced for so long in this narrative and will be the only effective mechanism in the development of real, meaningful change.

As one of the NT's leading legal services representing the community most affected by DFV, in both a victim-survivor and defendant context, NAAJA knows too well how different and remote the practical application of legislation can become from the written intention of legislators. Therefore, we are deeply concerned by the many ways in which coercive control has been weaved into legislative changes in the Review, undermining the commitments made in **Option 1** to prioritise "legislative and systemic reforms (over four years) to improve the justice response to DFV and coercive control".

Whilst the suggested recommendations in the legislative reform proposals don't directly criminalise coercive control, they will inadvertently criminalise behaviours not understood or defined to a diverse community and inevitably lead to a criminal justice outcome, whether that be an increase of incarcerations and DVOs or length and severity of sentencing and DVOs. Without the much-needed education and service provision to support the community, introducing complex concepts of 'coercive control' and 'psychological abuse' into legislation prematurely will only increase the risks of further criminalising and disenfranchising our most vulnerable community members, including women and children.

Additionally, research shows that applying a DFV framework, as outlined in the Review, typically leads to a criminal justice pathway and increased rates of incarceration for Aboriginal communities, which impedes healing at a community level. Whereas an Aboriginal focused DFV framework, led by the community and service providers prefers to avoid such a route, favouring instead pathways to collective and family healing.³⁶

NAAJA appeals to ICRO to utilise the time frame proposed in **Option 1** to work in partnership with Aboriginal organisations, services, programs, partnership groups and victim-survivors to address the complex and multilayered factors contributing to DFV in the NT in a sustainable and effective way.

³⁶ Blagg, 2008 as cited in Healing Foundation et al., 2017). from Carlson, B., Day, M., & Farrelly, T. (2021)

