Family violence policies, legislation and services:

Improving access and suitability for Aboriginal and Torres Strait Islander men

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Acronyms

ABS	Australian Bureau of Statistics
ACCO	Aboriginal community-controlled organisation
ACPP	Aboriginal and Torres Strait Islander Child Placement Principle
ADVO	Apprehended domestic violence order
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AIJA	Australasian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
CA	Capabilities approach
CAS	Crisis Assistance Service
CISP	Court Integrated Support Program
COAG	Council of Australian Governments
DATSIPD	Department of Aboriginal and Torres Strait Islander Policy and Development
DCJ	New South Wales Department of Communities and Justice
DHHS	Department of Health and Human Services
DSS	Department of Social Services
DV	Domestic violence
DVO	Domestic violence order
FVO	Family violence order
FVRIM	Family Violence Reform Implementation Monitor
FVRO	Family violence restraining order
MBCP	Men's behaviour change program
MDAS	Mallee District Aboriginal Services
NDVOS	National Domestic Violence Order Scheme
NFVPLS	National Family Violence Prevention Legal Services
NHMP	National Homicide Monitoring Program
RCFV	Victorian Royal Commission into Family Violence
SCRGSP	Steering Committee for the Review of Government Service Provision
SNAICC	Secretariat of National Aboriginal and Islander Child Care
VALS	Victorian Aboriginal Legal Service
VFVD	Victorian Family Violence Database

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Definitions and concepts

This section provides brief definitions of key terms and concepts used in the context of this report (see Appendix D for in-depth details of legislative terms and concepts).

Aboriginal and Torres Strait Islander

This report uses the term "Aboriginal and Torres Strait Islander" when referring to nationwide matters, and "Aboriginal" when discussing the participants interviewed in the fieldwork locations; no Torres Strait Islander people were interviewed in this research.

Cultural safety, cultural competency

Cultural competency requires special knowledge of the histories of Aboriginal and Torres Strait Islander people, specifically the effects of colonisation and the Stolen Generations, which requires a commitment to work in partnership with Aboriginal and Torres Strait Islander people to (support them to deliver and) produce services, programs and policies (Secretariat of National Aboriginal and Islander Child Care [SNAICC], 2013, p. 12).

Culture

We use the term culture informed by the anthropological literature which generally, since the post-1970s critique of British anthropology and its development as a discipline in societies colonised by the European powers, has avoided definitions of the term. As Robert Thornton noted, "there is not much point in trying to say what culture is … What can be done, however, is to say what culture does" (Thornton, 1988, p. 26). Many anthropologists regard culture as a process in that it involves, in human societies in any case, signifying meaning and meaning-making. In the traditional definition, especially in dictionaries, the concept of culture refers to the particular beliefs, values, traditions, ideas and practices of groups of people as well as their language; and religious, kinship and economic traditions and behaviour, including those norms that have been adopted in more recent times, and did not necessarily originate in the deep past. This is not always what is meant when people from other disciplines use the term. In the context of discussing family violence and its cultural contexts, factors and impacts, such as mental health and trauma, a useful approach to the concept of culture is provided by Aboriginal psychologists Graham Gee, Pat Dudgeon, Clinton Schultz, Amanda Hart and Kerrie Kelly (2014) in their work on Aboriginal and Torres Strait Islander social and emotional wellbeing to inform others working in the field of mental health on how to be mindful of their clients' "connection to culture":

> Connection to culture, as we use the term here, refers to Aboriginal and Torres Strait Islander peoples' capacity and opportunity to sustain and (re) create a healthy, strong relationship to their Aboriginal or Torres Strait Islander heritage. This includes all of the associated systems of knowledge, law and practices that comprise this heritage. Culture is, of course, a complex concept to try and define or articulate. We ascribe to Hovane and colleagues (2013) articulation of Aboriginal culture as constituting a body of collectively shared values, principals, practices and customs and traditions … Within this context, maintaining or restoring SEWB [social and emotional wellbeing] is about supporting Aboriginal and Torres Strait Islander

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Culture (continued)	peoples to maintain a secure sense of cultural identity and cultural values, and to participate in cultural practices that allow them to exercise their cultural rights and responsibilities.
	This can be deeply rooted in areas of wellbeing such as connection to spirituality and land, but also might not be due to the large variation and increasing complexity of Aboriginal identity (Gee et al., 2014, p. 61).
Family violence	Family violence is a broad concept, incorporating all forms of violence within the bounds of family. Definitions of family are dictated by cultural precepts of kinship and vary widely across societies. This has particular relevance in the context of Australian Aboriginal kinship systems, which form the basis of social organisation, such as extended families, clans or descent groups.
Intergenerational trauma	Historical trauma is a type of trauma transmitted across generations (that is, intergenerational trauma). It is defined as the subjective experiencing and remembering of events in the mind of an individual or the life of a community, passed from adults to children in cyclic processes as "cumulative emotional and psychological wounding" (Mu'id, 2004 as cited in Atkinson, 2013, p. 5).
Service provider	Unless indicated otherwise, the term service provider is used in this report to refer to anyone who works in Aboriginal community-controlled domestic and family violence services and government and legal and services. It was necessary to use a general term to conceal the identity and protect the privacy and safety of those we interviewed and the clients and cases they spoke about. To the greatest extent possible, we have de-identified all data to comply with ethics requirements. It would be relatively easy to identify those we interviewed if we were more specific about their roles and status in the two fieldwork locations in New South Wales and Victoria: rural towns with relatively small Aboriginal populations. The research did not involve a formal evaluation of such services, but rather aimed to analyse qualitative (ethnographic, interview and observational) and quantitative data to build a picture of the experience of Aboriginal women who disclose violence in the legal and social family violence service environments available to them. Unless indicated otherwise, the term is used to refer to police and court personnel as well to protect the privacy of individuals.

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Victims, perpetrators and women who have experienced violence

The research team is aware of the many variations and terminological approaches used in family and domestic violence research and policy. However, the research team chose the terminology used in the report guided by leading academic literature, Australian legal definitions of family and domestic violence, and the voices of our participants. We use the terms "victims", "perpetrators" and "women who have experienced violence" throughout the report.

The term victim is used throughout this report to refer to women who have suffered an injury as a direct result of an act of violence in accordance with the legal meaning of "primary victim" in Victorian law as defined in the *Victims of Crime Assistance Act 1996* (Vic) at s 7. The term is also used to refer to women who have suffered any of the legally defined types of "family violence" as defined in the *Family Violence Protection Act 2008* (Vic). The term victim is not generally used to mean "secondary victim" or "related victim" as defined in that Act.

In its general and non-legal usage, the term can be imprecise for research purposes, however, as Putt, Holder, and O'Leary (2017, p. 7) note:

> Much of the statistical data from service providers (e.g. police, hospitals) and from the partner services' client profiles indicate that much of the violence experienced by women is "domestic violence", that is, by an intimate or former intimate partner.

The term perpetrator is used in its ordinary dictionary meaning to refer to someone who has committed a crime or a violent or harmful act.

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Executive summary

Overview

Improving access to and suitability of legal and support services for Aboriginal and Torres Strait Islander perpetrators of violence against women is an urgent priority to reduce the unacceptably high rates of Aboriginal and Torres Strait Islander family violence. This report outlines our research investigating the pathways of Aboriginal and Torres Strait Islander men through the family violence legal and support service system, seeking better understanding of the opportunities for rehabilitation that are respectful and culturally responsive, and to see if these pathways enable positive shifts in the lives of women, children and communities affected by family violence.

As reported in the associated study of Aboriginal women who are victims of family violence (Langton et al., 2020), these matters are of national importance in Australia. Aboriginal and Torres Strait Islander people are increasingly over-represented in the criminal justice system and Aboriginal and Torres Strait Islander perpetrators of violence constitute the most significant group of offenders (Australian Law Reform Commission [ALRC], 2017), driving alarming rates of incarceration and other contacts with the criminal justice system in every jurisdiction.

Research aims and design

The research aimed to investigate the opportunities for rehabilitation for perpetrators of domestic and family violence that are respectful and culturally responsive, and to examine whether these pathways enable positive shifts in the lives of women and children affected by family violence. Using an ethnographic approach, mixed methods were used to investigate the following research questions:

1. What are the current barriers faced by Aboriginal and Torres Strait Islander male perpetrators of family violence that increase their likelihood of recidivism in relation to family violence, and what are the key impediments to their active engagement with police and the criminal justice system?

2. What are the practical and legal supports available to Aboriginal and Torres Strait Islander men amid a changing landscape of legal and policy reforms aimed at addressing the high levels of Aboriginal and Torres Strait Islander family violence in Australia?

3. How do policy and legal frameworks support or impede the capacity for Aboriginal and Torres Strait Islander male perpetrators of family violence to engage with available support services (such as men's behaviour change programs)?

The research methods included participant observation, semi-structured interviews (n=27) and focus groups (n=22) with a total of 97 participants, focusing on two research field sites: Mildura and Albury–Wodonga (see "Methodology" for more information). As anthropologists, we are experienced in "deep and insightful interactions" with research participants, and data obtained through interviews, focus groups and encounters "are a prerequisite for qualitative data interpretation" (Maher, Hadfield, Hutchings, & de Eyto, 2018, p. 1). "Deep listening" and precautionary measures to ensure the safety of the participants were fundamental to the approach adopted during all interviews, focus groups and less formal encounters, particularly in the context of potentially highly vulnerable participants.

The semi-structured interviews and focus groups varied in length of time. Some interviews and focus groups were extensive, and all were conducted with cultural safety and respect. Some participants were interviewed more than once in accordance with best practice in research (see for instance DeJonckheere & Vaughn, 2019). The interview and focus group approach was to actively listen and only engage with topics that participants felt comfortable discussing (see Bessarab & Ng'andu, 2010); this considered approach yielded evident success during the analytical research phase. There were 31 participants in Mildura, 61 in Albury–Wodonga and five relevant government officials in Melbourne.

Key findings

The associations between rates of Aboriginal and Torres Strait Islander family violence and Aboriginal and Torres Strait Islander incarceration and contacts with the criminal justice system for violence-related offences are complex, affecting reporting rates, recidivism and reoffending, and

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the effectiveness of services and institutions to reduce family violence.

The associated study of Aboriginal women who are victims of family violence (Langton et al., 2020) found three key barriers to the reporting of family violence incidents and the effectiveness of services: first, the reluctance of Aboriginal and Torres Strait Islander female victims of violence to report perpetrators of violence to the police for fear that they will contribute to the incarceration of Aboriginal and Torres Strait Islander men; second, the fear that the victim may be ostracised by their community for contributing to the incarceration of Aboriginal and Torres Strait Islander men; and third, the victim's fear of further violence and child removal in an already traumatic context. Historic injustices against Aboriginal and Torres Strait Islander people have led to high levels of systemic mistrust, distrust of the police, and resentment and anger among Aboriginal and Torres Strait Islander men. These factors all detrimentally impact on both perpetrator and victim engagement with the criminal justice and support systems.

This study found that recidivism rates affected by these historic injustices are additionally impacted by inadequate measures to enforce perpetrator accountability at both systemic and community levels, which create barriers to perpetrators taking responsibility for, and stopping, their violence and abuse against women and their children. High levels of recidivism were also found to be related to a lack of general understanding of protection orders, including a lack of familiarity with the complexity of the legal obligations they encompass. How protection orders are implemented, especially in relation to the consequences of breaching an order, can increase the likelihood of victimisation of Aboriginal and Torres Strait Islander people experiencing violence and of the perpetrator reoffending.

Other general barriers to the efficacy of legal and support services for Aboriginal and Torres Strait Islander men who are perpetrators of family violence were found to include:

- the under-resourcing of legal and support services to provide long-term, evidence-based programs that aim to shift men's understanding of family violence and provide the context-specific supports to do so

- the systemic "invisibilisation" of men who are perpetrators of family violence in some agencies
- the inappropriate identification of and support for perpetrators experiencing mental health or substance issues, neurological disability and mental illness
- the unfamiliarity and lack of training for service providers and related agencies regarding the dynamics of family violence, particularly related to the cultural importance of family for Aboriginal and Torres Strait Islander people.

Inadequate evidence base

Better understanding of the complexities and dynamics of intimate and familial relationships in Aboriginal and Torres Strait Islander families and communities is necessary in order to implement effective and appropriate legal responses for both victims and perpetrators. Understanding the context in which protection orders are implemented, understood and contravened is, thus, essential to improving the criminal justice response, as imprisonment for reoffending or contravening an order is still unlikely to deter continued violent behaviour towards victims in the community.

We found that the rates of violence perpetrated by Aboriginal and Torres Strait Islander men are difficult to determine, and more innovative, rigorous and comprehensive data collection and reporting is necessary to ensure funding is distributed more effectively. More targeted research is urgently required to provide better evidence of how to manage and rehabilitate perpetrators of family violence successfully within justice systems and communities, to ensure that Aboriginal and Torres Strait Islander women and children are no longer exposed to the extraordinarily high levels of violence currently being experienced. This is central to ending intergenerational cycles of trauma experienced by many Aboriginal and Torres Strait Islander communities.

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Recommendations for policy and practice

The magnitude of the challenge of shifting established belief systems of men who have perpetrated family violence is best understood in the context of the severity of violence inflicted on their victims. Thus, men's intervention and support programs require a rigorous evidence-base and evaluation for effectiveness to improve individual and service accountability outcomes. Further, in the absence of accountability tests for men who have attended rehabilitation programs, resources should be directed towards women's and children's safety to ensure they are provided with adequate protection from the violence.

In recognising the focus on family violence by policymakers and government, we examined where resources were allocated, determining that a significant proportion of overall funding was designated to men's programs. Many men who have perpetrated violence are mandated to complete men's intervention and support programs that aim to alter their attitudes towards women over a short period; we found this approach to be insufficient in ensuring the safety of women and children, highlighting the urgent need to address perpetrator accountability as a national priority.

Court services, men's support programs, alcohol and other drugs services and other relevant services for Aboriginal and Torres Strait Islander men who are perpetrators of family violence need to be more accessible, available and appropriately targeted to meet the ever-increasing demand and highly complex needs of different perpetrators to prevent further family violence and support stable and safe family relationships and communities.

Introduction

Family violence, and the reduction of associated significant and varied harms inflicted on victims and communities, is an issue of national importance in Australia. Perpetration of family violence is associated with alarming rates of incarceration of Aboriginal men (and women) and contributes to a wide array of other contacts with the justice system in every jurisdiction. The relationship between family violence experienced by Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander incarceration is complex, impacting on reporting, recidivism, and the effectiveness of services and institutions to reduce the rates of family violence. Barriers to reporting family violence perpetrated by Aboriginal and Torres Strait Islander men include:

- fear it will contribute to rapidly increasing incarceration rates
- fear that victims will be ostracised by their communities for contributing to the incarceration of Aboriginal and Torres Strait Islander men
- fear of further, escalating violence in an already traumatic context.

The findings from our associated study revealed that these fears are reasonable and that implications have been experienced by many Aboriginal women experiencing family violence (Langton et al., 2020).

For this study, the research team undertook four fieldwork trips to Mildura and Albury–Wodonga to capture a wide range of views on the accessibility, availability and acceptability of family violence services for Aboriginal men who had perpetrated violence. The research team collected ethnographic data from participant observation during all fieldwork as well as 27 interviews and 22 focus groups (n=97 participants). There were 31 participants in Mildura, 61 in Albury–Wodonga and five relevant government officials in Melbourne.

Research aims

This research investigated the pathways of Aboriginal and Torres Strait Islander men through the family violence legal and support system to develop the evidence base on what is, and is not, working to support the individual accountability of Aboriginal perpetrators to shift their attitudes and cease their violent behaviours.

The sites chosen for this research were Mildura in Victoria and Albury–Wodonga, all of which are located on the New South Wales–Victoria border. This enabled the team to collect evidence that would provide broader understanding of the legal and support service landscape, and to address and better understand the barriers presented in cross-border contexts. The following research questions framed the research.

1. What are the current barriers faced by Aboriginal and Torres Strait Islander male perpetrators of family violence that increase their likelihood of recidivism in relation to family violence, and what are the key impediments to their active engagement with police and the criminal justice system?

2. What are the practical and legal supports available to Aboriginal and Torres Strait Islander men amid a changing landscape of legal and policy reforms aimed at addressing the high levels of Aboriginal and Torres Strait Islander family violence in Australia?

3. How do policy and legal frameworks support or impede the capacity for Aboriginal and Torres Strait Islander male perpetrators of family violence to engage with available support services (such as men's behaviour change programs)?

Project rationale

This project provided nuanced and in-depth evidence from ethnographic studies in Victoria and New South Wales and addressed the differences in the overarching policy and legislative frameworks between the two jurisdictions. The project had numerous intersections and connections with a concurrent project focusing on Aboriginal and Torres Strait Islander women victims of family violence. The ethnographic and legal findings from this project, alongside those of the complementary project "Improving family violence legal and support services for Aboriginal and Torres Strait Islander women", map a holistic and complete picture of the family violence system for Aboriginal communities in regional Victoria and New South Wales.

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We designed the research questions framing the study with the aim of providing more nuanced understandings of why Aboriginal and Torres Strait Islander people are increasingly over-represented in the criminal justice system (Cunneen, 2009, 2010), particularly in relation to family violence. In Victoria, there were 3655 incidents of family violence in 2016–17 that were alleged to have been perpetrated by Aboriginal men (State of Victoria, 2017, p. 53). Although comprising less than 1 percent of the Victorian population, Aboriginal people made up 5 percent of all alleged offender reports (25,666) over the last 10 years (State of Victoria, 2017, p. 59).

The rate of family violence perpetrated by Aboriginal and Torres Strait Islander men is difficult to determine due to under-reporting, lack of appropriate screening by service providers, and incomplete identification of gender and Aboriginal and Torres Strait Islander status in many datasets (see Closing the Gap Clearinghouse, 2016; Cunneen, 2010; Day, Jones, Nakata, & McDermott, 2012; Willis, 2011). Our research supports the recommendations of Olsen and Lovett (2016) that more (and better) qualitative and quantitative research is necessary to ascertain the extent and impact of these forms of violence accurately.

The majority of homicides (between 60–85%) recorded in 2002–3 in Australia involving an Aboriginal or Torres Strait Islander perpetrator also involved an Aboriginal or Torres Strait Islander victim (Steering Committee for the Review of Government Service Provision [SCRGSP], 2016, p. 4.104). When the Aboriginal and Torres Strait Islander status of victim and perpetrator was known, 13.7 percent of homicides included both Aboriginal and Torres Strait Islander perpetrator and victim, whereas 4.6 percent involved a non-Indigenous perpetrator and an Aboriginal and Torres Strait Islander victim (SCRGSP, 2016, p. 4.104). In 2013–14, intimate partner violence was attributed to over half of the 24 Aboriginal and Torres Strait Islander homicides recorded (SCRGSP, 2016, p. 4.104).

One factor adding to the complexity of some experiences of family violence is that Aboriginal and Torres Strait Islander (and non-Indigenous) male perpetrators may have been subject to family violence themselves (Department for Victorian Communities, 2003). The National Aboriginal and Torres Strait Islander Social Survey also found that, in 2014–15, nearly one quarter (23%) of Aboriginal and Torres Strait Islander adults in Australia had experienced physical violence or had been threatened with physical violence in the previous 12 months (Australian Bureau of Statistics [ABS], 2016a; Closing the Gap Clearinghouse, 2016, p. 4). Aboriginal and Torres Strait Islander young people aged 15–24 years were found to be 22 times more likely to be hospitalised for family violence assaults than their non-Indigenous counterparts (Closing the Gap Clearinghouse, 2016, p. 5); Aboriginal and Torres Strait Islander Australians aged 25–34 years were found to be 46 times more likely to be hospitalised than their non-Indigenous counterparts (Closing the Gap Clearinghouse, 2016, p. 5). Another study from 2012–13 revealed that Aboriginal and Torres Strait Islander boys (aged 0–14 years) were 6.5 times more likely and Aboriginal and Torres Strait Islander girls (aged 0–14 years) 12.3 times more likely to be hospitalised for family violence-related assaults than non-Indigenous Australians (Closing the Gap Clearinghouse, 2016; SCRGSP, 2016).

Key national data on family violence

Box 1 and Box 2 provide an overview of some of the key measures of family violence in Australia, and those specifically for Aboriginal and Torres Strait Islander people. However, there are many limitations to the data relating to family violence in general, and more specifically data pertaining to Aboriginal and Torres Strait Islander male perpetrators. Some of the general limitations include inaccurate or incomplete Aboriginal and Torres Strait Islander status; lack of disaggregated data for specific regions or towns; and a scarcity of data pertaining to non-physical family violence such as psychological, emotional or financial abuse (Buxton-Namisnyk, 2015).

BOX 1: KEY NATIONAL FAMILY VIOLENCE MEASURES

One in six (1.6 million) women have experienced physical and/or sexual violence by a partner since age 15.

Family/domestic violence was a factor for 94,100 females (78%) and 27,000 males (27%) of the 121,000 clients seeking homelessness services in 2017–18, 26,500 (22%) of whom were aged 0-9 years old. Of all male clients experiencing family/domestic violence, half were between ages 0-9 years.

4600 women and 1700 men were hospitalised in 2016–17 due to family and domestic violence.

Of all spousal/partner assaults leading to hospitalisation, 63 percent required treatment of head or neck injuries, including brain injuries.

Nearly half of all assault-related brain injury hospitalisations were inflicted by a spouse or partner.

One in 16 (500,000) men have experienced physical and/or sexual violence by a partner since age 15.

One in 20 men have been sexually assaulted and/or threatened since age 15.

Source: Data extracted from the Australian Institute of Health and Welfare (AIHW, 2019)

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BOX 2: KEY DATA ON FAMILY VIOLENCE-RELATED MEASURES FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

Family violence occurs at higher rates in Aboriginal and Torres Strait Islander communities than in the general population.

Aboriginal and Torres Strait Islander people have increased risk factors for family violence, such as social stressors including poor housing and overcrowding, financial difficulties and unemployment.

In 2017, the majority of Indigenous assault victims recorded by police were victims of family violence, ranging from 64 percent (2700) in New South Wales to 74 percent (3900) in the Northern Territory. In 2016–17, Indigenous people were 32 times as likely to be hospitalised for family violence compared with non-Indigenous people.

Two in five Aboriginal and Torres Strait Islander homicide victims (41%, or 32 victims) were killed by a current or previous partner, compared with one in five non-Indigenous victims (22%, or 94 victims) during 2012–14.

Aboriginal and Torres Strait Islander children were approximately seven times as likely as non-Indigenous children to be the subject of substantiated child abuse or neglect.

In 2017–18, 16 percent (48,300) of Indigenous children received child protection services.

Aboriginal and Torres Strait Islander people made up 22 percent of all clients seeking homelessness services due to family violence in 2017–18.

Aboriginal and Torres Strait Islander adults make up less than 2 percent of the nation's total population, yet constituted over a quarter (28%) of the total prison population in 2018.

Aboriginal and Torres Strait Islander men are 14.7 times more likely to be imprisoned than non-Indigenous men (Aboriginal and Torres Strait Islander women are 21.7 times more likely to be imprisoned).

Source: Data extracted from ABS (2018); AIHW (2019); Australian Law Reform Commission (ALRC, 2017)

We commence this report by presenting a state of knowledge review, noting that the literature highlights the need for Aboriginal-led and designed studies that show the reality of family violence for Aboriginal and Torres Strait Islander men who are perpetrators of violence, and that this informed our work in Mildura and Albury–Wodonga.

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State of knowledge review

The state of knowledge review focuses on literature related to legal and support services for Aboriginal and Torres Strait Islander men who are perpetrators of family violence. While both men and women have come into contact with criminal justice and social service systems as victims, so too have both men and women been classed as perpetrators, although the victims are predominantly and overwhelmingly women, while the perpetrators are predominantly men.

This review addresses the literature on Aboriginal and Torres Strait Islander perpetrators that focuses on reducing the levels of family violence for Aboriginal and Torres Strait Islander peoples in alignment with the national priorities (Australia. Department of Social Services [DSS], 2016) that recognise complex intersectional issues (Blagg, Bluett–Boyd, & Williams, 2015; DSS, 2016).

The *National Plan to Reduce Violence against Women and their Children 2010–2022* ("the National Plan"; Council of Australian Governments, 2011) identifies the need to hold perpetrators accountable for family violence across all professional services, including community leaders, police, social and community services, health services, correctional services, and services specific to both victims and perpetrators (Blagg et al., 2015). The National Plan includes four action plans that underpin its implementation: the *First Action Plan 2010–2013 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (the First Action Plan; Council of Australian Governments, 2012); the *Second Action Plan 2013–2016 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (the Second Action Plan; DSS, 2014); the *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (the Third Action Plan; DSS, 2016); and the *Fourth Action Plan 2019–2022 of the National Plan to Reduce Violence against Women and their Children 2010–2022* (the Fourth Action Plan; DSS, 2019). The four action plans build on one another to construct a framework for responding to and addressing family and domestic violence. It is under the Third Action Plan that the need for perpetrator intervention programs to target behavioural change and reduce recidivism is highlighted (DSS, 2016, p. 33).

Focus of the state of knowledge review

This review of the existing literature and research focuses primarily on the state of knowledge of Aboriginal and Torres Strait Islander men who perpetrate or have perpetrated family violence. The review also presents an analysis of the literature, including gaps identified for further research. This review summarises some of the contextual and background information related to family violence experienced by Aboriginal and Torres Strait Islander women. The review used an integrative framework to enable the collation and synthesis of a broad range of data. The significant advantages of adopting an integrative approach have been demonstrated in other research related to violence against women (Madhani, Tompkins, Jack, & Fisher, 2014; Olsen & Lovett, 2016). As Olsen and Lovett (2016, p. 6) note, "the method allows for the incorporation of research from diverse empirical and theoretical sources including grey or unpublished literature".

The literature search strategies implemented included:
- searches of electronic databases of peer-reviewed literature (ProQuest; Applied Social Sciences Indexes and Abstracts [ASSIA]; ProQuest Social Science Journals; Web of Science; Scopus) using the search terms "Aborigin* or Indigenous" and "family violence or domestic violence or intimate partner violence" and "men" or "perpetrator" and "Australia" with a date range of 2000–2019
- citation tracking, hand-searching and snowballing from literature sourced in the electronic database search.

Other electronic databases searched included:
- Closing the Gap Clearinghouse
- Australian Domestic and Family Violence Clearinghouse
- Australia's National Research Organisation for Women's Safety (ANROWS)
- The Lowitja Institute
- Australian Institute of Family Studies Library
- Australian Indigenous HealthInfoNet
- Victorian Family Violence Database (VFVD).

Although empirical and grey literature have limitations

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(Wundersitz, 2010), including the definition and classification of what constitutes "violence", "to exclude literature based on 'quality' would discount literature that may reveal important insights into the lived experiences and cultural understandings of violence against women in Indigenous communities" (Olsen & Lovett, 2016, p. 6). This becomes evident with the inclusion of government reports on Aboriginal and Torres Strait Islander family violence (such as Al-Yaman, Van Doeland, & Wallis, 2006; Memmott, Stacy, Chambers, & Keys, 2001; Robertson, 2000). Reports like these provide a "wealth of information on Indigenous violence, gleaned from existing literature and from evidence provided by individual witnesses, public consultations and site visits" (Wundersitz, 2010, p. 9). This information has significant potential to assist in the development of theory, as government, policy and academic reports from the late 1980s and the 1990s—derived from disciplines including health, anthropology, criminology, psychology and legal fields—often engaged with various theoretical understandings of the "causes" of Aboriginal and Torres Strait Islander violence.

Integrative literature reviews "combine data from theoretical as well as empirical literature" (Whittemore & Knafl, 2005, p. 547). Integrative literature reviews advocate for an "explicit philosophical or theoretical perspective, focusing a review within a broad and diverse sampling frame, in contrast to integrative reviews that are solely descriptive of existing research" (Whittemore & Knafl, 2005, p. 548; see also Kirkevold, 1997). Torraco (2005, p. 362) refers to this process as "synthesizing the literature", in which the review "weaves the streams of research together to focus on core issues rather than merely reporting previous literature". In this manner, the integrative literature review becomes less about describing existing research and more about engaging with it, enlivening historical conceptions of Aboriginal and Torres Strait Islander family violence so as to develop innovative or renewed ways of understanding the issue. This is not a mere theoretical exercise but, as Cunneen and Rowe (2014, p. 5) posit, one that can have "profound political implications" for the primary prevention of violence in Aboriginal and Torres Strait Islander communities.

The integrative approach is a creative process of critical analysis, the burgeoning of a conceptual framework that develops from the gaps in the literature under review. Such analysis includes "the history and origins of the topic, its main concepts, the key relationships through which the concepts interact, research methods, applications of the topic, and so on" (Torraco, 2005, p. 362). It becomes vital then to recognise the critical contributions of Aboriginal writers to the issue of family violence in Aboriginal and Torres Strait Islander communities. Some of these key works are, however, published in data sources that are often excluded in similar research papers, on account of the scope or the exclusion of particular data sets (e.g. newspapers, magazines and editorial articles).

Understanding family violence in Aboriginal and Torres Strait Islander communities

The term "family violence" in the literature is broadly defined, incorporating a wide range of victim–offender relationships all contained within the confines of the family. The definition of family, however, is dictated by cultural precepts of kinship and varies widely across societies, for example as extended families, clans or descent groups. These can include groups based on the maternal line (often resulting in extended family networks) and those based on the paternal line, where relationships, roles and responsibilities in "family" arrangements are highly complex. Aboriginal kinship systems construct the post-contact family in more extensive and inclusive terms than, for example, family or household-related data reported in the national census, or other data such as police or hospital statistics (Rigsby, 1999; Sutton, 2003).

The majority of recent research in the area of Aboriginal and Torres Strait Islander family violence in Australia has been primarily undertaken from either criminological or social work perspectives. Very little of this research problematises or details the gaps in the multimodal legal and support systems from the experiential perspective of Aboriginal and Torres Strait Islander women and men who are attempting to navigate them. A recent study conducted by Andrews et al. (2018) focused on holistic program development for Aboriginal and Torres Strait Islander men who use violence against Aboriginal and Torres Strait Islander women. The study developed the

"Yarra Model", which provides a practice frame, privileging women's and children's safety through program work with Aboriginal men (Andrews et al., 2018, p. 11).

The Yarra Model is symbolic of men's identity, focusing on gender accountability targeted towards greater safety of women and children. The Model addresses socio-economic, psychological and political elements of the men's journey through the program (Andrews et al., 2018). As well, it captures the choices men make, the ebbs and flows, and the direction in which they are heading through the culturally appropriate, holistic program approach (Andrews et al., 2018). Holistic programs are often the desired approach for Aboriginal and Torres Strait Islander communities because holistic care fulfils the "cultural needs of participants to facilitate healing" (Gallant, as cited in Andrews et al., 2018, p. 3). The Yarra Model is one of many models that exist, though it is worth noting as it demonstrates contemporary, community-led design and implementation.

Australian anthropologists have outlined the extent of violence that Aboriginal and Torres Strait Islander women have experienced in many Aboriginal and Torres Strait Islander communities (Burbank, 1994, 2011; Langton, 2010, 2011; Sutton, 2006, 2009). In particular, Burbank's extensive work on stress (2011) and women's aggression (1994) in Aboriginal communities communicates a range of detailed ethnographic observations and contextual complexities that explain the cultural construction of anger and aggression in communities across northern Australia. Other significant research that has added to the understanding of the role of culture for Aboriginal and Torres Strait Islander family violence includes McCoy's (2008) work exploring cultural models of sickness and health for Aboriginal and Torres Strait Islander men, and the research of Day et al. (2006, 2008) addressing male Aboriginal and Torres Strait Islander anger. Data analysis from the *Beyond Bandaids: Exploring the Underlying Social Determinants of Aboriginal Health* report (Anderson, Baum, & Bentley, 2004), showed the correlation between common health concerns in Aboriginal and Torres Strait Islander communities and their causes. The identified health issue of family violence showed the cause referred to as a "lack of role models", and the identified health issue of family issues and breakdown was shown to result from "unsafe practices in daily life" (Anderson et al., 2004, pp. 6–7).

In the literature from international jurisdictions, intimate partner violence has been found to occur in the context of, or be triggered by, emotionally charged events (see e.g. Brear & Bessarab, 2012). Similarly, in Australia, funerals can be triggering events for violence, while also offering culturally normative demonstrations of respect among family members (Babidge, 2017). Cultural norms, values and practices, especially in relation to kinship bonds and allegiances, may be useful in developing "strengths-based" violence prevention and healing programs, but may also be a deterrent to preventing violence, such as when men justify their family violence, falsely, as an Aboriginal cultural practice. While some researchers refer to pre-contact or traditional forms of violence, there is a general consensus that family violence experienced by Aboriginal and Torres Strait Islander people in contemporary times is significantly different and cannot be justified by appeals to "tradition" (Anderson, 2002; Atkinson, 1990, 2002, 2003; Bennett, 1997; Cripps, 2012; Hovane, 2006; Lucashenko & Best, 1995; Robertson, 2000).

The majority of the relevant literature, especially reports by Aboriginal and Torres Strait Islander experts, recommends a holistic approach to Aboriginal and Torres Strait Islander health. Studies have confirmed the need for a more holistic approach to health and family violence support services (see Anderson et al., 2004, p. 7). Tsey and Every (2000) reported in their study the effectiveness of a family wellbeing course, emphasising the importance of Aboriginal and Torres Strait Islander-initiated and -led programs to address trauma, though they found discouraging results in relation to Aboriginal and Torres Strait Islander male participation in the course (p. 513). The study acknowledged the high suicide rates among Aboriginal and Torres Strait Islander men alongside the high rates of imprisonment, concluding that more Aboriginal and Torres Strait Islander men need to be targeted to encourage participation in future family wellbeing courses (Tsey & Every, 2000).

Aboriginal and Torres Strait Islander men and family violence

It is important to emphasise that not all Aboriginal and Torres Strait Islander men use violence: "As in all societies, some young men are fine role models, and male Elders are

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speaking out in a responsible manner and working towards change" (Aboriginal and Torres Strait Islander Women's Task Force on Violence, 1999, p. 193). The rates of violence perpetrated by Aboriginal and Torres Strait Islander men are difficult to determine due to the under-reporting by victims, lack of appropriate screening by service providers, and incomplete identification of gender and Aboriginal and Torres Strait Islander status in many datasets (Closing the Gap Clearinghouse, 2016; Cunneen, 2010; Day et al., 2012; Willis, 2011). Olsen and Lovett (2016) argue that more qualitative and quantitative research is necessary to ascertain the extent of this violence more accurately.

Aboriginal and Torres Strait Islander people are increasingly over-represented in the criminal justice system (Cunneen, 2008, 2010), particularly in family violence incident reports. In Victoria, there were 3655 incidents of family violence in 2016–17 that were alleged to have been perpetrated by Aboriginal men (State of Victoria, 2017, p. 53). Although comprising less than 1 percent of the Victorian population, approximately 5 percent of the alleged offenders were Aboriginal (25,666) over the last 10 years (State of Victoria, 2017, p. 13).

It is necessary to acknowledge that family violence against Aboriginal and Torres Strait Islander women is not exclusively or directly linked to Aboriginal and Torres Strait Islander men, and that not all perpetrators of violence against Aboriginal women are Aboriginal men (Andrews et al., 2018). However, in the context of this research, Aboriginal and Torres Strait Islander perpetrators of family violence are the focus. Existing research reports on the historical effects that colonisation has for Aboriginal and Torres Strait Islander men, "erod[ing] their place in the family and substantially fragment[ing] their role in the community" (Aboriginal and Torres Strait Islander Women's Task Force on Violence, 1999, p. 193). Aboriginal and Torres Strait Islander women have affirmed that

> their men are hurting too, and if there is to be a break in the cycle of violence, they must work collectively to reunite their families and to address the effects of alcohol and drug misuse and to eradicate these illnesses from their lives. (Aboriginal and Torres Strait Islander Women's Task Force on Violence, 1999, p. xii)

The Victorian *Family Violence Rolling Action Plan 2017–2020* (State of Victoria. Department of Premier and Cabinet, 2017) identified the need for culturally appropriate responses by police and improvement of Victoria Police's response to family violence as critical areas to be addressed. Victims of violence may go on to become perpetrators of violence, attesting to the pervasiveness of the problem of family violence in Aboriginal and Torres Strait Islander communities and the sense of "inevitability" that may influence their behaviour (Willis, 2011, p. 7). In Victoria, when Aboriginal and Torres Strait Islander men enter the prison system, they are 1.3 times more likely to return to prison than non-Indigenous people (State of Victoria, 2017, p. 62). This is similar to national data that places recidivism rates between 1.2 and 1.8 for Aboriginal and Torres Strait Islander adults within 2 years of offending (Allard, 2010, pp. 3–4; see also Calma, 2008).

In remote and regional areas, higher rates of offending are often recorded for Aboriginals and Torres Strait Islander people. The available data and literature indicate that there is an association between higher incidence rates and the limited services available in Aboriginal and Torres Strait Islander communities in regional and remote areas (Bryant & Willis, 2008; Memmott et al., 2001; Wundersitz, 2010). A critical factor concerning the balance between restorative and punitive justice approaches in preventing Aboriginal and Torres Strait Islander family violence is understanding the distinct ways in which Aboriginal and Torres Strait Islander communities understand and approach the criminal justice system (Olsen & Lovett, 2016).

In Aboriginal and Torres Strait Islander communities and family networks, perceptions of historical injustices, especially the forced removal of Aboriginal and Torres Strait Islander children from their families, have shaped a generational lack of trust towards police services and the criminal justice and social service systems and, in the light of the Stolen Generations, a lack of trust in child protection services. These are primary factors in a reluctance to report violence and to access the services available for all Australians. The failure of criminal justice responses to family violence is exacerbated in Aboriginal and Torres Strait Islander communities on account of this lack of trust. Criminologist Chris Cunneen reports that Aboriginal and Torres Strait Islander men's

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issues with authority and the impact of high levels of police scrutiny and surveillance "will generate feelings of resentment, injustice and anger" that limit the efficacy of the criminal justice system (Cunneen, 2008, p. 43).

Such tensions are evident in the way that violence intervention orders are implemented and contravened in Aboriginal and Torres Strait Islander communities. The complexity of legal processes coupled with a lack of knowledge regarding the requirements, obligations and consequences of breaching an order can increase the likelihood of further victimisation of Aboriginal and Torres Strait Islander victims and of the perpetrator reoffending. In some circumstances, a victim may breach an order of protection, and in some jurisdictions be charged with such a breach (Douglas & Fitzgerald, 2018, p. 49).

Therefore, it is necessary to understand the complexities of intimate and familial relationships when it comes to implementing appropriate legal responses to both victims and perpetrators (Commonwealth Attorney-General's Department, 2010, p. 23; Nancarrow, 2016, p. 180). In Cunneen's 2009 study, the frequency of orders involving Aboriginal and Torres Strait Islander women as victims was due to police initiating the process (Cunneen, 2009, p. 327). In remote communities, this number increased exponentially. As Cunneen (2009, pp. 326–327) observed:

> This raises issues about the sense of ownership of the legal process by Aboriginal and Torres Strait Islander people and has implications in terms of either the victim or the respondent understanding the nature of the order.

This was also reflected in Aboriginal and Torres Strait Islander men's attitudes towards imprisonment, in which there is neither "shame" (Blagg, 2008) nor "value" in "public denunciation" (Cunneen, 2009, p. 327). Moreover, as Douglas and Fitzgerald (2018, p. 48) contend, the over-representation of Aboriginal and Torres Strait Islander people in the context of contravening violence orders is not only reflected at the "level of policing and prosecution but also at the sentencing level". Understanding the context in which violence intervention orders are both implemented and contravened is therefore vital to improving criminal justice responses, as imprisonment for reoffending or contravening an order is still unlikely to deter continued violent behaviour towards known victims in the community.

There is also a strong resistance among some Aboriginal and Torres Strait Islander men to taking accountability for the violence they perpetrate against their victims. This attitude can be shared by communities with higher proportions of Aboriginal and Torres Strait Islander people, justifying, excusing or dismissing male violence—as behaviour related to "colonisation", "culture", stress, anger or alcohol—compared to that of non-Indigenous Australians (Closing the Gap Clearinghouse, 2016, p. 6; VicHealth, 2014; Willis, 2011, p. 3).

Violence perpetrated by Aboriginal and Torres Strait Islander men may then become normalised by non-Indigenous community members as a problem that does not concern the wider community, with historical ignorance being dominant. Some Aboriginal and Torres Strait Islander men tend to view violence as part of Aboriginal and Torres Strait Islander culture and consider "that by becoming perpetrators of violence they are maintaining culture" (Department for Victorian Communities, 2003, p. 100). For these reasons, it is important for Aboriginal and Torres Strait Islander women to translate and interpret the language used by Aboriginal and Torres Strait Islander men to describe family violence, as it masks the "lived realities of community members' experience of violence" (Cripps, 2007, p. 14).

Family violence protection orders and criminal justice responses

In Australia, the central statutory and legal measures aiming to protect the safety of women and their children are family violence orders and criminal law (Taylor, Ibrahim, Wakefield, & Finn, 2017). Family violence orders are generally issued under civil proceedings and are enforced by police. Breaches of family violence orders have criminal and civil implications in different jurisdictions (Dowling, Morgan, Hulme, Manning, & Wong, 2018). During the 1980s, legislation was introduced in all states and territories to establish family violence orders (Taylor et al., 2017).

In 2017, the National Domestic Violence Order Scheme (NDVOS) was introduced as a response to concerns raised by the Australian Law Reform Commission regarding inconsistencies between statutes and practice across jurisdictions and the lack of cross-border enforceability

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Table 1: Family violence order scheme name by state and territory

State or territory	Family violence orders
Victoria	Family violence intervention order
New South Wales	Apprehended domestic violence order
South Australia	Intervention order
Western Australia	Violence restraining order
Tasmania	Family violence order
Queensland	Protection order
Northern Territory	Domestic violence order
Australian Capital Territory	Domestic violence order

Source: Family Court of Australia (2018)

of protection orders (Australian Law Reform Commission & New South Wales Law Reform Commission, 2010). This scheme has driven legislative amendments in all jurisdictions to enable national recognition and enforcement of family violence orders made in any jurisdiction. The scheme is facilitated by a national information system to assist in cross-jurisdictional information sharing (Commonwealth Attorney-General's Department, 2019). There has been no research examining the implementation of the NDVOS. Given the specific mobility patterns of Aboriginal and Torres Strait Islander people, with their kinship networks in communities located across jurisdictions, the effectiveness and enforcement of the NDVOS has significant implications, indicating the need for future research in the area.

Nancarrow (2010) argued that there is a dilemma facing Aboriginal and Torres Strait Islander women in communities where the imprisonment rates for Aboriginal and Torres Strait Islander men are exceedingly high. She and other researchers have argued that these high rates create additional barriers for victims reporting family violence, who fear criticism and intimidation by other community members for any potential consequent incarceration of offenders (Nancarrow, 2010; see also Holder, Putt, & O'Leary, 2015).

Although it is well established that Aboriginal and Torres Strait Islander women experience family violence at higher rates than the rest of the population, police initiate the vast majority of family violence orders in different remote areas (Cunneen, 2009, p. 326; Nous Group, 2013; Queensland Indigenous Family Violence Legal Service [QIFVLS], 2014). Cunneen's (2009, 2010) study of Aboriginal and Torres Strait

Islander women's experiences of family violence indicated that there are many reasons a victim may choose not to seek family violence orders against the perpetrator, including:

- fear of the perpetrator
- family and kinship issues
- the nature of Aboriginal and Torres Strait Islander relationships
- fear of intervention by child welfare authorities and the subsequent removal of children
- the unavailability of community support and services
- lack of police presence and police responses
- empathy for the perpetrator (Cunneen, 2009, p. 325).

Cunneen (2009) detailed how the complexity of family and kinship issues in different Aboriginal and Torres Strait Islander communities can have specific implications for decision-making for victims seeking family violence orders. The "perpetrator" may, for instance, involve a larger group beyond the individual, including the perpetrator's extended family group. As a consequence, if the victim makes an application for a family violence order, it may lead to the escalation of retaliatory violence towards the victim by family members of the perpetrator. In this instance, family violence orders offer little protection to the victim (Cunneen, 2009).

The highly influential *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (Aboriginal and Torres Strait Islander Women's Task Force on Violence, 1999, p. 37) outlined key problems often encountered by Aboriginal and Torres Strait Islander female victims in relation to family violence orders. Although women may take out orders against the perpetrator and avail themselves of all other legal

options, these actions seem to provide little protection from the abuse. In many instances, the perpetrator receives more support from the community than the victim, intensifying the victim's vulnerability. This assistance can include familial support, service support and wider community support. The report also noted that the ethnocentric and racial values embedded within the construction, implementation and enforcement of family violence orders could render them ineffective in Aboriginal and Torres Strait Islander communities (Robertson, 2000).

The Victorian *Family Violence Rolling Action Plan 2017–2020* (State of Victoria. Department of Premier and Cabinet, 2017) identified the need for culturally appropriate responses by police and an improvement in Victoria Police's response to family violence as critical areas to be addressed. Some Aboriginal and Torres Strait Islander victims of violence may go on to become the agressors as a form of self-defence (Snowball & Weatherburn, 2008; Stubbs & Tolmie, 2008). This attests to the pervasiveness of the problem of family violence in some Aboriginal and Torres Strait Islander communities and the sense of "inevitability" that weighs on their experiences (Willis, 2011, p. 7). In Victoria, when Aboriginal men enter the prison system, they have been found to be 1.3 times more likely to return to prison than non-Indigenous men (State of Victoria, 2017, p. 62). The inadequacy of criminal justice responses to family violence is heightened in Aboriginal and Torres Strait Islander communities in relation to historic injustices, mistrust in the system, and distrust of the police:

> Profound levels of mistrust are the legacy of Australia's colonial history, including oppression through legal and government systems and policies of forced assimilation— the impact of which cannot be overstated. (Aboriginal Family Violence Prevention Legal Service Victoria [FVPLS], 2015, p. 46)

For Aboriginal and Torres Strait Islander men, issues with authority and the impact of high levels of police scrutiny and surveillance "generate feelings of resentment, injustice and anger" that affect the efficacy of the criminal justice system (Cunneen, 2008, p. 43). Further, unfamiliar legal processes coupled with complex requirements, obligations and consequences of breaching an order can increase the likelihood of victimisation of Aboriginal and Torres Strait

Islander peoples and of the perpetrator reoffending. In some circumstances, victims inadvertantly breach protection orders and are consequently charged (Douglas & Fitzgerald, 2018). Therefore, it is necessary to understand the complexities of intimate and familial relationships when it comes to implementing appropriate legal responses to both victims and perpetrators (Commonwealth Attorney-General's Department, 2010; Nancarrow, 2016).

Cunneen's 2009 study found that the frequency of protection orders involving Aboriginal and Torres Strait Islander women as victims was due to police initiation of legal processes (see also Douglas & Fitzgerald, 2018; Nancarrow, 2016). In remote communities, this number increased exponentially. As Cunneen observed:

> This raises issues about the sense of ownership of the legal process by Indigenous people and has implications in terms of either the victim or the respondent understanding the nature of the order. (2009, pp. 326–327)

Further, Aboriginal and Torres Strait Islander peoples have significantly higher rates of contravening protection orders than non-Indigenous Australians. Douglas and Fitzgerald (2018) have contended that the over-representation of breaches is reflected at the "level of policing and prosecution but also at the sentencing level" (p. 48). Understanding the context in which family violence protection orders are implemented, understood and contravened is, thus, essential to improving the justice responses, as imprisonment for reoffending or contravening an order is still unlikely to deter continued violent behaviour towards known victims in the community.

One study found a strong resistance among Aboriginal and Torres Strait Islander men to take accountability for the violence they have perpetrated against known victims. As Day et al. (2012, p. 110) note, Aboriginal and Torres Strait Islander men in their study were found to "dispute the evidence that is presented to police", believing their violent behaviour to be justified and appropriate for them in the context of their relationships.

Day et al.'s (2012) study also reported additional complexities affecting the decisions of Aboriginal and Torres Strait Islander men to cooperate with the justice system when residing in

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remote and regional areas. These include the role of authority, fear of (re-)imprisonment, stereotyping of offenders, lack of correct information, and the limited availability of services that offer culturally informed models of violence prevention. Further, the existing evidence base lacks the necessary detail for developing better responses for women (Cunneen 2010; Putt et al., 2017). These factors are compounded by the significant existing gaps in service responses that affect "both victims and perpetrators of violence" (Department for Victorian Communities, 2003, p. 74).

As Cripps (2007, p. 14) contends:

> Appropriate levels of support are needed for everybody within the family and kin networks in question, including the perpetrator, as they are all affected by the violence (albeit to varying degrees).

Australian service providers have identified client-centredness, referral pathways to other services, advocacy, cultural safety, and having Aboriginal and non-Indigenous staff working together as central to successful services (Putt et al., 2017). Aboriginal and Torres Strait Islander family violence is a "multi-dimensional problem" (Olsen & Lovett, 2016, p. 5) that requires a "holistic approach" (Cripps, 2007, p. 14) to addressing, reducing and preventing family violence.

Legal systems abuse

An emergent body of literature has identified a practice of systems abuse by perpetrators of family violence in Australia (Australasian Institute of Judicial Administration [AIJA], 2019; Douglas et al., 2018; Reeves, 2018). Systems abuse refers to manipulation of the legal system, using tactics that are "malicious, frivolous, vexatious, querulous, or an abuse of process" (AIJA, 2019, p. 848) in order to "exert control over, threaten and harass a partner" (Reeves, 2018, p. 1). One such example of systems abuse may occur when perpetrators make applications for family violence cross-orders (or cross-applications) against the victim in response to the order against themselves. Cross-orders are made for different reasons in this context (AIJI, 2019, s 3.1.11):

- to neutralise the original order set in place by the victim

- to intimidate the victim so that they will withdraw their application
- to trivialise the victim's claims for protection.

Other forms of systems abuse, particularly in regional and remote areas, include what is known as "conflicting out", where the perpetrator seeks preliminary advice from multiple legal services, effectively limiting or denying the victim access to any legal representation due to conflicts of interest (AIJA, 2019, s 3.1.11).

There is a large body of international literature outlining how victims of family violence can experience secondary systemic violence that reinforces victim entrapment due to inappropriate responses within the legal system in relation to family violence orders (Busch, Robertson, & Lapsley, 1995; Douglas et al., 2018; Gillis et al., 2006; Hartman & Belknap, 2003; Hunter, 2005; Ptacek, 1999). The failure of the legal system to address this form of systems abuse can lead to victim disillusionment regarding lack of access to justice and disengagement with the legal system.

The issue of systems abuse is not directly addressed in the literature for Aboriginal and Torres Strait Islander perpetrators of family violence. However, Cunneen (2010) has referred to secondary abuses in relation to legal system failures for Aboriginal and Torres Strait Islander victims, noting the low levels of attendance of Aboriginal and Torres Strait Islander victims and respondents at court when family violence orders are put in place, and arguing that "the picture emerges that the legal system is extraneous to the issue of Indigenous violence; it is a legal system that lacks an organic connection to community" (Cunneen, 2010, p. 327). By extension, it can be inferred that the inability of the legal system to engage Aboriginal and Torres Strait Islander victims (and perpetrators) in court processes related to family violence leads to similar secondary abuses.

Some of the barriers reported to be faced by Aboriginal and Torres Strait Islander men in accessing intervention and related programs include the difference in jurisdiction for court referrals to intervention programming; inconsistencies or delays around program attendance; whether such programs are voluntary or mandatory; and, significantly, whether such

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programs are culturally specific to the experiences and needs of Aboriginal and Torres Strait Islander men (Blagg et al., 2015; Day et al., 2012). Other impediments might include high attrition rates for rehabilitation programs (Day et al., 2012; McMurran & Theodosi, 2007).

There is insufficient evidence available in the published literature and data to ascertain the overall effectiveness of Aboriginal and Torres Strait Islander-specific family and domestic violence intervention or prevention programs in reducing reoffending and recidivism. However, this could be due to a scarcity of rigorous evaluations of these programs (Closing the Gap Clearinghouse, 2016; Cripps & Davis, 2012).

It is likely that there are further compounding factors for Aboriginal and Torres Strait Islander people engaging with the judicial system, such as cultural approaches and understanding of justice. This gap in the literature is another area requiring further investigation.

New South Wales and Victorian government responses to family violence

The New South Wales government response to domestic and family violence

In 2011, the Legislative Council Standing Committee on Social Issues commenced an inquiry into domestic violence trends and issues in New South Wales. Following the establishment of the Inquiry, significant developments in domestic violence policy in New South Wales were instigated. First, an independent review of the whole-of-government domestic violence policy was conducted, resulting in the *Stop the Violence, End the Silence: NSW Domestic and Family Violence Action Plan* (New South Wales Department of Premier and Cabinet, 2010). In November 2011, the NSW Auditor-General released a report titled *NSW Auditor-General's Report: Performance Audit—Responding to Domestic and Family Violence* (Audit Office of New South Wales, 2011).

In 2016, the New South Wales Government released a blueprint for reform titled *NSW Domestic and Family*

Violence Blueprint for Reform 2016–2021: Safer Lives for Women, Men and Children. This document outlines a five-year plan aiming to "prevent violence, intervene early with vulnerable communities, support victims, hold perpetrators accountable, and deliver evidence-based quality services to make victims safer and support their recovery" (New South Wales Ministry of Health, 2016, p. 1).

In 2018, the New South Wales Government released an evaluation of the Domestic Violence Disclosure Scheme (DVDS) and Crisis Assistance Service (CAS) programs, reporting that a major barrier was the lack of training of those in those services, as well as a lack of referrals from police, who did not prioritise the services (New South Wales Department of Family and Community Services, 2018).

The Victorian government response to domestic and family violence

> Family violence policy must … stop violence at its source. It should never be … the victim's responsibility to stop [it] … those who use violence should always be held responsible for their actions. (State of Victoria, 2016b, p. 10)

In 2016, the final report for the RCFV was delivered to the Victorian Government in eight volumes with 227 recommendations. The definition of "family violence" for the RCFV was taken from the *Family Violence Protection Act 2008* (Vic), s 5(a) and (b):

Family violence is —

(a) behaviour by a person towards a family member of that person if that behaviour—

(i) is physically or sexually abusive; or

(ii) is emotionally or psychologically abusive; or

(iii) is economically abusive; or

(iv) is threatening; or

(v) is coercive; or

(vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or

(b) behaviour by a person that causes a child to hear

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or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a). (State of Victoria 2016c, p. 2)

The RCFV recommendations included whole-of-government, non-government organisational and legal changes to provide a holistic response to the many challenging issues posed by family and domestic violence. The RCFV report stated that "stopping family violence requires a multi-faceted, sustained effort by government. This effort cannot be effective without strong leadership, bipartisan support and partnership with the community" (State of Victoria, 2016c, p. 12).

The RCFV found the response to perpetrators was under-developed, despite existing initiatives, and that to overcome this there had to be an ongoing focus on effective perpetrator interventions. The RCFV report noted the following problems with perpetrator programs (State of Victoria, 2016c):

- too few programs to cater for need
- insufficient follow-up and monitoring
- inadequate surveillance of program quality or methodologies applied
- lack of response to variety of needs of different perpetrators (particularly those unsuitable for group work)
- not enough collaboration across key agencies, experts and stakeholders.

The RCFV report also noted that a significantly higher investment was needed for Aboriginal community-controlled and culturally safe services to support Aboriginal families experiencing family violence (State of Victoria, 2016c).

In January 2017, the Victorian government established the Family Violence Reform Implementation Monitor (FVRIM), in accordance with the *Family Violence Reform Implementation Monitor Act 2016* (Vic), to oversee the execution of the RCFV recommendations. The FVRIM also refers to the Victorian government's 10-year plan, *Ending Family Violence: Victoria's Plan for Change* (State of Victoria, 2016a) as an instrument to examine the process and progress of implementation of the recommendations of the RCFV. This plan was a recommendation of the RCFV and is intended as an outline of

recommendation deliverables. The FVRIM has handed down two reports on the progress of government performance in enacting the RCFV recommendations to date.

In 2019, the RCFV reported that they had implemented 143 recommendations of the 227 recommendations and noted that the other 84 recommendations were in progress (Family Safety Victoria, 2019). It remains unclear at this stage how successful the implementations have been, and we will learn more as they are rolled out and actioned by communities involved. We are hopeful that they will undergo a rigorous evaluation process that results in a clear understanding of what is working.

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Research methods

Multi-sited ethnographic research

The use of multi-sited ethnography is an important development in anthropology, and is most useful in complex studies such as this. This form of ethnography is particularly well suited to a study investigating assemblages of family violence services, policies and legislation as it allows an in-depth exploration of highly mobile components (both spatially and geographically) including multi-jurisdictional, temporal and overlapping policy; responses and interactions of men with services, policies and legislation in urban and regional contexts; and interconnectivity. Marcus (1999) contends that multi-sited ethnographies allow for the examination, investigation and ethnographic construction of both the life worlds of spatially diverse subjects and elements of the system in which the subjects are situated through the links and relations indicated at the various sites.

Further, Falzon (2009) contends that multi-sited ethnographies arise from the need to follow "people, connections, associations, and relationships across space" (pp. 1–2). This study's ethnography was located at two fieldwork sites across two jurisdictions of Australia, both in regional contexts. The sites were Mildura in Victoria and Albury–Wodonga, all of which are located on the New South Wales–Victoria border. This enabled the research team to collect evidence that would provide broader understanding of the legal and service landscape and to address the difficulty of living between jurisdictions, and how this is managed by participants and services. The main research methods employed for this multi-sited ethnographic study were semi-structured interviews, focus groups and participant observation.

Semi-structured interviews

Interviews were conducted with female victims of family violence, male perpetrators of family violence, relevant service providers from both Aboriginal and Torres Strait Islander and non-Indigenous organisations, legal services, court services, and others within the community based on recommendations from key stakeholders. The interviews were audio-recorded and fully transcribed. Interviews were conducted in a quiet place to aid audio recording, where the participant felt comfortable and where they felt their privacy

and confidentiality were best protected. These included locations such as private homes, private office spaces or other locations as requested by the participant. The duration of the interviews was approximately 1 hour. Participants answered questions based on thematic interview schedules developed by the research team, alongside other questions that developed throughout the interview. Some participants were requested to participate in follow-up interviews based on data collected from the first interview.

Focus groups

Each focus group consisted of 2–10 individuals, either:

- professionals from either an Aboriginal or non-Indigenous workplace that worked with people experiencing violence, such as a wellbeing service, a legal service, a health service or a women's shelter
- community members (both Aboriginal and non-Indigenous) who had been referred to the researchers by stakeholder services.

The focus groups were audio-recorded and fully transcribed. Consenting focus group participants were asked to participate in discussions that lasted between 60–90 minutes. The participants were asked to discuss a number of key themes. Focus group locations were defined according to participant availability and appropriateness of setting according to the make-up of the group.

Participant observation

Participant observation enabled the researchers to advance understandings of how local factors shape Aboriginal and Torres Strait Islander men's access to and use of family violence support services and the justice system (e.g. the physical location of services) and how this differed between fieldwork sites. Participant observation included observation and informal conversations with individuals in the community at the field sites. Data were recorded as field notes during research fieldwork visits and transcribed to digital word documents.

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Table 2: Population of fieldwork sites

Local government area	Total population	Aboriginal and Torres Strait Islander population
Mildura	53,878	2065 (3.8%)
Albury	51,106	1417 (2.8%)
Wodonga	39,351	975 (2.8%)

Source: ABS (2016b, 2016c, 2016d)

Critical, socio-legal audit of family violence legal framework

This aspect of the research was an audit of civil domestic and family violence-related legislation across all jurisdictions with a focus on the fieldwork jurisdictions in this study (Victoria and New South Wales), as well as child protection regimes and relevant family law. The audit focused on legislation, and did not cover subordinate legislation, such as regulations or rules. It included the mapping of legislative and major administrative changes for the past 20 years. The audit was then correlated with the study's ethnographic data to assist in analysis of the interviews with personnel in government departments and agencies. Their perspectives, while subjective to some extent, provide an understanding of the complexity of the systems and the strengths and weaknesses of laws and policies. The range of factors considered in this socio-legal analysis grew as the investigation proceeded and as the variations and problems that arose from the legal and administrative settings emerged in the interviews. A summary of the issues is set out below, along with some methodological challenges.

Some of the interviews have provided sufficient data to describe a range of experiences that could adequately represent the situation of victims and perpetrators at the two fieldwork sites. Combined with secondary data from police, health providers and courts, this approach to the socio-legal analysis provided a detailed picture of Aboriginal and Torres Strait Islander family violence to add to the literature in this field.

Fieldwork sites

This study was conducted at the fieldwork sites of Mildura and the twin cities of Albury and Wodonga. The population of Mildura is approximately 53,000, with an Aboriginal and Torres Strait Islander population of approximately 2.3 percent (ABS, 2016c). In 2016, Albury had a population of 51,076 in the local government area, with 1417 (2.8%) Aboriginal and Torres Strait Islander peoples (ABS, 2016d). Wodonga had a population of 39,347 people, with 980 (2.49%) Aboriginal and Torres Strait Islander peoples reported in 2016 (ABS, 2016b). Although Albury and Wodonga are two distinct cities, one on each side of the Victoria and New South Wales border, due to their close proximity and the high mobility of population between the two, we examined them as a single fieldwork site.

The fieldwork sites, Mildura and Albury–Wodonga, are regional cities that were selected to enable the investigation of the impact of multi-jurisdictional policies and programs for Aboriginal and Torres Strait Islander women, men and children who have experienced or perpetrated family violence and live in a state border town. The cities are situated on the border of Victoria and New South Wales, allowing for comparative analysis and a close examination of the legal and policy frameworks of both jurisdictions. Local-level courts and mainstream family violence services operate in the two locations.

In Mildura, Mallee District Aboriginal Services (MDAS) offer "case management" and "time out" services for Aboriginal and Torres Strait Islander male offenders of family violence, providing culturally appropriate ways of responding to family violence perpetrated by Aboriginal and Torres Strait Islander men. The Victorian Aboriginal Legal Service (VALS) and the Mallee Indigenous Family Violence Regional Action Group (IFRAG) operate across Victoria to implement community-led responses to family violence in Aboriginal and Torres Strait Islander communities. In Albury–Wodonga, Mungabareena Aboriginal Corporation is often the first point of contact for Aboriginal and Torres Strait Islander families experiencing family violence.

A comparative analysis was conducted to highlight the differences between the two fieldwork sites. Mildura had higher reported rates of family violence than Albury–Wodonga.

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Table 3: Interviews

Location	Participants	Participant categories
Mildura	16	Aboriginal perpetrators of family violence, Aboriginal community members, Aboriginal Elders, health providers, justice sector, Aboriginal community-controlled organisations (ACCOs), family violence-specific services, housing and homelessness services
Albury–Wodonga	11	
Total	**27**	

Table 4: Focus groups

Location	Number	Participants	Participant categories
Mildura	5	15	Aboriginal perpetrators of family violence, Aboriginal community members, Aboriginal Elders, health providers, justice sector, Aboriginal community-controlled organisations (ACCOs), family violence-specific services, housing and homelessness services
Albury–Wodonga	15	50	
Melbourne	2	5	Government officials
Total	**22**	**70**	

There were 76,503 recorded incidents of family violence in Victoria in 2016–17, with 1725 incidences in Mildura and 494 in Wodonga (Crime Statistics Agency, 2016). The rate of family violence incidents per 100,000 population was 3213 in Mildura and 1938 in Wodonga (Crime Statistics Agency, 2016). Albury recorded 297 domestic violence-related assaults in 2016–17 (Bureau of Crime Statistics and Research [BOCSAR], 2016). In 2017, one of the first State Government Support and Safety Hubs was launched in Mildura. Mildura also has a history of partnership-based engagement between the local Aboriginal and Torres Strait Islander community and police to address family violence (BOCSAR, 2016). In 2007, the Mildura Aboriginal Corporation, the Murray Valley Aboriginal Cooperative and several Aboriginal justice and family violence organisations, in close consultation with Victoria Police, initiated the Mildura Family Violence and Sexual Assault Campaign. This campaign focused on the community's knowledge and awareness of family violence (Calma, 2007; Cripps & Davis, 2012).

Evidence was sought on issues including experiences of past and present family violence services, policies and programs in the community, and perceptions related to the barriers to and enablers for Aboriginal and Torres Strait Islander men accessing family violence services and the suitability of services offered. The research team investigated the roles of police, court personnel, and professional and service personnel and their understanding and use of the jurisdictional policy frameworks. Participant observation was conducted throughout fieldwork trips with a strong emphasis on how services respond to male perpetrators of family violence.

Research participants

A total of 97 participants took part in this study across both field sites. We conducted 27 individual interviews and 22 focus groups (with a total of 70 participants; see Tables 3 and 4). There were 31 participants in Mildura, 61 in Albury–Wodonga and five in other locations.

As this was a qualitative study of an exploratory nature, we did not seek to recruit a representative sample of the population. Therefore, participants were invited to take part using a snowball sampling approach to provide information-rich, in-depth data for analysis.

There were three categories of participants:

1. Professionals and paraprofessionals: advisors and public advocates, staff of public or not-for-profit organisations, relevant service providers and senior officials at ACCOs, family violence-related service providers, representatives of community groups, and government bureaucrats. A

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gender balance was not actively sought for this category, as women make up a far higher ratio of the stakeholder service staff and professionals in this area of study.

2. Clients: Aboriginal and Torres Strait Islander men who had perpetrated violence.

3. Aboriginal and non-Indigenous community members: Aboriginal people—and some non-Indigenous people with kinship connections to the Aboriginal community—who who were residents of the fieldwork sites, including Elders and key community leaders. Both men and women were included in this category.

All participants were adults and pseudonyms were used in this report.[1] The researchers recognised that it was possible that people in the first category of participants (professionals and paraprofessionals) may have been perpetrators or victims of family violence. This was taken into account in all stages of recruitment and participation in the study.

Participant recruitment

As noted, research participants were sourced in consultation with relevant community organisations in each area, using snowballing techniques. The researchers contacted potential participants to request their participation in semi-formal focus groups and/or interviews. Recruitment of male participants for this research was challenging due to the silent nature in which family violence can manifest in communities. Service providers assisted the team in locating men who were willing to talk with our researchers, however, we found that there was a general reluctance from participants to talk about their role in perpetrating violence. The issue of Aboriginal male violence emerged in most interviews with service providers, legal services and court services, which enabled us to generate in-depth data examining male family violence, given the low number of perpetrator interviews (n=4).

The focus groups and individual interviews were conducted using techniques advocated by Kvale (1996): focusing on a theme, design, interviewing, transcription, analysis, verifying and reporting. The researchers investigated the roles of

professional and service personnel and their understanding and use of the jurisdiction legal and policy frameworks. For all participants, referrals were solicited from our partnering Aboriginal and Torres Strait Islander organisations and other support services. In the first instance, the research team decided which organisations and individuals were appropriate to contact to seek input to the research. Organisations were identified from material on the public record (e.g. public advocates, bureaucrats, professionals). Building rapport and trust with men who use violence (and their service providers) takes time, transparency and sensitivity. In each instance, we discussed the participant's willingness to take part in the research and made sure they gave their free and prior informed consent. If at any point the participant demonstrated or expressed discomfort, the interview was ceased and only continued at the direction of the client.

Data analysis

Recorded data (notebook and journal entries, transcripts of digitally recorded interviews and focus groups) were stored in a collated project file and cross-checked by a chief investigator. All research participants were sent a detailed summary of their interviews and asked if they would like to provide feedback or correct any aspect of that summary. This process continued with each fieldwork visit. The fieldwork data were analysed using an inductive approach to thematic analysis (Terry, Hayfield, Clarke, & Braun, 2017). This is a dynamic and flexible process, where codes and themes emerge de novo by researcher immersion in the data. As per the methods described by Terry et al. (2017), we used a six-phased approach:

1. familiarisation with the data

2. generation of codes

3. constructing themes

4. reviewing themes

5. defining and naming themes

6. writing up the data (using the data analytically and illustratively).

When using this method, the researcher is integral to the process, as the analysis is shaped at the intersection of the data and the researcher's theoretical framing, disciplinary

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1 Children and young people under the age of 18 years were not included in this study.

background and research experience and skills (Terry et al., 2017).

Data management

Confidential data were secured through a range of precautions, with access allowed only by the chief investigators and associated researchers, as approved by the University of Melbourne's Medicine and Dentistry Human Ethics Subcommittee (ethics ID: 1852396.1). For digital files, the researchers took precautions such as secure password access and locking of data files for any confidential research data and records stored electronically. Confidential analogue data, such as participants' signed consent forms, were stored separately from the other research data in lockable filing cabinets in a secure room. The project has a formal data management plan, and a record of the research data generated from the project was stored in the Central Research Data Registry of the University of Melbourne.

The researchers ensured that the data were accurate, complete, authentic and reliable. The research data will be kept for a minimum of five years post-publication, in accordance with the National Health and Medical Research Council ethical guidelines. Digital data are held on a secure, networked server that is managed by the University of Melbourne and backed up on a daily basis. The chief investigators and associated researchers have ensured that the integrity and security of the research data and records are maintained and that this material is stored in a retrievable way and in line with confidentiality restrictions, including any relevant agreements that affect access to or disclosure of information.

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Key findings

Audit of relevant legislation

Men who commit family violence can be subject to an ad hoc framework of state/territory and Commonwealth laws. Broadly, these laws seek both to punish criminal behaviour and prevent men from further offending against their victims, including children.

The laws that punish offenders are criminal in nature and are almost always state laws. For example, "offences against the person" is the Victorian terminology for these offences and includes assaults, murder and manslaughter. The laws that are designed to protect victims from future offending by male offenders are both state- and Commonwealth-based. For example, intervention regimes which result in court orders preventing male offenders from contacting their victims (among other prohibitions) are state-based laws. Child protection schemes, designed to remove at-risk children (including from family violence) from their carers, are also state-based. Family law is Commonwealth-based (except for Western Australia) and particularly comes into play when family violence matters impact post-separation parenting arrangements.

This complicated legal framework can result in confusion and delay for family violence offenders and victims alike. For example, it can result in families experiencing long delays in relation to the care of children where family violence results in a mix of legal avenues being pursued, such as child protection issues, family law separations and intervention orders. In 2011, the Council of Australian Governments (COAG) created the *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). In 2017, the National Domestic Violence Order Scheme (NDVOS) was established to ensure that family violence orders made in one state or territory are recognised across all Australian jurisdictions. The National Plan also anticipated a national system of cross-jurisdictional information sharing, known as the National Order Reference System. While this scheme has been placed on indefinite hold, interim information sharing arrangements are in place which include, for instance, the National Police Reference System and a range of manual information sharing processes. Under the National Plan, states and territories are asked to take actions to ensure a uniform national response. These actions range from programs to promote gender equality to improving family violence support services. Nevertheless, despite the aim of national uniformity, there continue to be significant differences between state and territory laws, policies, relevant departments, implementation and policing standards. Figure 2 shows how these laws are enforced, and how they relate to each other.

Criminal family violence offences

There are a broad range of criminal offences that may be brought against male family violence offenders. These offences are state- or territory-based and are almost never family violence-specific—they apply to the population at large, and are brought by police against offenders on behalf of the state.

The most common criminal offence that is family violence-specific is breach of a family violence order. While there have been calls in some quarters to introduce "coercive control" criminal offences, existing legislation is rarely used for prosecution in Australia (Douglas, 2015). Indeed, the RCFV argued that such a move would be purely symbolic and likely to have no impact on family violence statistics (State of Victoria, 2016d, p. 189). Family violence comprises a substantial proportion of criminal offences reported to police. Prior to the RCFV in Victoria, for example:

> Offences arising out of family violence incidents accounted for 41.7 percent of all crimes against the person … Family violence-related assaults accounted for 45.7 per cent of all assaults … Family violence-related rape offences made up 34 percent of all rape offences … Family violence-related abduction or kidnapping accounted for 41.7 percent of all abductions. (State of Victoria, 2016c, p. 5)

These high statistics belie the true figures, however, with family violence being significantly under-reported, for instance because

> many people, and some victims, do not recognise that what is happening is in fact family violence, others choose not to report it or are unable to, and sometimes incidents are not recorded as family violence or are not recorded at all. (State of Victoria, 2016b, p. 18)

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Figure 1: Family violence law

| FAMILY VIOLENCE LAW | ENFORCERS OF FAMILY VIOLENCE LAW | THE COURTS |

State and territory laws: establish criminal offences; basis for family violence protection orders; child protection laws

Individuals: can be subject to family violence protection orders under state and territory laws; can apply for and be subject to parenting and separation orders under Commonwealth law; can make child abuse reports to police or relevant government departments

State and territory courts (Magistrates, County, Supreme and Children's Courts): enforce state and territory laws in relation to family violence and child protection

Commonwealth *Family Law Act 1975*: basis for parenting orders; the division of property post-separation

State and territory child protection departments and workers: act on reports of child abuse and make applications for child protection orders to the relevant court (usually a Children's Court)

Commonwealth Family Court: enforces the *Family Law Act 1975* (Cth)

State and territory police forces: enforce state and territory family violence law, including criminal offences, child protection matters, and protection orders

Australian Federal Police: can act on breaches of Commonwealth family law parenting orders with an order of the Family Court

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When dealing with incidents of family violence, police are bound by policing procedures which, in some states, have changed significantly in the past few years in response to recommendations by broad-based investigations, including the RCFV. For example, in Victoria, police have much less discretion in relation to whether or not charges are brought against male family violence offenders than previously. These changes have also been directed towards the gathering of evidence in family violence court cases. These include that since 2015, New South Wales has allowed video statements taken by police body-worn cameras to be admitted as evidence in family violence prosecutions. This change in the rules of evidence is part of a broader initiative in New South Wales known as the "Domestic Violence Evidence in Chief" which has been designed to increase family violence conviction rates (including family violence guilty pleas) and reduce court trauma for family violence victims. The use of video evidence from offenders and victims from the scene of the alleged crime is designed to highlight the victim's experience to the court, reduce the likelihood of evidence being misremembered, and minimise the chance of the victim being intimidated into changing their evidence (see pt 4B of ch 6 of the *Criminal Procedure Act 1986* [NSW]).

Protection orders: Protecting victims from harm

Protection orders are designed to prevent men from committing family violence, brought by victims of family violence (or the police on their behalf). These applications are usually heard by Magistrates Courts and then are administered by police. As noted above, since 2017, protection orders can now be enforced by all states and territories.

The table in Appendix D outlines the protection order regimes of all Australian states and territories. As can be seen in this table, the reasons why a protection order is issued differ between states and territories, as does who is protected by such an order. There are also a wide range of actions or activities that a protection order can prohibit or mandate, the most usual being that the male offender cannot contact or approach the victim.

New South Wales and Victoria both contain very broad definitions of who can be protected. For example, the

Victorian *Family Violence Protection Act 2008* notes that the definition of "relative" in relation to Aboriginal and Torres Strait Islander relationships "includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative" (s 10[b]).

However, the success of protection orders in preventing family violence has been disputed, with a 2018 study finding that protection orders are only effective

> under certain circumstances, including when the victim has fewer ties to the perpetrator and a greater capacity for independence, and [are] less effective for offenders with a history of crime, violence and mental health issues. (Dowling et al., 2018, p. 1)

The RCFV documented other issues with protection orders including one of vexatious protection order respondents who apply for orders against their victims, both delaying the original application and limiting their victims' ability to obtain legal advice because of visiting multiple lawyers and thereby creating conflicts of interest, as well as creating the impression that the violence in the family was perpetrated by multiple family members (State of Victoria, 2016f, pp. 124–5).

The RCFV also noted that Aboriginal and Torres Strait Islander people can find courts to be culturally unsafe, and that cultural awareness training for magistrates was essential to ensure that Aboriginal and Torres Strait Islander people receive proper legal outcomes (State of Victoria, 2016f, p. 140). The RCFV also noted that application forms are overly complicated and long (State of Victoria, 2016f, p. 122).

Child protection: State- and territory-based

Child protection and removal is governed by state and territory legislation, which sets out the administrative aspects of the family violence framework. Under these legislative instruments, government departments and officials are empowered to take certain actions to respond to relevant situations, generally with ultimate oversight by the state's or territory's Children's Court.[2] There is general acknowledgement

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2   While the Children's Court is a standalone court in most jurisdictions, in the Australian Capital Territory and Tasmania it is a branch of the Magistrates Court. In South Australia, the equivalent court is known as the Youth Court.

that family violence is a major contributing factor in a child becoming involved in the child protection system (Family Matters, 2019). As noted already, families involved in child protection matters may also be involved in family law litigation. This can result in further complexity, delay and uncertainty for children and their families.

The main pieces of legislation relating to child protection are listed in Appendix E. While the state and territory governments have statutory responsibility for child protection systems, the Australian Government and the states and territories committed to work together under the *National Framework for Protecting Australia's Children 2009–2020* (COAG, 2009). Outcome 5 of the Framework is that "Indigenous children are supported and safe in their families and communities" (p. 28). The Framework goes on to note that where Indigenous children are in the child protection system, "culturally appropriate care and support is provided to enhance their wellbeing" (p. 28). Strengthening the application of, and compliance with, the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP) is a major element of the Framework (COAG, 2009) as relevant to child protection. The ACPP emerged in the 1970s from a grassroots movement led by Aboriginal and Torres Strait Islander child care agencies (Arney, Iannos, Chong, McDougall, & Parkinson, 2015), with the objective of reducing rates of child removal, and is intended to enhance and preserve children's connections to family, community and culture.

There are, however, various barriers to the implementation of the ACPP. According to Arney et al. (2015, pp. 7–8), systemic barriers include:

- a lack of Aboriginal and Torres Strait Islander foster and kinship carers
- poor identification and assessment of carers
- inconsistent involvement of, and support for, Indigenous people and organisations in decision-making around child protection
- deficiencies in the provision of cultural care and connection to culture and community
- systemic issues undermining the operation of Aboriginal and Torres Strait Islander child care agencies
- inconsistent evaluation and monitoring of the Principle.

Arney et al.'s (2015, p. 11) research suggested that with regard to involvement of Aboriginal and Torres Strait Islander organisations and individuals, government consultation often lacked genuineness and was a "box ticking" exercise rather than an exercise in shared decision-making.

A major hurdle is the over-representation of Aboriginal and Torres Strait Islander children in the child protection system (Arney et al., 2015, p. 7). How children end up in the protection system varies, but one relevant mechanism is mandatory reporting requirements.[3] These differ between states and territories as to who is obliged to report potential child protection issues and the grounds on which they must do so.

In New South Wales, the mandatory reporting requirements are set out in the *Children and Young Persons (Care and Protection) Act 1998* and apply to people who work with children and provide specified services. These include law enforcement personnel, as well as their managers and supervisors. Under s 27, the mandatory reporting obligation arises where an individual "suspects on reasonable grounds that a child is at risk of significant harm", and the legislation states that this includes where a child lives in a house "where there have been incidents of domestic violence and, as a consequence, the child … is at risk of serious physical or psychological harm" (s 23). The obligation to report potential harm includes harm to an unborn child; under s 25, a "pre-natal report" must be made where there are reasonable grounds to suspect that an unborn child "may be at risk of harm after his or her birth". It is one thing to require a professional to make a report, but there is evidence that reporters see all responsibility as ending once a report has been made (New South Wales Legislative Council, 2017, pp. 174–175). This can lead to children falling through the gaps.

Part 2 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) sets out principles related to Aboriginal and Torres Strait Islander peoples. These include "as much self-determination as is possible" in the placement of children under the Act (s 11[1]) and the opportunity to participate in decisions about the placement of children (s 12). Section 13 establishes a general order of placement. This stipulates that

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3   While there are mandatory reporting requirements in place, anyone can report a potential child protection issue. See e.g. *Children, Youth and Families Act 2005* (Vic) s 183, *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 24.

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a child should first be placed with extended family or their kinship group, then with a member of their community, then with a family residing near their usual place of residence and, finally, with someone approved by the Secretary, in consultation with the child's extended family or kinship group and any appropriate Aboriginal or Torres Strait Islander organisations. There is an exception to this general order where there is a risk of immediate harm (s 13[7]), which would include exposure to family violence.

Although s 13 seems drafted to implement the ACPP, there is some evidence that family and community services caseworkers do not comply with the requirements of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), nor are they held accountable for such failures (Davis, 2019). Moreover, any monitoring of compliance fails to take into account the wider application of the principle of family preservation, restoration and participation in care planning for Aboriginal and Torres Strait Islander children (Aboriginal Family Violence Prevention & Legal Services Victoria, 2015).

In New South Wales there is an *Aboriginal Case Management Policy* endorsed by the New South Wales Department of Family and Community Services in 2018. This sets out an operational framework for practitioners working with Aboriginal and Torres Strait Islander children in the child protection system (New South Wales Department of Communities and Justice, 2019, p. 2).

In 2018, amendments were made to the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which placed a two-year maximum time limit on the allocation of parental responsibility to the Minister (s 79[9]). Unless the Children's Court is satisfied that special circumstances apply (see s 79[1]), this may lead to more permanent removals of children from their parents, which would disproportionately impact Aboriginal and Torres Strait Islander children and families given their higher representation in out-of-home care (Davis, 2019).

In Victoria, the *Children, Youth and Families Act 2005* also contains mandatory reporting requirements for a wide range of abuse and neglect likely to result in "significant harm" (s 162). Under this legislation, the best interests of the child are paramount and take precedence over all other considerations, including connection to family, community and culture. When deciding whether to place an Aboriginal child in out-of-home care, the Victorian provisions set out additional considerations. These are intended to recognise the principle of Aboriginal self-determination, granting members of the Aboriginal community and other respected Aboriginal people the opportunity to contribute their views where relevant (s 12). Under s 13, the ACPP applies where a child is to be placed in out-of-home care. This requires taking the advice of the relevant Aboriginal agency and following a placement hierarchy designed to ensure ongoing connection to family, community and culture. However, the ACPP is not mandatory and as at June 2019, only 46 percent of Aboriginal children and young people in care on a contractible order were managed by an Aboriginal community-controlled organisation (Family Matters, 2019). The *Children, Youth and Families Act 2005* (Vic) establishes restrictions on the making of a permanent care order for an Aboriginal child with a non-Aboriginal person (s 323). Such an order can only be made if no suitable placement is available with an Aboriginal person, and the relevant authority is satisfied that the placement accords with the ACPP. The Court must also receive a report by the relevant Aboriginal agency and can require a cultural plan to be prepared for the child (s 323[c]).

Both the Victorian and New South Wales family violence legislation contain provisions specifically directed at protecting children. Under the *Family Violence Protection Act 2008* (Vic), for instance, a court must consider children before making protection orders (see e.g. s 52A). In Victoria, in some circumstances, an interim protection order may even be made on the court's own initiative if it views this as necessary to protect a child (s 53AB). Part 9 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) contains additional measures for the protection of children, including a requirement that a protection order for an individual must also include as a protected person any children of that person (s 38).

Family law: Commonwealth-based

The *Family Law Act 1975* (Cth) is the key piece of legislation governing family law throughout all Australian states and territories, except Western Australia, which is governed by the *Family Court Act 1997* (WA). The *Family Law Act 1975* (Cth)

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covers divorce and the making of orders relating to parental responsibility for children as well as property and financial arrangements.[4] Under s 4AB of the Act, family violence is defined as "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family … or causes the family member to be fearful". The provision further outlines that such behaviour can include (but is not limited to) assault, stalking, repeated derogatory taunts, intentionally damaging property, unreasonably withholding financial support, and preventing a family member from making or keeping connections with family, friends or culture (s 4AB[2]). The Act stipulates that a child is exposed to family violence if they "see or hear family violence or otherwise experience the effects of family violence" (s 4AB[3]) and provides a non-exhaustive list of examples of situations that involve a child being exposed to family violence. This includes overhearing threats, witnessing an assault, comforting or providing assistance to a family member who has been assaulted and being present when police or ambulance officers attend a family violence incident (s 4AB[4]).

Although the *Family Law Act 1975* (Cth) acknowledges the impact of family violence, it does not empower the Family Court to make or vary a child protection or family violence protection order. As noted above, this means that in situations where family violence is present, children often come into contact with multiple courts, including any or all of the Family Court, the Children's Court, and the Magistrates Court or other state Court dealing with criminal proceedings in the event of a violent incident. The existence of concurrent proceedings—often across both federal and state jurisdictions—can lead to increased delay and uncertainty, as well as being confusing for court users. Such duplication of proceedings can give rise to safety risks for those affected by family violence (State of Victoria, 2016d, p. 181), as well as causing re-traumatisation by requiring people to re-tell their stories before multiple courts (p. 190). In addition, being involved in various parts of the justice system has led to people "falling into the gaps" (p. 191). Unsurprisingly, this can all lead to significant negative impacts on a child's wellbeing (ALRC & NSWLRC, 2010, p. 897).

In 2006, amendments were made to the *Family Law Act 1975* (Cth). Despite being intended to protect children from violence, these reforms were criticised for effectively placing the rights of parents to be involved in their children's lives over the rights of children to be protected from harm (ALRC & NSWLRC, 2010). For instance, the new s 61DA of the Act created a presumption that "equal shared responsibility" is in the best interests of the child. Although the presumption does not apply if there are "reasonable grounds" to believe that family violence is present (s 61DA[2]), these provisions have incorrectly been understood by many parents as establishing a presumption that children spend equal time with each parent (Parkinson, 2013). Another aspect of the 2006 reforms was an increased focus on alternative dispute resolution in family law proceedings, particularly via Family Dispute Resolution Centres.[5] This has led to the majority of parenting orders being made without the scrutiny of the Family Court. These reforms seem to have led to parents (particularly mothers) agreeing to arrangements which may not be in the child's best interests, because of misunderstandings of the new family law regime and the power differential between separating parents, exacerbated in situations of family violence, as well as the pressures of the time and cost of litigation (Cleak, Schofield, & Bickerdike, 2014). Where family violence is present, mediation of family law matters has been described as "fraught", with mediators not always equipped to recognise family violence (Cleak et al., 2014). Even where family violence is recognised, appropriate actions are not always taken to ensure participant safety. It may be that this is due to the very high rate of families presenting with disclosed family violence (see Cleak et al., 2014).

In 2019, the ALRC released its final report on the Family Law System Review. Its key recommendations included closing the "jurisdictional gap" between state and territory courts, on the one hand, and federal family courts on the other (ALRC, 2019). This was particularly in order to improve the family law system's handling of cases involving family violence and child protection issues. As noted by the ALRC, over the past two decades, 11 inquiries into the family law system have

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4   With the exception of Western Australia, where de facto relationships are covered by the *Family Court Act 1997* (WA).

5   It is obligatory to attend a Family Dispute Resolution Centre before litigation relating to parenting orders can be commenced in the Family Court. Although the relevant provisions acknowledge that alternative dispute resolution is not appropriate where there is family violence, the ALRC and NSWLRC (2010) note that procedures seem to be failing, as many people experiencing family violence are sent to these centres.

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Figure 2: Family violence intervention and prevention
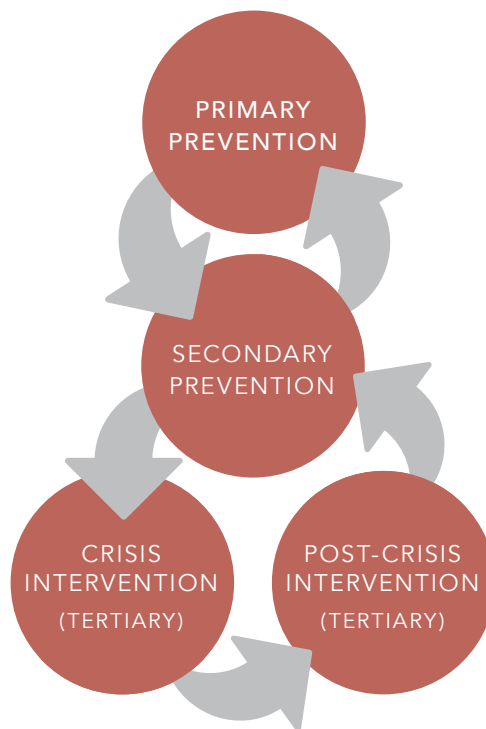
concluded that "the family law system does not deal well with violence" (ALRC, 2019, p. 111). Vesting state and territory courts with jurisdiction to hear matters under the *Family Law Act 1975* (Cth) would, the ALRC suggests, improve courts' capacity to deal with the "particular contemporary problems of family disputes", including domestic violence (ALRC, 2019, p. 135). The ARLC's recommendations also included proposed amendments to the *Family Law Act 1975* (Cth) to ensure that when considering the best interests of an Aboriginal or Torres Strait Islander child, the court "must consider the child's opportunities to connect with, and maintain the child's connection to, the child's family, community, culture, and country" (ALRC, 2019, p. 16). To date, the ARLC's recommendations have not been implemented.

Scope of perpetrator programs

As part of our preliminary scoping of services across Mildura, Albury and Wodonga, we identified services that addressed different aspects of family violence, health and wellbeing, justice, and Aboriginal and Torres Strait Islander-specific services[6] (see Table 7 and Appendix A).

Preventative approaches

Family violence programs and interventions are generally targeted to people at different stages of experience and contact

with the legal and service systems, with the aims of preventing violence and ceasing harm. Interventions operate across different levels for both victims and perpetrators. As family violence does not follow a linear trajectory, interventions are designed accordingly (see Figure 3). Primary prevention interventions refer to universal programs that aim to broadly educate the population and establish normative understandings of the unacceptability of family violence. Secondary prevention targets individuals or groups who may be at high risk of family violence, intervening at early stages. Crisis interventions are designed to intervene when people are experiencing family violence. Post-crisis interventions are long-term programs aiming to support victims to escape and overcome family violence, and provide support to perpetrators to change their attitudes and cease violent behaviours.

The lack of primary and secondary prevention programs and strategies was identified as a major gap by participants across Mildura and Albury–Wodonga, with the current focus predominately being on crisis responses. One participant explained: "So, we need to start with prevention is better than cure. It's about organisations and community having free consultation with community around what does a healthy relationship look like" (Carmen, focus group, October 2018).

Education on how family violence is defined was identified as a high priority for Aboriginal and Torres Strait Islander communities. Our literature review revealed that family violence in Aboriginal and Torres Strait Islander communities

6   These include ACCOs and programs targeted at/adapted for Aboriginal men.

should be considered a "community issue" (Bennett, 1997, p. 12), an offence "not just against an individual, but also against the community" (Atkinson, 2002, p. 238; see also Olsen & Lovett, 2016, p. 18). This was part of a larger prevention strategy that required the whole community "to be involved to make changes and find solutions" (Cummings, as cited in Bennett, 1997, p. 12). We have seen this community approach being actioned in the Koori Court, for example with the trial of violence orders being seen in the Koori Court in Mildura (see "Koori Court" section). There was a concern among services that clients were unclear about what constitutes family violence. This could contribute to under-reporting, as victims might be normalising behaviour that they have witnessed in childhood or experienced in subsequent relationships, with one participant explaining, "because they've seen it, they grew up around it and they, they're thinking it … yeah, that's a normal 'currency' thing, every day. You know, we grew up with it" (Lorraine, focus group, August 2019).

We spoke to services about whether there was a need for more preventative work in the family violence space, with one service provider stating that this work could help with cultural change:

> I mean, it's always a challenge in any social work practice, it's not just here … we need to keep having conversations in the community to change this culture, to change this understanding that men are better than women, because they're not. (Eliza, focus group, October 2018)

Aboriginal-specific services and privacy

A theme that emerged from our research relates to the concern many participants voiced regarding a perceived lack of privacy and confidentiality when accessing Aboriginal-specific services for family violence-related issues. Many Aboriginal participants noted that they preferred to use a mainstream service because of the anonymity they felt it provided, in contrast to Aboriginal-specific services. This was found to be an issue across Mildura and Albury–Wodonga and was not isolated to a particular area. One service provider explained, "I've had a client recently being one extremely discriminated and shunned … there's no privacy here at all, because everyone knows your business" (Bronwyn, focus group, August 2019).

However, we also found that Aboriginal services often provided more tailored, culturally appropriate services and programs for Aboriginal clients experiencing family violence. These factors present a serious dilemna for clients seeking support for highly sensitive and volatile matters.

Cultural competency in mainstream services

In a 2013 report on cultural competency, the Secretariat of National Aboriginal and Islander Child Care (SNAICC) defined cultural competence as "a complex and interwoven concept", adding, "It is not a quick fix or tick the box issue, but a journey for individuals and organisations to invest in" (SNAICC, 2013, p. 12). Furthermore, cultural competency is a complex process that

> requires specific knowledge of the history of Aboriginal and Torres Strait Islander people and of the effects of colonisation and the Stolen Generations. It requires a commitment to working in partnership with Aboriginal and Torres Strait Islander people to produce services, programs, policies and processes … (SNAICC, 2013, p. 12)

In Mildura, the Orange Door hub is a government–funded, centralised referral agency servicing family violence clients. It is co-located with child services, which many interviewees identified as a critical issue for women who fear that their children will be taken away and their families broken up.

> It's not so much fear of the police it's more a fear [of] DOCS [Department of Community Services, now Department of Communities and Justice]. I do a lot of referrals. I do quite a few. I'd say eight out of 10 don't follow it up because they know at the end of the day it's going … back to DOCS. (Louise, interview, June 2019)

Many participants spoke of the co-location of Orange Door and child services as an initial referral service as an example of a disregard of cultural histories for Aboriginal and Torres Strait Islander people that is often embedded systemically and organisationally, creating barriers to service access for Aboriginal and Torres Strait Islander Australians (National Health and Medical Research Council, 2006).

A positive factor arising from our research was the importance of Aboriginal and Torres Strait Islander liaison officers for

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all mainstream services, including court services and the police. Aboriginal liaisons were percieved to break down barriers to access by providing improved cultural safety and connections to the Aboriginal community, and enabling greater institutional trust. For example, one participant explained:

> Our domestic violence liaison officers locally are just fantastic. Couldn't fault them at all. They're compassionate. They understand but they also think critically. They're so willing to go into organisations or properties to make everyone feel comfortable. (Bronwyn, focus group, September 2019)

Another gap in cultural competency identified by our research is whether services ask clients about their Aboriginality, and whether clients feel safe to provide details of their Aboriginality if asked. One participant said, "We focused a lot on our professional development with staff about the importance, why people won't identify, or make assumptions about Aboriginality" (Cheryl, focus group, July 2019).

Identification was recognised as a gap by many participants during this research. Aboriginal and Torres Strait Islander identity is complex, and there is no one way to identify Aboriginal or Torres Strait Islander status. There are also colonial signifiers that services might use to identify a client such as skin colour, which might mean that a lighter skinned Aboriginal or Torres Strait Islander person is not identified by the justice system and therefore not provided the culturally safe care required. As one participant noted:

> The police can [refer clients], yep. That doesn't happen as much. A lot of people I've noticed don't really identify when the police ask, you know, pale-skin people like myself who can get away with saying that they're not Aboriginal won't actually identify … I think if the police were to be a little more culturally safe in taking on domestic violence victims and carefully mapping out where they can send them, gave them the option to identify as Aboriginal, then yeah, it'd probably see more people coming in through here for domestic violence assistance. (Kate, interview, October 2018)

In a special report to Parliament under s 161 of the *Police Act 1990* (NSW), one recommendation was to "further train staff (sworn and unsworn) who are responsible for data

entry changes to improve the recording of demographic data, especially about Aboriginality" (New South Wales Ombudsman, 2011, p. 27). If police officers dealing with family violence incidents are inexperienced in family violence dynamics or cultural competency, this can create further barriers to reporting perpetrators of violence. One participant discussed the lack of service provider knowledge of how to address identity and Aboriginality:

> How comfortable people feel to ask, or confident, sorry, people feel to ask it. Do they know how to record it accurately, do they know how to answer somebody if they're being asked, "Why do you want this information?" (Cheryl, focus group, July 2019)

Program reliability and funding

As of July 2019, an Aboriginal-run MBCP in Mildura was closed due to lack of funding. This was a loss for the community and women who were experiencing violence with no alternate Aboriginal and Torres Strait Islander-specific MBCP available for hundreds of kilometres (see "Men's behaviour change programs" section below). Men need to be held accountable and take responsibility for their actions, and behaviour change programs are one avenue that supports them to do so. Removing services such as Aboriginal-specific MBCPs indicates instability within the sector, and sends a clear message to communities that their services are not viewed as important. It also leaves unfilled voids, with those in need of the support they provide trapped in cycles of violence with no viable alternatives. As one participant said:

> [Men] are the ones who have to make the changes if you want to fix the problem, not the mums and the kids … [we need] better link-ups and more quick access to services to deal with the underlying factors that lead to the offending. Drugs, alcohol, mental health, social and emotional wellbeing and those services that can be delivered in a really focused and targeted way in custody to continue after a person's released if they're serving time for it. (Lotus, interview, August 2019)

A service provider we interviewed stated that more resources were needed—"We're completely under-resourced, there's wait lists for every program" (Amanda, focus group, October 2018)—and another noted that "in terms of funding, just

further funding and for a longer period … that's not something our clients need to deal with, that instability" (Jasmine, focus group, October 2018).

Men's behaviour change programs

Family violence was found in one study to contribute more to the burden of disease than any other risk factor in women aged 18–44 years (Webster, 2016, p. 7). Given the gravity of the burden of family violence on women's safety, therein lies the question: is this burden significantly lessened by MBCPs? This section will explore the manner in which MBCPs have been heralded as a quick fix for addressing family violence, while unpacking the issues that exist in this space, including accountability, accessibility and barriers. The RCFV *Summary and Recommendations Report* (State of Victoria, 2016e) explicitly stated that we do not have sufficient knowledge to gauge whether existing MBCPs are effective in changing perpetrator behaviours. Nor do we know whether they improve victim safety. The report further noted that all we do know is that

> there are insufficient programs to cater for all men who are referred to them; there is little or no follow-up to monitor completion of a program; and there is inadequate oversight of the quality of programs or for assessing the appropriateness of the methodologies used. (State of Victoria, 2016e, p. 28)

The RCFV report goes on to explain that MBCPs are also not designed for "different cohorts" and those unsuited to group work. It was recommended that more research was needed to develop evidence-based programs that manage risk, effect long-term changes in behaviour and attitude, decrease recidivism and support victims (State of Victoria, 2016e).

In 1994, No To Violence (NTV) developed a set of minimum standards for MBCPs

> so that all programs reflected good practice and were safe and effective in working with men who used family violence. The standards were updated once in 1996 and were widely used to guide the practice of MBCP providers funded by the Victorian State Government. (NTV, 2019)

In 2017, following the RCFV recommendation to enhance the MBCP standards, Family Safety Victoria updated the minimum standards with the aim of further strengthening the model, with versions of the program being adopted in New South Wales, the Northern Territory and Queensland (NTV, 2019).[7]

The purpose of creating a minimum standards model for MBCPs was to hold men accountable in a space that monitors and responds to risks men might present. The model aims to encourage consistency by offering weekly classes that intend to enhance the safety of women and children (NTV, 2019). Group-based intervention is not designed for all men across the violence spectrum; there are those who will suit the MBCP and others that may need

> more tailored and intensive assistance, including those with a mental illness or problems with drug and alcohol use. Other perpetrators will continue to pose unacceptable risks to their family members, requiring stricter justice system-based interventions. (NTV, 2019)

Evidence also suggests that Aboriginal men are more likely to disengage from an MBCP if it is not culturally competent, indicating that MBCPs need to be flexible to be able to include the cultural needs of Aboriginal clients (New South Wales Ministry of Health, 2016) to encourage engagement and retention.

Both the Victorian and New South Wales governments have contributed significant resources in recent years (see Tables 5 and 6) to support access to and intake for MBCPs. In Victoria the focus is on increasing capacity and accessibility of MBCPs (State of Victoria, 2016b). The New South Wales government has contributed in the area also, with a sector development strategy that includes "$27.5 million funding for new men's behaviour change interventions over 4 years …, and support to develop a strong professional network of program providers" (New South Wales Department of Justice, 2017, p. 4).

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7   The minimum standards are also supported at the South Australia-based, family violence-specific ACCO, Kornar Winmil Yunti.

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Table 5: Victorian funding for men's behaviour change programs

Year	Amount/allocation	Source of funding
2016	$5.3 million to support access to more places in MBCPs	Victorian Government
2017–18	$71 million to fund men's intake services, to address demand for MBCPs	Multiple funders across Victoria
2019–20	$55.7 million over 4 years; $15.7 million for MBCP facilitator training	Victorian State Budget

Source: Family Safety Victoria (2019)

Table 6: New South Wales funding for men's behaviour change programs

Year	Amount	Source of funding
2019	$27.5 million	NSW Government

Source: New South Wales Department of Justice (2017, p. 4)

However, even with the additional resourcing of men's programs aiming to make men accountable for their actions, our data and analysis indicated that there are MBCPs not sufficiently meeting their aims. For example, one participant stated:

> I was pretty horrified at some of the things they [service provider] did or didn't put in the case notes and their reasons for that. As I said, I'll put quotation marks if they [say] "She's a stupid blah, blah, blah, blah". I'll quote it verbatim and put it there and hope that it will get used in court. Because if [the perpetrator has] had 10 weeks of an MBCP group and he can still say that, with that much hatred, then guess what, MBCP's not working; and who's going to be a greater risk of killing their partner, the guy that can't even refer to her by name and says these things? So, the risks are all there, we're just not perceptive of reading them. (Nicholas, interview, June 2019)

Availability, accessibility and acceptability of men's behaviour change programs and related programs in Victoria and New South Wales

This section addresses the availability, accessibility and acceptability of MBCPs for Aboriginal men who had perpetrated family violence at each of the field sites. Availability refers to whether an MBCP service is provided, and if there are adequate MBCP services to meet demand. Accessibility refers to the timely delivery of MBCPs and whether they are reasonable to access in terms of geography and are provided in settings with skills and resources commensurate to need.

Acceptability refers to whether Aboriginal men are satisfied with the MBCPs and not deterred from using them. We found that at all research sites, there were significant issues related to all three factors.

During the fieldwork research for this study (2018–19), there was only one Aboriginal-specific MBCP offered in all the research sites, located in Mildura. This service, Dardi Munwurrow, has since ceased operation, with the next closest Aboriginal-specific MBCP being located in Shepparton, 474 km away (see Table 7; Dardi Munwurro, 2019). The absence of Aboriginal-specific MBCPs was raised as an acceptability concern by service providers in these regions, noting the difficulty of providing appropriate referrals. We asked Nicholas where his organisation sends clients from Albury–Wodonga who are unsuited to a mainstream service, and he responded, "Well Melbourne, yeah … guess we can refer to Melbourne or just try and engage them with a one-on-one worker" (Nicholas, interview, June 2019). A participant from Wodonga also commented, "I don't think there's enough around, there's non-Aboriginal men's therapy programs and men's programs but they're not Aboriginal-specific" (Georgia, interview, June 2019).

The lack of availability of MBCPs (appropriately targeted or not) was a significant obstacle for achieving their intended outcomes. There was only one mainstream MBCP offered in each area, however, it was repeatedly noted by participants that these programs had long waiting lists and did not provide the cultural safety needed by many men mandated to attend. Participants who worked with perpetrators,

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Table 7: Men's behaviour change programs and related programs in Mildura and Albury–Wodonga

Mildura				
Aboriginal-specific	**Provider**	**Program**	**Location**	**Information**
Yes	Dardi Munwurro	Men's healing and behaviour change program	Melbourne (formerly Mildura)	Only Aboriginal-specific MBCP in Mildura, formerly available in Mildura (closed in July 2019)
Yes	Mallee District Aboriginal Services (MDAS)	Men's case management program	Mildura/Swan Hill/ Kerang/ Robinvale	Men's case management
No	Sunraysia Community Health Services	MBCP and case management	Mildura	20-week MBCP
Albury–Wodonga				
Aboriginal-specific	**Provider**	**Program**	**Location**	**Information**
No	Gateway Health	MBCP	Wodonga	Alcohol and drug counselling, case management, 20-week MBCP
Yes	Mungabareena Aboriginal Corporation	Men's Shed	Wodonga	Men's focused group
Yes	Albury Wodonga Aboriginal Health Service (AWAHS)	Men's Shed	Albury	Men's focused group

particularly those working with Aboriginal men, found the lack of availability frustrating, with one participant noting that "they're not available, the wait is too long … even though everyone says it's available the wait is too long, I don't see any of them accessing it" (Jeanine, interview, August 2019). If Aboriginal men are unable to access MBCPs in Mildura and Albury–Wodonga, they are slipping through the system without the vital supports needed to effectively address their actions, behaviours and attitutides.

Further, if a perpetrator is deemed eligible to complete an MBCP, they are placed on a waiting list where there are already a limited number of spaces, with some perpetrators waiting for extended periods of time, and a number of men potentially "losing interest, or no longer willing to join the program, or becom[ing] unreachable during the waiting period" (Mackay, Gibson, Lam, & Beecham, 2015, p. 10). A

perpetrator we interviewed talked about his experience of trying to access an MBCP:

> There are not enough services out there if men want to go and ask for help, like for a men's behavioural change program, for instance. I was told by community health and DOCS, I've got to do the men's behavioural change program. So, when I wanted to try and look into that, I go to [service provider]—"How do I do a men's behavioural change?" "We've got a waiting list. We're trying to build enough numbers so that, once we get the numbers, we'll have a spot." No, it took too long. Go to [mainstream service], they actually run a program there but it's only twice a year or something. So how is that helpful when it [is] twice a year? It should be something that should be more ongoing, because it seems to be a big issue around here, domestic violence. (Timothy, interview, August 2019)

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It is evident from the data gathered by this project that existing (mainstream) MBCPs are not sufficiently tailored to meet the needs of Indigenous men, which supports the broader findings from the RCFV (State of Victoria, 2016e).

The lack of program availability is a major concern for people experiencing family violence, with MBCPs being only one approach "to addressing the source of the problem—how men coercively control, entrap, frighten and terrorise adult and child victims/survivors" (Day et al., 2019, p. 10). What we heard in the interviews is that an MBCP is the first step towards addressing violent behaviour. Yet if men are not held accountable for their actions and do not attend a mandated MBCP, who is prioritising and protecting the safety of the victim? Some participants felt that the urgency to provide support and funds that care for women who have experienced violence should take precedence, rather than concentrating on the perpetrator, with one stating:

> So, there's a men's program that runs in [fieldwork site]; most [fieldwork site] people can't access that, there's not one in … I think that yes we do need to get support in that space but I think that we need to ensure that we have adequate coverage for victims first. (Stephanie, focus group, August 2019)

Individual case management, employed in some Aboriginal organisations, is an approach that could be considered more widely. Unlike the restricted 20-week program MBCP that only has intake twice a year, individual case management in the field site areas was not subject to waiting lists, with some men reportedly preferring this approach.

In general our findings concur with the assertions of Mackay et al. (2015), that there is "a shortage of programs for perpetrators of family/domestic violence in rural and remote areas of all jurisdictions, which represents a further barrier to access to these programs" (Mackay et al., 2015, p. 5). One family violence-specific service provider also discussed the lack of availability of targeted services for men to address underlying issues contributing to family violence:

> While men's programs exist, they [men] might have to wait three months, four months, five months, six months to get any of those services, and for emotional counselling, psychological counselling and drug and alcohol counselling

I think that they [counselling services] are more likely to have a higher level of success than necessarily men's behaviour change. (Molly, interview, August 2019)

In Albury–Wodonga, many participants discussed the lack of Aboriginal-specific family violence services for for young Aboriginal men who were perpetrators of family violence.

> I know four boys … killed a bloke … and got sent away. They come here, got out and they come here and bashed their women you know. One of them stabbed her not long ago. In and out of jail all the time and there's nowhere for them to go to talk about their childhood trauma or things that they've been through in the past. There's nothing. You've got the men's program or the Men's Shed up at [the ACCO] but it's more older people that go there. Whereas the younger boys, the younger men say, "I'm not going up there. They do nothing. I'm not going to sit up there and fiddle with wood. I can do that at home." And the stuff they really want, they want to sit around and have a yarn and open up about stuff and they want to talk to people that have been through similar circumstances, similar situations as they have. There's nothing like that here. That's why if I get out, if I get out and into a house, it's hard to get away from there because they'll sit and have a yarn. Even the boys. The men say, "Oh Jillian, this happened at home. I've been thinking about this a lot. This has been playing on my mind. Where can I go?" (Jillian, focus group, September 2019)

A 2017 report, *Towards an Aboriginal and Torres Strait Islander Violence Prevention Framework for Men and Boys* (Adams et al., 2017), made the contention that Aboriginal and Torres Strait Islander men do not address their violence through existing programs as they are not culturally appropriate. The failure of mainstream programs to meet the needs of Aboriginal and Torres Strait Islander community members is "attributed to the client group being 'difficult to engage' rather than recognising the deficits of flawed, culturally irrelevant top-down service design" (Adams et al., 2017, p. 22). Mick Adams, who has been a practitioner, founder of, and advocate for culturally informed MBCPs and healing, wrote:

> In many of our communities men have taken on a leadership role to establish male support programs with the objective of enhancing the health wellbeing of the

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Table 8: Graduate certificate in client assessment and case management (MBCP facilitator training)

Graduate certificate in client assessment and case management (MBCP facilitator training)	
For students who *are not* granted a Skills First government-subsidised place	For students who *are* granted a Skills First government-subsidised place
$11,330	$6860

Source: Data extracted from Swinburne University of Technology (2020)

male population within their communities. For many the journey has imposed a lot of challenges because most of the men in their community have not had the opportunity or wanted to take the responsibilities to modify their behaviours, in order to bring about social change. The male support programs are based on the community development philosophy that allows the men to develop skills and use their own experience to take control of their responsibilities and behaviours. The aim is to assist the men to reconstruct [their] position within the family and community context in a positive manner by utilising a healing approach that encompasses a holistic paradigm to address the social, spiritual, emotional, physical and psychological characteristic of life. The restoration of the male's well-being could only be successful through leadership and individuals taking the responsibility for one's own action. (Adams, 2006, p. 8)

Adams' approach brings hope into the lives of men who are seeking to behave in nonviolent ways. Furthermore, if men's programs were more flexible and culturally safe, it is possible that we would see more Aboriginal and Torres Strait Islander men utilising their mandated time constructively and engaging with the process. Instead, they are breaching their orders, falling out of the system and potentially placing women and children at further risk.

A significant accessibility issue for MBCPs was the shortage of MBCP facilitators in these regional areas, and the barriers to gaining the qualifications required to become an MBCP facilitator. A family violence worker noted:

> We have to employ people with an undergraduate qualification to go into that facilitation. They're pretty short on the ground up there. And again, working with men who choose to use violence is not seen as being work that a lot of people want to do. So how do we encourage people to go into that area of practice? (Amy, interview, June 2019)

These requirements do not account for people who may have significant experience working in the community in related areas but have not had the opportunity to complete the

required training. For example, one of the specific courses that provides the qualifications to work as an MBCP facilitator is conducted over a 12-month period on a part-time basis in Melbourne. Features that may make the atttainment of this qualification inaccessible include the reduction of income during study, caring duties and responsibilities for family or community, and the cost of completing the facilitator course (see Table 8).

Even if individuals from regional areas are able to undertake an MBCP facilitator course, there are other issues related to lack of incentive and poor retention rates. One participant explained:

> There's not much incentive unless you're really passionate about the work … you'd have to spend $6000 to get the certificate and do a group for 20 weeks and get maybe $2000. Even to pay back your studies you're looking at three years of work. So, it's not worth it. So, what you do is you team up with an agency … or whoever does the group and they'll train you up or DHS [Department of Human Services, now Department of Health and Human Services] will do the scholarship but that's another level removed here because we're so far away that level of commitment is the transport and the motel so the $6000 is not just the $6000. We factor it to be about $18,000 for someone to do it. That's the course cost, travel and motel. Because you're staying four days. You get there late at night. You do the two days of the course and then you leave the next day. (Nicholas, interview, June 2019)

These barriers to training likely contribute to the poor accessibility of the current skills required for MBCPs in Mildura and Albury–Wodonga.

Men's healing programs

It is important to make a distinction between MBCPs—20-week certified courses—and men's healing-centred programs. Men's healing programs generally refer to those run by Aboriginal organisations and operate as an alternative to MBCPs with the focus on talking with Elders. Holistic healing

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programs are often the desired approach for Aboriginal and Torres Strait Islander communities as they fulfil the "cultural needs of participants to facilitate healing" (Andrews et al., 2018. p. 3). They often break down ill-informed constructs that violence is culturally inherent by centring the men's healing programs around camping and yarning, with most men's groups based on

> empowering the men to help prevent them from being perpetrators of domestic violence … it's just men supporting men … Men yarning about very important issues that are affecting our men these days and domestic violence is huge. (Tony, interview, June 2019)

The Healing Foundation has men's healing groups that "aim to develop the capacity of all men through cultural, educational and therapeutic healing activities" (Healing Foundation, 2019). The Healing Foundation identified that "there has been a 50 percent drop in the number of men registered with the NT Department of Correctional Services" in Wurrumiyanga, and a corresponding decrease in violence, with women reporting they feel "safer both in their homes and within the community" (Healing Foundation, 2019). According to Tony, a service worker we interviewed, "a lot of people weren't going [to MBCPs] unless they were mandated to go … With [Aboriginal healing programs], people go voluntar[il]y" (Tony, interview, June 2019). It was also reported that many Aboriginal men try to avoid mainstream MBCPs.

Aboriginal men's groups that have a focus on healing generally do not meet MBCP minimum standards, regardless of their effectiveness for Aboriginal perpetrators of family violence (NTV, 2019). A study conducted by Day, Vlais, Chung, and Green (2019, p. 73) found that "cultural constraints in the applicability of some standards (e.g. some Aboriginal communities advising against mixed gender co-facilitation on cultural and spiritual grounds)" were a barrier for Aboriginal and Torres Strait Islander men accessing MBCPs, along with the "absence of some specific considerations regarded as crucial to working with Aboriginal and Torres Strait Islander perpetrators of family violence, including healing work" and "the community accountability context underpinning program implementation, such as the potential role of Elders and involvement of the wider community" (Day et al., 2019, p. 73). Our research also found some mainstream

MBCPs were not attentive to cultural gender-based needs, particularly related to women facilitating MBCPs. One participant explained: "Yeah, so, they do a mainstream one which a lot of our guys sort of don't identify with because there's a female facilitator" (Sean, interview, August 2019). We also heard from another participant that,

> in the mainstream, they have a woman and a man, like, a male and female facilitator … it's a men's issue, we are coming from societies that value the women and now where there's a lot of violence in our communities and that the men need to take the lead in addressing their own behaviours. And that's why, and people often say that you need the female's voice in there and … you know, we want men to take ownership and we don't think a woman should have to stand in that space and [be] trying get men to take ownership. Men need to take charge of that, and also just that whole men's business stuff. (Joshua, interview, June 2019)

These concerns raised by Aboriginal community members should be taken into account when revising MBCP standards. If MBCPs are focused on keeping women and children safe, expanding the standards to include the voices of Aboriginal and Torres Strait Islander people can only encourage more Aboriginal and Torres Strait Islander men to engage with MBCPs (i.e. by removing simple barriers).

One participant discussed the positive experience he had had with an Aboriginal behavioural change healing program:

> Yeah, I'm still linked in with it. I've been the longest person on the men's behaviour change program, ever, now virtually. So, I've been doing it. I reckon it's good. It's good to allow getting away from things and they have a talk with the boys who's going through other issues and know better than yourself … I like it so much. You're always learning something. Someone's got a different coping strategy around things and how to get over that little hurdle or something like that. I don't reckon it should be set as a set goal of how long you should be, it should be optional. If you want to learn and better yourself a bit more further down the line, you should be able to adjust to it, I reckon. (Samuel, interview, August 2019)

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Our data highlighted the importance of cultural safety and cultural approaches in men's programs to serve the needs of Aboriginal perpetrators of violence.

Koori Court

The Koori Court is a specialised sentencing court for Aboriginal and Torres Strait Islander clients in Victoria. It is a radical departure from the typical Magistrates' Court that implements the law intending to punish offenders for committing crimes. The Koori Court's purpose is to provide a therapeutic style of justice that encourages the offenders to desist from crime and to involve the Aboriginal community in achieving better outcomes than simple punishment. An outstanding feature of the Koori Courts is the service to the courts by Aboriginal Elders. Elders and Respected Persons are appointed to serve with the presiding magistrate: Elders hear cases, counsel offenders and victims, and advise on support services and solutions—beyond solely punishment—for longer term beneficial outcomes for perpetrators, victims and the wider community. The Koori Court has the same range of sentencing options as the mainstream Magistrates' Court. The Koori Court magistrates and Elders use the court-integrated support services to provide offenders and victims with the resources to improve their family circumstances and ensure safety in the home and other settings. Recommendation 149 of the RCFV, that "the Melbourne Magistrates' Court resume the Koori Family Violence and Victims Support Program" (Family Violence Reform, 2019), was implemented as Umalek Balit, the specialist family violence program. Umalek Balit employs specialist Koori family violence practitioners, male and female, to work with male perpetrators of violence, and women to work with female victims. This is a significant feature of the court's therapeutic approach.

The RCFV made nine recommendations focusing on Aboriginal and Torres Strait Islander family violence. The Victorian Magistrates' Court is leading the implementation of Recommendations 149 and 150, including extending the jurisdiction of the Koori Magistrates' and Koori County Court to hear family violence breaches. Following the RCFV, the *Magistrates' Court Act 1989* (Vic) was amended to enable the Koori Court to deal with family violence breaches. This

has been implemented but only at the Mildura Koori Court as of the time of writing.

This was subject to the approval of the Aboriginal Justice Forum and inclusion of any necessary safeguards, which were necessary to address the high incarceration rates of Aboriginal offenders. The Victorian Aboriginal Justice Agreement has been in operation for 18 years, and as a result of the strong Aboriginal leadership and voice has led to better outcomes compared with other jurisdictions. Notably, it has resulted in greater trust among the partner entities and "high demand for accountability and action" (State of Victoria, 2020). Its impact on the Aboriginal and Torres Strait Islander people in the Victorian criminal justice system predates the RCFV, and the partnership has resulted in reforms that should be adopted in other jurisdictions. The extraordinarily high incarceration rates of Aboriginal offenders in Australia is a problem for Australian institutions that have the responsibility of enforcing laws designed to both punish those who break the law and deter them and others from breaking the law in the future.

In August 2019, we observed the Koori Court in Mildura where a magistrate for the Koori Court convened the court with two Aboriginal Elders, one male and one female, and the Koori Court officer. The Koori Court is conducted in Mildura once a fortnight on a Wednesday. We also observed the Children's Koori Court to gain a better understanding of the offences by Koori youth, including drug offences and use. These observations assisted us in understanding the potential of early prevention measures to reduce drug use and violence. During our fieldwork, we attended on a "general day" to ensure we observed cases that were family violence-specific or -related. In May 2019, the Koori Magistrates' Court in Mildura was given the power to hear family violence cases. As one participant explained:

> There was an anomaly in the legislation that allowed us to hear the violence that led to assault charges and injury charges, but we couldn't deal with breaches of an intervention order. (Barbara, focus group, August 2019)

Barbara explained that the Koori Court in Mildura is

> the only gazetted court that can deal with the breaches and to have the specialist [family violence] program

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[Umalek Balit] in place, including the men's worker and the women's worker. (Barbara, focus group, August 2019)

The Mildura Magistrates' Court first heard family violence matters from May 2019 (Family Violence Reform Implementation Monitor, 2019). This Court comes under the umbrella of the specialist program (focusing on family violence) and "it's one part of the work". Barbara further explained:

We're hoping to roll it out to all Koori Courts but this is a pilot to see how it works and we're ironing out the issues as they arise, and they do arise. There are teething issues but we're getting there … but it's not the first day of dealing with family violence in Koori Court because family violence pervades a lot of the work that we do and a lot of the criminal charges related to family violence. (Barbara, focus group, August 2019)

During our interview, Barbara stated her support and enthusiasm for the Koori Court model:

Meeting Aboriginal people and learning about their lives so intimately and learning from it and developing things that can maybe provide some assistance to Aboriginal people has been a singular privilege that I'll never forget. So, I learn every day from Koori Court, absolutely every day. I learn from the Elders and from the other Koori people in the court. (Barbara, focus group, August 2019)

Barbara was not the only participant who advocated for the Koori Court model. Another participant we interviewed was very positive:

Because it's actually given a chance for the Indigenous people to have a voice. It gives a chance for our Elders to give the people that's coming through the courts … [a chance to give their point of view] … it's, growing up, being an Aboriginal person or Indigenous person, you're growing up and you're taught to respect your Elders and that's the main thing of growing up. And having the Elders on the court makes a big difference to know that you'll be able to express yourself and have not only the magistrates, a conversation with the magistrate, but also having conversations with the Elders. It's awesome. (Tori, focus group, August 2019)

The interviews in Mildura provided evidence that the Koori Court serves as a therapeutic form of justice and appears to achieve positive outcomes for many offenders concerned, as compared with other courts.

In the following section, we describe the origins and history of the Koori Courts in Victoria, their operations and the evidence from interviews as to the potential of the Koori Court to deal more effectively with cases of family violence.

How the Koori Court works

The Koori Court in the Magistrates' Court is

a court for Aboriginal and Torres Strait Islanders who have taken responsibility and pleaded guilty to a criminal offence … It has been developed to reflect cultural issues and operate in a more informal way. You must choose to have your case heard in the Koori Court. (Magistrates' Court of Victoria, 2019)

The legislative provisions outlining the design of the Koori Court require that its jurisdiction be exercised with expedition and as little formality and technicality as possible (*Magistrates' Court Act 1989* [Vic], s 4D[4]). Proceedings are to be conducted in a way to make them comprehensible to the offender, and ensure that the offender's family members and any other member of the Aboriginal community are able to be present in the courtroom. This is especially the case in sentencing proceedings (*Magistrates' Court Act 1989* [Vic], s 4g). Importantly the Koori Court also presents the opportunity for the presiding magistrate to sit with Aboriginal Elders or Respected Persons, to provide greater participation by the Aboriginal community in the sentencing process (Harris, 2007, pp. 130–131; *Magistrates' Court Act 1989* [Vic], s 17a). Although equipped with the same sentencing options as the Magistrates' Court, the Koori Court is designed to support "more creative uses of the sentencing process to enable Aboriginal communities … greater flexibility and control over sentencing outcomes" (Victoria, 2002, p. 1129).

The Koori Court's website explains:

In Koori Court, you will sit around a table—called the bar table—with the Magistrate, Aboriginal Elders, a Koori Court officer, the prosecutor, community correction officer,

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your lawyer and family. Koori owned and controlled agencies may also be in attendance in the courtroom to contribute to the conversation and offer support … Everyone is encouraged to take part in a sentencing conversation by having a yarn and avoid using legal language. Aboriginal Elders or respected persons may give cultural advice to help the Magistrate make a judgment that is culturally appropriate [and] helps reduce the likelihood of reoffending. (Magistrates' Court of Victoria, 2020)

The Koori Court system is designed to allow the local Koori Court to reflect local cultures and communities; consequently, offenders are expected to reside near the local Koori Court to "facilitate compliance with the order" (Victoria, 2002, p. 1131).

In order for an Aboriginal person to have their matter heard in a Koori Court rather than in the Magistrates' Court, the offender must follow the procedures set out on the Koori Court's website which include confirming availability and eligibility, entering a guilty plea and seeking a referral.

The role of the Koori Court has grown substantially since the commencement of this alternative court model. In 2002, the Attorney-General cited the high incidence of property offences as the likely business of the first Koori Court (Victoria, 2002, p. 1131). The matters before the court now are largely violence-related: offences involving violence and assault are the leading categories, and while family violence is not distinguished from other violence in the reporting materials, it is clear that violence-related offences predominate.

Sentencing in the Koori Court is decided by the magistrate but informed by advice of the serving Elders and engagement with other court participants at the hearing. The Victorian Sentencing Advisory Council's consideration of the Koori Court sentencing outcomes provides insight into the different approaches to offences most often sentenced by the Koori Court and the Magistrates' Court (Sentencing Advisory Council, 2010). The difference in sentencing approaches may be largely explained by the range of offences heard in each court, the prevalence of defendants with prior offences in the Koori Court (as those with a history of offending are more likely to receive sentences further up the sentencing hierarchy), and the Koori Court's distinct approach to sentencing

(Sentencing Advisory Council, 2010). The latter includes careful consideration of the impact on outcomes for an offender and the community; by way of example, the Sentencing Court suggested that the frequency of community-based orders and lower percentage of fines imposed in the Koori Court may reflect the emphasis on "deriving 'meaningful' sentencing outcomes" and recognition that "given the significant socio-economic disadvantage of those appearing … fines may … [compound] the underlying problems" (Sentencing Advisory Council, 2010, p. 32).

The Royal Commission into Aboriginal Deaths in Custody recommended the development of alternative sentencing options to position imprisonment of Aboriginal offenders as a "sanction of last resort" (Harris, 2007, p. 137). Across both courts the sentence of imprisonment was relatively rare, except in the instance of burglary. When comparing sentencing for the same offence, the Sentencing Advisory Council found that the Magistrates' Court was slightly more likely than the Koori Court to impose imprisonment; however, when imposed, both courts had an identical average sentence duration (2010, pp. 61–62). Dawkins, Brookes, Middlin, and Crossley (2011) observed in their 2009 to 2011 evaluation of the Koori County Court that these sentencing outcomes in the Koori Magistrates' Court suggest "the Koori Court is not a 'soft option'" (Dawkins et al., 2011, p. 25).

Profile of offenders appearing before the Koori Court

The Sentencing Advisory Council's 2010 report provided an overview of educational qualifications, employment status and history of prior convictions of offenders appearing before the Koori Courts from 2004–5 to 2009–10. The data were extracted from two primary sources: the Koori Court database and the Courtlink database. In total, 890 Koori Court cases and 426,438 Magistrates' Court cases were deemed suitable for analysis (Sentencing Advisory Council, 2010, p. 2). The Sentencing Advisory Council (2010) reported that:

- the majority of people sentenced in Koori Court and Magistrates' Court were male (71.7% and 79.2% respectively) and aged between 20–24 years (p. 26)
- the majority of male offenders accused before Koori Court had attained an education level of Year 10 or below (89.6%) and/or were unemployed (69.2%; pp. 59–60)

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- the majority of male offenders before the Koori Court had a history of prior convictions (76.8%; p. 35).

The Koori Magistrates' Court in Mildura and family violence–What works?

Our research focused on the pilot underway in the Mildura Koori Magistrates' Court. As previously discussed, in 2019 the Koori Magistrates' Court and Koori County Court in Mildura were empowered to sentence on breaches of family violence intervention orders. Mildura Koori Magistrates' Court is a trial site with a current sunset clause in May 2019.

Preliminary findings were overwhelmingly in support of the pilot and its potential for better addressing the complexities of family violence presented by offenders. There is currently no data on the impact of violence order breaches being heard in the Koori Court. During our research we listened to Elders express concern about the trial of violence orders in the Koori Court, saying that this wasn't entirely welcomed as there was considerable doubt about being "too involved" in people's personal lives—that intimate family violence was not something that the entire community should, or needs to, be involved in. We are hopeful this concern will be drawn out further when the Koori Court is evaluated to ensure women are not under-reporting in order to protect themselves and their children from community scrutiny.

Koori Court Elders and their strong community networks and knowledge

Critical to the success of the Koori Court is the service by Aboriginal Elders and Respected Persons. Elders serve on the Koori Courts in part-time roles and bring their strong community networks to bear on their semi-judicial duties. One Elder serving on the Koori Court was Elaine, a senior Aboriginal woman with an enduring professional and personal commitment to serving the Aboriginal communities in rural Victoria and New South Wales. The willingness of Elaine and others to undertake the role of Elders in the Koori Court speaks to their heightened concern for the future of younger generations. Her understanding of the circumstances of Aboriginal families is well-grounded in her years of involvement in Koori Court matters and her

professional history and involvement in community issues, especially in relation to family violence.

As discussed in *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women* (Langton et al., 2020, p. 78):

> Elaine's strong networks, years of experience and deep historical understanding of the Aboriginal communities across the Mallee region and into north-west New South Wales are forms of social capital that only she and a handful of people like her would hold. An Aboriginal offender facing an Elder like Elaine would recognise her power and influence in the community, and most importantly, that her opinion and judgement of his worth as an Aboriginal community member could damage his life chances in a tight-knit community like this one, and indeed, his life chances across a very large area that encompasses two states. She works closely with other local family violence workers and is fully aware of every family violence incident in the district.

The position of an Elder in the Koori Court is time-intensive and, in many cases, exhausting; the role is shared so Elders don't burn out, and this is important to protect them and ensure their ongoing influence in the Koori Court (p 78).

However, it was clear that Koori Court was not perceived as a silver bullet, but as a mechanism that improved court outcomes, as a court officer explained:

> So, I think that's one of the reasons [the Koori Court] works. But when you say it works, Koori Court isn't going to fix things. Koori Court sits at the top. The problems are all down here and we actually need all the [support] services and everything. By the time they get to us it's almost too late. We can't fix things. All we can do is provide a better court outcome. (Barbara, focus group, August 2019)

Shame and accountability

The shame felt by offenders appearing before Elders was reported to be the most effective impact of the Koori Court. As one participant explained:

> It's not easy. It's not easy at all. With coming in as an

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Indigenous person you're confronted by your Elders and you have to admit to the shame of doing what you've been [doing]. And that's a big step for anyone really, but it's hard because you know that you're disrespecting not only your Elders but your culture … Because it's that high level of shame, I think. Because I know that they can't get out because you've got the Elders and they will tell you … They'll tell you if you're doing wrong or you're doing right. They're not there just to chastise you. They're there to give you support and to advise you and to help you. (Tori, focus group, August 2019)

The Koori Court as an effective engagement mechanism for offenders and community

The evidence from our interviews during this research points overwhelmingly to a consensus that the Koori Court is an effective engagement mechanism for Aboriginal offenders and their family and community members, as well as service personnel, and that it is an improvement on their experience of the mainstream courts.

It is also clear that there is a consensus that careful case management of offenders who are perpetrators of family violence is the best measure for reducing violence; ensuring safer home and community environments for partners, children and other victims; and reducing opportunities for recidivism. Support service officers who managed referred clients from the Koori Court identified a complexity of issues:

Domestic violence itself is wrapped in other things, and one thing that we have found is poverty is a big thing … people want to feel independent and empowered, and when they don't, they get frustrated and act out … (Tony, interview, June 2019)

The Koori Court appeared to function as a formal, institutional and culturally safe witness to family violence and this witnessing role seemed to provide a measure of surety to the victims. Having the facts laid out in forms in plain English enabled the participants to better understand and be better understood. This approach avoids addressing witnesses in a confrontational and "high English" style often used in adversarial criminal court, with the possibility of miscommunication when speakers of Aboriginal English

are witnesses, offenders or victims. We were informed that this approach enabled participants in the process to better discuss matters and uphold the various aims of the court. Beyond the strict legal definition of the Koori Court's aims, we observed in Mildura that the presence of Koori Court Elders with the power to work with the magistrate to impose conditions of defendants appearing for violence enabled the potential for higher standards of perpetrator accountability and reform than observed elsewhere, such as:

- the offender taking responsibility for his or her actions
- the victims receiving an apology and the opportunity to air their grievance with dignity
- measures for case management of the offender ordered by the court
- any measures for problem-solving and ameliorating the circumstances that led to the violence able to be ordered by the court.

One of the key impacts of the Koori Court lies in giving victims a sense of dignity and removing the shame of being a victim. We note that this is particularly important, because if victims feel that there is a community-supported mechanism like the Koori Court that will deal with their matters, they will be less likely to be accused of treachery in reporting the perpetrators of the violence against them to the police. The victims are also more likely to engage with the range of support services that are recommended by the Koori Court in the collaborative style of problem-solving that is the hallmark of this special court.

This effect on the victims applies equally to the perpetrators, who are therefore left with little to support their justifications for violence in the face of victims' statements to the court and the opprobrium of the Elders in relation to their criminal acts. The impact of the Koori Court in ordering integrated services for offenders was referred to explicitly by a participant:

I think the principles of therapeutic justice would have us provide a more therapeutic court to everybody if we could. I'm very pleased that we can offer it to Indigenous people, that we're not treating them as cogs in the system, that we can explore the issues and look at solutions … And I think one of the intentions of Koori Court is to lower the incarceration level, to try to get a better outcome

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for the offenders so that they're not incarcerated, see if the Elders can get them to change their ways. (Barbara, focus group, August 2019)

Court officers are familiar with the history of the offenders and their connections or lack thereof in the community. Those who are disconnected from their kinship networks as a result of the disruption to family lines and the functionality of Aboriginal family structures by historical events (such as the forced removal of children, the impact of repeated incarceration of men removing them from their families and their family responsibilities, and the impoverishment of Aboriginal families by historical welfare and segregation policies) were perceived to be more likely to become offenders and to use violence in their family and other social settings, as one participant explained:

> I think there's a more homogenous community here than in other places, there is that pervasive notion of families being disconnected and struggling to reconnect. We've got some of that today where people didn't know where they fitted in … We deal with families with significant generational trauma, generational dysfunction and disadvantage; more so than in other parts of Victoria that I've experienced. So, it's really hard to tackle. In a rose-coloured world we could say, yes, Koori Court's doing fantastic things, but we can't tackle the social issues that arise. We struggle with getting services here. The amount of [acquired brain injuries] in this community is … huge, but if you're on the CISP program we can [now] actually have you screened for acquired brain injury and get [neuropsychologists involved]. (Barbara, focus group, August 2019)

Resourcing needs for Umalek Balit

The Umalek Balit program is a welcomed outcome from the RCFV. It is the provision of specialist family violence training and appropriate wellbeing support for court officials, staff and Elders, and addresses concerns of confidentiality and conflict of interest. Umalek Balit is the reinstated Koori Family Violence and Victim Support Program, as explained earlier, which employs specialist Koori family violence practitioners, male and female, to work with male perpetrators of violence and women victims respectively. The male family violence practitioners assist Koori offenders to understand their

orders and access support if they are unsure what they are required to do. All interviewees who spoke about the Koori Court advocated for the program and have noticed a shift in the court processes since, lifting some of the burden from the magistrate when explaining the conditions of an order. Fjorn, a family violence worker, explained the need for the program, and the need for resourcing and time for those who access the Koori Court pilot:

> [We need a] Koori man and Koori woman who would actually assist people coming to court. And … what we do already have evidence for is that client support to Aboriginal clients actually does take more time … What often happens, like you just copy/paste services from the mainstream and then you employ Koori people and you try to go ahead with that. But actually … [a session with] our practitioners … is like three times longer than mainstream practitioners. So, basically, at the same time that something that we are telling like, yeah it takes time. You know when you say culturally safe it doesn't mean just like hang the picture and … Koori stuff, it does also mean, you know like we actually need time to give proper support … (Fjorn, focus group, July 2019)

Along with the likelihood of Koori Court outcomes causing community conflict, as with other Magistrates' Court outcomes, safety, confidentiality and conflict of interest remain issues that require further attention and management. While the strengths of the Koori Court rest on local Aboriginal Elder service and Aboriginal community engagement, some participants raised concerns about training, scheduling and resourcing to ensure that safety, confidentiality and conflict of interest are managed: "Everyone in the court process needs to have specific family violence training and understanding. That's a whole new skillset, a whole new area …" (Fjorn, focus group, July 2019).

The Koori Court and Koori incarceration rates

Recent data show imprisonment rates for Aboriginal and Torres Strait Islander people remain high and that there has been an increase at a greater rate than in the non-Aboriginal Victorian population. This issue has been described as "the most intractable problem facing the justice system" (Sentencing Advisory Council, 2013, p. vii). Between 2008–18, the

imprisonment rate for Aboriginal and Torres Strait Islander Victorians remained consistently higher than the rate for the total Victorian population. In 2018, the imprisonment rate for Aboriginal and Torres Strait Islander Victorians was 2015.1 per 100,000 adults, but 152.3 per 100,000 adults for all Victorians (ABS, as cited in Sentencing Advisory Council, 2019). The *Burra Lotjpa Dunguludja Victorian Aboriginal Justice Agreement Phase 4* observed that these statistics were unsurprising as the "[socio-economic] conditions that led to the signing of the first Aboriginal Justice Agreement remain as valid as they were in 2000" (State of Victoria, 2018, p. 14). The observation of participants who spoke about the Koori Court was that incarceration rates had not diminished since the introduction of the Koori Court in Mildura, and the reasons they suggested were complex. Further research could reveal whether particular offenders were deterred from further offending by contact with the Koori Court. The success or failure of the Koori Court seeing violence breach orders remains unknown, though with rigorous evaluation, we hope to learn whether the introduction is welcomed by the community.

Substance abuse, neurological disability and mental illness

Three consistent and intersecting themes emerging from the interviews and focus groups were related to the significance of substance abuse, neurological disability, and mental disorders and mental health issues for Aboriginal perpetrators of family violence and their victims. Our findings suggest that all three issues are associated with an increased severity of (predominantly) physical family violence, the creation of barriers to accessing services, higher levels of incarceration and more interaction with the justice system in general. All three also created greater difficulties for ensuring perpetrator accountability. Perpetrators with substance abuse issues, neurological disorders and mental health disorders were reported at significantly higher rates than we anticipated.

One solicitor who works with perpetrators of family violence explained that the majority of her clients appear to have high-level and intersecting substance abuse and mental disorders:

> Yeah. Mental illness, drug and alcohol, family violence, yeah. So, I know that when we did our stats recently

… most of our clients had about two or three stages of complexity, and when I say stages it was like a priority, so, lots of people we see, they might have mental health, they might have literacy, they might have homelessness. You know you don't, rarely do we see somebody who comes in the door and we'd probably question if we were the right organisation for that person if they came in and we said, "Look, can you tell us about your priorities, or is there any disability you want to talk to us about, or let us know about?" And if they say, "No, we're good thanks", we're like, "Oh you can probably self-represent, I'll give you some information and off you go". (Sharon, focus group, October 2018)

Rhonda, a health service provider, outlined the embedded complexity of the lived experience for one of her Aboriginal clients experiencing family violence, and how the client's and her perpetrator's substance abuse (and her mother's neurological disorder) played a role in the family violence:

> Yeah. So, we've got a few Indigenous clients. I'm probably thinking of one in particular at the moment. So, she has disclosed quite significant violence out in [community], and that's been picked up by Child Protection. She's had her previous child removed because of family violence. She doesn't seem to be able to break away from this guy, and we all understand why that happens. I don't feel like there's enough support for her in regard to working on strategies to stay away, but also protecting her. So, she has … there are some drug issues. So, there's methamphetamine use with the perpetrator and with mum. There is other drug and alcohol issues. Mum's been brought up in family that's always been violent. Her own mother has a brain injury from violence within the family. (Rhonda, focus group, September 2019)

Linking substance abuse with family violence

The consensus among the service providers who participated in our research was that drug and alcohol abuse was linked to the majority of incidents of family violence and other violence and charges for violence-related offences. High levels of alcohol consumption and misuse are reportedly significant factors that precipitate violence, assault, early death and avoidable illness for Aboriginal and Torres Strait Islander people. For example, more than 70 percent of Aboriginal

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and Torres Strait Islander homicides between 1999–2009 involved the consumption of alcohol by both the offender and victim (SCRGSP, 2016). There is some evidence that shows alcohol use by offenders and victims can be a trigger that exacerbates both the risk and severity of assaults (AIHW, 2018; Miller et al., 2016). However, the limited national and international literature mainly focuses on the association between intimate partner violence and alcohol (Wilson, Graham, & Taft, 2014). More than two thirds of Indigenous Australians who have experienced physical violence report the involvement of alcohol or other substances (SCRGSP, 2016). The Productivity Commission's *Overcoming Indigenous Disadvantage* report found that despite the large number of initiatives and targeted policies and legislation implemented across the nation between 2002 and 2014–15, extreme rates of Indigenous family violence and risky, chronic drinking barely changed (SCRGSP, 2016, p. xxviii).

There is a small yet growing body of international evidence indicating an association between alcohol interventions and the reduction of family violence, including several examples in Aboriginal and Torres Strait Islander communities (Wilson et al., 2014). For example, after a liquor management plan was introduced in Groote Eylandt and Bickerton Island in the Northern Territory in 2005, it was found that community functioning had improved and that family and other violence had significantly decreased (Conigrave, Proude, & d'Abbs, 2007; Smith et al., 2013). Another example, known as the "Thirsty Thursday" initiative, was introduced in Tennant Creek in 1995. The initiative banned takeaway alcohol sales in all outlets and restricted bar sales on Thursdays. The restrictions led to a reduction of alcohol-related hospital presentations, including family violence assault admissions (Gray, Saggers, Sputore, & Bourbon, 2000; Wilson et al., 2014). Similar findings followed a ban on strong takeaway alcohol in Fitzroy Crossing in 2007. Outcomes included the reduction of alcohol-related hospital presentations and a reduction in the severity of family violence incidents (Blagg et al., 2015).

Lotus, a legal professional who often works with perpetrators of family violence, noted that of the hundreds of criminal offenders she had worked with who had been processed through the court in the past two years, there had been only one who had not reportedly been affected by drugs or alcohol.

She also noted the extremely high prevalence of addiction to the methamphetamine "ice" among these offenders, and that only four of this group had not had ice addictions.

Lotus also explained that she believed there were different categories of family violence offenders who engage and interact with the system in different ways:

- younger, immature offenders who cease their behaviours as they get older
- offenders with addictions to or who are misusing drugs and alcohol
- "sober and mature thinkers who breach intervention orders" (Lotus, interview, August 2019).

She also explained that perpetrators in these categories often respond well to services such as emotional, psychological, and drug and alcohol counselling (as opposed to an MBCP) and that waitlists were long.

Service providers working in individual perpetrator case management and MBCPs discussed the high level of perpetrators using alcohol and drugs to self-medicate for previous, non-treated traumas. For example, Tony explained that many of his clients turned to drugs and alcohol when they were not coping with past trauma or life in general:

> They walk in the door, saying they need support with substance abuse issues and after you start building rapport and peeling back the layers, you find that there's obviously been domestic violence in their home when they were children or they are now perpetrators of domestic violence, and not coping too well at home. So, they start substance abusing and obviously, not being able to identify their triggers and that sort of stuff. (Tony, interview, June 2019)

One Aboriginal community member explained how, as a child, her perception of family violence was intimately tied to alcohol abuse:

> Or you know the person and you know they're a good person and the behaviour that they're displaying or acting out towards you isn't really who that person is. And often trying really hard to keep things under control or try what you can to minimise it, keep things safe … So, a lot of your effort is going into that. As a child, for me, I

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would associate alcohol consumption; adults drinking to me, meant family violence. So, yeah, before I could put words like control and stuff into it, it was alcohol. (Jane, focus group, September 2019)

Other service providers discussed how some perpetrators use their substance abuse as an excuse for their violent and abusive behaviour:

We're also very mindful I guess with the language that we use with women, is it [substance abuse] exacerbates but it is not a cause, it is not anything for family violence, it is exacerbates it, but you find that there is always an element. They may be just be verbally violent but it may become physical when they're using alcohol or drugs. But we're definitely not looking as a cause, it's definitely not a cause of family violence. It's the general excuse you hear, "I was drunk", "I just finished smoking a point of meth", "I was just joking", "I didn't mean it", "I thought it was funny". These are the comments that are consistently coming, where we need to shift it, we should be majorly shifting our attitude of all services across into perpetrator accountability … And all language needs to be, you need to own and accept the actions and look at the reasons of why you actually got here. It's not because she told you to, "put your shoes out the front" or "don't walk mud through the house". No. She didn't turn around and say, "Hey excuse me, can you please punch me in the face?" It really needs to be that perpetrator accountability and the choices and the actions that they actually choose. And Victoria's slowly getting there. Albury's horrific, their family violence services, they're non-existent. They don't exist. The women's centre that provides … the counselling has a waitlist of nearly nine months … Yeah, I can't even get a meeting … Yeah, because they've got no time. They don't even have a full-time … they don't even have one full-time counsellor and we're not funded to work in New South Wales. (Julie, focus group, October 2018)

High levels of access to and availability of drugs at the fieldwork sites

Participants at both fieldwork sites reported the high availability of and easy access to drugs, particularly crystal methamphetamine (commonly known as ice).

Well [ice] is like the new alcohol. It used to be just alcohol

back in the day, when I was growing up. But now it's the drugs that's taken over the alcohol scene. So, it's probably a worse thing because, with drugs, you just don't know with someone. You don't know what they're going to do. With alcohol, you can sort of predict what's going to happen. But someone on drugs; you just can't predict what they're going to do. And what they're doing now is they're all thieving off one another. So, the whole families are fighting. So, it's breaking up the whole families, not just one or two in the family, it's the whole family because, like I said, they're saying, yeah, I'll come and clean your house, aunt or mum. Then when they go to clean, they're cleaning all right. They're cleaning them out of everything. (Damian, interview, November 2018)

These contentions are supported by the research of the wastewater monitoring project at the University of Queensland, commissioned by the Australian Criminal Intelligence Commission (ACIC), which tested at 52 sites nationally (20 in capital cities and 32 in regional sites). Although exact locations were not published to protect confidentiality and the integrity of the project, in the Commission's eighth National Wastewater Drug Monitoring Program report of 2019 it was revealed that Victoria had "the highest average regional consumption of methylamphetamine nationally" and "the second highest average regional consumption of oxycodone in the country" (ACIC, 2019, p. 49). One regional site in New South Wales had the highest average weekly use of methylamphetamines in the nation (ACIC, 2019, p. 23).

The already increasing prevalence of crystal methamphetamines in Victoria prior to this led to the Parliamentary Law Reform, Drugs and Crime Prevention Committee leading an inquiry into the supply and use of methamphetamines, the final report of which was released in 2014. This report found that although there had not been an overall increase in methamphetamine use between 2011–13, regular users were using the drug more frequently and there had been a shift towards the use of crystal methamphetamine (away from the powder form). It also found that there was an increase in the purity of crystal methamphetamines, which reportedly exacerbates harm (Law Reform, Drugs and Crime Prevention Committee, 2014). The Victorian Government responded in early 2015 with a $45 million action plan to start the process of addressing the impact of ice use and supply in Victoria.

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Mildura, in particular, has been identified as a site with a high prevalence of crystal methamphetamine supply and consumption. Community concerns in 2013 regarding its increasing pervasiveness led to a community intervention: Project Ice Mildura. This project ran a community education campaign promoting awareness of the risks and harms associated with the drug, with information sessions addressing issues such as how to recognise the signs and symptoms of ice use, its effects and the available treatment options (Australian Indigenous Health Infonet, 2014).

There was also a general consensus from participants in the study that there were high levels of drug and alcohol consumption in Albury–Wodonga, which was impacting families and the community in general:

> And then we found that that's causing the family breakdowns with the drug use and alcohol use. It's high, it's getting massive here in Albury. Just … yeah, it's not good. I don't know what it's like in the cities, but definitely in these little country towns it's high, it's definitely high. The families are breaking down. The women, obviously going through domestic violence because of what the males are doing, and then there's no money. So, then how do they support the children? It's horrible. And there's no services here to support that. And to try and get help for your drug and alcohol and domestic violence, what are you going to do, ring up a health service to try and get in there and talk about it? What are they going to do? (Laura, interview, October 2018)

Many service providers and community members discussed the growing and problematic role of crystal methamphetamines in relation to family violence in the fieldwork sites:

> Yeah. The ice is just, I think that's the big trigger for the majority of everything. Family violence, that is more in the open now and there's a lot more support [for] the accused or the victims with that as well. (Barbara, focus group, August 2019)

Some noted that ice appears to be the trigger for some instances of family violence:

> We'll get people that have had the first … never had DV in their relationship then DV starts and it's to do with ice. And then, for some women, it will just take one or

two events and then they say, "That's it, you're not coming near us", and then the partner has got off it—like it's only been a few times that they've used it but they've gone mental [sic]—and now they're back together as a family, no problems. Like, ice has been the blame or the instigator of it. (Jennifer, interview, October 2018)

Healthcare providers also discussed how the use of crystal methamphetamines was creating far greater harms than other drugs:

> Yeah, it is sad. Even our paediatricians would say that the methamphetamine use is at the crux of a lot of our issues at the moment, and we've heard some people say that they would rather people be addicted to heroin because they're calmer and easier to deal with, and with babies that are born addicted to methamphetamine, it's easier to withdraw them from an opiate-based drug. But yeah, methamphetamine is huge in this town and I think at the centre of a lot of our problems. (Rhonda, focus group, September 2019)

Rehabilitation services and drug and alcohol counselling

One of the findings of this research is that support services such as rehabilitation and drug and alcohol counselling services play a significant role in perpetrator accountability, as they can enable perpetrators to address underlying issues that create barriers to taking responsibility for and ceasing their violent behaviours and abuse (see more detail in "Perpetrator accountability" section). The lack of access to rehabilitation services and alcohol and other drugs counselling was regularly raised by Aboriginal service providers and community members at both fieldwork sites.

> And I know off the top of my head the drug and alcohol counsellor's only available once a month or something like that for the community as well. So, they don't get to see everyone. It's crazy down there. (Laura, interview, October 2018)

Douglas explained his use of drugs and alcohol to self-medicate for other problems that had arisen during his lifetime. He also explained that rehabilitation services had worked well for him to address his drug and alcohol issues, as well as past trauma and his use of violence:

I've masked it. I've always masked it. I've never dealt with the issue. I just masked it with drugs and alcohol and just buried it. Yeah. Doing 18 months of rehab, it brings up all of your, you know, your underlying issues and what not and yeah … It was either that or never see my kids again and that—I might as well be dead, you know? Didn't think I'd live to 25 to tell you the truth, the things I did as a young fella you know what I mean? Yeah. I was 35 when I first went to jail for armed robbery and there was an opportunity to go to rehab and I took it, you know? It changed my life. (Douglas, interview, September 2019)

Acquired brain injuries

The AIHW (2014, p. 220) defines acquired brain injury (ABI) as

multiple disabilities arising from damage to the brain acquired after birth. It results in deterioration in cognitive, physical, emotional or independent functioning. It can be as a result of accidents, stroke, brain tumours, infection, poisoning, lack of oxygen, degenerative neurological disease, etc.

ABIs damage parts of the brain that regulate emotions and behaviour. For this reason, research has found that people with ABIs have a higher likelihood of committing violent crimes. A study that analysed 10 years (2006–16) of Victorian emergency department hospital data found that approximately 40 percent of the victims of family violence had sustained brain injuries (Gabbe et al., 2018). The report outlining the study's findings noted that male perpetrators of intimate partner violence were "twice as likely to have sustained a brain injury as matched community samples" (Gabbe et al., 2018, p. iv) and that around 60 percent of these perpetrators had ABIs (Gabbe et al., 2018, p. vii). There are multiple studies that have also connected high rates of ABI with intergenerational trauma (Campo, 2015; Gabbe et al., 2018).

Some participants noted that ABIs (and mental health issues) often go undiagnosed, and in many circumstances are misinterpreted as drug or alcohol consumption by authorities on family violence call-outs. For example, Elaine, a service provider, noted: "But then there's a lot of mental health issues there too that police think may be drugs that are not drugs; they're mental [health], ABIs or whatnot" (Elaine, focus group, October 2018).

The misinterpretation of symptoms of mental health disorders or neurological conditions can have significant implications for the way perpetrators (and victims) of family violence are treated and managed in the justice system. For example, preventative approaches such as referring individuals to appropriate treatment could divert many perpetrators away from the criminal justice system and inappropriate incarceration. Given the high and increasing rates of Aboriginal and Torres Strait Islander people incarcerated, this distinction and need for recognition is of high import.

One service provider working with Aboriginal perpetrators of family violence estimated that approximately half the men he worked with had ABIs from either alcohol and other drugs misuse or physical violence inflicted on them, often in childhood (Gary, focus group, June 2019).

Several service providers in the study noted that for perpetrators of family violence with ABIs, the use of violence can often be a form of communication, with behaviour similar to that of a child:

… they resort to a communication style such as violence that's … especially if you're working with a guy who's got a acquired brain injury … Yeah. He's, you know what I mean, probably functioned around like a, you know, he's got a 30-year-old body, but he functions around like a … like a little kid, sorry. (Gary, focus group, June 2019)

A good example, I've got a client, he's got an acquired brain injury and you can tell when he's upset with you, he, like, engaged into kids mode and he looks the other way and starts swearing but not at you, if you know what I mean. Like if you're a kid. And just, his behaviour's like a little kid. And, yeah. (Danika, focus group, June 2019)

Service providers that provide support to women who are victims of family violence also explained how many of their Aboriginal clients have ABIs as a result of the family violence they have suffered. Jeanine, an officer of the court, noted this also makes these women more vulnerable to chronic victimisation and at a higher risk of suffering more severe family violence:

I would say that ABI issues drive victims' behaviour a lot. So, you know you get a lot of women, particularly Aboriginal women with ABIs. A lot of those ABIs are a

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result of violence in their lives … [and] alcohol abuse or drug abuse as well. Once they have an ABI they're more susceptible to being victims of violence and they tend to have more incidents of serious injury as a result of the violence that's perpetrated. So, they tend to experience I think the higher level violence. They're less likely to react to that and get an intervention in place that might protect them. In terms of the perpetrator, some of it's ABI which makes it difficult because an ABI is a disability … (Jeanine, interview, August 2019)

Another service provider explained that most of her Aboriginal clients with ABIs have perpetrators that use coercion and manipulation to control them:

But then, somebody with an ABI usually has somebody controlling them. So, it's no carer, it's a controller. So, yeah. You're always, and it could be a child or anything, it's a controller, there's no, people don't know how to care, they know how to control. So, it's just inbuilt, so. And there's a lot of really, we've actually got one at the moment, here in [location], she was dragged behind a car and she's got all these little children. (Danika, focus group, June 2019)

Foetal alcohol spectrum disorder

Foetal alcohol spectrum disorders (FASDs) are a group of neurodevelopmental and growth abnormalities that are caused by maternal consumption of alcohol during pregnancy (Burns, Breen, Bower, Leary, & Elliott, 2013; Riley, Infante, & Warren, 2011). FASD is poorly diagnosed in Australia and internationally, although there are some studies indicating a high prevalence in Indigenous populations in the United States, Canada and some parts of Australia (O'Leary, 2004; Pyett, Waples-Crowe, Loughron, & Gallagher, 2008; Roozen et al., 2016). People with FASD can experience a wide range of behavioural issues, memory loss, substance abuse issues and increased contact with the legal system (Streissguth et.al., 2004).

One legal professional's observation of the extent of FASD was described, and she also observed that those who suffer from the impact of FASD are vulnerable to drug dealers, especially methamphetamine dealers. Talking about the impact of illicit drugs on the local Aboriginal population caused her distress because of the impact on Aboriginal women who become addicted to ice and are forced into prostitution by the dealers. Despite her distress and our suggestion that we stop, she insisted on continuing with the interview:

We were talking today about my observation that I believe that there's intergenerational foetal alcohol syndrome … I think I'm seeing it in the third generation at the moment. It's undetected, undiagnosed, manifests itself in what we consider criminogenic behaviour. But I take the view that it's largely to do with people not having the capacity for self-regulation, self-reflection or impulse control or consequential thinking, all indicia of foetal alcohol syndrome. And the thing that hit us here harder than anywhere was ice because the bikie gangs infiltrated here. It was about seven years ago the bikie gangs actually used this as a hub for a distribution ring and used the Kooris in the community here to distribute the drugs. Yeah, the bikies have all been locked up, but the ice problem is rife … So, they were using Aboriginal people, giving them freebies, and then getting them hooked and then turning them into … their dealers. So, we've been left with the awful situation … It's just when I was working in the Koori women's diversion, so I know … women that actually are addicted to ice and the stories that they have told me [are] just heart-wrenching where the dealers have prostituted them out and being that drug mule and getting them to do all sorts of nasty things, and it's just, it's really horrible … (Barbara, focus group, August 2019)

Other service providers discussed the problem of referring and accessing treatments and programs that are sufficient to manage the needs of perptrators with FASD. Lotus explained, also noting the problems related to when perpetrators have undiagnosed FASD or other neurological and mental health disorders, that

people who do have an ABI or have things like FASD, it's difficult to get programs that are actually tailored to their needs and in some situations there's an inability to acquire the skills and apply them at times of crisis … The one that's more difficult to discern at Monday triage day are things like undiagnosed mental health issues and undiagnosed or undisclosed brain injuries or conditions like FASD. (Lotus, interview, August 2019)

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Mental illness and mental health problems

Many service providers taking part in this study noted that although mental disorders and other mental health problems were rife in the fieldwork sites, there was an acute shortage of mental health services to refer their clients to. Jeanine, an officer of the court, explained the extent of the demand and the shortage of services in this area:

> That's mental health. That's the driver behind that particular offender and it's amazing that it's not drugs and alcohol, but it is clearly mental health. Mental health is one of the biggest drivers of illicit drugs up here, of homelessness, of violence. You know it's such a big underlying issue and I haven't specifically stopped to work out the numbers, but I'd say that that will be as high as the ice usage issue. So, mental health is a major, major issue in this town with violence. You know and it's the fact that people, you can't access a doctor up here in a timely fashion. You can't get to a specialist up here; you can't get to a mental health service provider in any quick time. So, if you're not already a patient in a clinic you can't get in to see one. And that's just generally for health issues, let alone mental health. When you do, the limited number of referral services around. So, you need your mental health plan. So, that's kind of a hurdle that people have to get over. But even then, to get a bulk-billed service is really difficult. So, you can really then only access the other service providers if you can afford to pay the gap. Most Aboriginal people can't afford to pay the gap. So, what happens is of course they're not getting treated through the medical profession … they're actually self-medicating and ice is a good, feel-good drug unfortunately. (Jeanine, interview, August 2019)

As noted by Jeanine, the lack of access to services to treat mental health conditions can cause knock-on effects, such as self-medication with drugs and alcohol. Some community members explained how this has impacted them when they have experienced family violence:

> The same thing, yeah, happened to me, similar to me. I actually had a manic attack. I've got diagnosed with bipolar and I ended up in the hospital for a month following an assault last year. And then I just got put in the hospital. So, when I got out and still today, I still have stuff I haven't told them. I don't know how to, and then they just give you medication. (Jane, focus group, September 2019)

Other participants noted the high levels of mental disorders in the Aboriginal community at the fieldwork sites. For example, Jeanine discussed the high levels and associated problems of schizophrenia in the local Aboriginal community, and how that can exacerbate violence and criminal offending:

> But it's mental health that I'm seeing a bigger driver, it's the schizophrenia. Schizophrenia's off the Richter scale in my view in the Aboriginal community up here and not very many people are regularly taking their medication. There's a lot of really late diagnosis so a lot of the criminal clients that I've seen they've been schizophrenic all their life, they've been in prison for most of the[ir] life, it's not until a recent diagnosis [that they] go, "Oh that's the driver of this particular behaviour". And then in that mix there's violent outbursts. Schizophrenia's a pretty scary illness when it's not medicated and managed properly and yet it's a lot of those clients in particular who are taking ice because they don't know what's wrong with them and so they think that's the solution which then, as you can imagine with the aggression that that can drive if that's inherent in your nature, there are the high-end offenders just in terms of criminal offending let alone family violence offending. So, it's mental health and it's disability and neither area in this town and probably not in this state is managed properly, and yeah you do see a lot of those clients in the criminal justice system and particularly in the domestic violence space. (Jeanine, interview, August 2019)

Court Integrated Services Program

The Court Integrated Services Program (CISP) is a support program in Victoria available to

> accused persons who are on bail, summons or remand pending a bail hearing, and have health or social needs that contribute to their offending such as drug and alcohol addiction, homelessness, disability, mental health or social and cultural isolation. (Hardy & Rutter, 2017, para 1)

It aims to help offenders address the factors that are leading to their offending. The need for support programs, such as social housing, programs like CISP and expert medical diagnosis, is high in Mildura. All were described as inadequate and the follow-up interventions as lengthy. We spoke to several participants about CISP and the positive changes it has made,

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and the potential it has to make if used properly.

> Acquired brain injury … it's huge, and until we got the CISP program here and now the court, if you're on the CISP program we can actually have you screened for acquired brain injury and get the neuropsychs. CISP, it's not just for Kooris, but it's a bail support program to try and help people address their offending, the factors that are leading to their offending. So, we put in a holistic program that lasts for 4 months that'll try and look at housing, mental health issues, drug issues, whatever else, anger management, whatever is the situation. Through that program we identified that there's been a shortfall in proper assessments for neuropsychological disorders. So, we screen and if we think that somebody's [a candidate], we get the experts to screen. If we think somebody might have an acquired brain injury, we then commission a full report and at the conclusion of that report we also arrange a follow-up interview so that the person has the findings explained to them in plain English. (Barbara, focus group, August 2019)

One participant explained that prior to launching CISP they were limited in resources that could identify people with existing neurological issues. This deficit was in dire need of intervention, which is what the CISP program appears to be adequately addressing.

> So, we're getting better reports [with CISP] and similarly we're getting better psychological reports. But the services here aren't great and drug services, for example, at [service provider] they've just cut the Koori drug program. So, we struggle up here with services. (Barbara, focus group, August 2019)

We asked the participants if they were able to order an assessment for offenders that they suspected of showing symptoms of FASD, to which one participant responded:

> Under our Sentencing Act, we're not able to order forensic care assessments, but through our bail program, if somebody's on bail, we can order a neuropsych assessment hinting that they have a look for FASD. We're not getting many people identifying with FASD … We know they're out there but to get a definitive diagnosis is very difficult, and often it's because it's very difficult to get a proper history of what the mother's drinking habits were during

pregnancy as of the shame factor and we're all very well aware of that but mothers aren't readily going to say, "Yeah. Well, I was drinking during pregnancy". It's not the sort of thing you want to put your hand up to so it's very hard to pinpoint it. But we know that it happens … across the board in the community. The most recent, the West Australians who are well ahead of us in FASD research reckon there could be up to a million Australians with FASD. (Barbara, focus group, August 2019)

We heard in the interviews that it could be difficult to obtain a report if an offender was unaware of the benefits of taking part in the CISP, which highlights a major gap in service delivery and communication with offenders about their cases. As described below, service providers are only required to inform court services that a client is not engaging, rather than the court following up to ensure offenders with potential neurological disorders are assessed prior to a hearing.

> Yeah, so, it's a court program. It's like an intensive support program. But if it's from the Koori Court, it might not be heard for another, you know, four months. And in that time, they are long gone. We can't get that information back to them to the magistrate. So, it's kind of two weeks out from Koori Court, the officer might say, "Can we get a report on them?" And so, we've got nothing to report on, they didn't, you know, attend. So, there's a gap. I don't know how we could service that better, but I guess it just depends who we are interacting with. With that CISP program, it is easier for us to jump on the phone and say they're not suitable or they're not engaging, which again, we always tell the guys we're not a part of that system, the court system or the justice system and all of that, but there's also an honesty thing for us that we're not going to say, "They are going great, we caught up with them". They're just not engaging. So, that's what it is. And we don't tell their life story back to the courts or anything, we just say they are not engaging and it's as simple as that. (Joshua, interview, June 2019)

The underlying issues raised in the interviews were the physical and social attributes of the offenders, such as FASD, ABI, other neuropsychological conditions and, especially, intergenerational trauma, which is often expressed as poor social and communication skills and poor socialisation such that the offender is unable to inhibit his or her behaviour,

Figure 3: The three pillars of Aboriginal and Torres Strait Islander perpetrator accountability

distinguish between right and wrong, or make sensible choices, including using nonviolent behaviour to resolve disputes. In the Koori Court, these matters are brought to the attention of the offender and the attending service personnel during the course of the proceedings (rather than at sentencing as in the Magistrates' Court).

Perpetrator accountability

"Perpetrator accountability" is frequently used terminology in policy and other grey literature, yet its definition and use are often very general and ill-defined. The Centre for Innovative Justice (CIJ) has noted that perpetrator accountability definitions often focus on criminal justice responses and single interventions such as MBCPs (2018, p. 1). Others have described perpetrator accountability more broadly, as a combination of all of the mechanisms and responses that contribute to a perpetrator's process or "journey" towards taking responsibility for, and ultimately ceasing to use, violence (CIJ, 2016, p. 10).

Three pillars of Aboriginal and Torres Strait Islander perpetrator accountability

Given this project focuses on the journeys of Aboriginal and Torres Strait Islander men through the family violence legal and support system, the issue of perpetrator accountability is highly pertinent. In the context of this research, perpetrator accountability is used as an umbrella term, referring to its three interconnected pillars of responsibility:

- systemic and institutional accountability
- community accountability
- individual perpetrator accountability.

Using this framing, we see Aboriginal and Torres Strait Islander perpetrator accountability as the configurations of responsibility that are specific to, or shared across, institutions, communities and the individual perpetrator (see Figure 3).

A core aim of perpetrator accountability is to shift responsibility for the violence and abuse away from victims, who are often unfairly blamed, either directly or indirectly, by the system, their communities and their perpetrators. This research has found that understanding the interconnectedness of the three pillars of perpetrator accountability is important to ensure the best outcomes for individuals, families and their communities, as failings or weaknesses in any of the three can significantly impact the risks for women and children who are victims of family violence.

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Figure 4: Systemic and institutional response measures for perpetrator accountability

Targeted accountability measures (direct)	Support measures to address accountability (indirect)
• MBCPs • clinical interventions • individual case management • risk management mechanisms • Family Violence Police Units • civil and criminal justice system (protection orders etc.) • family violence legislative and policy measures • interagency risk assesments	• Alcohol and drug rehabilitation • trauma counselling and healing services • housing and homelessness services • employment and financial services • family services

Systemic and institutional perpetrator accountability

Systemic and institutional perpetrator accountability refers to the responsibility of governments and services to hold perpetrators to account for their violence and abuse. This includes the system of targeted responses that encourage (or compel) individual perpetrators to take responsibility for their violence. Targeted responses include MBCPs, risk management mechanisms and civil and criminal justice responses (see Figure 5). There are also other associated responses that indirectly support perpetrator accountability by seeking to address factors that may contribute to, exacerbate or trigger perpetrator violence or create barriers to accountability, such as substance misuse, poverty, unemployment and homelessness (see Figure 4). These responses aim to address underlying factors that may present major context-based barriers to individual perpetrators addressing and accepting their responsibility for acts of violence and abuse. International and national studies show that family violence reoffending is statistically associated with some of these issues (e.g. low educational attainment, residential instability and unemployment; see e.g. Hulme, Morgan, & Boxall, 2019; Millsteed & Coghlan, 2016). Thus, support measures can be necessary for perpetrator accountability: if fundamental and underlying issues are not addressed, a perpetrator's ability to take responsibility for, and cease using, violence is significantly diminished.

The CIJ (2018, p. 11) has contended that all components of the family violence service system must be held accountable for the way in which they deliver their services to perpetrators, especially with regard to:
• how they approach and engage with perpetrators
• how they manage referrals to other services
• their family violence expertise

• how they identify, take action against and manage risk
• how they support individual perpetrator accountability.

This research found that although overall systemic and institutional accountability was improving at the fieldwork sites, the improvements were both variable and relative. Many gaps and inconsistencies remained within and across institutions and between sites and jurisdictions. Our findings are in alignment with those of the RCFV, which determined that perpetrator programs in Victoria were inadequate in scope, variety and number to meet demand. The RCFV also found that program completion and quality was insufficiently monitored, and that MBCPs needed to be integrated across relevant services and organisations (State of Victoria, 2016b).

One measure that aims to increase systemic and institutional perpetrator accountability is the formation of multi-agency risk assessment and monitoring groups. In both New South Wales and Victoria these groups regularly meet to monitor and assess individual high-risk cases of family violence. Cases are referred to these groups to address any risks that are not sufficiently mitigated by interventions in place. In Victoria, there are 17 Risk Assessment Management Planning (RAMP) regions that operate across the state, putting strategies in place with the aim of holding perpetrators accountable and increasing the safety of victims. One service provider explained the RAMP process in relation to increasing perpetrator accountability:

Well it could be he's not allowed to come within the bounds of Wodonga, or he has to do drug screens every day. He might have to see his parole officer once a week, those sort of, so that's about accountability, the perpetrator accountability. That's for high-level cases where there's a risk of lethality, like where it's considered this woman and her children are really at risk of being killed. So, probably

once a month we have probably on average two referrals in this region, to the RAMP panel. Yeah and just below that we have what's called a strengthening risk management form, and we try and do a whole lot of that work before taking, referring the case to RAMP because often the work can be done, because of this new information sharing legislation. So, we can share more freely around risk to children and women. (Judy, interview, October 2019)

In New South Wales, there are locally coordinated Safety Action Meetings (SAMs) that have been implemented as part of the NSW Domestic and Family Violence Framework for Reform. SAMs similarly focus on high-risk perpetrator accountability and prevention of family violence. Although the membership of these multi-agency groups may differ, they include relevant workers from family violence agencies, the health sector, the alcohol and other drugs sector, police, corrections departments, child protection authorities, education, mental health, housing and community organisations.

A particular weakness in systemic and institutional perpetrator accountability that consistently arose in this research related to the child protection system. Many service providers discussed how victims of family violence—particularly mothers—were systemically held to account for the violence of their perpetrators by child protection authorities:

> Well, Child Protection [blames the mother for the violence], like she's not a protective mother. She's not seen as a protective mum or if she's putting her relationship before her children and things like that. He's the violent one, often, for lots and lots of reasons. (Judy, interview, October 2018)

Others discussed how this is more indicative of overarching systemic failure to hold perpetrators to account:

> We know … that we need to make men more accountable. They need to be more visible in this system. But there is not a lot of services to refer men out to. Like I said, we're lucky we've got the case management. But we didn't have that a few years ago. And we know that probably more kids were being removed at that time for those reasons. (Carmen, focus group, October 2018)

Some participants noted how ignorance of the dynamics of family violence of some authorities interacting directly with victims and perpetrators of family violence can work directly against individual accountability, instead supporting the perpetuation and continuation of family violence.

> There's also a concern with the way the police—if the police are victim blaming to the woman's face, potentially, they've already just been through something quite traumatic, to then have that almost reaffirmed that that's person worse off or whatever it may be … So, with all that research and the power and control where the one thing they say, the most common form of violence despite your drug and alcohol and your physical attacks and what not, the most common form of violence is minimising, denying, and blaming. So, absolutely if that sentiment's echoed through the police, "Did he really do that? Is that that bad?" and she's hearing that from them, then her reluctance to report the next time is going to be huge. Either the feeling of betrayal of, "Shit they didn't believe me" or "Maybe I'm crazy, no one's going to believe me", "He's right. I am blowing it out of proportion". It just validates some kind of … those stats around they'll leave seven times, it makes sense. I think it's seven times and higher if they've had a need of response with services with engaging and needing a response could be any of those things, yeah. (Nicholas, interview, June 2019)

Service providers also observed that there are waiting lists upwards of three months in Albury–Wodonga and six months in Mildura. One participant explained that the wait for access to a program can lead to an escalation of violence for the victims: "[Perpetrators'] behaviour escalates and so the more they come in contact with the justice system for breaches the worse they get" (Jeanine, interview, August 2019).

Participants frequently discussed the lack of specialist training in family violence issues for police and corrections officers and the problems this can lead to for the victims of violence. For example, one participant noted:

> But then you fold in Corrections and Police, I wouldn't say they're family violence specialists, even though the majority of their work is family violence. So, I'd like to see them on board with risk assessment and the same language. You catch that very easy if you do your research

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in terms, if you're including police, if you look at L17s [Risk Assessment and Risk Management Reports] and just look at some of these reports and they're just dreadful. The content's dreadful but the description of it, "She seems to have pissed him off by not doing this" or you know, some of it's just useless. They're supposed to have statewide training and be universal and supposed to be writing this for court and not in the way it's blaming but some of it's very blaming. "This is the third incident we've attended this week and the AFM [aggrieved family member] is drunk again." Like "again" doesn't need to be there. It is factual to say, "She's substance affected" but it's very blaming narratives. So, that's a worry. So, usually the women or children, or children are noted as children. So, the standard language, and see they've got standards, so the standard language is, "Perp was interviewed", so the perpetrator's going to be the man, and the AFM's going to be the woman. That work goes from there you can hear that opinion coming out in it. So, they have means to do that. They have statewide training and yeah. (Nicholas, interview, June 2019)

Another service provider discussed why it was important for all police to have expertise in family violence, rather than only specific family violence units:

> With the police as well, I'm not sure they're all skilled in family violence. Sometimes the family violence team will be attending to another matter, another department will have to attend to the family violence matter and whether they're trained appropriately for that or not; sometimes there's no trust at all in the police. (Rosalie, interview, August 2019)

Aboriginal and Torres Strait Islander community perpetrator accountability

Community perpetrator accountability denotes the responsibility of communities to hold perpetrators to account for their violence. For Aboriginal and Torres Strait Islander women experiencing family violence, this form of accountability is of high significance, but is also often lacking. For example, one service provider explained how community accountability would be improved with better community cohesion and connectedness:

> And, also in the Aboriginal space, we want to create that

community feeling again, which is a way of a prevention approach because if you bring the community back together then you've got more support when a family is going through it. If you think pre-colonisation, the family business was out in the open in front of everyone. Especially for my people, that court would come together, and you have your clans, your chief, your headmans and leaders, you know, around in the inner circle and you would have the community around as well booking their way through the issue. And say, back then, if I was to hit my partner, it was as if I hit my whole community. The whole community felt it and that whole community would be like, "How could you do that to our community?" And I said, that's what I think about prevention with Aboriginal, by creating that community that helps bring that back together, so everyone is supportive. If your community is more connected, then you are going to have guys who are not going to be afraid to go and say to that guy that you shouldn't be doing that and that's no good. You don't have the community to do that now. If we were to just go out and do that. (Joshua, interview, June 2019)

An example of strong community accountability is when members of the Aboriginal community assist the police to locate a perpetrator after a breach of a protection order. A participant explained:

> When my one breaches his [protection order], he goes on the run like a little bloody greyhound. And they can't find him. They depend on the community. That's how he got locked up last time, through the community. So, they couldn't find him. We do have a lot of resources between each other. (Lorraine, focus group, September 2019)

Community accountability also supports perpetrators with their own individual accountability. For example, when one participant in the study was asked what most supported his journey towards personal accountability for his violence, he explained:

> Members of the community that I respect. So, like, there's a counsellor from mental health up at [the local Aboriginal community-controlled health care centre]. He actually turns out to be an uncle of mine and some advice he give me, and some of the other advices from the Elders up there, they were sort of really pointing the

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finger and saying, "Well, you've got to own your stuff, Timothy". And just looking back—I've always been an honest believer in reflections, if it's honest reflection. You can't just look back and go, "Oh, yeah, that was yesterday. If I try and do things different then they will be different today because I'm trying". Well, it's not the case. You can try all you fucken like, but nothing will change if you don't actually do it. So, you've got to do what you want to do to try and change. You can't just think about doing it, you've actually got to do it. And so, there was a lot of respected people in the community pointing the finger and saying, "But, Timothy, you did this. They didn't make you do that, you done it. Own it". And it's all about accountability and so, I'm very accountable for my actions and I won't deny things I've ever done. If I've done it, I've done it and I'm happy to own it. Because that [is] the only way to move forward, when you own your stuff and [that's] what's helped me a lot with my getting better in myself. (Timothy, interview, September 2019)

Aboriginal and Torres Strait Islander community accountability was found to be also strongly connected with systemic and institutional accountability. Examples of crossover include the work of Elders and respected community members in Koori Courts (e.g. the trial of family violence protection order breaches in Mildura) and the services provided by local community organisations (e.g. Aboriginal-specific MBCPs and drug and alcohol counselling). However, systemic accountability failures can impact on community accountability (and vice versa). For example, if the justice system fails to hold perpetrators to account for their violence, fear of perpetrators can escalate in communities, making it frightening and potentially dangerous for community members to support victims and call perpetrators to account. Other participants noted it can also become a divisive issue:

[Catherine:] Yeah, they all talk but they all want to, they all want to harbour the person that did … the person that did the assault …

[Lorraine:] And it divides the community.

[Catherine:] You're the victim, you're a dog for telling. But …

[Lorraine:] [Community members say] "Oh, youse think youse are good now because youse have got a job and youse went white because youse …"

[Catherine:] They're hiding him.

[Lorraine:] [Community members say] "Youse are respecting, you know you're respecting the government."

[Catherine:] Because they're scared of him too. So, you don't know which way to go. You know you … you just might as well not get involved in any of it at all. (Focus group, September 2019)

Other participants noted that some Aboriginal perpetrators used kinship and other networks within their communities to extend their control over and manipulation of their victims. An example of this is when perpetrators used community members to monitor their victims.

[Monica:] Or he's locked you in the house and he's watching everywhere you go … it's like what can you do?

[Lynette:] His family watches everywhere you go. If she's been isolated here, if she comes down from [outside of town] or whatever … (Focus group, October 2018)

Another theme arising from the interviews was the damage that individual perpetrators could inflict on their communities with regard to community cohesion. Timothy, a perpetrator of family violence who had also engaged in years of other criminal behaviours, explained how he understood the damage he had imposed on his own community:

How much destroying of the community have I done? As long as I've been a member of it, I've destroyed it just as much. Because I haven't helped no-one, that's for sure, doing what I used to do. Because I can … I own the story and it did me no favours. So, imagine if I can own that in myself, if someone else can own it too—that's just doing the walk at the moment—that would be their journey as well. They'd probably be thinking, "Fuck you. You're not doing no favours". And I've had to live with that stigma in the community for a long time because my behaviour was pretty out there—and I never cared. I never cared what the community think. I'm me and if you don't like me, fuck what you think. I'm me and I'm going to be me, that's all I is and that's all I will be. Can't be anyone else. But I learnt, after some deep reflection and some help … and psych work and counselling that there's other ways to

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do things. And brief interactions with the NA [Narcotics Anonymous] rooms and AA [Alcoholics Anonymous] rooms … and it wasn't really me … (Timothy, interview, September 2019)

As detailed earlier in this report, a potential mechanism to encourage greater community and individual perpetrator accountability is to hold family violence matters in Koori Court. This was explained by a participant in Mildura:

In Koori Court you can develop better knowledge of the offender. You can make the offender more accountable on a range of different indicia, not just whether they've reoffended. There's a lot of people in court that tell you, "I'm going to do this", and, "I'm going to do that". But when they say they're going to do it and they've told the Elders they're going to do it, they're accountable to the Elders as to whether they've done it or not. That makes a huge difference. But my list today I could've done that list in mainstream in 45 minutes, but we didn't do it in 45 minutes, we did it in four hours. We allotted an hour, at least an hour per case. We teased everything out. We made sure we got the information we wanted. We don't bother with the lawyers. They're usually useless in terms we don't want to hear from them in court. But they've got to do the work outside court, get it all finessed, but in court we talk to the accused. So, the accused is accountable, and that's different to mainstream. In mainstream the accused is not accountable. (Barbara, focus group, August 2019)

Individual perpetrator accountability

Individual perpetrator accountability refers to perpetrators taking personal responsibility for their violence and abuse, and for ceasing these behaviours. Individual perpetrator accountability for Aboriginal men who were perpetrators of family violence at both fieldwork sites was found to be extremely low. This may be due to the insufficiency of both systemic and community accountability mechanisms in alignment with the RCFV findings that

efforts to hold perpetrators to account are grossly inadequate. Victims are too often left to carry the burden of managing risk. Insufficient attention is given to addressing perpetrators' individual risk factors. (State of Victoria, 2016c, p. 6)

It has been well established that many family violence perpetrators (Aboriginal and Torres Strait Islander and non-Indigenous) go on to re-offend, especially men (Klein, 2009; Millsteed & Coghlan, 2016; Puffeii & Gavin, 2004; Wooldredge & Thistlethwaite, 2005). One New South Wales study found that Aboriginal and Torres Strait Islander family violence offenders were more likely to be reconvicted than non-Indigenous perpetrators (Fitzgerald & Graham, 2016). Other studies have noted the association between alcohol and drug use and family violence recidivism (Hilton & Harris, 2005; Hirschel & Dawson, 2000; Millsteed & Coghlan, 2016).

One lawyer participating in the research described some of the complex factors within the justice system (systemic/institutional accountability) that can impact on individual perpetrator accountability:

So, that client that I had today, it may actually stop him from perpetrating again, because he got a period of custody which really knocked him about and it's just from when I first represented him a few weeks ago to today when we resolved the matter he has a very different approach. So, I'm hoping that he won't be a repeat offender, but I've got no doubt it's the seriousness of the consequences and the potential for a lengthy period of incarceration that's a great disincentive for new perpetrators. What I'm noticing about the old perpetrators, because I keep seeing them, but I keep seeing them with new and younger women. So, they get to a certain level, but they can avoid the consequences of that by starting off again with a new relationship. And it's not so much the fact that if they get the intervention order and then breach it that the court is saying, "Oh, it's a new relationship, we'll go easy on you", they just look at their criminal history, not going easy on them but it takes longer for the new women to make the complaint. And once the intervention order's in place, move on, start beating up the next one. Takes a while for the intervention order to come in place, move on. So, they're not breaching because they're moving on before they breach but they're still not stopping the behaviour either. And I see that in the child protection space because there's flags come up on certain partners of women whose children are at risk and you can see the patterns. Then you look at the person, because you've been in the system for long enough you can say that that person was with this woman who had the same issues and the

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same risk for her children and the same child protection involvement. So, that's how you're seeing perpetrators behave more so now that the sanctions have increased. (Jeanine, interview, August 2019)

Another support worker explained how some men cycle in and out of perpetrator interventions, often victimising multiple partners over time:

There's a lot of clients that we get, victim[s]/survivors, that [their] perpetrators won't engage in the men's behaviour program. We've got to be able to work with both to get that outcome. Sometimes that won't happen, or women will disengage men. We've really got to work with both to get that outcome … I think if the woman doesn't return to that relationship and for whatever reason she's had enough, he will generally keep trying, keep trying to control. We see a lot of women relocate when that happens … They'll go back to family if they're not from here; that's their way out. Sadly, yeah, he'll eventually get sick of that and move onto [another] woman. So, then we're in the same predicament again. Yep, and then continue the behaviour with another woman, and we do see that … We see a lot of kids who wouldn't even know their father. There's a trail of children around these men. I don't know. It actually makes me sick. To think that these poor kids have no father figure, no positive role model, and there's a lot like that around in Mildura, in this area; like a lot of—they just go from one to the next … Yep, and the behaviours don't change … It does feel like that sometimes. It feels like we do all this work to try and help these women and unfortunately sometimes we do get this woman victim/survivor away from the perpetrator, but we know that he's going to perpetrate violence towards someone else. It's really hard. You try not to think of it that way because it's really awful. You've removed one woman from this awful situation but there's someone else that may be vulnerable to his behaviour now … At a certain point, once the men's behaviour change program try and engage him, he just falls back in … I guess the guys that are attending some of these men's behaviour change programs, they're mandated to go. They don't want to go. They go, sit there, fill out their paper bullshit all they've want. They've done their job and they can go back out into community again. I guess they've got to want to change as well. I think that's why a lot of them

return to these behaviours. They don't give a shit really. (Rosalie, interview, August 2019)

One perpetrator discussed the lack of community support for behavioural change services for Aboriginal men to support individual accountability:

There's lots of support for women but there's not much support for men in regard to changing their behaviour and that or wanting to change. It's more around women. So, I wish there was more that the community could offer for around men getting help that they need. Also, a part of it is the man's got to own it and swallow that pill too. A lot of men won't swallow that pill. (Timothy, interview, September 2019)

Therapeutic interventions, individual accountability and intergenerational trauma

Research suggests that the suppression or non-treatment of trauma can result in behaviours that lead to increased levels of criminal activity, violence against self and others, and self-medication through drugs and alcohol (Figley, as cited in Atkinson, 2008, pp. 238–239). This can lead to cycles of trauma for the partners, families and communities of those affected. It can also contribute to embedding behaviours in the culture of a community, where they are normalised and transmitted across generations (Atkinson, 2002; Duran & Duran, 1995; Milroy, 2005; Ralph, Hamaguchi, & Cox, 2006). Thus, although working to address perpetrator trauma can be vital for individual accountability, it is also an important factor to address cycles of family violence and intergenerational trauma in Aboriginal and Torres Strait Islander communities.

Several participants who worked directly with Aboriginal perpetrators discussed how trauma stemming from violence inflicted on them in the past was a common feature for many of their clients. One of these service providers explained that most men needed to address their own trauma before they were able to understand and take accountability for the violence they inflicted on their victims:

But with the trauma, like, I know through the intake, we've had a few guys that have had sexual assault, but I'd dare say, a very high majority have had, have come from homes of family violence, in family violence households.

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Dads that are violent, stepdads that are violent, mothers that are violent. No violence inside the home from their parents but they've had, you know, from family or extended family or community, had that violence kind of come to their house, I guess, with like, the whole home-invader-type stuff. And, you know, which is those family feuds and those massive brawls you see that can happen, you know, a lot of guys have had that happen in their childhood which can affect the kids, you know, they're witnessing the violence … And then they talk about their dads, like they're right onto them when they're angry or they're crying and they're upset, and their dad would be jumping on their back about it. And you get that, and now they're adults, the only way they know how to act out, when they feel those emotions, is through violence. So, we're getting, you know, that's, we see that as trauma as well … But we also know that you can't really make any kind of shift along that change, along that cycle, along that continuum, without addressing the trauma. Because at the end of the day, like I said, they're going to feel like the victim when they're perpetrating the violence just because of their childhood and having that trauma. You know, they just kind of box themselves in. (Joshua, interview, October 2018)

Another participant spoke of how perpetrators (particularly repeat offenders) often have access to sufficient therapeutic treatment when they are incarcerated, but when they return home, they do not have access to the level of therapeutic treatment (and other supports) they require:

A lot of the people who are really repetitive, repeat offenders get really good support tragically in custody, when they're sober and when they're not able to have the same access to drugs and they've got some distance and some quietness to think and do some really good programs in custody and have some really insightful conversations about their behaviour and the importance of their family and why they want to be different and do things differently. There isn't, I mean there's a reasonable transition program in terms of get some housing, get some money to get home. Here's your corrections order or your probation parole officer, but there isn't that seamless link from prison treatment, drug and alcohol treatment, men's behaviour change to those programs back home. And in the absence of those supports being here to deal with the underlying causes of

that offending, whether it's drugs and alcohol or mental health issues or unresolved grief and loss or generational trauma. If those things aren't there for the person once they've had this period of time to reflect, then it's very difficult for people to sustain change and that connection to family and kids. (Lotus, interview, August 2019)

Other participants discussed how parenthood can promote attitudinal and behavioural shifts for perpetrators. One perpetrator discussed his experience of fatherhood and shifts to his understanding of responsibility:

… because it's been different having to be a father, not just some responsible male figure in his life. Because that's all I thought I was at the start, just a responsible person—even though I wasn't the most responsible—but I try to be. But my choices weren't that responsible in the end and I try and advise him against them choices now, as a young fella himself—and he's finding his trust in the wrong crowds like I used to, which is quite easy when you've come through a bit of trauma and that. You put your faith in the wrong places and think that all these people are your mates but they're all out for one thing in the end, themselves. So, you've just got to learn them boundaries, sometimes slower than others. But, yeah, it's been a good wake-up call. And the fact that I'm a father to a 16-year-old boy, because I already acknowledged I was father to a 6-year-old daughter—I've got two kids. (Timothy, interview, September 2019)

Several participants said that they had noticed positive shifts in individual perpetrator accountability when perpetrators addressed and understood the impact their violence had on their children. Barbara explained how she has observed this in the context of the Koori Court:

Because one of the things I've learnt … is just the power of the parental relationship between fathers and children that I wasn't previously aware of, the depth of emotion that the fathers had for their kids … There has been in the past some sort of bravado around the families that haven't stayed together, and through Koori Court one of the things I've learnt is that how deeply emotionally affected the men are. And one of the things I'm noticing is that there is a dawning realisation of the damage of family violence that the children are experiencing from

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the men's behaviour that they weren't, so we're getting that message through. I don't know what it is you're doing but somehow we're getting the message through to the men that their behaviour is negatively impacting on the children and that we are seeing … But I'm certainly seeing more sensitivity by the men … towards their partner insofar as it affects the children and their relationship with their children but I'm not sure what to attribute that to. I don't know whether it's what the Elders say in Koori Court. I don't know whether it's what they're experiencing in programs. I don't know … But they're drawing the two things together. (Barbara, focus group, August 2019)

Nicholas, a service provider who works with perpetrators of family violence, reiterated the importance for Aboriginal men to recognise and take responsibility for the impact of their violence on their children:

> … the question always comes back to despite growing up in that … limited way of learning positive relationships, but if they can connect to that and have that feeling and that horror and how shit that was … the million dollar question there is then, how can you take that and then just dump that on your kids and that's the big, that always is quite impactful because they never want to be like their dad or the upbringing they had and they're generally repeating it and sometimes worse … That's a good question that gets a lot of thinking. (Nicholas, interview, June 2019)

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Discussion

Beyond tokenism— Women and children's safety first

The safety of women and children is often the foundational objective for perpetrator programs and services. Yet, in practice, we found that many men failed to attend services and did not receive support in prison to change their behaviour, so we looked at how this objective was being met. If men avoid programs or do not receive appropriate and targeted service support, then women and children are at grave risk of further harm. As we investigated the programs at the fieldsites, we found that policymakers and governments have allocated a significant portion of funding and resources for men's programs. The vast majority of these programs are mandated, requiring men to complete a 20-week course that aims to shift their behaviour and ensure women's and children's safety. However, poor tracking of attendance rates and a lack of consequences for non-attendance make it very difficult to ascertain their efficacy. Men's programs need more rigorous evaluation of their effectiveness to improve individual and service accountability outcomes. Given our data highlighted that the perpetrator programs in place at the fieldsites are poorly suited to demand and the specific needs of Aboriginal men, this is an area that requires further detailed research to provide the evidence for much needed reform.

Addressing substance abuse, neurological disability and mental illness as underlying factors contributing to family violence perpetration

Our findings suggest that there are significant and interrelated issues pertaining to substance abuse, neurological disability and mental illness. The ease with which illegal drugs, particularly crystal methamphetamine, were accessed at the fieldwork sites is of considerable concern given the reported associated increases in the frequency and severity of violence. Further, the lack of rehabilitation and other alcohol and other drugs support services to meet demand creates a great risk of further perpetuating cycles of violence and trauma within communities. Another concern identified by this research is the likelihood of a significant cohort of family violence offenders with undiagnosed ABIs who are not accessing appropriate supports to manage their emotions and behaviours. Another group of perpetrators for which appropriate, tailored responses were entirely lacking are those with FASD. FASD also often goes undiagnosed due to the inaccessibility of specialists with the skills and tools to make the diagnosis, particularly in regional and remote locations. Other perpetrators suffering from mental illnesses such as schizophrenia, or who were experiencing mental health issues of any kind, also had little access to appropriate services to manage or treat their symptoms. The high numbers of perpetrators with these issues at the fieldwork sites reported by service providers and professionals participating in the study warrant immediate further investigation and action, particularly due to the implications of increased severity of physical family violence, higher rates of incarceration, and increased contact with the justice system. Further, perpetrators with substance abuse issues, neurological disability and mental illness all present specific barriers to addressing perpetrator accountability. Thus, recognising and addressing significant underlying factors contributing to the perpetration of family violence is likely a key to addressing cycles of family violence and intergenerational trauma in Aboriginal and Torres Strait Islander communities.

Perpetrator accountability

Considering the alarming patterns and trends of family violence in Aboriginal and Torres Strait Islander communities reported in this study, our research focused on what was actively being done to address the rising rates of Aboriginal and Torres Strait Islander family violence and its impact on victims. We started by addressing how accountable perpetrators were for their violent behaviour, and found inadequate accountability by men who had perpetrated violence at individual, community and systemic levels with many perpetrators engaging in long-term patterns of violent behaviour that placed women and communities at great risk of harm. We found a substantial financial injection into MBCPs as a solution to addressing the alarming rates of violence.

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We also found that perpetrator accountability was not being met with this approach alone, and the allocation and prioritisation of funding to this one area is a limited response considering the immediate danger many women were facing on a daily basis from their perpetrator. Community accountability was found to be of great importance to Aboriginal and Torres Strait Islander women who had experienced violence—such recognition of perpetrator behaviour from the community enabled some women to feel a greater level of protection, though community recognition was reported to be seldom realised, leaving women vulnerable and at risk of staying in a violent relationship to avoid shame and guilt (see "Accountability" section). A key issue emerging from our data is that Aboriginal men who have perpetrated family violence are often caught in cycles of re-offending, with little individual accountability achieved within the broader pillars of systemic, institutional and community accountability. To strengthen individual communities, many gaps in systemic, institutional and community accountability must be filled, including greater investment in Aboriginal community-controlled and -led MBCPs and related perpetrator programs to enable better accessibility, availability and suitability. Although some state governments are shifting towards more suitable investment models for both ACCOs and communities to direct their own services according to local and contextual needs (see State of Victoria. Department of Health and Human Services, 2019), the application of these principals has not been responsive enough to ensure useful services are resourced appropriately in the interim (see e.g. the closure of the Dardi Munwarro MBCP in Mildura). Further, this study has highlighted that Aboriginal community accountability mechanisms require further research to better understand how communities work to support—or create barriers to—perpetrator accountability.

The dangers of de-emphasising individual perpetrator accountability

The findings of this research also suggest that while emergent, strengths-based policy recommendations and framing for Aboriginal approaches to family violence are important, there needs to be a considered focus on how broader accountability responsibilities of the community, the service sector, government and other related institutions support and uphold individual perpetrator accountability. An example of this shift away from an emphasis on individual perpetrator accountability can be seen in the Victorian *Dhelk Dja Agreement* (State of Victoria. Department of Health and Human Services, 2018), a 10-year, Aboriginal-specific family violence agreement. This agreement highlights the systemic and community responsibilities (and governance) for family violence, emphasising that "the right to safety is everyone's responsibility" (State of Victoria. Department of Health and Human Services, 2018, p. 32). The agreement contains few references to individual perpetrator accountability, setting a dangerous precedent, as the inferred messaging to an individual perpetrator is that his patterns of coercive control and use of violence and abuse are not his fault or his responsibility. It also sends a problematic message to the victims of family violence who already have little faith in systemic and community accountability. The *Final Report of the Victorian Expert Advisory Committee on Perpetrator Interventions* (Expert Advisory Committee on Perpetrator Interventions, 2018, p. 8) noted that "the individual perpetrator is responsible for his own unacceptable violence against women and children", and the system's responsibility is to ensure he is held accountable. We assert that there are, in fact, three pillars of responsibility for perpetrator accountability (systemic/institutional, community and individual) that are inextricably linked, and all are vital for the reduction both of family violence in Aboriginal and Torres Strait Islander communities and of the risks of violence for women and their children.

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Conclusion

This research aimed to expand understanding of Aboriginal and Torres Strait Islander family violence by focusing specifically on Aboriginal men who are perpetrators of family violence. The study highlighted the ongoing and traumatising effects that family violence has for many Aboriginal and Torres Strait Islander women, families and communities by widening the lens beyond the present research landscape.

Our legal audit of state and Commonwealth laws that apply to men who perpetrate family violence exposed a somewhat ad hoc and complex framework, which can lead to confusion for both offenders and victims. It also detailed the potential lengthy delays that can occur, particularly when children are involved. The audit also found that the lack of national uniformity between state and territory laws presents specific problems for how laws are enforced across jurisdictions and how they relate to one another. These factors are particularly pertinent to the Aboriginal participants in this research who have experienced long-term cycles of family violence, as many have dealt with protection orders, child protection and criminal matters in two different jurisdictions, causing further confusion, uncertainty and mistrust of the legal system.

Our analysis of perpetrator programs at both field sites found that there is much higher demand for services than the services provided. Further, the interventions in place focus on clients in crisis and post-crisis, with few universal (primary) or secondary prevention interventions available to Aboriginal men at risk of perpetrating violence. Given the inferences of normalisation of family violence and cycles of intergenerational violence emerging from the data, it would seem that these services would be of great benefit. Further, although Aboriginal-specific services offer greater cultural safety, and often more tailored solutions for Aboriginal men, the lack of community confidence in their privacy and confidentiality creates a barrier to accessing these services. Similarly, although there is greater availability of mainstream services across the fieldsites, these services do not provide appropriate cultural safety and the programs offered are viewed as less relevant to Aboriginal people. One factor highlighted was the important role that Aboriginal liaison officers can play in improving cultural safety in mainstream services and institutions. The unreliability and instability of the resourcing of perpetrator programs was also identified as an issue.

MBCPs are often presented as a key to shifting perpetrator attitudes and taking responsibility for their violence. We investigated the availability, accessibility and acceptability of MBCPs and found that although there have been significant resources allocated to these programs in Victoria and New South Wales, the demand for services in both fieldsites far outweighed the service availability. Given that MBCPs are often court-mandated, the waiting lists—reported as being as long as three months at one site—are unacceptable, and indicate either a misallocation of state resources according to need, or that far more funds are needed to fill the gap. However, we also found that mainstream programs were not acceptable or suitable for Aboriginal men. The only program that was reported to be highy acceptable and accessible for Aboriginal men was closed shortly after we completed our fieldwork. This was also the only Aboriginal-led and -run program in either region. A promising alternative to MBCPs that was reported to provide more holistic and targeted support for Aboriginal men are men's healing-centred programs. However, the centralisation of Aboriginal knowledges in these programs mean that they often fail to meet the minimum standards set for MBCPs, regardless of their effectiveness, with the implication being that it may be more difficult to attract resources for these programs, and Aboriginal men who are perpetrators of violence may be less likely to be referred to them.

Our research also investigated the Koori Court in Mildura, paying particular attention to the pilot program underway during our fieldwork that enabled the Court to hear family violence breaches. Preliminary findings indicated that there was great support for the continuation and expansion of the trial to other sites across Victoria. We found that the Koori Court is an effective engagement mechanism for offenders and community, functioning as a formal, institutional and culturally safe witness to family violence. We found that the Koori Court enables potential for higher standards of perpetrator accountability and reform than observed elsewhere.

Of substantial concern among the findings emerging from this research are implications of the high numbers of Aboriginal perpetrators with underlying issues related to their violent behaviours and actions. In particular, substance abuse, neurological disability, mental disorders and mental health issues were identified at high levels for Aboriginal perpetrators

of family violence (and their victims). It was also identified that many perpetrators with ABIs, FASD and mental disorders likely go undiagnosed or are misdiagnosed, and thus do not receive appropriate treatment and support. The high level of accessiblity of drugs, particularly ice, was also noted, with many service providers discussing how substance addiction increased the severity of the violence experienced and inflicted, but was often turned to as a form of medicalisation when other suitable services were unavailable, innaccesible or unsuitable.

The final theme addressed in our report was perpetrator accountability. We found that Aboriginal men who had perpetrated violence at the field sites were viewed as having low levels of accountability. We proposed a three-pillar framework for the interconnected responsibilities that are specific to, or shared across, institutions, communities and the individual perpetrator. We posit that this approach will shift responsibility for the violence and abuse away from victims, who are often unfairly blamed by the system, their communities and their perpetrators, either directly or indirectly. We also found that understanding the interconnectedness of the three pillars of perpetrator accountability is important to ensure the best outcomes for individuals, families and their communities.

Our research found that the pathways of Aboriginal men through family violence legal and support services at the field sites was often fraught, with significant—yet varied—barriers to access, availability and suitability. However, we outlined many examples of alternative approaches and frameworks, such as that operating in the Koori Court, which could be widely incorporated by services. These alternatives generally prioritise contextualised Indigenous knowledge and could better tailor programs according to individual needs. They also hold great potential to lead to better accountability mechanisms that would ultimately lead to a shift in attitudes and violent behaviours, breaking intergenerational cycles of violence and trauma in communities and providing greater safety for women and children.

Recommendations for policy and practice

Men's programs: Need for better methodological framing, rigorous and outcomes-based evaluation and outcome transparency

There is a great need for men's programs to be underpinned by evidence-based methodologies that have proven outcomes in long-term behavioural changes that lead to the cessation of the use of violence and abuse by perpetrators. A missing element of many MBCPs is the follow-up process of women's and children's safety post-program completion. Risk-based monitoring of the men participating in the programs could act as a safety net for their victims and the broader community yet is not always undertaken. Individual programs would benefit from onboarding outreach workers to maintain contact with former program participants to assess the ongoing risk they pose to their families and communities. Allocation of funding and resources for these programs should reflect the principles outlined above.

Extending Koori Court hearings to include family violence matters across Victoria

The interviews in Mildura conducted during the course of this research provided evidence that the Koori Court service appears to be a therapeutic form of justice that achieves better outcomes for all concerned as compared with the other courts. Evidence of the potential of the Koori Court to deal more effectively with cases of family violence was also found. Our own findings, based on our fieldwork interviews with members of the Aboriginal community, victims, perpetrators, court officers and members of the legal profession, show overwhelming support for the Koori Court in Mildura, and that close attention was being paid to its operations throughout Victoria. The Aboriginal community and service personnel dealing with family violence were eager for the establishment of Koori Courts in other regional centres as soon as possible, and we recommend rigorous evaluations be conducted to ensure the Koori Court is effective in family violence matters.

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Improved accountability with an interconnected, three-pillar approach

We recommend adopting a three-pillar approach to accountability, understanding that the foundations of perpetrator accountability are premised on taking on responsibility at the following levels:

- systemic and institutional (government authorities and non-government services and agencies)
- Aboriginal and Torres Strait Islander communities (ACCOs, families and extended kinship groups, Elders, neighbours, men's sheds and community groups)
- individual perpetrator (long-term shift in attitudes and stopping violent behaviours).

These three pillars are interconnected and cannot be addressed as isolated components. Many approaches tend to highlight or focus on either systemic or community accountability, particularly in Aboriginal and Torres Strait Islander-specific approaches. Existing siloed approaches ensure that the burden of responsibility for the violence continues to fall on Aboriginal women and children and allow perpetrators to avoid accountability for their behaviours and actions.

More resources for the training of service providers in the dynamics of family violence and better understanding of family violence referral pathways

Many service providers and related authorities who work with perpetrators were found to have inadequate expertise or training to appropriately manage perpetrators of family violence. Many non-Indigenous providers also had little understanding of the dynamics of family violence in Aboriginal communities. More resources are required to provide education and specialist training to understand the relevant complexities. For example:

- General practitioners should be required to screen their patients for signs of family violence.
- Service providers should be provided with opportunities to engage in preventative practice (e.g. young men engaging in programs with fathers on respectful relationships).
- Police officers engaging in call-out work should have a cultural understanding of the dynamics of family violence.

More local, appropriate and accessible perpetrator accountability support services

We have highlighted throughout this report the insufficiency of local and appropriate programs for perpetrators of family violence. Existing programs and support services at both fieldwork sites were overloaded in their capacity to manage the demand and unable to provide adequate—if any—follow-up practices. In particular, the following services and programs need to be expanded:

- therapeutic counselling and related services (both individual and group)
- Aboriginal-specific and other culturally appropriate MBCPs
- local drug and alcohol rehabilitation and counselling
- mental health services.

Better screening and identification of neurological disorders and mental health issues and illness

This research uncovered the prevalence of perpetrators with neurological disorders such as ABIs, FASD and mental health disorders at the fieldwork sites. This finding is grave and significant, requiring immediate attention. Undiagnosed and untreated, these chronic health issues present a high risk to women, children and communities. Screening and diagnosis need to be undertaken when there is any indication of symptoms of associated behavioural issues. Service providers, particularly health providers, and authorities need to be trained to recognise the signs and symptoms of the neurological disorders such as ABIs and FASD to avoid assumptions of substance abuse and the risks posed by individuals with these disorders. The provision of appropriate services to treat perpetrators with neurological disorders is needed to reduce the impact and severity of violence against women and their children. Addressing this factor effectively could potentially interrupt intergenerational cycles of trauma in many Aboriginal communities.

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Victims of Crime Assistance Act 1996 (Vic)

Weapons Prohibition Act 1998 (NSW)

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Family violence-related services in Mildura, Albury and Wodonga

Albury (NSW only)					
Service	**Location**	**Category**	**Aboriginal-specific**	**Target**	**Description**
NSW Police	Albury	Government	No	Women and men	• Emergency/crisis response to domestic violence incidents in the community • domestic violence education and support • apprehended domestic violence order (ADVO) court support
Southern Women's Domestic Violence Court Advocacy Service	Albury	Legal	No	Women	• Central intake assessment and referral service for public and police • court advocacy support for victims of domestic violence
YES Unlimited—Betty's Place Women's Refuge	Albury	Housing	No	Women	• Intake/assessment/crisis accommodation, case management and counselling for victims of domestic violence (onsite and outreach) • secure location in Albury
Mission Australia Albury Family Services	Albury	Family	No	Women and men	Intensive, in-home crisis intervention, practical assistance, counselling and skill development to support families with children that are placed in OOHC, or an authorised carer where a child in OOHC has been placed in their care, or a family restoration following a child's entry into OOHC
Riverina Murray Family Referral Service	Albury	Referral	No	Women and men	Assists in linking vulnerable children, young people in need of assistance, and their families, with the most appropriate available support services, including domestic violence support services and counselling
Woomera Aboriginal Corporation	Albury	Community-controlled	Yes	Women and men	Promotes Aboriginal leadership within the community through a range of family services including social housing. Provides a single point of access to information, resources, services and support

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Centacare	Albury	Mental health	No	Women and men	Social service agency providing a range of community education courses, mental health services, and family and relationship counselling
Aboriginal Legal Service	NSW statewide	Legal	Yes	Women and men	Statewide Aboriginal controlled service that provides free legal work in criminal law, children's care and protection law and family law
NSW Government–Domestic Violence Line	NSW statewide	Government	No	Women	Statewide phone crisis counselling and referral service for women. Referrals to police, hospital care, AVOs, safety plans, emergency accommodation
NSW Government–Victim's Services	NSW statewide	Government	No	Women and men	Provides counselling, recognition payment (of criminal offence such as assault), financial assistance (e.g. relocation assistance)

Wodonga (Victoria only)					
Service	**Location**	**Category**	**Aboriginal-specific**	**Target**	**Description**
Victoria Police	Wodonga	Legal	No	Women and men	• Emergency/crisis response to domestic violence incidents in the community • domestic violence education and support • ADVO court support
Centre Against Violence	Wodonga	Mental health; homelessness; legal	No	Women and men	• Family violence services and sexual assault services for women and children • intake/assessment, crisis support and housing assistance • secure locations • men can access sexual assault services and can also participate in restorative justice program
Gateway Health	Wodonga	Health	No	Women and men	• Provides women's domestic violence outreach counselling, and women and childrenss family violence counselling • behaviour change program for men who use violence
Junction Support Services	Wodonga	Family violence-specific	No	Women	Women and children's family violence support program providing counselling, children's support and children's resource programs for agencies

Mungabareena Aboriginal Corporation	Wodonga	Community-controlled	Yes	Women and men	Provides a range of services for the Aboriginal community including a program specifically aimed at family violence and aiding people with support, information, education and techniques put in place at early intervention that empower individuals to make safe decisions for themselves and their families
Rural Housing Network	Wodonga	Housing	No	Women and men	Short-term crisis accommodation for men who have been excluded from the family home via intervention orders also provides housing assistance to women and children experiencing family violence in partnership with Centre Against Violence
Merri Health	Wodonga	Health	No	Women and men	Intake, assessment and referral, case management for victims of crime, including men who are experiencing family violence
Upper Murray Family Care (UMFC)	Wodonga	Financial	No	Women and men	Financial counselling for men and women who have been affected by family violence
Women's Health Goulburn North East/No Interest Loan Scheme (NILS)	Wangaratta	Health/financial	No	Women	NILS program provides no-interest loans for women on low incomes for essential goods and services
Djirra (Aboriginal Family Violence Prevention Legal Service)	Vic statewide	Community-controlled; family violence-specific	Yes	Women and men	Community-controlled organisation working on preventing and addressing family violence in Aboriginal communities, including programs supporting Aboriginal women's journey to safety and wellbeing
Victorian Government–Child Protection Crisis Line	Vic statewide	Government	No	Women and men	Statewide phone line to report concerns for the welfare of children due to family violence or other factors
Victoria Legal Aid Helpline	Vic statewide	Helpline	No	Women and men	Statewide phone line and internet service providing free legal advice and referrals
Women's Legal Services Victoria	Vic statewide	Legal	No	Women	Provides free legal services to women experiencing disadvantage or legal issues due to relationship breakdown or family violence
Victoria Aboriginal Legal Services (VALS)	Vic statewide	Community-controlled; legal	Yes	Women and men	Community-controlled organisation providing legal referrals, advice and case work assistance to Aboriginal people

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Albury–Wodonga (cross-border)

Service	Location	Category	Aboriginal-specific	Target	Description
Women's Centre for Health and Wellbeing Albury Wodonga	Albury–Wodonga	Health; mental health	No	Women	Women-specific counselling, medical services, support groups and referrals related to family violence
Hume Riverina Community Legal Service	Albury–Wodonga	Legal	No	Women and men	• Provides assistance on a range of legal issues including family law and family violence • offers specific Invisible Hurdles project aimed at providing better legal outcomes for young people experiencing family violence in north-east Victoria
Albury Wodonga Aboriginal Health Service (AWAHS)	Albury–Wodonga	Community-controlled; health	Yes	Women and men	Community-controlled organisation providing culturally appropriate health services for local Aboriginal community to enhance health outcomes
Albury Wodonga Health	Albury–Wodonga	Health; mental health	No	Women and men	• Cross-border public health service including hospitals in Albury and Wodonga • initiated Strengthening Hospital Responses to Family Violence (SHRFV) project building the capacity of staff to better deal with patients in relation to family violence

Mildura (Vic)

Service	Location	Category	Aboriginal-specific	Target	Description
Victoria Police	Mildura	Government	No	Women and men	• Emergency/crisis response to domestic violence incidents in the community • domestic violence education and support • ADVO court support

Orange Door	Mildura	Referral	No	Women and men	• Outsources services for victims and perpetrators of family violence • connects people involved in family violence with services they require such as refuge services, Aboriginal services, family services and perpetrator services
Dardi Munwurro ***Closed July 2019**	Mildura	Community-controlled	Yes	Men	• Focuses on the prevention of family violence by offering men's behaviour change programs to Aboriginal men • these programs aim to address intergenerational trauma, change behaviours related to family violence and equip men with the skills to be leaders within their communities
Mallee District Aboriginal Services (MDAS)	Mildura	Community-controlled; health; mental health	Yes	Women and men	Community-controlled organisation that provides health and family services including behaviour change programs for Aboriginal male perpetrators of family violence, and also includes Meminar (see below)
Mallee Domestic Violence Services	Mildura	Homelessness	No	Women and men	Provides specialist family violence services to victims and survivors of domestic violence, including immediate crisis care and emergency housing, advocacy and referrals
Mildura Base Hospital–Aboriginal Health Unit	Mildura	Health; mental health	Yes	Women and men	Sector of the hospital run by Aboriginal staff that aims to improve the health outcomes of Aboriginal patients. Refers patients on to local family violence services as required and advocates on behalf of patients when accessing these services
Sunraysia Community Health Services	Mildura	Health	No	Women and men	Health provider that offers a men's behaviour change program that aims to prevent male family violence and promote the safety of women and children
Meminar Ngangg Gimba	Mildura	Community-controlled; housing	Yes	Women	• Provides a range of support services, including 24-hour crisis support and accommodation for Aboriginal women and children experiencing family violence • also provides services to connect clients with their culture to help them make positive life changes

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Umalek Balit	Mildura	Government; legal	Yes	Women and men	• Dedicated Koori family violence and victim support program that is designed to address the specific barriers faced by Aboriginal people when attending court and interacting with the justice system • Includes practitioners that guide men and women through the court's family violence-related response
Mallee Family Care	Mildura	Health	No	Women and men	Provides a range of human services including family support, legal support, foster care, mental health and homelessness support
Djirra (Aboriginal Family Violence Prevention Legal Service)	Vic statewide	Community-controlled; legal; FV specific	Yes	Women and men	Community-controlled organisation working on preventing and addressing family violence in Aboriginal communities, including programs supporting Aboriginal women's journey to safety and wellbeing
Victorian Government–Child Protection Crisis Line	Vic statewide	Government	No	Women and men	Statewide phone line to report concerns for the welfare of children due to family violence or other factors
Victoria Legal Aid Helpline	Vic statewide	Legal	No	Women and men	Statewide phone line and internet service providing free legal advice and referrals
Women's Legal Services Victoria	Vic statewide	Legal	No	Women	Provides free legal services to women experiencing disadvantage or legal issues due to relationship breakdown or family violence
Victoria Aboriginal Legal Service	Vic statewide	Community-controlled; legal	Yes	Women and men	Community-controlled organisation providing legal referrals, advice and case work assistance to Aboriginal people in the state of Victoria

National					
Service	**Location**	**Category**	**Aboriginal-specific**	**Target**	**Description**
1800 RESPECT–National Domestic Violence and Sexual Assault Help Line	National	Helpline	No	Women and men	• National domestic violence and sexual assault help line • provides counselling, advice and resources on healthy relationships, violence and abuse, and links to help and support

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Centrelink—Social Work Department	National	Government; mental health	No	Women and men	Government service providing short-term counselling, information and referrals to people experiencing family violence and a range of other situations
Safe Steps Family Violence Response Centre	National	FV-specific	No	Women	Provides a range of services supporting women and children experiencing family violence including reporting hotline, advice, court support services and recovery services
Men's Line Australia	National	Helpline	No	Men	National telephone and online support hub, information and referral service for men with family and relationship concerns
No To Violence—Men's Referral Service	National	Referral; FV-specific	No	Men	• Works to bring about the changes needed to eliminate men's use of family violence • works directly with men who use family violence to support them to change

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Men's behaviour change programs in Victoria

Provider	Program	Location
Anglicare	MBCP	Bayswater, Box Hill, Lilydale
Bethany Community Support Inc.	MBCP	Hamlyn Heights
Brophy Family and Youth Services	MBCP	Warrnambool
Centre for Non-Violence	MBCP	Bendigo
Child and Family Services Ballarat Inc.	MBCP	Ballarat
Dardi Munwurro	Strong Spirit Men's Healing and Behaviour Change Program	Mernda
Djerriwarrh Health Services	MBCP	Melton
Family Life	MBCP	Sandringham, Frankston
Gateway Health	MBCP	Wangaratta, Wodonga
Gippsland Lakes Community Health	MBCP	Bairnsdale
Grampians Community Health Service	MBCP	Horsham, Stawell
Koori Men's Behaviour Change Program	CHOICES (MBCP)	La Trobe Valley
Latrobe Community Health Service	MBCP	Morwell, Sale, Warragul
Relationship Matters	MBCP	Frankston, Williamstown, Wyndham, Melbourne
Link Health and Community	MBCP	Clayton
Nexus Primary Health	MBCP	Broadford
Peninsula Health Community Health	The M.E.N.S. (Men Exploring Non-violent Solutions) Program (MBCP)	Frankston, Mornington, Rosebud

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Provider	Program	Location
DPV Health	MBCP	Epping
Relationships Australia Victoria	MBCP	Boronia, Cranbourne, Kew, Shepparton, Sunshine
Relationships Australia Victoria	Vietnamese MBCP	Sunshine
Salvocare Eastern	MBCP	Wonthaggi, Leongatha
Star Health	MBCP	Moorabbin, South Melbourne, St Kilda
Sunbury Community Health	Men's Business (MBCP)	Sunbury
Sunraysia Community Health Services	MBCP	Mildura, Swan Hill
Thorne Harbour Health	ReVisioning (GBTIQ MBCP)	Melbourne (St Kilda Rd)
Uniting Kildonan	MBCP	Epping, Heidelberg, Reservoir
Uniting Kildonan—Arabic-speaking Men's Family Violence Group	MBCP	Broadmeadows, Epping
Uniting Kildonan	South Asian MBCP	Heidelberg

Source: Data extracted from No to Violence, 2019

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Men's behaviour change programs in New South Wales

Provider	Program	Location
Anglicare	S.T.O.P. (Skills, Techniques, Options and Plans) MBCP	Parramatta, Nowra
BaptistCare Counselling and Family Services	Facing Up	Bankstown, Campbelltown, Tuggerah
CatholicCare	Choosing Change	Fairfield
Men & Family Centre	MEND (Men Exploring New Directions)	Lismore, Tweed Heads
Mission Australia	Mannin' Up MBCP	Dubbo
Liberty Domestic & Family Violence Specialist Services	Engage2Change MBCP	Port Macquarie
Relationships Australia Canberra and Region	Taking Responsibility	Wagga Wagga
Relationships Australia New South Wales	Taking Responsibility	Penrith, Macquarie Park, Parramatta, Wollongong, Sydney City, Hunter
Kempsey Families Inc.	Engage2Change MBCP	Kempsey, Nambucca Valley, Coffs Harbour

Source: Data extracted from No to Violence, 2019

APPENDIX D:

Table of national family violence protection orders legislation

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Victoria	*Family Violence Protection Act 2008* (Vic) Orders are known as a family violence intervention order	"Family member" is defined very widely. It includes a current or former spouse, domestic partner, or person who is or has been in an intimate personal relationship (whether or not it is sexual in nature); a parent, a child, a relative (including immediate and extended family). It also includes people who, when looking at the social, cultural, financial and emotional context in which the relationship occurs, are considered to be a family member. The legislation gives the example that "a relationship between a person with a disability and the person's carer may over time have come to approximate the type of relationship that would exist between family members" (s 8). The legislation specifies that "relative" also covers a wide range of people, including "for an Aboriginal or Torres Strait Islander person—includes a person who, under Aboriginal or Torres Strait Islander tradition or contemporary social practice, is the person's relative" (s 10[b])	The legislation specifies that an intervention order can cover a wide range of subject matters, including: • prohibiting the respondent from committing family violence against the protected person • prohibiting the respondent from the protected person's residence • prohibiting the respondent from contacting the protected person • requiring the respondent to attend counselling • revoking or suspending any licence/permit to carry or use firearms (see Alexander, 2019)
New South Wales	*Crimes (Domestic and Personal Violence) Act 2007* (NSW) Orders are known as apprehended domestic violence orders	"Domestic relationship" is defined to include a person who is a current or former spouse, de facto partner, or person who is or has been an intimate personal relationship (whether or not it is sexual in nature); is living or has lived in the	The legislation specifies that the court may impose any such prohibitions or restrictions on the behaviours of the respondent as they deem necessary, including prohibiting or restricting:

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
New South Wales continued	*Crimes (Domestic and Personal Violence) Act 2007* (NSW) Orders are known as apprehended domestic violence orders	same household (not in a correctional centre as outlined in the *Crimes [Administration of Sentences] Act 1999* or a detention centre as outlined in the *Children [Detention Centres] Act 1987*); currently or previously had a relationship involving the dependence on ongoing paid or unpaid care of the other person; currently or previously a relative; for Aboriginal and Torres Strait Islander peoples the other person is or has been part of the kin or extended family according to their kinship system (s 5). The legislation specifically covers carers and their dependents. An apprehended domestic violence order can be made against a paid carer for the protection of a dependent but not the other way around (s 5A[2][b]). The meaning of a "relative" covers a range of direct, in-law and step-relations of the person and a de facto partner's relations (s 6)	• approaching the protected person • access to any premises occupied by the protected person, place of work or place frequented by the protected person • approaching the protected person or a place within 12 hours of consuming illicit drugs or alcohol • locating the protected person • interfering, damaging or destroying the protected person's property • specific behaviour by the respondent which may affect the protected person (s 35) The respondent is prohibited in every apprehended violence order from: • assaulting or threatening the protected person or someone with whom they have a domestic relationship • stalking, harassing or intimidating the protected or someone with whom they have a domestic relationship • damaging or destroying any property of the protected person or someone with whom they have a domestic relationship whether intentionally or recklessly (s 36) The *Firearms Act 1996* (NSW) provides for automatic suspension of a firearms licence when an interim apprehended violence order is made (s 23) and automatic revocation of a licence upon a final order being made (s 24).

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
New South Wales continued			The *Weapons Prohibition Act 1998* (NSW) provides for automatic suspension of a permit when an interim apprehended violence order is made (s 17) and automatic revocation of a permit when a final order is made (s 18). The *Residential Tenancies Act 2010* (NSW) terminates the tenancy of a tenant or co-tenants upon a final order being made (s 79)
Queensland	*Domestic and Family Violence Protection Act 2012* (Qld) Orders are known as domestic violence orders	The aggrieved person can be protected by a domestic violence order along with their child, a child who lives with them, a relative or an associate of theirs. Associates could be a current partner, work at the same workplace or live at the same place as the aggrieved person (s 24).	Conditions which can be imposed on a domestic violence order include preventing the respondent from: • going to, or within a certain distance, of the aggrieved person's place of work or residence • living with the aggrieved person • locating the aggrieved person, family, friends or a place where they are staying • specified behaviour towards the aggrieved person's children (which could include prohibition of the presence of the respondent in locations associated with the children) • going to places frequented by the aggrieved person's children • having contact with the aggrieved person or other people named on the order

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Queensland continued		A "family relationship or relative" means a person connected by blood or marriage, current or former. The wider concept of a relative as understood in Aboriginal and Torres Strait Islander communities may be recognised as a relative within this act if the person regards or did regard the person as a relative or they consider themselves to be a relative of the first person (s 19)	It can also include: • compelling the respondent to return property or provide access to a place to retrieve personal belongings • protecting an unborn child of the aggrieved person (see Legal Aid Queensland, 2017)
South Australia	*Intervention Orders (Prevention of Abuse) Act 2009* (SA) Orders are known as intervention orders and must specify if they are domestic or not	An intervention order can be issued to protect any person whom it is suspected the respondent will commit an act of abuse against or any child who may hear, witness or be exposed to the effects of the respondent's act of abuse against a person (s 7). The legislation refers to "abuse" in a domestic and non-domestic context to mean physical, emotional, psychological or economic abuse. "Domestic abuse" specifically refers to an act of abuse which is committed by the respondent against someone they are currently or formerly in a relationship with. This means the two people are married, domestic partners, in an intimate relationship, one child is a child, stepchild, grandchild or under guardianship of the other partner or former partner, they are siblings, are related by marriage, blood or domestic partnership or adoption, are related in accordance with the Aboriginal or Torres Strait Islander kinship rules or one is the carer of the	An intervention order can include terms prohibiting or compelling the respondent to do things, including: • prohibiting the respondent from going to the protected person's residence, work, places frequented by the person, going to specific locations or approaching the protected person • prohibiting contact, harassment, threats, intimidation or allowing another person to behave in such a way • prohibiting the respondent from being on rented premises where they previously resided, and the respondent is a party to the rental agreement • requiring the respondent to surrender any firearms, licence or permit, suspend firearms licence and disqualify the respondent from having a firearm while the intervention order is in place • issuing a problem gambling family protection order under the *Problem*

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
South Australia continued		other (s 8[8])	*Gambling Family Protection Orders Act 2004* (SA) • requiring the respondent to participate in a program for problem gambling, substance abuse, other behavioural problems or mental impairment • prohibiting the respondent from damaging, taking possession of, or allowing another person to damage or possess property of a protected person • requiring the respondent to surrender, return property or provide access to a place to retrieve personal belongings (see Legal Services Commission of South Australia, 2016)

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Western Australia	*Restraining Orders Act 1997* (WA) Orders are known as family violence restraining orders (FVROs)	"Family member" is defined to mean two people in a relationship who are currently or were married to one another, in a de facto relationship or related to one another; one of the people is a child who currently or has resided with the other person or regularly resides with the other person; one of the people is or was the guardian of the other person; or they have had an intimate or personal relationship with one another (s 4[1]). A personal relationship is of a domestic nature when lives of the persons are or were interrelated considering social, religious and cultural backgrounds (s 4[2])	The legislation specifies that an FVRO can restrain the respondent's behaviour, as the court deems fit, including: • prohibiting the respondent from being on or near where the protected person lives or works • prohibiting the respondent from going to a location • prohibiting the protected person being approached by the respondent • prohibiting the respondent from stalking the protected person • prohibiting the respondent from communicating with the protected person • preventing the respondent from obtaining or using the protected person's personal belongings • prohibiting the respondent from distributing intimate images of the protected person • prohibiting the respondent from causing or allowing another person to engage in conduct mentioned above (s 10G)
Northern Territory	*Domestic and Family Violence Act 2007* (NT) Orders are known as domestic violence orders	"Domestic relationship" is defined to mean a person whom the protected person is or has been in a family relationship with; currently or previously had custody, guardianship or access to the person; ordinarily resides or resided with the other person or someone in a family	A domestic violence order can include different orders depending on the needs of the parties, including: • non-contract orders prohibiting or imposing conditions on the respondent regarding contact to the protected person and children

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Northern Territory continued		relationship with that person; currently or previously was in a family relationship with the child of the other person; an intimate relationship with the other person (engaged, sexual relationship and other factors are considered [s 11]); or in a carers relationship with the other person (one person is dependent on the other person's ongoing care [ss 12, 9]). A family relationship means the two people are spouses, de facto partners or a relative. For Aboriginal people this is per Aboriginal tradition or contemporary social practice (s 10)	• prohibiting the respondent from exposing the protected person, children on an order or the protected person's property to be threatened, damaged or abused • prohibiting the respondent from stalking the protected person • requiring the respondent to return the protected person's belongings to them • any other orders which the court deems appropriate (see Fauls, 2018)
Tasmania	*Family Violence Act 2004* (Tas) There are two types of protective orders, namely Police FVOs (issued by police for up to 12 months), and FVOs (granted by a court)	The *Family Violence Act 2004* (Tas) specifically provides for spouses or partners, and any affected children. The definition of family violence in the Act refers to any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner: assaults including sexual assault, threats, coercion, intimidation, verbal abuse, abduction, stalking and bullying, economic abuse, emotional abuse or intimidation, damaging property, and attempting or threatening conduct towards their partner or spouse (s 7). "Spouse or partner" means the person currently or previously was with a person in a family relationship (marriage or significant relationship;	**Police FVOs** Orders granted by police may require the person to whom it is issued to do any or all of the following: (a) vacate any premises, whether or not that person has a legal or equitable interest in the premises (b) not enter any premises or only enter premises on certain conditions, whether or not that person has a legal or equitable interest in the premises (c) surrender any firearm or other weapon (d) refrain from harassing, threatening, verbally abusing or assaulting an affected person, affected child or other person named in the order (e) not approach, within a specified distance,

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Tasmania continued		Ts 4). An affected child means a child whose safety, psychological wellbeing or interests are affected or likely to be affected by family violence (s 4).	an affected person, an affected child, or other person named in the order or certain premises
			(f) refrain from contacting an affected person, affected child or other person named in the order directly or indirectly or otherwise than under specified conditions (s14)
		Affected children can be named on Police FVOs and court-made FVOs	**FVOs**
			An FVO may include such conditions as the court considers necessary or desirable to prevent the commission of family violence against an affected person or to protect any other person named in the order.
			Without limiting the nature of the conditions which may be included in an FVO, the court may require the person against whom the FVO is to be made to do one or more of the following:
			(a) vacate premises, not enter premises, or only enter premises on certain conditions, whether or not that person has a legal or equitable interest in the premises
			(b) [Section 16 sub-s 3 amended by No. 50 of 2017, s 6, Applied: 12 Dec 2017] not possess firearms specified in the order or forfeit or dispose of any firearms in his or her possession
			(c) [Section 16 sub-s 3 amended by No. 50 of 2017, s 6, Applied: 12 Dec 2017] submit to being electronically monitored by wearing and not removing, or always carrying, an electronic device which allows—

Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Tasmania continued			(i) the Commissioner of Police (ii) a police officer, State Service officer, State Service employee or other person, or a person of a class of persons (whether police officers, State Service officers, State Service employees or other persons), authorised by the Commissioner of Police— to find or monitor the geographical location of the person (s 16) A court may also: • terminate an original tenancy agreement • terminate and establish a new residential tenancy agreement for the benefit of the affected person and any other party who was a party to the terminated agreement, other than the person against whom the FVO is to be made; or • terminate the original agreement and establish a new residential tenancy agreement for the benefit of the person against whom the FVO is to be made and any other party who was a party to the terminated agreement, other than the affected person (s 17) In practice, conditions in FVOs are often of a similar nature to those listed in s14

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Jurisdiction	Relevant legislation and relevant term	Who can be protected by a protection order?	What matters can a protection order cover?
Australian Capital Territory	*Family Violence Act 2016* (ACT) Orders are known as FVOs	"Family member" is defined by the legislation to mean a current or former domestic or intimate partner, a relative of the person, a child of the current or former domestic partner or the parent of a child of the person (s 9). The meaning of a "relative" covers a range of direct, in-law and step-relations of the person. For Aboriginal and Torres Strait Islander peoples this means someone whom the person has responsibility for or someone the person has responsibility, or an interest in, in accordance with their traditions and they regard as a relative, someone they have a family-like relationship with and anyone reasonably considered to be a relative (s 11)	The legislation specifies that an FVO can cover a wide range of subject matters, including: • prohibiting the respondent from going to the protected person's residence, work or premises they are likely to be • prohibiting the respondent from going to a specific place • requiring the respondent maintain a certain distance from the protected person • prohibiting the protected person from locating or contacting the protected person • prohibiting the above actions in relation to a child of the protected person, or any other child which may be at risk of being exposed to family violence • prohibiting the respondent from taking property necessary for the protected person or a child of theirs • require the respondent to engage in a program for counselling, training, rehabilitation or assessment • prohibit the respondent from physically, sexually, emotionally or economically abusing, threatening or coercing the protected person (s 38)

APPENDIX E:

Table of child protection legislative and policy provisions in Victoria and New South Wales

New South Wales legislation/policy	Relevant term	Key sections relating to Aboriginal and Torres Strait Islander children and family violence	Summary of key sections
Crimes (Domestic and Personal Violence) Act 2007	Apprehended violence orders to protect children	Part 9, ss 38–45	Among other things, s 38 provides for apprehended violence orders, and empowers the court to issue an order for the protection of a child in a domestic relationship involving violence even though an application for the order was not made by a police officer. In a case in which a person is found guilty of a serious offence and where no order has been issued, the court must issue an apprehended violence order for the protection of a child, even though an application for the order was not made by a police officer. The court must make an interim court order against a person charged with a serious offence, "for the protection of the person against whom the offence appears to have been committed whether or not an application for an order has been made". These reforms are necessary to protect victims of domestic violence

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Children and Young Persons (Care and Protection) Act 1998 (NSW) Continued	Mandatory reporting	Section 27: Mandatory reporting	Abuse and neglect types that must be reported are:
		Mandated reporters are required to report on reasonable grounds that a child is at risk of significant harm. Mandated reporters are people who in the course of their professional work or paid services deliver the following services to children: • health care • welfare • education • children's services • residential services • law enforcement Also, a person who holds a management position in an organisation and has either direct supervision of, or direct responsibility for children in: • health care • welfare • education • children's services • residential services • law enforcement A state-regulated service does not include: • babysitting, playgroup or child-minding service that is organised informally by the parents of the children • a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised	• physical abuse • sexual abuse • emotional/psychological abuse • neglect • exposure to domestic violence (AIFS, 2017) Part 2, s 23: Child or young person at risk of significant harm (1) A person is at risk of significant harm if there are concerns for the safety, welfare or well-being of a child due to … (d) the child or young person living in a house which has reported incidents of domestic violence and as a result the child is at risk of serious physical or psychological harm

Children and Young Persons (Care and Protection) Act 1998 (NSW) Continued		• a service principally conducted to provide instruction (e.g. sports, music, culture or religion; *Children [Education and Care Services] Supplementary Provisions Act 2011*, s 4) Section 29A: A person who has made a report in compliance with pt 2 is not prevented from helping the child or young person in the course of their employment otherwise Section 32: Initial identification—Aboriginal and Torres Strait Islanders If the Secretary believes that a child or young person who has been reported is Aboriginal or Torres Strait Islander, then they are to make reasonable inquiries to determine if they are
	"Risk of significant harm" report for unborn child (mandatory reporting does not apply)	Section 25: A person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of harm after his or her birth may make a report to the Director-General. Note: The intention of this section is to provide assistance and support to the pregnant woman to reduce the likelihood that her child, when born, will need to be placed in out-of-home care. The principle is that of supportive intervention rather than interference with the rights of pregnant women

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| *Children and Young Persons (Care and Protection) Act 1998 (NSW) Continued* | Aboriginal Child Placement Principle | Part 2 s 11: Aboriginal and Torres Strait Islander self-determination

(1) Aboriginal and Torres Strait Islander people are to have as much self-determination in the care and protection of their children and young people as possible.

(2) The Minister may negotiate with Aboriginal and Torres Strait Islander people to agree on programs and implementations strategies.

Section 12: Aboriginal and Torres Strait Islander participation in decision making:

• The opportunity to participate in decisions regarding the placement of the children and young people of Aboriginal and Torres Strait Islander people is to be given to their families, kinship groups, representative organisations and communities, where possible.

Section 13: Aboriginal and Torres Strait Islander Child and Young Persons Placement Principle

(1) … the general order of placement for an Aboriginal or Torres Strait Islander child or young person is:

(a) a member of the child or young person's extended family or kinship group to which they belong; or

(b) If (a) is not practicable or it is not in the best interests of the child or young person then they should be placed with a member of the Aboriginal or Torres Strait Islander community to which they belong; or

(c) If (a) or (b) is not practicable or it is not in the best interests of the child or young person then they should be placed with an Aboriginal or Torres Strait Islander family living in the vicinity of their usual residence; or | Section 13(7) of the Act provides that where there is a serious risk of immediate harm then the general placement principles will not apply.

Section 23 outlines that "serious risk of immediate harm" includes where a child or young person is living in a home which has had reported family violence incidents.

Where family violence is present the general placement principles will not be followed |

***Children and Young Persons (Care and Protection) Act 1998 (NSW)*
Continued**

(d)　If (a), (b) or (c) is not practicable or it would be detrimental to the child or young person's safety, welfare or wellbeing then they should be placed with a suitable person approved by the Secretary after consultation with members of the child or young person's extended family or kinship group and any Aboriginal or Torres Strait Islander organisations deemed appropriate.

(2) The expressed wishes and self-identification (whether they identify as Aboriginal or Torres Strait Islander) of the child or young person should be considered when determining where to place them.

(3) If a child or young person has parents from different Aboriginal or Torres Strait Islander communities the general order for placement under subsection (1) should be followed but should have regard to the best interests of the child or young person.

(4) Where a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal or Torres Strait Islander parent then the child may be placed with the parent with which their best interests would be served.

(5) If subsection (4) applies and the child or young person is placed with a non-Aboriginal or Torres Strait Islander family or community then there must be arrangements to ensure the opportunity to contact their Aboriginal and Torres Strait Islander family, culture and community; or

(6) If the child or young person is placed with an Aboriginal or Torres Strait Islander family then there must be arrangements to ensure the opportunity to contact their non-Aboriginal and Torres Strait Islander family, culture and community.

(7) If an Aboriginal or Torres Strait Islander child or young person is placed with a carer that is not Aboriginal or Torres Strait Islander then it will be subject to their best interests

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***Children and Young Persons (Care and Protection) Act 1998* (NSW) Continued**		with the objective to reunite the child or young person with their family/community and there must be continuing contact between the child or young person and their Aboriginal or Torres Strait Islander family, culture and community. (8) Subsection (1) does not apply to an emergency placement to protect a child or young person who is at serious risk of immediate harm or if the placement is for less than 2 weeks	
	Referrals/non-mandated reporters	Section 24: A person who believes on reasonable ground that a child or young person is at risk of significant harm may make a report to the Secretary. Section 25: A person may make a report to the Secretary if, prior to the birth of a child, a person has reasonable grounds to suspect that after the birth they may be at risk of serious harm. Section 26: A report made under sections 24 or 25 may be made anonymously	As s 23 outlines that "serious risk of immediate harm" includes where a child or young person is living in a home which has had reported family violence incidents, *anyone* can report if they have reasonable grounds to suspect the child or young person may be at risk of significant harm
Aboriginal Case Management Policy		Targeted at ss 11–14 of the *Children and Young Persons (Care and Protection) Act 1998*. It is an operational framework for all practitioners working with Aboriginal and Torres Strait Islander children	The Aboriginal Case Management Policy aims to prevent harm and preserve families, promoting child safety and wellbeing, facilitates Aboriginal family-led decision making and case management that delivers holistic services tailored to the needs of Aboriginal children and families

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Victorian legislation/policy		Key sections relating to Aboriginal and Torres Strait Islander children and family violence	
Children, Youth and Families Act 2005 (Vic)	Mandatory reporting	Section 182: Mandatory reporters • registered medical practitioners • nurses including midwives • Victorian police officers • registered teachers and school principals • out-of-home care workers (excluding voluntary foster and kinship carers) • early childhood workers • youth justice workers • registered psychologists Legislation passed on 10 September 2019 to include people in religious ministry. School counsellors to be mandated from 31 Jan 2010. Section 184: Failure to report is a summary offence by fine of up to $1611.90 (as at 1 July 2018)	Abuse and neglect types that *must* be reported: • physical injury • sexual abuse • sexual offence (AIFS, 2017) Note: it does not explicitly refer to family violence; other jurisdictions do (New South Wales, Tasmania and Northern Territory)
	Aboriginal Child Placement Principle	Part 1.2, div 4: Additional decision-making principles for Aboriginal children Section 12: in deciding or taking an action in relation to an Aboriginal child: • an opportunity should be given, *where relevant*, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views; • a decision re: placement of an Aboriginal child, or other significant decision, *should* involve a meeting by a DHHS-approved Aboriginal convener and be attended by the child, the parents, extended family, appropriate	DHHS provides family violence support via: Indigenous Family Violence Strategy—a community-led initiative to develop a whole-of-government response to family violence in Aboriginal and Torres Strait Islander communities. It is jointly managed by Aboriginal Affairs Victoria, the department and the Office of Women's Policy (DHHS, 2019a)

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***Children, Youth and Families Act 2005* (Vic) Continued**		members of the Aboriginal community that parents choose;	Code of Practice for Investigation of Family Violence (Victoria Police, 2019)

members of the Aboriginal community that parents choose;

- when deciding about out-of-home care, an Aboriginal agency **must** first be consulted, and the Aboriginal Child Placement Principle *must* be applied

Section 13: Aboriginal Child Placement Principle: If it is in best interests of an Aboriginal child to be placed in out–of–home care, then regard must be had to:

- advice of the Aboriginal agency
- priority criteria:

    (a) extended family or relatives

    (b) a local Aboriginal community family

    (c) an Aboriginal family from another community

    (d) last resort, a non-Aboriginal family in close geographical proximity to natural family—must ensure ongoing culture and identity through contact with child's community

- Where a child care agreement is made with the parent, then advice of the Aboriginal agency does not apply

Section 14: Further principles for placement:

- must take into account whether the child identifies as Aboriginal and the expressed wishes of the child.
- where parents from different communities must consider priority criteria from s 13, and child's own sense of belonging
- if child placed with one parent's community, then child must have continuing contact with the other
- if one parent is non-Aboriginal, then best interests of child is primary
- if placed with a non-Aboriginal family or community, then arrangements must ensure continuing contact with Aboriginal family, community and culture

Code of Practice for Investigation of Family Violence (Victoria Police, 2019)

Child Safe Standards (DHHS, 2019b)

Assessing children and young people experiencing family violence practice guide

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***Children, Youth and Families Act 2005* (Vic) Continued**		(Section 18: DHHS may authorise the Aboriginal principal officer of an Aboriginal agency to undertake specified functions and powers in relation to a Children's Court protection order for an Aboriginal child or young person. Section 162: (1) A child needs protection if: (a) abandoned by parents and no other suitable and willing carer; (b) parents are dead or incapacitated and no other suitable person; Sections 228–239: DHHS can apply for an order to investigate whether a child needs protection without leave of the court Sections 242–243: Only DHHS initiates protection applications; in urgent cases with or without a warrant; in non-urgent cases, giving notice to the parents of a hearing Section 323: Restrictions on the making of permanent care order in respect of an Aboriginal child: • not unless a disposition report states that DHHS is satisfied the order the court order will accord with the Aboriginal Child Placement Principle; and • the court has received a report from an Aboriginal agency recommending the making of the order; and • if one parent is non-Aboriginal, then best interests of child is primary • if placed with a non-Aboriginal family or community, then arrangements must ensure continuing contact with Aboriginal family, community and culture • a cultural plan has been prepared for the child	

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Children, Youth and Families Act 2005 (Vic) Continued	Referrals/reports	Section 183: Report to protective intervener • anyone who reasonably believes that a young person needs protection may report the circumstances to the DHHS or to the police; and • must be in good faith (Fitzroy Legal Services, 2020)	Non-mandatory referrals: *Anyone* can contact child protection if a child has been or is at risk of child abuse and neglect. Child FIRST, as the access point for family services, is progressively transitioning to the Orange Door. The Orange Door is the new access point for families who need assistance with the care and wellbeing of children, including those experiencing family violence, to contact the services they need to be safe and supported. *Anyone* concerned about the well-being of a child, but not for their immediate safety, can refer to Child FIRST, or the Orange Door, for example where families: • are experiencing significant parenting problems that may be affecting the child's development; • are experiencing family conflict, including family breakdown; • are under pressure due to a family member's physical or mental illness, substance abuse, disability or bereavement; • are young, isolated or unsupported; • are experiencing significant social or economic disadvantage that may adversely impact on a child's care or development (DHHS, 2019)

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***Children, Youth and
Families Amendment
(Permanent Care and
Other Matters) Act
2014***

**A review of
amendments will
begin in 6 months**

Amendments include:

- identifying and removing delays and barriers to
  achieving permanent placements for children
  - to provide stability
  - for most children permanency is achieved through
    family preservation or reunification
- the authorisation of carers to make decisions on
  specified issues about the children in their care, which
  commenced on 17 November 2014

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